

HOUSE OF LORDS

Merits of Statutory Instruments Committee

24th Report of Session 2010-11

Drawing special attention to:

**Draft Employment and Support
Allowance (Work-Related Activity)
Regulations 2011**

**Export Control (Amendment) Order
2011**

**Export Control (Amendment) (No.2)
Order 2011**

**Immigration (Designation of Travel
Bans) (Amendment) Order 2011**

**Libya (Asset-Freezing) Regulations
2011**

Ordered to be printed 8 March and published 10 March 2011

London : The Stationery Office Limited
£price

HL Paper 109

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 Methuen
The Lord Eames OM	Rt Hon. the Baroness Morris of Yardley
Rt Hon. the Lord Goodlad (<i>Chairman</i>)	The Lord Norton of Louth
The Baroness Hamwee	The Lord Plant of Highfield
The Lord Hart of Chilton	Rt Hon. the Lord Scott of Foscote
The Lord Lucas	

Registered interests

Members' registered interests may be examined in the online Register of Lords' Interests at 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.

Declared interests for this Report are in Appendix 4.

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

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. The Committee's website, 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 National Archives publishes statutory instruments on the internet on behalf of the Government at www.legislation.gov.uk/ukxi, together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

Twenty-fourth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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 Employment and Support Allowance (Work-Related Activity) Regulations 2011

Date laid: 28 February 2011

Parliamentary Procedure: affirmative

Summary: This instrument would require all applicants for Employment Support Allowance in the Work-Related Activity Group to undertake “activity which makes it more likely that the person will obtain or remain in work or be able to do so”. This could be something like a training course to learn keyboard skills or learning how to apply for a job. Jobcentre Plus advisers and advisers within the Work Programme will be able to impose work-related activity requirements. If a claimant fails without good cause to undertake the activity specified in their action plan, benefit sanctions can be imposed. The House may wish to seek reassurance that staff will be adequately trained to fit them for this significant responsibility. The policy intention is that those genuinely capable of moving towards the job market should receive appropriate support but sanctions may be necessary to encourage the reluctant to participate. In its 23rd report the Committee noted evidence that 40% of appeals against a decision that an individual is capable of work are currently upheld, so the quality of the guidance material provided to staff and the consistency of their decision making will be crucial to the scheme operating as intended. Unless DWP staff correctly assesses the abilities of individual claimants, they may well find themselves losing benefit because they have been asked to undertake tasks beyond their scope. These Regulations therefore lend additional weight to the comments in our 23rd report that the descriptors for the Work Capability Assessment set out in the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-related Activity) (Amendment) Regulations 2011(SI 2011/228), need to be fully appropriate and accurately applied.

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

1. The Department for Work and Pensions (DWP) has laid this instrument under the Welfare Reform Act 2007, as amended by the Welfare Reform Act 2009, along with an Explanatory Memorandum (EM) and an Impact Assessment (IA).
2. All applicants for Employment Support Allowance (ESA) are given a Work Capability Assessment: people that score more than 15 points are designated as having limited capability for work and are placed in the Work-Related Activity Group. Currently they are required to take part in work-focused interviews with a personal adviser to help them prepare for suitable work.

This instrument proposes new powers which would enable the Secretary of State to require those claimants to undertake “*activity which makes it more likely that the person will obtain or remain in work or be able to do so*”.¹ This could be something like a training course to learn keyboard skills or learning how to apply for a job. Regulation 3(4)(b) prohibits the required activity from including either actual work or medical treatment. The requirement to undertake work-related activity would not apply to the Support Group of ESA claimants.

3. Jobcentre Plus advisers and advisers within the Work Programme will be able to impose work-related activity requirements. Once an activity is recorded in the claimant’s action plan it is mandatory and must be completed by the deadline set. If a claimant fails without good cause to undertake the activity specified in their action plan, benefit sanctions can be imposed – of a 50% reduction of their Work Related-Activity Component for the first 4 weeks of the sanction period followed by a 100% reduction if they continue with non-compliance.
4. These sanctions are similar to those placed on claimants who fail to comply with the requirements of Jobseeker’s Allowance but a number of safeguards are in place: the requirement imposed must be reasonable in regard to the person’s particular circumstances, there is discretion for staff to require no action plan, there is a mechanism for the claimant to appeal against the requirements of the action plan (Regulation 7) and there is some discretion to waive sanctions where, because of a mental health condition or learning disability, the claimant may not have fully understood their obligations.
5. The responsibility for deciding on the action plan and what it should include rests with the Jobcentre Plus advisers. In making their decision the adviser will not have access to the report of the Work Capability Assessment but will have to base their decisions on what is reasonable on a discussion with the claimant. This appeared to the Committee to be unnecessary duplication of assessment, and the Committee asks whether at least the summary of findings could be made accessible to staff. **The House may also wish to seek reassurance that staff will be adequately trained to fit them for this significant responsibility.** The same staff will also be working with Jobseeker’s Allowance customers and we note from paragraph 4.3 of the EM that regulations making major changes to the Jobseeker’s Allowance Work Programme will be coming forward shortly. **So the House may wish to seek reassurance that staff will be able to cope with the cumulative burden of these changes to the system.**
6. The policy intention is that those genuinely capable of moving towards the job market should receive appropriate support, but that sanctions may be necessary to encourage those reluctant to participate. In its 23rd report the Committee noted evidence that 40% of appeals against a decision that an individual is capable of work are currently upheld, so the quality of the guidance material provided to staff and the consistency of their decision making will be crucial to the scheme operating as intended. Unless DWP staff correctly assesses the abilities of individual claimants, they may well find themselves losing benefit because they have been asked to undertake tasks beyond their scope. These Regulations therefore lend additional weight to the comments in our 23rd Report that the descriptors for the Work

¹ The definition of work-related activity set out in section 13(7) of the Welfare reform Act 2007)

Capability Assessment set out in the **Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-related Activity) (Amendment) Regulations 2011**(SI 2011/228), need to be fully appropriate and accurately applied.

B. Export Control (Amendment) Order 2011 (SI 2011/543)

Export Control (Amendment) (No.2) Order 2011 (SI 2011/580)

*Dates laid: 28 February and 2 March 2011
Parliamentary Procedure: made affirmative*

Immigration (Designation of Travel Bans) (Amendment) Order 2011 (SI 2011/547)

Libya (Asset-Freezing) Regulations 2011 (SI 2011/605)

*Dates laid: 28 February and 3 March 2011
Parliamentary Procedure: negative*

Summary: Over the last ten days, the Government has taken a number of legislative actions in response to the situation in Libya. Much of the legislation follows the international response to the developments in that country. The Export Control (Amendment) Order 2011 introduced a new control on the export of uncirculated Libyan bank notes. However, the Export Control (Amendment) (No.2) Order 2011 subsequently revoked and replaced that Order, adding unissued Libyan coins to the control. The Immigration (Designation of Travel Bans) (Amendment) Order (“the Travel Bans Order”) imposed travel bans on Muammar Al-Qadhafi, his family and certain Libyan Government officials. The Libya (Asset-Freezing) Regulations 2011 (the “Asset-Freezing Regulations”) put in place criminal penalties for breach of EU financial sanctions in relation to Libya. Although the Travel Bans Order and the Asset-Freezing Regulations are subject to the negative procedure, the Export Control (Amendment) (No.2) Order 2011 is subject to the ‘made affirmative’ procedure and therefore requires the approval by resolution of each House of Parliament. The House may also wish to note that on 28 February, the Government laid before Parliament a further Order implementing asset freezing measures contained in the recent UN resolution on Libya. However, this Order is not subject to Parliamentary procedure.

These instruments 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.

7. The Export Control (Amendment) Order 2011 (“the Export Control Order”) amended the Export Control Order 2008 to introduce a new control on the export of uncirculated Libyan bank notes. The Explanatory Memorandum (EM) states that the purpose of the Export Control Order was to prevent UK companies with existing contracts to print bank notes from supplying such notes to Libya (paragraph 2.1). The EM also says that this control was the response to the risk posed to the UK national interest by the risk of money-laundering activity by certain individuals in Libya (paragraph 2.1). The EM says that it is unusual for export controls to extend to non-strategic/defence related goods, but there is nothing in the underlying primary legislation to prevent this (paragraph 4.2).

8. The Immigration (Designation of Travel Bans) (Amendment) Order 2011 (“the Travel Bans Order”) adds the United Nations Security Council Resolution 1970(2011) of 26 February 2011 (“the UN Resolution”) in response to the situation in Libya, to Part 1 of the Schedule of the Immigration (Designation of Travel Bans) Order 2000. The effect of the amendment is to impose travel bans on Muammar Al-Qadhafi, his family and certain Libyan Government officials. The EM says that the Travel Bans Order thereby implements the UK’s obligations under the UN Resolution (paragraph 2.1).
9. Both the Export Control Order and the Travel Bans Order were laid before Parliament on 28 February, but both came into force before being laid. In accordance with the Statutory Instruments Act 1946, the Home Office and Department for Business, Innovation and Skills wrote to the Lord Speaker on 28 February to invite attention to the laying of the Orders. Although the Travel Bans Order is subject to the negative procedure, the Export Control Order was subject to the ‘made affirmative’ procedure and therefore would have required the approval by resolution of each House of Parliament within forty days beginning of the day on which the Order was made (subject to extensions for periods of dissolution, prorogation or adjournment for more than four days).
10. On 28 February the Government also laid before Parliament the Libya (Financial Sanctions) Order 2011 (“the Financial Sanctions Order”). The EM says that the Financial Sanctions Order implements in the UK the asset freezing measures contained in the UN Resolution, and prohibits any dealing with the funds and economic resources of certain individuals and entities, and the making available of funds or economic resources to or for the benefit of those persons (EM paragraph 2.1). The Financial Sanctions Order came into force on 27 February and was also accompanied by a letter to the Lord Speaker. Although the Financial Sanctions Order is required to be laid before both Houses of Parliament under the United Nations Act 1946, it is not subject to Parliamentary procedure.
11. On 2 March, the Government made the Export Control (Amendment) (No.2) Order 2011. The Order was also laid before Parliament on 2 March and came into force the same day. The Order revokes and replaces the original Export Control Order – the main change is to control the export of unissued Libyan coins as well as unissued Libyan bank notes. This replacement SI is also subject to the ‘made affirmative’ procedure. On 3 March, the Government also made the Libya (Asset-Freezing) Regulations 2011, which were also laid before Parliament on 3 March and came into force on the same day. This negative SI puts in place criminal penalties for breach of EU financial sanctions in relation to Libya. The financial sanctions are contained in Council Regulation (EU) No 204/2011 of 2 March concerning restrictive measures in view of the situation in Libya, including freezing of funds and resources of designated persons (“the Council Regulation”). The Council Regulation implements the asset freezing measures required by the UN Resolution – but the EM says that while penalties are already in place for breach of the asset freezing measures imposed by the United Nations Security Council, the Council Regulation imposes an asset freeze on additional persons (EM paragraph 3.1).

OTHER INSTRUMENTS OF INTEREST

Poultrymeat (England) Regulations 2011 (SI 2011/452)

12. These Regulations provide enforcement powers for the directly applicable EU Poultrymeat Marketing Standards. The Regulations include a new power of entry which will allow an authorised officer to enter “any premises used only as a private dwellinghouse” without a warrant (Regulation 11). Defra has provided further explanation of this power (see Appendix 3), saying that: the safeguard for the occupier is that the officer would have to give the occupier 24 hours notice, which would provide the occupier with time to prepare for the visit or to obtain an injunction to prevent entry if the occupier objected. Defra also say that the use of this power would be exceptional. The Committee questions whether 24 hours notice would provide much of a safeguard in practice. Furthermore, the Committee has concerns over the practical implications of the word “only” in the phrase “premises used only as a private dwellinghouse”. Dwellinghouses on farms may well also be used for other purposes, including for paperwork, and if this was the case even the modest safeguards noted above would not apply, and an authorised officer would have the power to enter the premises which were being used primarily (but not “only”) as a private dwellinghouse “at any reasonable hour”.
13. The Committee considered this new power of entry in the light of the Protection of Freedoms Bill, which was recently introduced in the House of Commons. The Bill repeals certain powers of entry, several of them relating to agriculture, gives Ministers the power to repeal or restrict other unnecessary or inappropriate powers of entry, and requires that existing powers of entry should be reviewed within two years of the coming into force of the Bill. There is also a requirement for the Government to produce a code of practice containing guidance about the exercise of powers of entry. In this context, the Committee expects departments to be particularly careful to design powers of entry which are appropriate and proportionate in the circumstances to which they relate.

Draft Marine Licensing (Licence Application Appeals) Regulations 2011

14. These draft Regulations establish an appeals procedure in relation to decisions taken under Section 71 of the Marine and Coastal Access Act 2009 (“the 2009 Act”). They apply in relation to any area, and any licensable marine activity carried on in that area, for which the Secretary of State is the appropriate licensing authority under Section 113 of the 2009 Act. In response to questions from the Committee, Defra has supplied an explanation of the provisions relating to cross examination at hearings and inquiries (see Appendix 1).

Draft Warm Home Discount Regulations 2011

15. The draft Regulations will establish the Warm Front Discount Scheme (“the Scheme”), which will oblige energy suppliers with over 250,000 customer accounts to provide benefits to domestic customers for the purpose of reducing fuel poverty. The Scheme will have effect until March 2015. The Explanatory Memorandum says that subject to a degree of flexibility

permitted by the draft Regulations, the Scheme will require spending by suppliers totalling £250 million in 2011/12, increasing annually to £310 million in 2014/15 (paragraph 7.5). Lord Marland, Parliamentary Under Secretary of State at the Department of Energy and Climate Change, has written to the Committee (see Appendix 2). He says that although some financial support is currently provided to over one million vulnerable customers by energy suppliers on a voluntary basis, the agreement to provide this support ends in March 2011. The Government would therefore like to ensure that the draft Regulations are in place for the start of April to ensure as smooth a transition as possible.

Draft Information Commissioner's Data Sharing Code of Practice

16. The need for an improved code on Data Sharing was discussed in the course of the Coroners and Justice Bill. The demand for it to be strengthened arose from a number of high profile losses of sensitive data on disks by government Departments. The Explanatory Memorandum to this instrument did not make it entirely clear how the new draft Code improves on its predecessor. The Ministry of Justice has provided additional information to clarify this:

- The Statutory Code of Practice is more comprehensive than the previous Framework Code. It provides detailed guidance on each of the steps that organisations or practitioners need to consider when assessing whether to share personal data, and how this can be achieved in compliance with the Data Protection Act.
- The Statutory Code of Practice is intended for use by all organisations or practitioners that might share personal data, whether they are in the public, private or third sectors. It applies to both routine data sharing initiatives and one-off requests.
- The Statutory Code of Practice includes additional detail on several areas and some new chapters, for example, on 'data sharing and the law', 'things to avoid', 'ICO powers and penalties', and 'data sharing checklists'. Additional detail is included on issues such as 'fairness and transparency' and 'governance'. The Statutory Code of Practice also includes some helpful case studies, in response to requests from a number of organisations to help them understand the issues better.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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 subject to affirmative approval

Draft Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011

Draft Family Procedure (Modification of Enactments) Order 2011

Draft Patents County Court (Financial Limits) Order 2011
Draft Warm Home Discount Regulations 2011

Draft Instruments subject to annulment

Draft Information Commissioner's Data sharing code of practice

Instruments subject to annulment

- SI 2011/371 School Finance (England) Regulations 2011
- SI 2011/402 Food Labelling (Declaration of Allergens) (England) Regulations 2011
- SI 2011/405 Marine and Coastal Access Act 2009 (Amendment) Regulations 2011
- SI 2011/409 Marine Licensing (Exempted Activities) Order 2011
- SI 2011/423 Petroleum Act 1998 (Specified Pipelines) Order 2011
- SI 2011/424 Marine Licensing (Register of Licensing Information) Regulations 2011
- SI 2011/425 Air Traffic Services (Exemption) Order 2011
- SI 2011/426 Healthy Start Scheme and Welfare Food (Amendment) Regulations 2011
- SI 2011/427 Road Vehicles (Construction and Use) (Amendment) Regulations 2011
- SI 2011/432 Student Fees (Amounts) (England) (Amendment) Regulations 2011
- SI 2011/434 Valuation Tribunal for England, Non-Domestic Rating and Council Tax (England) (Amendment) Regulations 2011
- SI 2011/447 Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2011
- SI 2011/448 Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2011
- SI 2011/451 Natural Mineral Water, Spring Water and Bottled Drinking Water (England) (Amendment) Regulations 2011
- SI 2011/452 Poultrymeat (England) Regulations 2011
- SI 2011/454 Bovine Semen (England) (Amendment) Regulations 2011
- SI 2011/456 Reporting of Prices of Milk Products (England) (Amendment) Regulations 2011
- SI 2011/493 Office of the Renewable Fuels Agency (Dissolution and Transfer of Functions) Order 2011

APPENDIX 1: DRAFT MARINE LICENSING (LICENCE APPLICATION APPEALS) REGULATIONS 2011: FURTHER INFORMATION

Information from the Department for Environment, Food and Rural Affairs

Q. These two SIs were before the Committee yesterday afternoon. However, they have been held over until the next meeting on 8 March pending further information from Defra. Specifically the Committee was interested in the provisions in the Draft Marine Licensing (Licence Application Appeals) Regulations 2011 as they relate to cross examination at hearings and inquiries. The Committee noted that the cross examination provisions appear inconsistent between hearings and inquiries (Regs 15, 16 and 17) and would therefore be grateful for an explanation of this policy.

A. In designing our appeals process, we have aligned the policy closely with the terrestrial planning system. The hearings procedure is intended to be less formal than the inquiries procedure and the draft regulations reflect this.

The cross-examination of witnesses is a more formal procedural step, and therefore more likely to be suited to an inquiry rather than a hearing. Consistent with this approach, regulation 16(8) provides that cross-examination is not generally permitted at a hearing. However, regulation 16(8) goes on to allow cross-examination if the appointed person (in practice, an Inspector from the Planning Inspectorate) considers it necessary to ensure a thorough examination of the main issues. If the appointed person does consider it necessary to allow cross-examination, regulation 16(9) then requires the appointed person to consider (after consulting the appellant and the Authority) whether to close the hearing and start an inquiry instead. The obligation is to 'consider' whether to close the hearing, rather than an obligation to do so. In many cases where cross-examination is considered necessary, the more formalised approach of an inquiry would likely be the proper procedure, and so we would expect the hearing to be closed and an inquiry started instead. However, this might not be true for every case, and so regulation 16(8) and (9) provide a degree of flexibility to what would otherwise be an absolute prohibition on cross-examination at hearings. There might be cases where, in the circumstances of that particular case, the issue in question could easily be clarified by permitting cross-examination, but where the closure of the hearing and the commencement of an inquiry would be a disproportionate use of time and resources.

This approach is not novel to these draft regulations, and a similar approach is found in regulation 11(2) and (3) of the Town and Country Planning (Hearings Procedure) (England) Rules 2000 (SI 2000/1626), on which regulation 16(8) and (9) of the draft regulations before the Committee is based.

The powers in regulation 17 supplement the procedural powers in regulations 15 (which applies only to inquiries) and 16. If a person has been given permission to cross-examine a witness at a hearing under regulation 16(8), they would still be subject to the powers in regulation 17 (e.g. they could be prevented from cross-examining on irrelevant matters, or if the person is being disruptive).

In essence these provisions have been included to ensure that proceedings are conducted in a way that places minimal burden on resources and allows appeals to be determined effectively in each individual case."

March 2011

APPENDIX 2: DRAFT WARM HOME DISCOUNT REGULATIONS 2011: CORRESPONDENCE

Letter from Lord Marland of Odstock, Parliamentary Under Secretary of State, Department for Energy and Climate, to Lord Goodlad

I am writing to inform you of Regulations that I wish to lay before Parliament under the powers provided to Government by the Energy Act 2010. These Regulations will enable the Warm Home Discount scheme to be put in place. This scheme will require energy suppliers to provide more of their most vulnerable energy consumers with valuable assistance towards their energy costs.

The Coalition Government is committed to tackling fuel poverty and is working to ensure help to improve household thermal efficiency goes to more of the most vulnerable consumers, through the Green Deal and Energy Company Obligation. Upgrading the housing stock is necessarily a long term project. In the interim, vulnerable households will continue to face problems paying for their energy needs. The Warm Home Discount scheme will require energy suppliers to provide direct financial assistance with energy costs to more of the most vulnerable households in a targeted and effective way. In total over £1.1 billion will be spent by suppliers on the scheme and I estimate that in the region of two million households a year will benefit from the Warm Home Discount Scheme.

Some financial support is currently provided to over one million vulnerable consumers by energy suppliers on a voluntary basis. Their agreement to provide this support ends in March 2011. Government wishes to ensure that vulnerable consumers continue to receive support and wishes to improve the methods with which this support is targeted and distributed. To this end I would like to ensure that the regulations for the Warm Home Discount scheme are in place for the start of April this year when the Voluntary Agreement ends, ensuring as smooth a transition as possible and avoiding the possibility that vulnerable consumers are left without support with their energy costs.

The regulations will be scrutinised by the lawyers of the JCSI and, subject to my legal advice, I aim to lay the regulations before Parliament on the 28th February. It would be most helpful if the Committee could consider reviewing the regulations on 8th March.

February 2011

APPENDIX 3: POULTRYMEAT (ENGLAND) REGULATIONS 2011 (SI 2011/452): FURTHER INFORMATION

Information from the Department for Environment, Food and Rural Affairs

1. With regards to the first set of query which states - Is it the case that an authorised officer may enter a private dwellinghouse without a warrant provided that they give 24 hours notice? If this is the case, are there any safeguards to protect the rights of the occupier? - the answer is as follows;

Yes. It is the case that an officer can enter a private dwellinghouse without a warrant to inspect the premises and poultry meat processing machinery and packaging equipment and also to examine business records or to investigate, but the safeguard for the occupier is that that if this situation arose the officer would have had to give the occupier 24 hours' notice. This time period would provide the occupier with time to prepare for the visit or to obtain an injunction to prevent entry if the occupier objected. The use of this power would be exceptional. There is no intention to use this power routinely. If the officer was using the power to investigate any offences (as opposed to simply conducting a routine inspection) then the provisions for the protections of suspects set out in Code B of the Police and Criminal Act 1984 apply.

2. In respect of the second question which queries whether regulation 11(4) in the SI is this a new power?

It is a new power. The Government is required to introduce measures to enforce the EU Poultrymeat legislation which has been directly applicable since 1 July 2008 and would be in breach of its EU obligations if it failed to do so. When implementing the EU regulations Defra have adopted a flexible approach to enforcement.

March 2011

APPENDIX 4: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at 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.

For the meeting on 8 March 2011 Members declared the following interests:

Draft Information Commissioner's Data Sharing Code of Practice

Lord Lucas: as collector and sharer of data in relation to the Good Schools Guide.

Attendance:

The meeting was attended by B. Butler-Sloss, L. Eames, L. Goodlad, B. Hamwee, L. Hart of Chilton, L. Lucas, B. Morris of Yardley, L. Plant of Highfield and L. Scott of Fosote.