



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Seventeenth Report of Session 2014-15

Drawing special attention to:

Care and Support (Provision of Health Services) Regulations 2014
(S.I. 2014/2821)

Care and Support (Market Oversight Information) Regulations 2014
(S.I. 2014/2822)

Care and Support (Assessment) Regulations 2014 **(S.I. 2014/2827)**

*Civil Aviation (Access to Air Travel for Disabled Persons and Persons
with Reduced Mobility) Regulations 2014* **(S.I. 2014/2833)**

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Joint Committee on Statutory Instruments

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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 74, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i. that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii. that its parent legislation says that it cannot be challenged in the courts;
- iii. that it appears to have retrospective effect without the express authority of the parent legislation;
- iv. that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
- v. that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi. that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii. that its form or meaning needs to be explained;
- viii. that its drafting appears to be defective;
- ix. any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Joanna Welham (*Commons Clerk*), Jane White (*Lords Clerk*) and Liz Booth (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons*); Nicholas Beach, Peter Milledge and John Crane (*Lords*).

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Instruments reported

At its meeting on 7 January 2015 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to four of those considered. The Instruments and the grounds for reporting them, are given below. The relevant Departmental memoranda are published as an appendices to this report.

1 S.I. 2014/2821: Reported for unjustifiable delay in laying before Parliament

Care and Support (Provision of Health Services) Regulations 2014 (S.I. 2014/2821)

1.1 The Committee draws these Regulations to the special attention of both Houses on the grounds that there appears to have been unjustifiable delay in laying them before Parliament.

1.2 S.I.2014/2821 was made on 6th October 2014 and not laid before Parliament until 24th October. The Committee asked the Department of Health to explain the reason for the delay, and also referred in its question to delays in respect of S.I. 2014/2822, S.I. 2014/2823, S.I. 2014/2824, S.I. 2014/2827, S.I. 2014/2828 and S.I. 2014/2829, which were identical or slightly longer.

1.3 In a memorandum printed at Appendix 1, the Department acknowledges that there has been a delay in laying the specified statutory instruments. It explains that “this was caused by delays within Government”, and adds that it regrets the delay in laying the Regulations but has taken various steps which mitigated the effects of the delay, as specified in the Department’s memorandum, including a public consultation and a “substantial gap” before commencement. It adds that “the contents of the Regulations were therefore already in the public domain before they were laid and will remain so for a considerable period before they come into force”; but it “nonetheless regrets the delay and unreservedly apologises to the Committee for this”, and “assures the Committee that steps are being taken to try and ensure that the omission is not repeated”.

1.4 The Committee accepts that the content of the Regulations were in the public domain as described. What the Department’s memorandum does not explain, however, is why they could not also be laid in a timely manner. The Committee is not told precisely what was the nature or cause of the “delays within Government” that prevented laying before Parliament, and it is difficult to imagine why it could have been necessary to postpone such a simple administrative step. Whatever arrangements Departments may make to consult the public about the content of instruments and to ensure that they have advance notice, the statutory arrangements for laying before Parliament remain part of the required formal measures by which publicity is assured, and they should not be neglected on account of other informal measures having been taken.

1.5 Accordingly the Committee reports the Regulations as being one of a number that were subject to unjustifiable delay in laying before Parliament, acknowledged by the Department.

2 S.I. 2014/2822 and 2827: Reported for defective drafting

Care and Support (Market Oversight Information) Regulations 2014 (S.I. 2014/2822)

Care and Support (Assessment) Regulations 2014 (S.I. 2014/2827)

2.1 The Committee draws the special attention of both Houses to both sets of Regulations on the ground that they are defectively drafted in one parallel respect.

2.2 Subject to qualifications, sections 9 and 10 of the Care Act 2014 impose obligations on local authorities to assess adults' needs for care and support and section 55(1) of the Care Act 2014 imposes an obligation on the Care Quality Commission to assess the financial sustainability of registered care providers. The two sets of Regulations make provision that supplements those obligations, S.I. 2014/2827 in the case of sections 9 and 10 and S.I. 2014/2822 in the case of section 55(1).

2.3 S.I. 2014/2827 is made under section 12(1) of the Care Act 2014 (among other provisions), and regulation 1(1) provides for it to come into force "immediately after section 12(1) of the Care Act 2014 comes fully into force". S.I. 2014/2822 is made under section 55(5) of the Care Act 2014 (among other provisions), and regulation 1(1) provides for it to come into force "immediately after section 55(5) of the Care Act 2014 comes fully into force".

2.4 Given that each of section 12(1) and section 55(5) of the Care Act 2014 is a provision for the sole purpose of making regulations and that article 2(1)(b) and (q) of S.I. 2014/2473 has already brought them into force for that purpose, the Committee asked the Department of Health to explain why regulation 1(1) of each instrument commences the Regulations immediately after the full coming into force of the provision identified in it, as opposed – say – to section 9 (in relation to S.I. 2014/2827) and section 55(1) (in relation to S.I. 2014/2822).

2.5 In materially parallel memoranda printed at Appendix 2 and Appendix 3, the Department explains that it considered that, although each of sections 12(1) and 55(5) of the Care Act 2014 confers a regulation-making power which has been brought into force for the purposes of enabling the exercise of the power to make regulations, sections 12(1) and 55(5) still need to be commenced for remaining purposes to enable regulations made under them to come into force.

2.6 In both memoranda the Department refers to another instance in which it has taken the same approach, i.e. S.I. 2012/2996, provisions of which were to come into force immediately after the full coming into force of section 75 of the Health and Social Care Act 2012. Had the circumstances been parallel and had S.I. 2012/2996 not been drawn to the special attention of both Houses, that would not alone have inhibited the Committee from drawing these sets of Regulations to special attention. Furthermore, in the Committee's view the circumstances are not parallel – section 75 of the 2012 Act contains a provision (subsection (2)) that, though dependent on regulations, is in conceptual terms free-standing. It follows that the Committee regards the precedent relied on as irrelevant.

2.7 In addition, in the memorandum relating to S.I. 2014/2827, the Department points out that the Committee's reference to full coming into force of section 9 as an implicitly better reference point might have been inapt, as section 10 was equally relevant and they would be capable of being commenced on different days. The Committee agrees that use of the

full coming into force of the latter of sections 9 and 10 would have been a better reference point. That, however, does not justify the approach taken by the Department in that instrument.

2.8 It follows that none of the points made in either memorandum provides the Committee with an understanding of the purposes for which either section 12(1) or section 55(5) of the 2014 Act remains to be commenced, given that the sole purpose of each is to authorise the making of regulations. As the Committee's questions imply, had commencement of the regulations been linked to full commencement of related provisions that do not merely contain enabling powers, the Committee would have understood the intention. As it is, however, the intention and effect of both commencement provisions appear doubtful, given that section 12(1) and 55(5) have already been commenced for the only purpose that they appear to have.

2.9 Accordingly, the Committee reports regulation 1(1) of each of these instruments for defective drafting.

3 S.I. 2014/2833: Reported for defective drafting

<p><i>Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 (S.I. 2014/2833)</i></p>
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3.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in two respects.

3.2 The Regulations are part of the implementation of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

3.3 Regulation 4(1) designates the Civil Aviation Authority for purposes of the Regulations, and provides that "it and any person authorised to act on its behalf are to have access at all reasonable times to any part of an airport or aircraft for the purposes of carrying out" their functions. The Committee asked the Department for Transport to explain by what mechanism it is intended that the CAA's right of access under regulation 4(1) is to be capable of being enforced. In a memorandum printed at Appendix 4, the Department explains that it decided in preparing the Regulations that no express sanction was required, on the grounds that "airport operators are, typically, established licensed bodies with reputational concerns who will have a pre-existing relationship with the CAA or other regulator", and that "prior experience suggests that the CAA's role in inspecting airports and aircraft does not typically need to be underpinned by sanctions save where there are pressing safety or security concerns". It goes on to explain that in certain circumstances suspected infringements could be partially addressed through requirements to provide information under the Regulations. Although the Committee accepts that in practice airport operators are likely to comply with a requirement to allow the CAA to enter, it is a matter of legislative principle that duties should not be imposed unless they can be enforced. If the CAA is confident that it will be allowed access to airports, a legal right of entry is unnecessary; if the right is required, then it must be capable of being enforced. **Accordingly, the Committee reports regulation 4(1) for defective drafting.**

3.4 Regulations 8(e) and 17(10)(e) deal with service of notices, and both allow a notice to be sent to any address that has been held out as a contact address, without excluding addresses which are no longer so held out. The Committee asked the Department to explain the absence of that exclusion. In its memorandum the Department says that since “the Regulations clearly anticipate an exchange of information ... the Department would not generally expect the CAA to send a request for consultation to an electronic address in respect of which it had become aware that it was no longer held out as a contact address”. It adds that “in the unlikely event that the CAA were to seek to contact an extant operator and had no other known means of contact then a request for consultation sent to a withdrawn email address would be permissible, in the same way that service on an individual’s last known place of business, employment or residence is permissible.” The Committee accepts that legislation sometimes permits service at a person’s “last known” address; but in the Committee’s view that provision is appropriate for cases of uncertainty, and is not intended to permit service at addresses with which the addressee is known no longer to have any connection. Sending a letter to a person’s last fixed address may effect service even when they have left that address, as they are likely to have established arrangements for the forwarding of post. Sending a message to a “withdrawn email address” is completely pointless; and the appropriate legislative provision would have been an exemption from the requirement to serve where the CAA has no recorded address for the person except for a withdrawn email address. **Accordingly, the Department reports regulations 8(e) and 17(10)(e) for defective drafting.**

Instruments not reported

At its meeting on 7 January 2015 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Instrument to which the Committee does not draw the special attention of both Houses

- *denotes that the written evidence submitted in connection with the instrument is printed with this Report*

Annex

Instrument requiring affirmative approval

Motor Vehicles (Variation of Speed Limits) (England and Wales) Regulations 2014

Draft Instruments requiring affirmative approval

- Draft S.I.** Care and Support (Business Failure) Regulations 2014
- Draft S.I.** Care and Support (Children's Carers) Regulations 2014
- Draft S.I.** Care and Support (Eligibility Criteria) Regulations 2014
- Draft S.I.** Care and Support (Market Oversight Criteria) Regulations 2014
- Draft S.I.** Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015
- Draft S.I.** Films (Definition of "British Film") Order 2015
- Draft S.I.** Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code A) Order 2015
- Draft S.I.** Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2015
- Draft S.I.** Protection of Freedoms Act 2012 (Code of Practice for Powers of Entry and Description of Relevant Persons) Order 2015
- Draft S.I.** Social Security (Penalty as Alternative to Prosecution) (Maximum Amount) Order 2015
- Draft S.I.** Justification Decision (Generation of Electricity by the UK ABWR Nuclear Reactor) Regulations 2015
- Draft S.I.** Regulation of Investigatory Powers (Communications Data) (Amendment) Order 2015
- Draft S.I.** Representation of the People (England and Wales) (Amendment) Regulations 2015
- Draft S.I.** Representation of the People (Scotland) (Amendment) Regulations 2015

Draft S.I.	Microchipping of Dogs (England) Regulations 2015
Draft S.I.	Judicial Pensions Regulations 2015
Draft S.I.	Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015
Draft S.I.	Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015
Draft S.I.	Renewable Heat Incentive Scheme (Amendment) Regulations 2015
Draft S.I.	Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015
Draft S.I.	Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2015
Draft S.I.	Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015
Draft S.I.	Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015
Draft S.I.	Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015
Draft S.I.	National Employment Savings Trust (Amendment) Order 2015
Draft S.I.	British Nationality (General) (Amendment) Regulations 2015
Draft S.I.	Misuse of Drugs Act 1971 (Amendment) Order 2015
Draft S.I.	Armed Forces Pension (Consequential Provisions) Regulations 2015
Draft S.I.	Public Service (Civil Servants and Others) Pensions (Consequential and Amendment) Regulations 2015
Draft S.I.	Firefighters' Pension Scheme (England) (Consequential Provisions) Regulations 2015
Draft S.I.	National Health Service Pension Scheme (Consequential Provisions) Regulations 2015
Draft S.I.	Teachers' Pension Scheme (Consequential Provisions) Regulations 2015
Draft S.I.	Police Pensions (Consequential Provisions) Regulations 2015
Draft S.I.	Smoke-free (Private Vehicles) Regulations 2015
Draft S.I.	Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015
Draft S.I.	Local Audit (Appointing Person) Regulations 2015
Draft S.I.	Local Audit (Smaller Authorities) Regulations 2015

Draft S.I.	Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015
Draft S.I.	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015
Draft S.I.	Legal Services Act 2007 (The Law Society) (Modification of Functions) Order 2015

Instruments subject to annulment

○ S.I. 2014/2871	Care and Support (Direct Payments) Regulations 2014
S.I. 2014/2920	Air Navigation (Amendment) (No. 3) Order 2014
S.I. 2014/3061	Marriage (Same Sex Couples) Act 2013 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014
S.I. 2014/3078	Occupational Pensions (Revaluation) Order 2014
S.I. 2014/3125	Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014
S.I. 2014/3134	Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations 2014
S.I. 2014/3138	Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014
S.I. 2014/3139	Nursing and Midwifery Council (Fees) (Amendment) Rules Order of Council 2014
S.I. 2014/3142	Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) (Amendment) Regulations 2014
S.I. 2014/3158	Non-Commercial Movement of Pet Animals (Amendment) Order 2014
S.I. 2014/3191	Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014
S.I. 2014/3224	Local Audit (Auditor Panel) Regulations 2014
S.I. 2014/3230	Ukraine (European Union Financial Sanctions) (No.3) (Amendment No.2) Regulations 2014
S.I. 2014/3249	Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2014

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2014/3094	Welfare Reform Act 2012 (Commencement No. 20 and Transitional and Transitory Provisions and Commencement No. 9 and Transitional and Transitory Provisions (Amendment)) Order 2014
S.I. 2014/3186	Care Act 2014 (Commencement No.3) Order 2014
S.I. 2014/3192	Crime (International Co-operation) Act 2003 (Commencement No. 6) Order 2014
S.I. 2014/3218	Health Education England (Transfer of Staff, Property and Liabilities) Order 2014
S.I. 2014/3245	Constitutional Reform and Governance Act 2010 (Commencement No. 9) Order 2014

Appendix 1

S.I. 2014/2821: memorandum from the Department of Health

Care and Support (Provision of Health Services) Regulations 2014 (S.I. 2014/2821)

1. In its letter to the Department of 3rd December 2014, the Committee requested a memorandum on the following point:

“Explain why, in common with six other contemporary instruments from the Department of Health (2014/2822, 2014/2823, 2014/2824, 2014/2827, 2014/2828 and 2014/2829) there was so long a period between making and laying these Regulations.”

2. The Department’s response to the Committee’s point is outlined below.
3. The Department acknowledges that there has been a delay in-between the making and laying of the above Regulations. This was caused by delays within Government.
4. The Department regrets the delay in laying the Regulations but has taken various steps which mitigated the effects of the delay. These included:
 - A. a prior public consultation bringing the proposals for the Regulations to the notice of those who stood to be affected, including local authorities and the public;
 - B. the building-in of a substantial gap in time in-between the date of laying and the proposed commencement date of the Regulations, in order (1) to give sufficient notice of the changes in the law so that those affected can adequately prepare themselves and (2) to give the Committee and the Secondary Legislation Scrutiny Committee sufficient time to consider the Regulations before they come into force.
5. On point A, a consultation on draft regulations under Part 1 of the Care Act 2004, including the above Regulations, was published on 5 June 2014, and ran for ten weeks to 15 August. In order to reach persons with a comprehensive and varied pool of experience and expertise, the consultation contained a mix of digital and face-to-face meetings and events with the full spectrum of stakeholders, including: people receiving care and support and their carers; social workers and other frontline practitioners; local authority finance managers, commissioners and elected members; voluntary and private social care providers; national representative groups and other charities and trusts; NHS agencies, housing departments, DWP Job Centre Plus and other key

partners involved in the reforms. In total, the consultation drew over 4,000 responses from many different sources.

6. The Department carefully considered all responses and made revisions to the draft Regulations where appropriate.
7. The Government response to the consultation was published on 23 October and can be found here: <https://www.gov.uk/government/consultations/updating-our-care-and-support-system-draft-regulations-and-guidance>.
8. On point B, it is not intended that the Regulations will come into force until April 2015 which will allow for at least five months' advance notice before the Regulations take effect.
9. The contents of the Regulations were therefore already in the public domain before they were laid and will remain so for a considerable period before they come into force.
10. However, the Department nonetheless regrets the delay and unreservedly apologises to the Committee for this. The Department also assures the Committee that steps are being taken to try and ensure that the omission is not repeated.

Department of Health
9 December 2014

Appendix 2

S.I. 2014/2822: memorandum from the Department of Health

Care and Support (Market Oversight Information) Regulations 2014 (S.I. 2014/2822)

1. In its letter to the Department of 3rd December 2014, the Committee requested a memorandum on the following point:

“Given that section 55(5) of the Care Act 2014 is a provision for the sole purpose of making regulations and that S.I. 2014/2473, article 2(1)(q), has already brought it into force for that purpose, explain why regulation 1(1) indicates that these Regulations come into force immediately after section 55(5), as opposed – say – to section 55(1), comes fully into force.”

2. The Department's response to the Committee's point is outlined below.

3. Regulation-making powers are often commenced in two stages: at the first stage the power is brought into force only for the purpose of enabling the exercise of the power to make regulations, and at the second stage the power is brought into force for remaining purposes, that is to say for the purposes of the regulations being brought into force. Accordingly, although section 55(5) of the Care Act 2014 confers a regulation-making power which has been brought into force for the purposes of enabling the exercise of the power to make regulations, the Department's view is that section 55(5) further needs to be commenced for remaining purposes to enable the regulations made under it to come into force, that is to say the Care and Support (Market Oversight Information) Regulations 2014. Provision has not yet been made to bring section 55(5) fully into force, with the intention being to commence it for remaining purposes in April 2015. The Regulations therefore provide that they will come into force immediately after section 55(5) comes fully into force.
4. This is an approach that the Department has previously taken in respect of similar issues. An example of this is the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) which were made in exercise of various powers including those under section 75 of the Health and Social Care Act 2012 ("the 2012 Act"). Regulation 1(3) provides for Part 8 of those Regulations, insofar as the provisions of that Part are made under section 75 of the 2012 Act, to come into force immediately after that section comes fully into force. Section 75 was commenced on Royal Assent so far as necessary for enabling the exercise of the power to make regulations by section 306(1)(d) of the 2012 Act. It was commenced for remaining purposes by article 2 of the Health and Social Care Act 2012 (Commencement No 4, Transitional, Savings and Transitory Provisions) Order 2013 (S.I. 2013/160).
5. In this instance, the Department considered it appropriate to link the commencement of the Care and Support (Market Oversight Information) Regulations 2014 to the full commencement of section 55(5) of the Care Act 2014, which is the main enabling power the Regulations rely on. Whilst the Regulations make provision for enabling the Care Quality Commission to obtain appropriate information to assist it in carrying out its duty under section 55(1) of the Care Act 2014, it is not a condition of the carrying out of that duty that provision for obtaining that information is made under section 55(5). The Department therefore decided to link the coming into force of the Regulations to the full commencement of section 55(5).

Appendix 3

S.I. 2014/2827: memorandum from the Department of Health

Care and Support (Assessment) Regulations 2014 (S.I. 2014/2827)

1. In its letter to the Department of 3rd December 2014, the Committee requested a memorandum on the following point:

“Given that section 12(1) of the Care Act 2014 is a provision for the sole purpose of making regulations and that S.I. 2014/2473, article 2(1)(b), has already brought it into force for that purpose, explain why regulation 1(1) indicates that these Regulations come into force immediately after section 12(1), as opposed – say – to section 9 or 10, comes fully into force.”

2. The Department’s response to the Committee’s point is outlined below.
3. Regulation-making powers are often commenced in two stages: at the first stage the power is brought into force only for the purpose of enabling the exercise of the power to make regulations, and at the second stage the power is brought into force for remaining purposes, that is to say for the purposes of the regulations being brought into force. Accordingly, although section 12(1) of the Care Act 2014 (the 2014 Act) confers a regulation-making power which has been brought into force for the purposes of enabling the exercise of the power to make regulations, the Department's view is that section 12(1) further needs to be commenced for remaining purposes to enable the regulations made under it to be brought into force, that is to say the Care and Support (Assessment) Regulations 2014, with the intention being to commence it for remaining purposes in April 2015. The Regulations therefore provide that they will come into force immediately after section 12(1) comes fully into force.
4. This is an approach that the Department has previously taken in respect of similar issues. An example of this is the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) which were made in exercise of various powers including those under section 75 of the Health and Social Care Act 2012 (the 2012 Act). Regulation 1(3) provides for Part 8 of the Regulations, insofar as the provisions of that Part are made under section 75 of the 2012 Act, to come into force immediately after that section comes fully into force. Section 75 was commenced on Royal Assent so far as necessary for enabling the exercise of the power to make regulations by section 306(1)(d) of the 2012 Act. It was commenced for remaining purposes by article 2 of the Health and Social Care

Act 2012 (Commencement No 4, Transitional, Savings and Transitory Provisions) Order 2013 (S.I. 2013/160).

5. In this instance, the Department considered it appropriate to link the commencement of the Care and Support (Assessment) Regulations 2014 to the full commencement of section 12(1) of the 2014 Act, which is the main enabling power the Regulations rely on. As the Regulations make provision about both needs assessments under section 9 and carers' assessments under section 10 of the 2014 Act, providing for commencement of the Regulations by reference to the enabling power in section 12(1), as opposed to one or other of sections 9 and 10, helps avoid possible confusion. It also accommodates the possibility of sections 9 and 10 being commenced to different timetables, the need for which could subsequently arise in principle because of, for example, practical or other issues.

Department of Health
9 December 2014

Appendix 4

S.I. 2014/2833: memorandum from the Department for Transport

Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 (S.I. 2014/2833)

1. By a letter dated 3rd December 2014, the Joint Committee on Statutory Instruments requested a Memorandum by reference to the following points:
 - (1) *Explain by what mechanism it is intended that the CAA's right of access under regulation 4(1) is to be capable of being enforced, and how that intention is achieved.*
 - (2) *Explain why regulations 8(e) and 17(10)(e) (both of which appear to have a comma missing after 'case') allow sending of notice electronically to any address that has been held out as a contact address, without excluding addresses no longer so held out.*
2. These Regulations make further provision for implementing European Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air ("the EU Regulation"). In

particular, these Regulations create a new enforcement regime by way of civil sanctions.

(1) Explain by what mechanism it is intended that the CAA's right of access under regulation 4(1) is to be capable of being enforced, and how that intention is achieved.

3. Regulation 4(1) provides that the Civil Aviation Authority ("the CAA") and any person authorised to act on its behalf are to have access at all reasonable times to any part of an airport or aircraft for the purposes of carrying out the CAA's functions as the designated enforcement body for the purposes of the EU Regulation. The question of whether or not such access should be enforceable under threat of potential criminal or civil sanction was discussed during development of the statutory instrument. The Department's thinking on that question was informed by a recent powers of entry review examining the proportionality of the CAA's powers to enter property or impact on ownership rights.
4. The conclusion on this point, with which the CAA agrees, is that no such power of enforcement is needed in this context. This position is in part a reflection of the fact that airport operators are, typically, established licensed bodies with reputational concerns who will have a pre-existing relationship with the CAA or other regulator. Prior experience suggests that the CAA's role in inspecting airports and aircraft does not typically need to be underpinned by sanctions save where there are pressing safety or security concerns. In a scenario in which the CAA had cause to believe that there might be infringement of provisions of the EU Regulation in circumstances where the CAA were not allowed access to an airport or aircraft then a potential next step for the CAA would be to require information to be provided to it under a notice served under regulation 16. Failure to comply with such a notice can lead to the CAA making a court application under regulation 18 in order to force a response.

(2) Explain why regulations 8(e) and 17(10)(e) (both of which appear to have a comma missing after 'case') allow sending of notice electronically to any address that has been held out as a contact address, without excluding addresses no longer so held out.

5. The purpose behind regulation 5 is to engage in appropriate consultation in order to stop or prevent a breach of the EU Regulation. Regulations 6, 7, 8 and 9 set out a comprehensive method for initiating a request for consultation and provide a range of alternative methods for delivering it, posting it or transmitting it by electronic communication. The Regulations clearly anticipate an exchange of information and in making the initial request and exercising its powers, including those provided by regulation 8, the CAA should, and would be

expected to, adopt an approach that would further the objectives of the consultation. Accordingly, the Department would not generally expect the CAA to send a request for consultation to an electronic address in respect of which it had become aware that it was no longer held out as a contact address. To do so would arguably, in many circumstances, tend to defeat the purpose of regulation 5 and be inconsistent with the CAA's functions under the Regulations. In the unlikely event that the CAA were to seek to contact an extant operator and had no other known means of contact then a request for consultation sent to a withdrawn email address would be permissible, in the same way that service on an individual's last known place of business, employment or residence is permissible.

6. Regulation 16 enables the CAA to elicit information for the purpose of establishing compliance with the relevant Articles of the EU Regulation, an enforcement order or interim enforcement order or an undertaking. Regulation 17 provides an equally comprehensive procedure for giving notice requiring such information. For similar reasons to those given in relation to regulation 8, the Department would not generally expect the CAA to send a notice pursuant to regulation 17(10)(e) to an electronic address which was no longer held out as a contact address otherwise than as a final course of action.

Department for Transport
16 December 2014

Appendix 5

S.I. 2014/2871: memorandum from the Department of Health

Care and Support (Direct Payments) Regulations 2014 (S.I. 2014/2871)

1. In its letter to the Department of 3rd December 2014, the Committee requested a memorandum on the following point:

“Explain the apparent omission to include express mention, in regulation 3(3), of a parent of a civil partner of an adult covered by that provision.”

2. The Department's response to the Committee's point is outlined below.
3. There is no express mention of a parent of a civil partner of an adult in regulation 3(3) because that relationship is covered by the reference to “parent-

in-law” in sub-paragraph (c)(i). This is by reason of sections 246(2) and 247 (1) of the Civil Partnership Act 2004 which provide that for the purpose of any provision made by future subordinate legislation (except so far as otherwise provided) the expression “parent-in-law” includes civil partner’s parent”, and the Department has not provided that the expression “parent-in-law” should be read so as to exclude a parent of a civil partner of the adult.

Department of Health
9 December 2014