

# HOUSE OF LORDS

Merits of Statutory Instruments Committee

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8th Report of Session 2008-09

Drawing special attention to:

**Draft Renewables Obligation Order 2009**

**Non-Domestic Rating (Collection and  
Enforcement) (Local Lists) (Amendment)  
(England) Regulations 2009**

Correspondence:

**Draft Renewable Transport Fuel  
Obligations (Amendment) Order 2009**

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### *The Select Committee on the Merits of Statutory Instruments*

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
  - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
  - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
  - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
  - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
  - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
  - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
  - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
  - (c) that it may inappropriately implement European Union legislation;
  - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Lord James of Blackheath CBE
The Lord Crisp KCB	The Lord Lucas
The Baroness Deech DBE	The Baroness Maddock
The Viscount Eccles CBE	The Lord Rosser
The Lord Filkin CBE ( <i>Chairman</i> )	The Baroness Thomas of Winchester
The Lord Hart of Chilton	

### *Registered interests*

Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

### *Publications*

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

### *Contacts*

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email [merits@parliament.uk](mailto:merits@parliament.uk). The Committee's website, [www.parliament.uk](http://www.parliament.uk), has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

### *Statutory instruments*

The Government's Office of Public Sector Information publishes statutory instruments on the internet at [www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm), together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

# Eighth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.**

### **A. Draft Renewables Obligation Order 2009**

*Summary: The Renewables Obligation, which this Order imposes on electricity suppliers, is the Government's main policy measure to encourage the development of electricity generating capacity using renewable sources of energy in the UK. The 2009 Order is significantly different from the predecessor Order (from 2006) because changes have been introduced to allow for "banding", allowing different technologies to be awarded different levels of support. The Government acknowledge that, if no changes were made, the Renewables Obligation would be unlikely to achieve Government targets. The banding proposals have been brought forward with the aim of promoting additional renewables generation.*

**This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.**

1. The Department of Energy and Climate Change (DECC) have laid this Order ("the 2009 Order") under section 32L(2) of the Electricity Act 1989 (as substituted by section 37 of the Energy Act 2008). An Explanatory Memorandum (EM) and Impact Assessment (IA) have been provided.
2. In the EM, DECC explain that the Renewables Obligation (the "RO") is the Government's main policy measure to encourage the development of electricity generating capacity using renewable sources of energy in the UK. The 2009 Order revokes and replaces the Renewables Obligation Order 2006 (SI 2006/1004).<sup>1</sup>
3. DECC state that, in order to "drive greater and more rapid deployment of renewables in the UK", section 37 of the Energy Act 2008 introduces "banding" into the RO, which allows different technologies to be awarded different levels of support. The 2009 Order is thus significantly different from the 2006 Order, because changes have been introduced to allow for banding. In making these changes, DECC have also changed the structure of the Order to reflect more clearly the process of the RO.
4. Further policy background is given in the IA. This explains that currently the UK has a target that 10% of electricity should be produced from renewable energy sources by 2010. In 2006, total generation from RO eligible renewable sources was 4.4% of electricity sales (up from 1.8% in 2002). DECC acknowledge that "the RO, in its current form, seems unlikely to achieve Government targets. Government work on how to bring forward additional renewables generation ... has led to the proposal to band the RO."

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<sup>1</sup> as amended by the Renewables Obligation Order 2006 (Amendment) Order 2007 (SI 2007/1078).

5. The House has taken a close interest in the Government's policy on energy generation, including the promotion of renewable technologies. This interest was reflected in consideration of the powers to allow implementation of banding during the passage of the Energy Act 2008 through Parliament. Most recently, on 24 February 2009, the House debated the report from the Economic Affairs Committee on "The Economics of Renewable Energy" (Fourth Report of session 2007-08, HL paper 195).
6. In that debate, Lord Vallance of Tummel, Committee Chairman, referred to future targets for renewable energy in the UK: in line with EU policy, the Government seemed to accept the target that, by 2020, 15% of the country's energy should come from renewables, and to look to the power generation sector (accounting for only one-fifth of the UK's total energy use) to achieve much of the necessary increase in renewable energy. "So in order to produce 15 per cent of our energy from renewable sources by 2020, we will need by then to produce around 34 per cent of our electricity from renewables, compared to about 6 per cent today." Lord Vallance referred to the Committee's estimate of the cost of moving from 6 per cent to 34 per cent in the share of electricity generated from renewable sources, namely an extra annual cost in 2020 of £6.8 billion, an increase of 38 per cent, which, in terms of the average household bill, would mean an extra £80 a year. (HL Deb 24 February 2009, cols 142-143)
7. Against this background, we would expect the House to be interested to see the changes which the Government have made in this Order, in order to carry forward the commitment to the banding of different technologies for the purposes of awarding different levels of support. The Renewables Obligation is central to the Government's efforts to encourage renewable electricity, and these efforts will clearly have to be intensified if targets agreed on an EU basis are to be met. For these reasons, the effectiveness of the Order will be a matter of close interest over the next few years.

**B. Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 (SI 2009/204)**

*Summary: These Regulations allow backdated liability for non-domestic rates to be discharged in instalments over a period of up to eight years, in certain cases. The policy background to the Regulations has included the recent review of the rating of ports, about whose effects the Committee has received a number of representations. We have sought additional information from the Department for Communities and Local Government to clarify and respond to issues raised in those representations. We accept that the Department's decision to bring forward these Regulations has been taken on the basis of advice that they will have a beneficial effect on relevant businesses, particularly port companies. However, we consider that the information given in the Explanatory Memorandum provided an inadequate basis for Parliament's consideration of the Regulations. We also draw to the House's attention the broader difficulties for port companies which arise from the ports rating review, which prompted the laying of the Regulations.*

**These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

8. The Department for Communities and Local Government (DCLG) have laid these Regulations under section 143(1) and (2) of, and paragraph 1 of

Schedule 9 to, the Local Government Finance Act 1988. An Explanatory Memorandum (EM) and Impact Assessment (IA) have been provided.

9. In the EM, DCLG state that the Regulations amend SI 1989/1058 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“the 1989 Regulations”), which included provisions allowing annual non-domestic rates (NDR) liability to be discharged in instalments in many cases. However, DCLG explain that, where a rating list is altered with retrospective effect by a valuation officer, this can lead to backdated liability which, rather than being payable in instalments, is payable straightaway. By amending the 1989 Regulations, SI 2009/204 will allow backdated liability to be discharged in instalments over a period of up to eight years, in certain cases.
10. By way of background, DCLG acknowledge that “in the current economic climate ... it could be harder for businesses to discharge their liabilities when they are faced with significant unexpected backdated bills that result from unilateral action taken by a valuation officer to maintain the accuracy of the local rating list.” The decision to amend the 1989 Regulations to allow businesses a period of eight years to pay off a backdated NDR liability was taken “to reduce the cash flow impact on businesses, and given the current economic difficulties”.
11. The EM contains a section headed “Consultation outcome” which consists only of the following statement:

“There has not been a formal consultation on these amendments to the 1989 Regulations, which were announced as part of the Pre-Budget Report 2008. The Government became aware of the policy issue now being addressed as a result of the recent review of the rating of ports and the subsequent separate entry of a number of new properties within ports on local rating lists. The Government has received numerous representations on the issue from businesses that have been affected.”
12. After the Regulations had been laid before the House, the Committee received a number of representations from port companies voicing concern about the impact that the Regulations and especially the wider outcome of the review of the rating of ports would have on their businesses. The companies that wrote included Denholm Handling Ltd; DFDS Tor Line; Frank Armitt & Son Ltd; Leaf and Hawkes Ltd; P&O Ferries Holdings Limited; RMS Group Holdings Limited; and TTS (Shipping) Ltd.<sup>2</sup>
13. These representations included the following claims:
  - no consultation had been carried out between the Valuation Office Agency (VOA),<sup>3</sup> which re-assessed ports rating liabilities, and the recipients of the backdated demands, and recipients had no prior warning of the re-assessed liabilities before 2008 when assessments and demands backdated to April 2005 arrived;
  - some port companies had not only been paying business rates as a part of the overall charge which they paid to Associated British Ports (ABP) during the whole period from 2005-09, but had also been

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<sup>2</sup> We are not publishing these representations, but copies can be obtained from the Committee Secretariat, or the Parliamentary Archives (020 7219 3074).

<sup>3</sup> The VOA is an executive agency of HM Revenue & Customs: see <http://www.voa.gov.uk/index.htm>

charged individually, at a rate approximately double what they were paying ABP;

- whilst giving companies eight years to pay backdated bills to 1 April 2005 might appear generous, it needed to be borne in mind that backdated rates liabilities had to be shown on balance-sheets immediately; and that giving a bankrupt company eight years to pay was irrelevant because those enterprises would be bankrupt before the first payment was made; and
  - the unintended consequence of the legislation would be that hundreds of companies would be forced into administration.
14. The representations also stressed that the House of Commons Treasury Select Committee (TSC) had taken an interest in the issue. This has found expression in the TSC's First Report of the current session (HC 35).<sup>4</sup> Section 7 of that report deals with the VOA's work, and looks in particular at the VOA's handling of the re-assessment of ports rating. It refers to the Government's intention to extend payment terms for port businesses, but urges that "consideration should be given to the proposal to maintain the rateable values of premises in statutory docks and harbours at the levels published in the April 2005 rating lists until the new ratings list is published in April 2010" (para. 139).
15. We also received a representation from Schofield Sweeney LLP,<sup>5</sup> which argued that the provisions in the Regulations allowing annual non-domestic rates liability to be discharged in instalments would amount to the grant of aid by the UK, and that this would be an infringement of Article 87 of the EC Treaty.
16. In the light of the issues raised in these representations, we sought further information from DCLG, both about the Government's response to the concerns expressed and to the questions raised by the TSC, and about the failure to refer to these matters in the EM to the Regulations. The questions which we asked, and the answers offered by the Department, are printed at Appendix 1. As regards the point made by Schofield Sweeney LLP (not mentioned in the information at Appendix 1), the Department have told us that, in producing the Regulations, they took account of State aid but did not consider this to be a problem. We do not offer a view on this point, but we would expect the Department to reflect fully on the legal arguments advanced.
17. In considering the intention behind, and effect of, the Regulations, we note DCLG's response that they took advice from the Insolvency Service and the Department for Business Enterprise and Regulatory Reform on the impact on companies of the requirement to show backdated rates liabilities on their balance-sheets. While stressing that the outcome for individual businesses must be established case by case, DCLG say that the advice received "is clear that the additional liability is not, in and of itself, a reason for a company becoming insolvent. Some companies have already settled their liabilities and are continuing to trade. [In addition] ... the amount of the debt that would need to be booked on the balance sheet can be reduced by a discount factor to reflect the fact that liability falls in the future. And the discount factor can

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<sup>4</sup> See: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/35/35.pdf>

<sup>5</sup> See footnote 2 (above).

include an element to reflect the interest-free nature of the arrangement.” DCLG and HM Treasury Ministers have written to the TSC since its First Report was published to convey this advice.

18. While there is a divergence of views on this issue between DCLG and ports companies who have made representations to us, we accept that DCLG’s decision to bring these Regulations forward was taken on the basis of advice that they will have a beneficial effect on businesses faced with backdated rating liabilities. The House may well wish to press the Government to keep it informed whether this beneficial effect is realised in practice.
19. The Department failed to provide adequate information to Parliament when they laid the Regulations. The advice subsequently received from DCLG states that, because the concerns of port companies and of the TSC relate to wider matters which are outside the scope of these Regulations, the Department saw no reason to mention them in the Explanatory Memorandum. This is unacceptable.
20. The need to extend the period for paying off backdated liabilities can be properly understood only against the wider policy background, and this includes the concerns expressed by port companies. Passing references in the Explanatory Memorandum to “the recent review of the rating of ports”, “the subsequent separate entry of a number of new properties within ports on local rating lists” and “numerous representations on the issue from businesses that have been affected” provide a completely inadequate basis for Parliament’s consideration of the policy context for the Regulations. Government in general, and the Department for Communities and Local Government in particular, must ensure that the appropriate degree of information is provided to Parliament when legislation is placed before it for scrutiny.

## OTHER INSTRUMENTS OF INTEREST

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### ***Draft Immigration and Nationality (Fees) Regulations***

21. Under provisions of the Asylum and Immigration (Treatment of Claimants) Act 2004 the Home Office was given flexibility to exceed the administrative costs of processing an application for immigration to reflect the wider benefits that the applicant may accrue. These Regulations not only include the annual uprating of such fees but also provide for an amount from certain fees to be paid into a fund designed to help local service providers deal with the transitional pressures of migration. This fund was announced in the Government’s response to the consultation on the Green Paper “*The Path to Citizenship*”<sup>6</sup> published on 14 July 2008 and an announcement on the size and usage to be made of the fund is to follow, before the debate on the Regulations in either House.

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<sup>6</sup>

<http://ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/>

***First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009 (SI 2009/196) and three related instruments***<sup>7</sup>

22. Continuing the phased transfer of tribunals to the more unified tribunal service set up by the Tribunals, Courts and Enforcement Act 2007, this Order, laid by the Ministry of Justice, creates a new Tax Chamber in the First-Tier Tribunal and a new Finance and Tax Chamber in the Upper Tribunal and allocates functions to those new chambers. The accompanying instruments set out procedures and clarify what cases may and may not be heard there.

***Gas Importation and Storage Zone (Designation of Area) Order 2009 (SI 2009/223)***

23. This Order designates the area of the Gas Importation and Storage Zone, an area beyond the United Kingdom's territorial sea in which exclusive rights of exploration for gas importation and storage purposes are vested in the Crown under section 1 of the Energy Act 2008.<sup>8</sup> These rights arise under Part V of the United Nations Convention of the Law of the Sea and are important for making the regime for the unloading and storage of natural gas more effective and will also provide for the permanent storage of carbon dioxide as a means of mitigating climate change under a recent EU Directive on the geological storage of carbon dioxide.

***Local Government (Structural Changes) (Further Transitional and Supplementary Provision and Miscellaneous Amendments) Regulations 2009 (SI 2009/276)***

24. The Department for Communities and Local Government have laid these Regulations. They are the third in a series of Regulations making provision of general application in the wake of the seven structural change orders which the Government have made under the Local Government and Public Involvement in Health Act 2007, and which provide that, from 1 April 2009, there will be a single tier of local government in the county areas of Bedfordshire, Cheshire, Cornwall, Durham, Northumberland, Shropshire and Wiltshire. The Regulations make provision relating to several issues: the exercise of certain education functions; councillors' conduct; the final accounts of predecessor councils and related financial matters; and changes of name of area. The structural change orders themselves came into force only a year ago and provided that new unitary authorities should operate from April of this year. The process of transition is wide-ranging and demanding, and the Government have left it until late in the day to lay these Regulations, not least as regards the provisions relating to councillors' conduct and the handling of matters in train before re-organisation.

***Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (SI 2009/303)***

25. This instrument, laid by the Department for Transport (DfT), replaces the 2001 scheme which was set up to address the disruption caused to traffic by

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<sup>7</sup> Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273), Tribunal Procedure (Amendment) Rules 2009 (SI 2009/274) and the Appeals (Excluded Decisions) Order 2009 (SI 2009/275)

<sup>8</sup> A map of the area is available from [http://www.ukho.gov.uk/cons/pdf/Gas\\_Importation\\_Jan2009.pdf](http://www.ukho.gov.uk/cons/pdf/Gas_Importation_Jan2009.pdf)

street works carried out by utility companies, who have the statutory right to place and maintain apparatus in the highway. Although the introduction of penalty charging under the 2001 Regulations resulted in a reduction in the number of overrunning works and the amount of time where a site is occupied but idle, a review of the scheme concluded that 17% of street works still took longer than the agreed duration. These Regulations clarify and revise the scheme in the light of evidence collected and extensive consultation with local authorities and utilities firms, the main innovation being the introduction of a scale of charges aligned to how busy the road is. We commend DfT's approach to preparing this legislation.

***Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 (SI 2009/312)***

***Banking Act 2009 (Bank Administration) (Modification for Application to Multiple Transfers) Regulations 2009 (SI 2009/313)***

***Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (SI 2009/317)***

***Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 (SI 2009/319)***

***Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (SI 2009/322)***

***Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities (Amendment) Order 2009 (SI 2009/308)***

***Heritable Bank plc Transfer of Certain Rights and Liabilities (Amendment) Order 2009 (SI 2009/310)***

***Bank Administration (Sharing Information) Regulations 2009 (SI 2009/314)***

***Bradford & Bingley plc Transfer of Securities and Property etc. (Amendment) Order 2009 (SI 2009/320)***

26. On 19 and 20 February 2009, HM Treasury (HMT) laid these nine statutory instruments, bearing upon the maintenance of financial stability, and brought them all into force one day after laying. Three of them (SI 2009/308 Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities (Amendment) Order 2009; SI 2009/310 Heritable Bank plc Transfer of Certain Rights and Liabilities (Amendment) Order 2009; and SI 2009/320 Bradford & Bingley plc Transfer of Securities and Property etc. (Amendment) Order 2009) were laid using powers in the Banking (Special Provisions) Act 2008. They serve to clarify and refine the effects of earlier instruments made under that Act.
27. The other six instruments were laid under the Banking Act 2009, and serve to flesh out the provisions of that Act. Of these, one is subject to the negative procedure: SI 2009/314 Bank Administration (Sharing Information)

Regulations 2009. The other five are “made affirmatives” which came into effect on the day after they were laid, but which require to be approved by Parliament within a period of 28 days: SI 2009/312 Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009; SI 2009/313 Banking Act 2009 (Bank Administration) (Modification for Application to Multiple Transfers) Regulations 2009; SI 2009/317 Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009; SI 2009/319 Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009; SI 2009/322 Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009.

28. The House will recall that discussions during the passage of the 2009 Act highlighted concerns about the uncertainty that might arise from partial property transfers, which are the subject-matter of some of these instruments. The Explanatory Memoranda accompanying the instruments say relatively little about HMT’s consultation of stakeholders, and we are seeking more detail about this. We have already obtained further information from HMT about the wider context, and in particular about the need for such a large number of instruments to be laid more or less at once, and to breach the 21-day rule. That information has been provided in a memorandum and is printed at Appendix 2.

#### **DRAFT RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER 2009: GOVERNMENT RESPONSE**

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29. Last week, we drew the special attention of the House to the draft Renewable Transport Fuel Obligations (Amendment) Order 2009. The Government have now responded, by way of a letter to the Chairman from Lord Adonis, Minister of State, Department for Transport. The letter is printed at Appendix 3.

#### **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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**The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.**

#### **Draft Instruments requiring affirmative approval**

Data Retention (EC Directive) Regulations 2009

Financial Assistance Scheme and Incapacity Benefit  
(Miscellaneous Amendments) Regulations 2009

Immigration and Nationality (Fees) Regulations

Occupational Pension Schemes (Contracting-out)  
(Amendment) Regulations 2009

Pension Protection Fund (Pension Compensation Cap)  
Order 2009

**Instruments requiring affirmative approval**

- SI 2009/312 Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009
- SI 2009/313 Banking Act 2009 (Bank Administration) (Modification for Application to Multiple Transfers) Regulations 2009
- SI 2009/317 Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009
- SI 2009/319 Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009
- SI 2009/322 Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009

**Instruments subject to annulment**

- SI 2009/196 First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009
- SI 2009/205 Plastic Materials and Articles in Contact with Food (England) Regulations 2009
- SI 2009/209 Payment Services Regulations 2009
- SI 2009/213 Education (Individual Pupil Information) (Prescribed Persons) (Amendment) (England) Regulations 2009
- SI 2009/216 Ozone-Depleting Substances (Qualifications) Regulations 2009
- SI 2009/221 European Communities (Designation) Order 2009
- SI 2009/223 Gas Importation and Storage Zone (Designation of Area) Order 2009
- SI 2009/261 Fluorinated Greenhouse Gases Regulations 2009
- SI 2009/262 Armed Forces (Pensions) (Prescribed Modification) Order 2009
- SI 2009/263 General Osteopathic Council (Constitution) Order 2009
- SI 2009/264 Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2009
- SI 2009/265 Safeguarding Vulnerable Groups Act 2006 (Devolution Alignment) Order 2009
- SI 2009/269 Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009
- SI 2009/272 Health Professions Council (Registration and Fees) (Amendment) Rules Order of Council 2009
- SI 2009/273 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009
- SI 2009/274 Tribunal Procedure (Amendment) Rules 2009
- SI 2009/275 Appeals (Excluded Decisions) Order 2009

SI 2009/276	Local Government (Structural Changes) (Further Transitional and Supplementary Provision and Miscellaneous Amendments) Regulations 2009
SI 2009/278	NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2009
SI 2009/295	Healthy Start Scheme and Welfare Food (Amendment) Regulations 2009
SI 2009/303	Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009
SI 2009/305	Civil Enforcement of Parking Contraventions (County of Worcestershire) (Borough of Redditch) Designation) Order 2009
SI 2009/306	Civil Enforcement of Parking Contraventions (County of Staffordshire) (Districts of Cannock Chase, Lichfield, South Staffordshire and Tamworth) Designation Order 2009
SI 2009/307	Gangmasters (Licensing Conditions) Rules 2009
SI 2009/308	Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities (Amendment) Order 2009
SI 2009/310	Heritable Bank plc Transfer of Certain Rights and Liabilities (Amendment) Order 2009
SI 2009/314	Bank Administration (Sharing Information) Regulations 2009
SI 2009/316	Personal Injuries (NHS Charges) Amendment Regulations 2009
SI 2009/320	Bradford & Bingley plc Transfer of Securities and Property etc. (Amendment) Order 2009
Draft	Modifications to the Standard Conditions of Electricity and Gas Supply Licences

**Instruments subject to annulment (Northern Ireland)**

SR 2009/36	Police Support Staff (Suitability) Regulations (Northern Ireland) 2009
SR 2009/38	Safeguarding Vulnerable Groups (Transitory Provisions) Order (Northern Ireland) 2009
SR 2009/39	Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009
SR 2009/40	Safeguarding Vulnerable Groups (Prescribed Information) Regulations (Northern Ireland) 2009

**APPENDIX 1: NON-DOMESTIC RATING (COLLECTION AND ENFORCEMENT) (LOCAL LISTS) (AMENDMENT) (ENGLAND) REGULATIONS 2009 (SI 2009/204)**

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**Further information from the Department for Communities and Local Government**

*Q1. What is DCLG's response to the concerns raised by the port companies?*

**A1.** The review of ports by the VOA was to ensure that all individual businesses within and outside of ports are treated in the same way. All non-domestic properties (unless exempted by Schedule 5 to the Local Government Finance Act 1988) generate liability for business rates and should all be valued in the same way to ensure that the burden of contributions to funding local government is shared fairly amongst businesses around the country.

Valuation officers are required to maintain accurate rating lists. When they become aware a change is needed, such as at the ports, they must make the alteration and also specify the date from which the change is effective for rates charging purposes. The effective date of the change is governed by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005.

*Why has the VOA not consulted with the ports or business within ports?*

The VOA wrote to all port operators in May 2006 advising that a full review of assessments would need to be undertaken, and followed this up in October 2006 where detailed replies had not been received.

The letter explained the background and requested that the operators ensure their tenants (whose identity would not necessarily be known to the VOA) were alerted.

Deciding which properties within ports should be separately assessed for the purposes of rates was not straightforward, requiring valuation officers to undertake physical inspections and also establish the exact degree of control over each property exercised by either the port operator or the occupier; where a property is under paramount control of a separate entity then that property is separately assessed and the occupier is liable for rates on that property.

The view was also complicated by the varying nature of ports and continuing changes in operational practice. The exercise has therefore taken some time, with varying degrees of cooperation by individual parties.

*[Port occupiers] paid rates to the Port Operators*

Port occupiers have told CLG that, where the designated port operator was regarded as liable to pay business rates, the contractual arrangements between the port operator and port occupiers typically contained explicit or implicit fee elements to cover the business rates incurred by the port operator.

However, the only contract forwarded to CLG is ambiguously worded, saying that where the property is separately rated the occupier is liable for rates. The Government cannot directly intervene between the Ports and the occupying businesses as the responsibility for paying rates or not through tenancy agreements is a private contractual matter between the ports and the occupying businesses.

*8 years to pay seems generous but the debt has to be put on the balance sheet*

The first issue is that Government cannot waiver tax liability owed by individual companies and the purpose for the 8 years scheme is to allow unexpected and significant

backdated liability to be discharged over a number of years rather than in one go – which would be the case without the new Regulations.

The Department took advice on this matter from the Insolvency Service and the Department for Business Enterprise and Regulatory Reform (attached with our letter to the Treasury Select Committee – see point 3 below).

The outcome for individual businesses will depend on individual circumstances and must be established on a case by case basis. It will be dependant on the level of both assets and liabilities and the directors' reasonable expectations of being able to meet their liabilities as they fall due in the future.

But the advice CLG received is clear that the additional liability is not, in and of itself, a reason for a company becoming insolvent. Some companies have already settled their liabilities and are continuing to trade.

It's worth noting also that the amount of the debt that would need to be booked on the balance sheet can be reduced by a discount factor to reflect the fact that liability falls in the future. And the discount factor can include an element to reflect the interest-free nature of the arrangement.

*The unintended consequence of the legislation is that hundreds of companies will be forced into administration*

See above answer. It is not the Regulations allowing 8 years to pay but the requirement to pay a tax liability that is due and cannot be waived that affects the viability of a business.

**Q2.** *Why did the Explanatory Memorandum fail to set out these concerns and the view of them taken by the Government?*

**A2.** The Regulations deal with cashflow issues resulting from a significant and unexpected backdated liability – which has been highlighted by the VOA's review of ports – whereas the arguments of the port occupiers relate to the existence of the liability itself, which is outside the scope of these Regulations.

**Q3.** *What Government follow-up has there been to the questioning of VOA representatives by the Commons Treasury Select Committee?*

**A3.** [Attached is]the recent letter sent by John Healey, Minister for Government, and Stephen Timms, Financial Secretary to the Treasury<sup>9</sup>.

**Q4.** *Why did the Explanatory Memorandum make no mention of this current Parliamentary interest in the effect of these Regulations on port companies?*

**A4.** The Regulations deal with cashflow issues resulting from a significant and unexpected backdated liability – which has been highlighted by the VOA's review of ports – whereas the arguments of the port occupiers relate to the existence of the liability itself, which is outside the scope of these Regulations.

February 2009

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<sup>9</sup> The letter is not printed but is available on request from the Committee Secretariat or the Parliamentary Archives (020 7219 3074).

## APPENDIX 2: BANKING ACT 2009 (BANK ADMINISTRATION) (MODIFICATION FOR APPLICATION TO BANKS IN TEMPORARY PUBLIC OWNERSHIP) REGULATIONS 2009 AND EIGHT OTHER RELATED INSTRUMENTS

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### **Further information from HM Treasury**

#### **The wider context, and in particular the relationship between the 2008 and 2009 Acts**

1. The Banking (Special Provisions) Act 2008 (the “2008 Act”) was enacted on an expedited basis in February 2008 when it became apparent that it would be impossible to achieve a private sector sale of Northern Rock plc which would adequately protect taxpayers’ and depositors’ interests. The 2008 Act conferred powers on the Treasury to transfer the securities or the property, rights and liabilities of a bank (see sections 3 and 6) into temporary public ownership for one or both of the purposes set out in section 2(2) of that Act. The powers to transfer securities and property, rights and liabilities under the 2008 Act were subject to a 1-year sunset provision (section 2(8)) and expired on 20 February 2009.
2. The 2008 Act provided the Government with temporary powers while permanent legislation – the Banking Act 2009 (the “2009 Act”) – was being prepared and passed through Parliament. The prudence of this approach was demonstrated by subsequent events – in autumn 2008 the Government used the powers conferred by the 2008 Act to take action in respect of Bradford & Bingley and certain subsidiaries of Icelandic banks, in order to protect financial stability.
3. Part 1 of the Banking Act 2009 (“the special resolution regime”), provides the Treasury and the Bank of England with permanent and refined powers to resolve banks in the interests of maintaining financial stability, protecting depositors and protecting public funds and is intended to replace the powers conferred on the Treasury under the 2008 Act. Parts 1-3 of the Banking Act 2009, and provisions in Parts 4 and 7 of that Act were commenced on 21 February 2009.
4. The Banking Act 2009 is the result of an extensive consultation process, involving the financial services industry, consumer groups and other stakeholders.
5. The 2009 Act benefited from wide cross-party support in both Houses and all possible efforts were made to ensure that Parliamentarians had sufficient time to scrutinise the provisions of the Act, whilst keeping to the accelerated timetable which was necessary to gain Royal Assent before the key provisions of the 2008 Act expired. In December 2008, an innovative parallel Bill process was used, whereby the Banking No. 2 Bill was introduced into the Lords – identical to that which was completing its final Commons stages – which provided the Lords with several additional weeks to scrutinise the legislation. At all times the Treasury maintained open and constructive lines of communication with interested Parliamentarians. For example, in the Lords, Treasury ministers and the Bill team sent regular email updates and held a number of meetings with interested peers.
6. Before the expiry of the key provisions of the 2008 Act, on 20 February 2009, several orders were made for the purpose of amending orders made under sections 3 and 6 of that Act.
7. Also on 20 February 2009, the Treasury made a series of statutory instruments under the 2009 Act. This was necessary in order for the secondary legislation to be in force as soon as possible following the commencement of the relevant parts of the Act on 21 February 2009.

8. On 25 February 2009 two orders were made under the 2008 Act, following the commencement of a clarificatory section in Part 7 of the Banking Act 2009 (section 237).

**The need for such a large number of SIs to be laid more or less at once, and to breach the 21-day rule**

*SIs under the Banking (Special Provisions) Act 2008*

- SI 2009/320 Bradford & Bingley plc Transfer of Securities and Property etc. (Amendment) Order 2009;
- SI 2009/308 Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities (Amendment) Order 2009; and
- SI 2009/310 Heritable Bank plc Transfer of Certain Rights and Liabilities (Amendment) Order 2009.

9. It was not possible to comply with the 21-day rule in making these instruments. This is because under section 2(8) of the Banking (Special Provisions) Act 2008 the primary enabling power to make transfer orders under sections 3 (transfer of securities) or section 6 (transfer of property, rights and liabilities) could not be exercised after the end of the period of one year beginning with the day on which the Act was passed. This period ended on 20 February 2009. It was therefore necessary to make the orders on an urgent basis before that date.

10. The Treasury had originally proposed to make the orders before that date but to allow at least 21 days before bringing the orders into force. However, it became apparent that there might have been some doubt as to whether this approach would be permitted under the 2008 Act. This was because section 2(9) of that Act provides that section 2(8) does not affect “the continuation in force or effect of any order made” under section 6 before the end of the specified period. It was considered that this might cast doubt on the ability of the Treasury to make an order under section 6 which did not come into force prior to 21 February 2009. This issue only recently came to light.

11. Further detail on these instruments can be found at Annex A.

*SIs under the Banking Act 2009*

12. In order for the powers under Parts 1-3 of the Banking Act 2009 to be fully operational on 21 February, several secondary legislative instruments also needed to be in force on that date – including key legislative safeguards to protect the rights and interests of creditors and counterparties of UK banks from possible disruption in the case of a partial transfer.

13. Section 259 of the Banking Act 2009 Act provides that certain instruments being made for the first time under powers conferred by that Act may be made without a draft being laid before and approved by resolution of each House of Parliament, if the Treasury is satisfied that this is necessary

14. The Banking Act 2009 received Royal Assent on 12 February 2009. In the days after Royal Assent, the Treasury completed the final stages of consultation for this secondary legislation – especially regarding the partial transfers safeguards order (Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009).

15. The following orders were made on 19 February 2009, under the 28-day procedure:

- SI 2009/312 Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009

- SI 2009/313 Banking Act 2009 (Bank Administration) (Modification for Application to Multiple Transfers) Regulations 2009
- SI 2009/317 Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009
- SI 2009/319 Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009
- SI 2009/322 Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009

In addition, SI 2009/314 Bank Administration (Sharing Information) Regulations 2009 were made on 19 February 2009, subject to negative resolution.

16. The Committee raised concerns about secondary legislation modifying the 2009 Act so soon after enactment. We can provide reassurance on this point. The first two instruments above apply Part 3 of the Act (“bank administration”) to specific types of transfers under Part 1 of the Act (in particular property transfers from a bank that has been taken into temporary public ownership and cases where there are transfers from a failing bank or a bank in temporary public ownership to more than one transferee). This approach of using secondary legislation to apply the bank administration procedure to specific transfer situations was preferred to including all variations of the procedure on the fact of the Act. The Government made clear to Parliament during the passage of the Bill its intention of applying the administration procedure in this way. Therefore these regulations do not correct mistakes; rather they modify the application of the procedure to specific transfer situations.

*SIs under the Banking (Special Provisions) Act 2008 as clarified by the Banking Act 2009*

- The Bradford and Bingley Plc Compensation Scheme (Amendment) Order 2009 and;
- The Northern Rock plc Compensation Scheme (Amendment) Order 2009.<sup>10</sup>

17. In 2008, the Treasury transferred into temporary public ownership the shares in Northern Rock plc and Bradford & Bingley plc, using powers conferred by the 2008 Act.

18. The Treasury, in accordance with section 7 of that Act, is required to make a compensation scheme order, whenever the transfer powers under sections 3 or 6 of that Act are exercised.

19. The purpose of the compensation scheme order is to make provision for the appointment of an independent valuer to determine the compensation due, if any, to the former shareholders or other specified persons affected by the provisions of a transfer order.

20. In accordance with the obligation set out in section 7, the Treasury made the following compensation orders: Northern Rock plc Compensation Scheme Order 2008 (S.I. 2008/718) and Bradford & Bingley Plc Compensation Scheme Order 2008 (S.I. 2008/3249).

21. The purpose of the draft Northern Rock Amending Order and the draft Bradford & Bingley Amending Order is to enable the independent valuers appointed under the two compensation scheme orders to apply to the court to obtain information reasonably required for the purposes of assessing the amount of any compensation payable by the

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<sup>10</sup> These two draft affirmative orders were laid on 25 February 2009 and have not yet been considered by the Committee.

Treasury. The provisions are designed to ensure that the valuers have such powers as are necessary to conduct the valuations.

22. Last December, the Joint Committee on Statutory Instruments (JCSI) were of the view that the 2008 Act did not provide the Treasury with the necessary legislative powers to grant the valuers with the necessary information-gathering powers.

23. A provision therefore was included in the Banking Act 2009 (section 237), which clarifies that the provisions under the 2008 Act to confer powers on independent valuers includes a power to make provisions of a kind that may be made under section 55 of the Banking Act 2009. Section 55 of that Act makes specific reference to the power for the Treasury to confer specific functions on valuer, including enabling a valuer to apply to a court or tribunal for an order requiring the provision of information.

24. The independent valuer for Northern Rock was appointed last September and started his valuation work. We are currently in the process of appointing the independent valuer for Bradford & Bingley

25. The amending orders were made as soon as possible after the commencement of section 237 of the Banking Act 2009, in order to ensure that the Northern Rock valuer, and the valuer who will be appointed for Bradford & Bingley, have the necessary powers to conduct effectively the valuation process. These orders have been laid in draft, and are subject to the draft affirmative procedure.

**HMT's plans for more such SIs in the near future (and whether those plans allow for 21 days or more between laying and commencement).**

26. The Treasury has no current plans to lay similar SIs in these areas in the near future. As always, if it were to become necessary to lay secondary legislation at short notice, we would, of course, make every possible effort to allow sufficient time between laying the instrument and the coming into force date.

27. The Treasury will, in due course, and as part of the implementation of the Banking Act 2009, be making further secondary legislation. Our intention is to leave at least 21 days or more between laying and coming into force of the order, where this is necessary and appropriate.

**Annex A – further detail on the statutory instruments.**

- The Bradford & Bingley Plc Transfer of Securities and Property etc. (Amendment) Order 2009 SI 2009/320

1. The purpose of the Amendment Order is to provide clarity in relation to the circumstances in which principal and interest on the dated subordinated notes issued by Bradford & Bingley will become due and payable. The Order also corrects a typographical error in the Bradford & Bingley plc Transfer of Securities and Property etc Order 2008 (S.I. 2008/2546) (“the Transfer Order”), which made provision to transfer into temporary public ownership shares in Bradford & Bingley plc.

2. The Amendment Order makes clear that amounts of principal and interest which would otherwise have become due and payable to holders of dated subordinated notes issued by Bradford & Bingley will not become due and payable until Bradford & Bingley's debt to the Financial Services Compensation Scheme (the “FSCS”) has been repaid. The 2009 Order also provides that Bradford & Bingley has the option to make payments of principal and interest on the dated subordinated debt.

3. In either case, amounts of principal and interest on the dated subordinated notes will only become due and payable to the extent that Bradford & Bingley would remain solvent after such payments(s) are made.

4. The Transfer Order had provided that a default in the payment of any principal due in respect of a dated subordinated note did not constitute an event of default.

5. The Order also deals with the ranking of the dated subordinated debt in the case of a winding-up or administration of Bradford & Bingley. In this regard, the effect of the Order is to preserve the normal creditor hierarchy: in the case of a winding-up or administration of Bradford & Bingley the dated subordinated notes would rank ahead of all undated notes (whose payment hierarchy has not been affected by the Order), which in turn rank ahead of equity.

- The Kaupthing Singer & Friedlander Limited Transfer of certain rights and liabilities (Amendment) Order 2009 SI 2009/308; and
- The Heritable Bank Plc Transfer of Certain Rights and Liabilities (Amendment) Order 2009 SI 2009/310

6. In the interests of maintaining the financial stability of the UK financial system and to protect retail depositors, the Treasury, using powers under the 2008 Act, transferred retail deposits and associated rights in the UK subsidiaries of two Icelandic banks. The two subsidiaries concerned were Heritable (a subsidiary of Landsbanki) and Kaupthing Singer & Friedlander (a subsidiary of Kaupthing). The deposits were initially transferred to companies wholly owned by the Treasury (in the case of Heritable) and by the Bank of England (in the case of Kaupthing Singer and Friedlander). The retail deposits were subsequently transferred to ING Direct N.V. This action was taken to protect depositors' money and to provide certainty for retail depositors.

7. The purpose of the orders listed above is to make amendments to the transfer orders to reflect changes which have taken place since the original transfer and to amend drafting errors and ambiguities in the transfer orders. Both Orders were made under the 2008 Act.

2 March 2009

### APPENDIX 3: DRAFT RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER 2009

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#### **Letter from Lord Adonis, Minister of State, Department for Transport**

As you will be aware the Committee on the Merits of Statutory Instruments considered the Draft Renewable Transport Fuel Obligations (Amendment) Order 2009 in its Seventh Report published on 25 February. This Report draws the Order to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House. Although the Committee has not formally requested a response from the Government to the concerns raised in the report I thought it might be helpful if I set out our position and more detail on some of the issues raised.

A key concern of the Committee is that the accompanying Explanatory Memorandum and Impact Assessment do not provide sufficient information to enable the House to consider whether either the RTFO mechanism or the revised obligation levels under the Renewable Transport Fuel Obligation (RTFO) scheme are appropriate.

“We note that the DfT is now taking a more cautious approach and commend them for it, but question whether the commitment under the European Directive of requiring road transport to use 10% of renewable fuels by 2020 is either achievable or desirable. The House may wish to ask DfT for sufficient information to set this instrument in context.” (*Summary Paragraph: Seventh Report*)

In addition the report refers to the Gallagher Review’s findings about the uncertainties surrounding the carbon savings from biofuels due to risks of indirect impacts of biofuel production:

“It is these uncertainties which have led to the slowing down of the obligation so that further evidence can be gathered. It is understood that similar moves to reconsider the assumptions and methodology are being considered by the European Commission but this is not explained in the material presented with the Order.” (*Paragraph 4: Seventh Report*)

The Committee may wish to note that in response to the Gallagher review, the then Secretary of State, Ruth Kelly made a commitment to Parliament last July that the EU target of 10 per cent renewable transport fuels by 2020 could remain an overall objective but that it should be subject to certain conditions, namely that the sustainability criteria applicable to the target should address the indirect as well as direct effects on land use; and that the 10 per cent target be subject to rigorous review to take account of the emerging evidence. The 10 per cent target is part of the Renewable Energy Directive (RED) approved by the European Parliament. The principle of a rigorous review of the 10 per cent target received strong support from the Council and the European Parliament and the Directive requires the Commission, by 2014, to review the cost-efficiency and sustainability of the target and, if appropriate on the basis of that review, to submit proposals to the Council and the European Parliament to take action.

The UK Government have led the debate in Europe on the need to address the indirect effects of biofuels on land use and so ensure that the RED will include sustainability criteria that address these indirect effects. The Directive requires the Commission, by 31 December 2010, to submit a report to the Council and the European Parliament on the impact of indirect land use change on greenhouse gas emissions. This report shall where appropriate be accompanied by a proposal for a methodology through which the greenhouse gas emissions caused by indirect land use change will be taken into account,

with a view to the Council and the European Parliament endeavouring to agree this methodology by 2012.

This recognises the fact that the scientific evidence around the indirect effects of biofuels is not yet certain enough to develop such a methodology now. However, the pace of research into indirect land use change has been accelerating rapidly. The UK Government are working with international partners and scientific experts to develop a biofuels research programme, which will aim to address gaps in the evidence around the indirect effects of biofuels, and through this group we will help to ensure that the development of any methodology to take into account indirect land use change is based on the best available science.

Further concerns are raised in the Committee's report about the lack of information about the effectiveness of the RTFO scheme since it began in April 2008 and how revised levels may affect biofuel producers:

“The Committee was surprised to see the statement in the EM that the legislation would have no impact on industry, when it is clear that producers of feedstock, processors and distributors will all be affected. We would have liked more information to set the policy in context, for example, how much feedstock is produced domestically and how much imported, which will also affect the carbon footprint.” (*Paragraph 5: Seventh Report*)

Regarding the impact on industry, paragraph 10 of the EM accompanying the 2009 Order incorrectly stated that “there is no impact on business” The Government has laid an amended EM which corrects this error. The Impact Assessment (IA) addresses the effects of the proposed slow down in the obligation levels and amending the definition of “relevant hydrocarbon oil.” The key identifiable costs of the RTFO scheme relate to increased fuel costs for consumers and businesses because biofuels generally cost more than fossil fuels. The key identifiable benefits relate to the carbon savings that biofuels offer compared with the use of fossil fuels. However, the IAs for the 2007 and 2009 Orders do consider the broad possible long-term impact of policy on investment, and does not quantify the specific impacts of the RTFO on the UK biofuel industry. This is because it is difficult to quantify or predict how changes to future UK obligation levels may affect a currently infant industry in the UK producing a commodity that is traded in a global market.

With regards to the UK production of biofuel feedstocks and carbon savings, through the carbon and sustainability reporting requirement under the RTFO, the Renewable Fuels Agency are gathering more information about the biofuels supplied. Their last quarterly report contains data on the amount of biofuel produced in the UK: This indicates that during the period 15 April to 14 October 2008 the majority of biofuel feedstocks are imported and 8 per cent of the biofuel supplied was from the UK (for bioethanol 17 per cent and for biodiesel 6 per cent). Over this six month period, 20% of biofuels met an environmental standard (note these are not mandatory standards), compared to a target of 30%; 98% of the fuel reported as coming from UK feedstocks met environmental sustainability standards; greenhouse gas savings of 47% were achieved against a Government target of 40%. (This figure excludes the emissions from indirect land-use changes considered in the Gallagher Review);

Almost all companies reporting to the RFA are either achieving or are close to achieving carbon savings in line with the Government's target for 2008-09. Seven of the 14 fossil fuel suppliers the RFA reports on are currently exceeding the target. Over time better information will become available on the carbon savings achieved by biofuels as the biofuels used by Member States will need to meet mandatory standards including minimum green house gas savings. These are likely to be transposed into a revised scheme by 2011.

The RFA's quarterly report is available at:

<http://www.renewablefuelsagency.org/reportsandpublications/rforeports.cfmis>

I hope this letter helps to address the issues raised in the Committee's report.

27 February 2009