HOUSE OF LORDS

Merits of Statutory Instruments Committee

First Report of Session 2010-11

Drawing special attention to:

Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010

Home Information Pack (Suspension) Order 2010

Energy Performance of Buildings (Certificates and Inspection) (England and Wales)(Amendment) Regulations 2010

Correspondence:

Social Security (Claims and Payments) Amendment (No. 2) Regulations 2010

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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 Eames OM
Rt Hon. the Lord Goodlad (*Chairman*)
The Baroness Hamwee
The Lord Hart of Chilton
The Lord Lucas
The Lord Methuen
Rt Hon. the Baroness Morris of Yardley
The Lord Norton of Louth
The Lord Rosser
Rt Hon. the Lord Scott of Foscote

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

First Report

We drew attention to the exceptionally high volume of "last-minute" instruments being laid in our 11th and 17th reports of the last session.[1] This trend continued right up the very end of the Parliament with over 60 SIs laid in the final few days. These could not be scrutinised until our first meeting of the new Session was convened – this meant that the majority were already in effect before the Committee could consider them. This is undesirable. We once again ask Departments to plan their legislation better to avoid significant regulations coming into effect during a recess.

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. Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (SI 2010/ 875)

Summary: These Regulations enable the migration to Employment and Support Allowance (ESA) of the majority of people currently receiving incapacity benefits, allowing simplification of the administration of such benefits. Over the period October 2010 to March 2014 all those with existing claims for incapacity benefits will be reassessed using the new Work Capability Assessment. The Department estimates that 23% will be found fit for work and will be required to make a new claim for Jobseeker's Allowance (JSA) with its obligation to participate in activities to improve job prospects. The rest will be moved across to ESA. The Social Security Advisory Committee has expressed particular concerns about the Department moving ahead with the initiative without a solid evidence base for either the decision to migrate or the proposed migration arrangements as it believes that DWP has underestimated the support required by this vulnerable group of claimants. The evaluation of ESA for new claimants, the first phase of the programme, will not be complete until 2011 by which time the proposed migration arrangements will have commenced. The Merits Committee shares those concerns but notes that the current instrument does not take full effect until October 2010, which allows the incoming Secretary of State some time for reflection: ***the House may wish to monitor closely how he addresses this programme.***

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. These Regulations have been laid by the Department for Work and Pensions (DWP) under the provisions of the Social Security Contributions and Benefits Act 1992, the Social Security Act 1998, the Child Support Pensions and Social Security Act 200 and the Welfare Reform Act 2007 along with and Explanatory Memorandum (EM) and an Impact Assessment (IA). A

[1] 11th Report paragraphs 26-30; 17th Report paragraphs 20-21, both Session 2009-10.

report from the Social Security Advisory Committee (SSAC), a statutory consultee, was published as an Act Paper on the same day.

2. These Regulations continue the programme of reform of Social Security Benefits by providing for the migration to Employment and Support Allowance (ESA) of the majority of people currently receiving benefits on the grounds of incapacity. Over the period 1 October 2010 to end March 2014 all those with existing claims for incapacity benefits will be reassessed using the new Work Capability Assessment, some (an estimated 23%) will be found fit for work and will be required to claim Jobseeker's Allowance (JSA) with its obligation to participate in activities to improve job prospects. Those found unfit for work through physical or mental incapacity will be moved across to ESA. Eventually the existing schemes such as Incapacity Benefit, Severe Disablement Allowance and Income Support will be wound down thus simplifying the administration of such benefits.

3. The Committee has seen a succession of regulations aimed at the reform of benefits and while welcoming the overarching policy intention of simplifying the system, the Committee has previously questioned some of the practicalities of its implementation – in particular whether Jobcentre staff have the capacity to absorb the pace of change and whether the DWP's original plans had been sufficiently adapted to take the sudden rise in general unemployment generated by the recession into account.[2] These Regulations inspire similar questions.

4. In order to achieve the migration of the 2.3 million customers currently on incapacity benefits to ESA within the planned timescales around 10,000 cases per week will need to be processed. We have previously questioned the robustness of DWP's plans for the transition of claimants of other benefits into ESA and JSA; the answers to the specific questions raised about the latest Regulations are contained in Appendix 1. Although DWP's quality of explanation in the EM has improved to a degree, we are still disappointed to find that significant information is only included in the Act Paper or has been received in response to our supplementary questions. For example we learn from Q11 that migration cases will not be processed by normal Jobcentre Plus offices, but by Benefit Delivery Centres. There will be about 20 Benefit Delivery Centres that will process migrated cases which would equate to around 450 claims per week per site.

5. Despite this new information our concerns over whether Jobcentre staff will have sufficient capacity to process the transition to this timetable remain, as the whole chain of events needs to be considered. As the response to Q18 confirms, those found unfit will have their claims automatically moved across to ESA but those found fit will have their incapacity claim terminated and will need to make a new claim for JSA. In addition to the sheer numbers involved in the influx, many of these customers will have special needs which will put additional burdens on Jobcentre staff if they are to be handled

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[2] Social Security (Work-Focused Interviews Etc.) (Equalisation Of State Pension Age) Amendment Regulations 2010 (SI 2010/563) 15th Report Session 2009-10 ; Draft Jobseeker's Allowance (Skills Training Conditionality Pilot) Regulations 2010 5th Report Session 2009-10; Social Security (Claims And Payments) Amendment Regulations 2009 (SI 2009/604); And Social Security (Transitional Payments) Regulations 2009 (SI 2009/609) 13th Report Session 2008-09; Social Security (Flexible New Deal) Regulations (SI 2009/480) 12th Report Session 2008-09; Draft Social Security (Lone Parents And Miscellaneous Amendments) Regulations 2008 30th Report Session 2007-08.

appropriately. Following the first phase of assessment it was concluded that 38% of new ESA claimants were found to be fit for work (Para 18 of the IA). Para 19 of the IA indicates that because this figure was significantly higher than anticipated, DWP is revising its estimates of those likely to be found to be fit for work during phase 2 from 15% to 23% but there is no indication of how robust this assumption may be.

6. From those former incapacity claimants assessed as fit for work it is expected that around half will go on to claim JSA. The Department recognises that claimants with a health condition or disability moving to JSA following the Work Capability Assessment may need additional support, but DWP is yet to decide exactly what form this will take. (Appendix A1, Answer 4) Although the answer to Q12 indicates what flexibility will be given to those with mental health or learning difficulties[3], for example an additional 15 minutes per caller for those who attend Jobcentre Plus offices in person.

7. The report from the SSAC highlights concerns about the delivery of the current ESA and JSA regimes that cast doubt over the Department's ability to process this number of claimants appropriately. The SSAC conducted a consultation on the proposals and the majority of the respondents expressed concerns over the quality of the Work Capability Assessment (paragraphs 100-107, Act Paper page 20). Additionally, in the initial phases DWP contractors have not been able to deliver the assessments within the target deadline; the proportion completed within 13 weeks has increased from 19 per cent to 48 per cent, and DWP express confidence that due to changes in its arrangements with its contractor Atos and the way assessments are conducted this improvement will continue into the future.

8. At the same time as the migration project both the Work Capability Assessment regimes and the Pathways to work regime are being evaluated and modified (paragraph 8.6 of the EM). In response to our question whether staff will have the ability to absorb so much change, the Department states that "ESA was always intended to be dynamic" and "DWP staff are well used to implementing change as part of a system which is subject to continuous improvement." (Appendix 1, Answer 14). DWP also state in response to Q17 that they monitor the overall burden on their staff from accumulated change and on that basis they are confident that Jobcentre Plus does have the capacity to deliver the programme within the timetable set, but no evidence is provided to support that assertion.

Unintended consequences?

9. Paragraph 7.5 of the EM reiterates the Government commitment that "no incapacity benefits customer who qualifies for ESA will see a cash reduction in their benefit at the point of migration".[4] However the SSAC noted that the migration may result in consequential changes, particularly in respect of the taxation of the income, that may result in the individual actually having less money. (Paras 5-12 Act Paper pages 3-4) DWP acknowledge that they need to consider this matter further with HM Revenue and Customs but say "this is not something that needs to be resolved for these regulations as they do not provide for the taxation of benefit income." (Appendix 1, Answer 9),

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[3] The IA indicates 43% of Incapacity Benefit claimants have mental or behavioural disorders

[4] Commons Hansard: 20 Feb 2007, Col GC8-9

which again raises concerns that DWP are not looking sufficiently broadly at the impact of their regulations when formulating them.

Unknown consequences

10. This strengthens the Committee's view that, from the limited evidence we have seen, a major project with a potential impact on the lives of some of the most vulnerable in the community is being conducted in a rather ad hoc fashion. The second phase is being rolled out before the first has been evaluated and although better information will be sought on the outcomes, the Department's intended course of action, and evidence to support it, all seem rather vague.

11. In paragraph 24 of the Impact Assessment it is stated that customers who are found fit for work will have their entitlement to incapacity benefits ended and will be able to claim another benefit or appeal. Of those found fit for work DWP estimate that:

- 50% will move onto Jobseeker's Allowance;
- 20% will move onto another benefit or reclaim ESA; and
- 30% will move off benefit.

12. The Impact Assessment also asserts that as well as savings to the benefits system from these changes there will be individual health benefits from more disabled people returning to work. While this may be true for individuals, DWP's information on the current contribution of their policy in achieving this outcome is sparse. In response to our questions on what percentage of those ESA claimants sent down the JSA route obtained work, and what happened to the 30% who moved off benefits, DWP replied :

> "The Department does not hold information centrally on whether people are moving from a claim for ESA via JSA and into work. The Department intends to carry out a qualitative piece of in-depth research on unsuccessful ESA claimants who do not qualify for ESA, have their claim closed, or withdraw their claim. The aim of this research is to provide further understanding of this group, to find out what happens to them, and what support could benefit them. It will help inform support for claimants who do not qualify for ESA and streamline ESA to JSA claims. Researchers who are experienced at contacting and interviewing 'hard to reach' groups will be used." (Appendix 1, Answers 5-7)

13. The SSAC report raises concerns about whether what is being delivered is achieving the policy intention:

> "It is of particular concern to the Committee that the Department is moving ahead with the migration of existing claimants of incapacity benefits without a solid evidence base for either the decision to migrate or the proposed migration arrangements. The Committee notes that the evaluation of ESA for new claimant is not planned to be complete until 2011 by which time the proposed migration arrangements will have commenced.

14. The Committee believes that the Department has underestimated the support required by this vulnerable group of claimants in terms of both their participation in a more active benefit regime and the support required to move them closer to the labour market. With the Pathways model, as

currently delivered and targeted, having been found to be largely ineffective and no alternative yet proposed, the Committee is concerned that the migration will neither be informed by evidence of how ESA is working for new claimants , nor supported by the sorts of services and programmes that these claimants will need if they are to comply with more demanding benefits conditionality" (Paras 134-5, Act Paper page 25).

15. The Merits Committee shares those concerns. However, since the instrument was laid there has been a change of Government. Although the same objective of simplifying the system and reassessing all current claimants of Incapacity Benefit for their readiness to work was included in the Coalition Agreement (section 19) it is not yet clear whether the means of achieving that end will be the same. The legislation and therefore the supplementary questions asked about it remain valid but the answers should for now be regarded as transitional. The current instrument does not take full effect until October 2010, which allows the incoming Secretary of State some time for reflection: **the House may wish to monitor closely how he addresses this programme**.

B. Home Information Pack (Suspension) Order 2010 (SI 2010/1455)

Energy Performance of Buildings (Certificates and Inspection) (England and Wales)(Amendment) Regulations 2010 (SI 2010/1456)

Summary: The changes to the Energy Performance Certificate regime are welcome, since by extending the longevity of the certificates from 3 to 10 years the new legislation corrects the defects the Committee identified in the way the previous system transposed the original Directive. Although this Committee has reported on Home Information Packs (HIPs) 6 times, more than on any other subject, because of enduring doubts that there was a mismatch between the stated policy objective and the proposed means of delivering it, we are concerned about the precipitate way the Government has acted to suspend them. While not necessarily dissenting from the Government's objective, the Committee would expect to see a more evidence-based consideration of the impacts of removing HIPs than the current explanatory material provides. Simply abolishing HIPs will not solve the well-known problems in the house-buying process, and we encourage DCLG to take up the offer to conduct positive discussions with the industry before bringing forward further legislation.

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.

16. The Department for Communities and Local Government (DCLG) has laid the Home Information Act (Suspension) Order under section 162 of the Housing Act 2004, and the Energy Performance of Buildings (Certificates and Inspection)(England and Wales)(Amendment) Regulations under section 2(2) of the European Communities Act 1972. They are laid with a joint Explanatory Memorandum (EM) and Impact Assessment (IA). A supplementary Q& A briefing about the suspension of Home Information Packs (HIPs) policy is published on the DCLG website.[5]

What is being done

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[5] DCLG Q & A on the Suspension of Home Information Packs
http://www.communities.gov.uk/housing/buyingselling/homeinformation/homeinfopackquestions/

17. The Home Information Pack (Suspension) Order ("the Order") suspends the requirement to have or provide a HIP when marketing a residential property from the date that the Order comes into force. The principal regulations, the Home Information Pack (No.2) Regulations 2007 ("the Principal Regulations") (SI 2007/1667) concerning the content and provision of HIPs will remain for the time being, but not in operation. The EM states at paragraph 2.2 the Government's intention to abolish HIPs altogether at the earliest opportunity, but this can only be done by primary legislation.

18. The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2010 ("the EPC Regulations") make amendments to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (SI 2007/991) in consequence of the suspension of HIPs to preserve their operation, in conformity with the Energy Performance of Buildings Directive (OJ No L 1, 4.1.2003, p. 65). They also extend the validity of the Certificate from 3 to 10 years. In addition a new regulation 5A aims to improve compliance by requiring:

    - a seller of residential premises (where no such certificate is already available) to commission an energy performance certificate (EPC) before marketing of the property commences,
    - the person acting on behalf of the seller (usually the estate agent) to be satisfied that an EPC has been commissioned before commencing marketing,
    - both the seller and a person acting on their behalf to make reasonable efforts to secure an EPC within 28 days, and
    - Enforcement authorities to give a £200 penalty charge notice for breach of any of these duties.

19. Both instruments breach the 21 day rule without providing any evidence of the harm that might occur if DCLG allowed the standard time for Parliamentary scrutiny to elapse. This period is also meant to allow the information about the changes in the law to be disseminated and to prevent inadvertent breaches of the new duties: in this case both sellers and estate agents overnight became liable to a penalty if they put a property on the market without an EPC having been commissioned and home sellers may not be able to claim a refund if they have commissioned HIPs unnecessarily. This is not best practice.

Why it is being done

20. In paragraph 7.2 of the EM it states that "the Government believes that HIPs are an expensive and unnecessary burden and that they have not achieved their objective to improve the home buying and selling process for consumers." This Committee has reported on HIPs 6 times, more than on any other subject, because of enduring concerns that there was a mismatch between the stated policy objective and the proposed means of delivering it.[6] While not necessarily dissenting from the Government's objective, the

[6] 39th Report of session 2005-06;18th & 24th Reports of session 2006-07; 5th & 15th Reports of session 2007-08 and 3rd Report of session 2008-09

Committee would expect to see a more evidence-based consideration of the impacts of removing HIPs than the current explanatory material provides.

21. Paragraph 7.2 of the EM continues "The Government believes that HIPs have acted as a deterrent to people wishing to sell their homes and that their abolition will help aid the recovery of the housing market." Yet paragraph 41 of the Impact Assessment says the number of transactions is unlikely to be significantly affected by the removal of HIPs and paragraph 43 concludes that there will be very little impact on house prices. In paragraph 38 it notes that the suspension of HIPs shifts some costs back to the buyer and in consequence this adds another burden to first-time buyers. In paragraph 32 it states that, although the removal of HIPs could see an increase in sellers (who may benefit from the shift in costs), a large proportion of these additional listings may only be speculative sellers who are just "testing the waters". In each case the IA indicates that other economic factors will have a stronger influence on the decision to buy or sell property.

Costs and benefits

22. Although critical of the existing HIPs regime, the House may wish to be persuaded that its overnight removal provides the most appropriate solution. The new government is not legislating in a vacuum, and the explanatory material gives little evidence of the benefits of the proposal. In addition precipitate action may exaggerate the negative impacts particularly on the providers of such packs, many of whom will have had their employment removed overnight. (The Association of HIPs providers (AHIPP) puts this figure at around 3,000 jobs lost and 10,000 affected, for example those who will have to modify their services).

23. The impact on providers is glossed over in the Impact Assessment saying they will have to compete more vigorously to provide better quality, value added products to homebuyers. But it is only made clear in the Q& A paper posted on the DCLG website that there will be no compensation provided to those affected. In response to a question about HIPs providers' qualifications now being redundant, DCLG write that there is work available to Home Inspectors who are accredited energy assessors in producing domestic EPCs which continue to be required for both sale and rental properties. However this is somewhat disingenuous when the EPC regulations simultaneously decrease the market demand by 2/3rds by extending the lifetime of such certificates from 3 to 10 years.

The way forward

24. The Committee notes from paragraph 8.1 of the EM that the Government takes the view that no further consultation is needed because the abolition of HIPs was a manifesto commitment. We have observed many times the role consultation with interested parties has played in preventing flawed legislation and unintended consequences. The Committee notes that AHIPP and the Royal Institution of Chartered Surveyors (RICS), both key stakeholders in this matter, recognise in their comments[7] that HIPs have not effectively addressed the problems in the market and should be scrapped. Equally they both invite DCLG to begin constructive discussions with

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7 AHIPP comment http://www.hipassociation.co.uk/node/1190; RICS comment http://www.rics.org/site/scripts/news_article.aspx?newsID=1470

industry to formulate a policy that will be more effective and "not throw the baby out with the bathwater".

25. This echoes the findings of this Committee's report on post-implementation review.[8] We note from paragraph 12.1 of the EM that the proposed evaluation of HIPs has been cancelled and are concerned that that DCLG risks losing valuable information on any beneficial aspects of HIPs or on any practical lessons that might inform future policy development in this area. We therefore trust that they will seek to capture this information, albeit in some modified form.

Conclusion

26. The changes to the EPC regime are welcome, since the new legislation corrects the defects the Committee identified in the way the previous system transposed the original Directive. In particular it removes the "gold plating" by extending the longevity of the certificates from 3 to 10 years.

27. The Committee notes DCLG's intention to permanently remove HIPs by means of primary legislation at the earliest opportunity: although HIPs have apparently failed to resolve the problems in the house buying process they were originally intended to address, simply abolishing HIPs will not solve those problems either. We therefore encourage DCLG to take up the offer to conduct positive discussions with the industry before bringing forward further legislation.

OTHER INSTRUMENTS OF INTEREST

Air Quality Standards Regulations 2010 (SI 2010/1001)

28. This SI transposes two EC Directives dealing with ambient air quality into English legislation. The overall objective of ambient air quality legislation is to improve air quality by reducing the impact of air pollution on human health and ecosystems. The Government launched a twelve week consultation on the draft Regulations on 9 November 2009. The Explanatory Memorandum (EM) says that they received 19 responses mainly related to points of clarification on the interpretation of provisions in the Directive and the basis of calculations in the draft Impact Assessment, with proposals for a few changes to the text of the new Regulations (paragraph 8.1). However, the Committee has received two letters from ClientEarth whose view is that the Regulations fail to adequately transpose the Directive because they do not provide a penalty framework and dilute the Secretary of State's duties in relation to air quality standards. The House may wish to note the content of the letters and the response from the Government (see Appendix 2).

[8] What Happened Next? 30th Report session 2008-09

Consumer Credit (EU Directive) Regulations 2010 (SI 2010/1010) and four related instruments[9]

29. These five sets of Regulations implement an EU Directive on consumer credit. They enhance existing consumer rights on the provision of information before and during the life of a credit agreement. They also introduce certain new consumer rights in relation to credit agreements, such as the right to withdraw from an agreement within 14 days and the right to repay early in part at any time. Any business that offers credit to consumers will have to comply with the new requirements. The Explanatory Memorandum (EM) says that it is estimated that there are 3,500 to 5,000 businesses holding consumer credit licenses in the UK and that the impact to these businesses is a potential cost of £1085 million to £1430 million over a period of ten years (paragraph 10.1). However, the EM also says that the costs to businesses are balanced by the benefits to consumers of £1185 million to £2180 million over a period of ten years (EM paragraph 10.1), although these benefits are illustrative and based on a number of assumptions.

Transnational Information and Consultation of Employees (Amendment) Regulations 2010 (SI 2010/1088)

30. In 1999 a set of regulations transposed the European Works Council Directive ("the Directive") and provided employees in large multinational companies with the right to be informed and consulted about transnational issues that affect them through a European Works Council (EWC). This SI amends the 1999 Regulations so as to implement the provisions of the recast Directive. These include: definitions that set out how information and consultation should take place; a definition of what constitutes a transnational issue for the purpose of information and consultation with EWCs; and a requirement that EWCs are adapted following significant structural changes to the company to ensure that all employees are represented. The Impact Assessment (IA) estimates the average costs at between £4.87 million and £5.95 million (IA page 2). The House may be interested in the outcome of the consultation (see section 8 of the Explanatory Memorandum). This shows that Trade Unions and EWCs felt that the SI did not go far enough in implementing certain aspects of the Directive, but that the Government acted on a number of suggestions made during the consultation in an attempt to make the Regulations easier to understand and to bring them more closely into line with the Directive.

End-of-Life Vehicles (Amendment) Regulations 2010 (SI 2010/1094)

End-of-Life Vehicles (Producer Responsibility) (Amendment) 2010 (SI 2010/1095)

31. These two SIs provide a number of amendments to the main Regulations transposing the EC Directive on the End-of-Life Vehicles (ELVs). The Directive aims to minimise the negative environmental impacts of vehicles (cars and goods vehicles up to 3.5 tonnes) when they are scrapped by:

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[9] Consumer Credit (Total Charge for Credit) Regulations 2010 (SI 2010/1011), Consumer Credit (Advertisements) Regulations 2010 (SI 2010/1012), Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013) and Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014)

establishing technical requirements affecting the design and composition of new vehicles; and establishing requirements for the collection, treatment, recycling and disposal of ELVs. The changes to the main Regulations include: an insertion of an ambulatory reference to the list of exemptions contained in Annex II of the Directive; changes to the requirements for reporting details of reuse, recycling and recovery rates; and further powers of entry for enforcement authorities.

Community Legal Service (Funding) (Amendment No. 2) Order 2010 (SI 2010/1109)

32. This Order continues the reform of legal aid payments by amending the fees payable to solicitors and Not for Profit organisations who provide civil legal aid services to the public. The Order brings the Private Family Law Representation Scheme (PFLRS) into a standard fee regime. It also amends the Family Advocacy Scheme (FAS) by creating a single graduated fee scheme covering payments to both solicitor advocates and barristers for public and private family law cases. The proposed fee schemes will replace hourly rates with the standard fees set out in this Order, and have been designed to be cost neutral against 2007/08 average case costs. The initial proposals were very unpopular but the Ministry has worked with the profession to create a compromise scheme that is regarded as fairer and more reflective of the way such cases work in practice.

Criminal Defence Service (Funding) (Amendment No. 2) Order 2010 (SI 2010/1181)

Criminal Defence Service (Funding) (Amendment No. 3) Order 2010 (SI 2010/1358)

33. Continuing the policy to reduce the amount spent on Criminal Legal Aid, SI 2010/1181amends the fees payable by the Legal Services Commission (LSC) to advocates for representing individuals in the Crown Court. The Order also amends the definition of Very High Cost Cases (VHCCs), which means that more advocacy payments will be governed by the graduated fees scheme set out in the Criminal Defence Service (Funding) Order 2007. The tables set out in the Orders fix the payment levels for each of the next three years for a range of fees. This is part of a plan to achieve an overall reduction of 13.5% over that period. Due to an error in the original Order, SI 2010/ 1358 was laid during the Dissolution with immediate effect to ensure that when the fees scheme came into effect on 27 April it accurately reflected the policy intention.

Merchant Shipping (Ship to ship Transfers) Regulations 2010 (SI 2010/1228)

34. Due to the increased volume of oil being transported from Baltic and Russian ports that is being transferred to larger vessels for onward transmission, these Regulations tighten current controls on cargo transfers, consisting wholly or partially of oil, and bunkering operations between ships. The ship-to-ship transfers may only take place where there is a fully worked up oil spill contingency plan, with trained personnel, and the necessary equipment for responding to a spill, close at hand. This means regulating and managing the practice of ship-to-ship transfer so that it takes place only in

the areas of harbour authorities which have suitable oil spill contingency plans. The Marine and Coastguard Agency will continue to monitor all such oil transfers and acquire new powers to take action against unauthorised ship to ship transfers within the 12 mile territorial sea of the United Kingdom.

35. The Regulatory Policy Committee, which was set up at the start of the year to monitor the quality of Impact Assessments, has issued a critical report on these Regulations [10] stating that the environmental benefits do not appear to justify the additional cost of conducting such transfers in harbour areas. The DfT have responded that although the UK has until now successfully controlled such transfers though voluntary measures, the rapid rise in the number of such transactions, (from 60 in total for 2006-8 to 200 in 2009) has significantly increased the risks. Although were only 6 incidents involving two oil spills in UK waters last year, both of them minor, the potential for a major pollution incident remains and the consequences of such an event can be drastically reduced by prompt action. DfT also comments that International Maritime Organization regulations will shortly come into effect which will require 48 hours notice from anyone wishing to carry out such oil transfers within the UK's counter pollution zone (which extends to a maximum of 200 nautical miles from the UK coast). Although the legislation seems likely to be effective, DfT could perhaps have made their case more explicitly in the initial Explanatory Memorandum.

SOCIAL SECURITY (CLAIMS AND PAYMENTS) AMENDMENT (NO. 2) REGULATIONS 2010 (SI 2010/870): CORRESPONDENCE

36. On 9 April the Committee drew these Regulations to the special attention of the House on the grounds that they give rise issues of public policy likely to be of interest (17th Report, HL Paper 113, Session 2009-10). They were concerned about proposals for a trial scheme by the Department for Work and Pensions to deduct tax debt from benefit claimants. The Committee had particular doubts about whether the methodology described in the EM would produce sufficiently robust data to inform a decision on whether to roll-out the scheme nationally. The Committee wrote to the then Parliamentary Under Secretary of State, Jonathan Shaw MP. Subsequently, the new Minister for the Department, Steve Webb MP, sent a response to the Committee on 31 May 2010. Both letters are printed at Appendix 3. The response was most helpful but we question why the Department could not have provided this information in the original EM.

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.

[10] RPC report http://interactive.bis.gov.uk/rpc/uploads/Ship-to-ship-oil-transfers-regulations.pdf

Draft Instruments requiring affirmative approval

Draft Political Parties, Elections and Referendums (Civil Sanctions) Order 2010

Instruments subject to annulment

SI 2010/951 Special Restrictions on Adoptions from Abroad (Nepal) Order 2010

SI 2010/983 Beef and Veal Labelling Regulations 2010

SI 2010/990 Teacher's Pensions Regulations 2010

SI 2010/991 Water Supply Regulations 2010

SI 2010/994 Water Supply (Water Quality) Regulations 2010

SI 2010/996 Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010

SI 2010/1001 Air Quality Standards Regulations 2010

SI 2010/1002 Education (Independent Educational Provision in England) (Inspection Fees) (Amendment) Regulations 2010

SI 2010/1010 Consumer Credit (EU Directive) Regulations 2010

SI 2010/1011 Consumer Credit (Total Charge for Credit) Regulations 2010

SI 2010/1012 Consumer Credit (Advertisements) Regulations 2010

SI 2010/1013 Consumer Credit (Disclosure of Information) Regulations 2010

SI 2010/1014 Consumer Credit (Agreements) Regulations 2010

SI 2010/1035 Guardian's Allowance Up-rating Regulations 2010

SI 2010/1050 Planning (Hazardous Substances) (Amendment) (England) Regulations 2010

SI 2010/1051 Whole of Government Accounts (Designation of Bodies) Order 2010

SI 2010/1061 Safeguarding Vulnerable Groups Act 2006 (Appropriate Officer and Schedule 7 Prescribed Persons) Regulations 2010

SI 2010/1070 Police Authority and Metropolitan Police Authority (Amendment) Regulations 2010

SI 2010/1071 Education (Short Stay Schools) (Closure) (England) Regulations 2010

SI 2010/1072 Appointments Commission (Amendment) Regulations 2010

SI 2010/1073 Safeguarding Vulnerable Groups Act 2006 (Supervisory Authorities and Devolution Alignment) Order 2010

SI 2010/1074 Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2010

SI 2010/1085 Dairy (Specific Market Support Measure) Regulations 2010

SI 2010/1088 Transnational Information and Consultation of Employees (Amendment) Regulations 2010

SI 2010/1090 Beef and Pig Carcase Classification (England) Regulations 2010

SI 2010/1091 Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2010

SI 2010/1092 Road Vehicles (Registration and Licensing) (Amendment) (No. 2) Regulations 2010

SI 2010/1094 End-of-Life Vehicles (Amendment) Regulations 2010

SI 2010/1095 End-of-Life Vehicles (Producer Responsibility) (Amendment) Regulations 2010

SI 2010/1096 Ordinance Survey Trading Fund (Maximum Borrowing) Order 2010

SI 2010/1110 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) Regulations 2010

SI 2010/1102 Flood Risk (Cross Border Areas) Regulations 2010

SI 2010/1108 Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Codes E and F) Order 2010

SI 2010/1109 Community Legal Service (Funding) (Amendment No. 2) Order 2010

SI 2010/1111 Vehicles Regulations (Amendment) Order 2010

SI 2010/1114 Motor Cycles Etc. and Tractors Etc. (EC Type Approval) (Amendment) Regulations 2010

SI 2010/1115 Motor Vehicles (Third Party Risks) (Amendment) Regulations 2010

SI 2010/1116 Isles of Scilly (Children Act 1989) Order 2010

SI 2010/1117 Motor Vehicles (Electronic Communication of Certificates of Insurance) Order 2010

SI 2010/1136 Medicines for Human Use (Miscellaneous Amendments) Order 2010

SI 2010/1140 Control of Artificial Optical Radiation at Work Regulations 2010

SI 2010/1143 Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2010

SI 2010/1144 Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2010

SI 2010/1150 Cosmetic Products (Safety) (Amendment) Regulations 2010

SI 2010/1155 Waste Electrical and Electronic Equipment (Amendment) Regulations 2010

SI 2010/1156 Education (Educational Provision for Improving Behaviour) Regulations 2010

SI 2010/1161 Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2010

SI 2010/1172 Local Education Authorities and Children's Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010

SI 2010/1173 Children's Centres (Inspections) Regulations 2010

SI 2010/1176 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010

SI 2010/1180 Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009 (Amendment) Regulations 2010

SI 2010/1181 Criminal Defence Service (Funding) (Amendment No. 2) Order 2010 (JW

SI 2010/1195 Seeds (National Lists of Varieties) (Amendment) Regulations 2010

SI 2010/1203 Motor Vehicles (Driving Licences) (Amendment) Regulations 2010

SI 2010/1205 Parental Orders (Prescribed Particulars and Forms of Entry) Regulations 2010

SI 2010/1220 Town and Country Planning (Compensation) (No. 2) (England) Regulations 2010

SI 2010/1226 Civil Aviation (Working Time) (Amendment) Regulations 2010

SI 2010/1228 Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010

SI 2010/1358 Criminal Defence Service (Funding) (Amendment No. 3) Order 2010

Instruments subject to annulment (Northern Ireland)

SR 2010/107 Police and Criminal Evidence (1989 Order) (Codes of Practice) (Temporary Modification to Code A) Order (Northern Ireland) 2010

SR 2010/143 Identification and Traceability of Explosives Regulations (Northern Ireland) 2010

SR 2010/146 Legal Aid in Criminal Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2010

APPENDIX 1: EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS, HOUSING BENEFIT AND COUNCIL TAX BENEFIT) (EXISTING AWARDS) REGULATIONS 2010 (SI 2010/ 875): GOVERNMENT RESPONSE

Information from the Department for Work and Pensions

Q1. *Previous regulations changed the system so new claimants entered the ESA system rather than IB, with those being found capable of work being sent down the Jobseeker's route– can you send me any evaluation of how that exercise has performed, and how outcomes compare with the previous system?*

A1. This is still an emerging picture but data so far suggests that:

Under Employment and Support Allowance (ESA) 39 per cent of ESA claims are being found fit for work and would have moved towards the Jobseeker's route. Another, 37 per cent either closed their claim or had their claim closed or withdrawn before the Work Capability Assessment (WCA) could take place, some of these would have also gone down the Jobseeker's route

Under incapacity benefits 15 per cent of new claims were disallowed at the Personal Capacity Assessment (PCA), with around 40 per cent of these people subsequently moved on to Jobseeker's Allowance (JSA).

The destination of the remaining leavers is not easily or reliably available from administrative data sources. A Department for Work and Pensions report on Destinations of Benefit leavers published in 2004) suggested that all incapacity benefits leavers (that is, not just those who left after assessment), went to a mixture of destinations – for example: work, claimed another benefit, education or training.

Note that due to the effect of the timing of the assessment (the earlier WCA means more people are assessed), comparing fit for work rates with PCA Disallowed rates is not a like for like comparison.

A further research piece is planned for 2011 to look at those that have been unsuccessful in their claim for ESA, the results of this research will be published when complete.

Q2. *In particular what are the numbers processed per week in the new system, what is the average length of time for WCA to be completed (including percentage within target of 13 weeks), what are the outcomes (some of this is touched on in the IA as estimates – what outturn data is available to support these estimates?)*

A2. The average length of time between ESA claim start to ATOS advice (i.e. a fit for work, Work Related Activity or Support Group recommendation) is the best current proxy for WCA completion time. This shows a steady fall since the start of ESA from 145 calendar days for the cohort of November 2008 ESA claims to 100 days for the June 2009 cohort. The proportions completed within 13 weeks increased from 19 per cent to 48 per cent over the same period. The recent trend suggests this improvement will continue into the future.

Ideally the measure used would be from the date of first contact by the claimant to the date of the decision on the claim. This information is expected to be available in the near future following database development work.

Q3. *Para 18 of the IA indicates that 38% of new claimants were found to be fit for work – is this due to different criteria applying to IB and ESA (ie is it simply a transitional effect) or do the criteria for satisfying ESA need to be spelled out better to potential claimants (ie are people applying for the wrong benefit?)*

A3. It is true that the WCA has different criteria to its predecessor the PCA. The new criteria take into account developments in disability analysis, the modern workplace and developments in health care. Given these changes it was expected that more individuals would be assessed as capable of work. This is in line with a body of evidence which demonstrates that work is generally good for health and can promote recovery and well being. Claimants will not be applying for the wrong benefit because a condition of entitlement for ESA is that they provide evidence of limited capability for work. This enables an ESA claim to be made, but only once a WCA has been undertaken do we finally know what the appropriate benefit is that a person should be claiming.

Para 19 of the IA indicates that significantly more new claimants were found to be fit for work than anticipated, so DWP is revising its estimates of those who will be found to be fit for work during phase 2 from 15% to 23%. How robust is this estimate (given that the previous one was too low)? Have adjustments been made to JSA provision to ensure that proportionate amounts of help, advice and training will be available for those additional migrants from IB to JSA. Is the cost of this additional provision included in the estimates of costs/benefits on page 5 of the IA – or does that solely consider the impacts of people moving out of IB/ESA?

The Department conducted further analysis on the proportion likely to be assessed as fit for work during the migration process. This has resulted in increasing the previous estimate from 15 per cent to around 23 per cent. Both estimates factored in evidence from new ESA claimants going through the WCA process, but the new assumption takes better account of the likely outcomes for those currently not required to have a face to face assessment. The Department will use evidence from the early migration phase to keep this important estimate under review and will also carry out sensitivity analysis to understand the implications if the proportion assessed fit for work is higher than estimated.

For those assumed to be assessed as fit for work it is expected that around half will go on to claim JSA. These claimants will be helped through the claim process and will be able to access the personalised, tailored employment support offered in JSA which is available to all claimants.

Claimants on JSA with a health condition may restrict their availability for work provided those restrictions are "reasonable" given their condition. It is recognised that more claimants with a health condition or disability are moving to JSA as a result of the WCA and the Department has been looking at what additional support may be required to help them return to work.

The provisions of employment support is under review and it is yet to be decided exactly what form additional help for those moving from incapacity benefits to JSA will take.

The costs of the standard JSA support for the migrated claimants have been included in the business case. Further costs of delivering employment support in JSA will be accounted for in JSA forecasts.

Q4. *What percentage of the 50% sent down the Jobseeker's route have successfully found work? What was the destination of the 30% who moved off benefits? Is there any information on the reasons they gave for doing so? What percentage of those who reapplied for ESA were successful?*

A4. The Department does not hold information centrally on whether people are moving from a claim for ESA via JSA and into work. The Department intends to carry out a qualitative piece of in-depth research on unsuccessful ESA claimants who do not qualify for ESA, have their claim closed, or withdraw their claim. The aim of this research is to provide further understanding of this group, to find out what happens to them, and what support could benefit them. It will help inform support for claimants who do not qualify for ESA and streamline ESA to JSA claims. Researchers who are experienced at contacting and interviewing 'hard to reach' groups will be used.

Pilot phase

Q5. *We note that you intend piloting the system in a couple of areas from 1 October 2010 before commencing national roll out in February 2011 –this is good practice but the timetable is very short. The assessment period target is "within 13 weeks" which takes you to the beginning of January, yet you plan to roll out the full programme after 31 January – that allows virtually no time for the experience in the initial test areas to be used to inform/modify plans for the national scheme. You state at page 6 of the Act Document that the feedback process will continue even after national implementation has commenced – surely that will further complicate the roll out for staff. Please explain the DWP's intentions.*

A5. The early introduction of the migration process is not a pilot; we are not assessing whether to go ahead with migration, this is a phased start to migration to inform successful delivery of the programme. There is no thirteen week assessment phase for migrating claimants and it is therefore expected that those claimants migrated during this phased introduction will have been through the WCA by January 2011.

This phased start will enable us to gain early feedback on customer and staff experience in relation to the new processes. Valuable information will also be gathered to undertake early validation of estimates such as the proportion found fit for work. The intention is to derive as much learning as possible from the phased introduction so that processes and procedures can be fine tuned ahead of national migration. Furthermore as more data becomes available we will continue to respond through a process of continuous improvement. This approach is entirely consistent with lessons learned and good practice for the implementation of major projects.

Equality

Q6. *It is a policy intention that no incapacity benefits customer who qualifies for ESA will see a cash reduction in their benefit at the point of migration (EM para 7.5) but the SSAC noted that the migration may result in consequential changes, particularly in respect of the taxation of the income, that may result in the individual actually having less money. In your response to the SSAC you state that DWP is considering matters further with HMRC - what is the current position?*

A6. It is still the current position that this issue remains under consideration and decisions will be taken by the new government in due course. This is not something that needs to be resolved for these regulations as they do not provide for the taxation of benefit income.

Q7. *In para 53 of the IA you note concerns about those who have fluctuating conditions e.g. if the WCA is done on a "good day" it may give a false impression of the person's general capacity. You state that the WCA has been designed to take account of this – please explain how.*

A7. Fluctuations, irrespective of their frequency and duration, should be reflected in the advice provided to DWP decision maker. Health care professionals carrying out the assessments are trained not to give a snapshot view based only on the day of assessment but instead to enquire about variability, both day to day and in the long term. Someone who is unable to complete a task reliably and repeatedly is considered to be unable to do that task at all.

The Department recognises the challenges associated with assessing fluctuating conditions and has been working to continually enhance the training that healthcare professionals receive and ensure that advice in this area is comprehensive. In order to further enhance the quality of training specialist disability representative groups have been invited to work with the Department in developing an additional training module on the assessment of fluctuating conditions.

Capacity

Q8. *The original timetable has already been extended but a number of respondents to the consultation and the SSAC have doubts about the Jobcentre's capacity to deal with the migration by March 2014. You expect to move across 10,000 claimants per week, how many claims is that per Jobcentre?*

A8. Migration cases will not be processed by normal Jobcentre Plus offices, but by Benefit Delivery Centres. There will be about 20 Benefit Delivery Centres that will process migrated cases which would equate to around 450 claims per week per site. This assumes an equal distribution of work between the areas which is not necessarily the case and demographic variations will have a bearing on the distribution. Implementation planning takes such factors into account, both in terms of resource planning both for operational staff and also for Medical Services health care professionals who will be required to undertake the WCA.

A number of measures have been taken to ensure that the volumes of customers to be migrated are achievable by both Jobcentre Plus and Medical Services. These are, reducing the overall volumes for migration by excluding those who will reach state pension age during the migration period and to leave those with no actual award but who are receiving national insurance credits until after the migration period.

A number of changes are being made to how Medical Services conduct the Work Focused Health-Related Assessment (WFHRA), such as enabling them to be conducted over the telephone. Jobcentre Plus have also re-prioritised the Jobcentre Plus work programme for IT changes to ensure that the right resources are available to accommodate the IT development work.

Q9. *Given that many of these migrants will be people with mental health and learning difficulties that may take longer to process than the average person, has allowance been made for this in DWP's calculations?*

A9. The Department is well aware from its engagement with customer representative groups and other stakeholders that all vulnerable customers, including these specific groups, will require additional support throughout the process of conversion from incapacity benefits. Allowance has been made within the resource calculations to cater for the additional work associated with supporting people in these circumstances. The calculations recognise both the additional time and number of people with mental health and learning difficulties and in particular:

- Those mental health customers who don't return their ESA50 will be referred to Atos for a WCA appointment rather than being considered for disallowance for non compliance with the process.
- All mental heath customers who don't attend their first appointment with Atos will be called on the phone (10 minute allowance).
- 5% of all the Atos appointments that are not attended by mental health customers will get a home visit (120 minute allowance - 2 people to visit for 1 hour (including travel time).
- We also take account of the number of customers, including those with mental health issues, who will attend Jobcentre Plus offices in person who will require additional support. The allowance is set at 15 minutes per caller.

Q10. *The Committee has previously expressed concern about the workload for Jobcentre staff. Will they require extra training to be able to handle the migration of IB?*

A10. The Department recognises the importance of training staff involved in the process of reassessing incapacity benefit claims. A full training needs analysis has been undertaken

for the training that will be necessary for supporting staff to administer the migration process. Local training plans are currently under development to cater for the individual training needs of staff. We also intend to involve customer representative groups in providing specialist input to training where appropriate.

Q11. *We note that in para 8.6 of the EM you state that WCA and the performance of the Pathways system will be reviewed with a report due out later in 2010 that presumably make recommendations for change – how will this affect the migration plans? Will the staff have to absorb information on modifications to the WCA and Pathways system at the same time that they are dealing with the migration?*

A11. ESA was always intended to be dynamic; it is set down in legislation that the Secretary of State shall lay before Parliament an independent report on the operation of the assessments of entitlement for the first five years after the regulations were laid. This is irrespective of the needs of migration.

The WCA Internal Review and of the review of the Pathways regime 'Building Bridges to Work: new approaches to tackling long-term worklessness' were published by the previous Administration in March 2010. However, the WCA and employment support regimes that will be in place for the migration process are yet to be decided by new ministers. DWP staff are well used to implementing change as part of a system which is subject to continuous improvement.

Q12. *We note that increased medical capacity is being sought to make the necessary medical assessments (EM para 10.2) – what is the current position?*

A12. Atos, the Medical Services contractor, have in place plans to recruit sufficient health care professionals to cover the increased capacity that migration will require. After consultation with Atos, we are confident that these plans are robust enough to deliver the required numbers. This is evidenced by the fact that Atos have already recruited significantly more health care professionals than this time last year.

Q13. *Paragraph 42, page 10 of the Act Paper says that Jobcentre Plus Work Psychologists will be available to help IB migrants into work – how many are such Psychologists are there in total on the Jobcentre staff. How many such Psychologists are there available per Jobcentre? How many per 1,000 claimants?*

A13. There are approximately 69 Work Psychologists employed by Jobcentre Plus in customer related work, either one-to-one or supporting Personal Advisers in case conferences or through specialist training and development. The Work Psychologists are employed by individual Jobcentre Plus districts. As previously stated it has not yet been decided how precisely employment support will be provided in the future.

Q14. *As well as dealing with the migration of IB, Jobcentre staff will be required to handle other changes to the benefit system for example the final tranche of Lone Parents having to migrate from Income Support to JSA when their youngest child turns 7 will commence on 25 October 2010. Is there a strategic overview that monitors the cumulative impact on Jobcentre staff of the various changes and how they are to be addressed? If so may we see a copy?*

A14. Like many organisations Jobcentre Plus has mechanisms in place for working out the impact on its business of change. Each change is assessed systematically and is considered against other known changes to ensure that Jobcentre Plus has the capacity to deliver. The migration process from incapacity benefits has been through this process and adjudged that it can be delivered over the timeframe indicated in the Act Paper.

Q15. Just to clarify – the IB claimant who is found not fit for work will automatically be transferred to ESA without the need to take any further action and receive benefits continuously. The IB claimant who is found fit for work will have their benefit disallowed within 15-27 days of the decision letter (para 74, page 16 of the Act Paper) and will have

to take action to make a new claim for JSA within that period if they wish to continue claiming benefits. Is that correct?

A15. It is correct that a person who meets the WCA threshold will automatically have their benefit converted to ESA. Thereafter the claimant will have to meet the conditions of entitlement for benefit to continue. In addition Jobcentre Plus is currently trialling new procedures for supporting customers who leave ESA and claim JSA. Subject to a successful evaluation of these trials these procedures will be rolled out ahead of Migration commencing. These procedures involve making a call to the claimant following the fit for work decision to explain the options open to them – Claiming JSA, appealing etc. If the customer decides to proceed with a JSA claim they will be helped to do so.

Appeals

Q16. *What percentage of those that have been assessed as fit for work have appealed against the decision and how many of those appeals have been successful? How does this figure compare with the number and outcome of appeals under the old system?*

A16. The PCA used for IB claims and the WCA used for ESA claims are not the same and consequently a direct comparison of the number of successful appeals should be seen in that context and could be misleading. The WCA was developed to be a more robust and accurate assessment than the PCA. The rise in the fit for work rate reflects the fact that the assessment is now identifying individuals who are considered capable of work, who may previously have received incapacity benefits.

It is too early to draw any firm conclusions from administrative data on ESA appeals as the main data source on appeals is only fully populated once an appeal has been heard. For the initial cohorts of ESA claims there appear to be a high number of appeals which have not yet been heard by the Tribunals Service.

Based on the latest data, 29 per cent of people found fit for work have had an appeal heard by the Tribunal Service to date. However, it is expected that this number will rise once the outcomes of appeals that have been submitted but not yet heard are known. Of the appeals heard so far, in 61 per cent of cases the Department's decision has been upheld.

For PCA capability for work decisions relating to the initial assessment at the start of a claim we estimate the rate of appeal was about 40 per cent, with around 57 per cent of the Department's decisions being confirmed.

The rate of appeal figures should become more definite as more appeals are cleared.

Q17. *We note that the change in system has significantly increased the number of appeals and that you are working with the Tribunal System to address this. We are concerned by the statement in the Act Paper (page 11, para 46 c)) that DWP plan to reduce the number of appeals by managing the customer's expectations and in particular the language in the disallowance letter. There is a fine line between not encouraging false hopes and discouraging those with a legitimate concern – please explain further what DWP's intentions are.*

A17. We agree. The current focus is on streamlining processes in both DWP and the Tribunals Service to reduce the overall time taken to process appeals. It includes critically assessing the process using recognised Lean techniques. The Department is also focusing on the quality of decision making, including the operation of the reconsideration process.

Through active engagement with customer representative groups we have identified that the nature of ESA and how it differs from incapacity benefits, has not been fully communicated or understood. The letter informing claimants of a fit for work decision has caused particular concern. Existing decision notices are under review and careful consideration is being given to the suite of notifications which will be used for migration.

This includes an ongoing commitment to consultation with customer representative groups and the Social Security Advisory Committee. There is no intention to try and discourage customers with a legitimate concern from appealing.

Q18. *Many of those in the target group will have learning difficulties (the IA indicates 43% of IB claimants have mental or behavioural disorders) – what is being done to help claimants in this category understand what they have to do?*

A18. The Department fully recognises that there are many vulnerable people who will need to be supported throughout the process and effective communications will be the key to their engagement – and that of people who support them - in the process. The communications process is currently being looked at to ensure that it is effective for different claimant groups. The customer journey has been designed to ensure that it caters for all claimants going through the migration process. Direct help and support will be available to people going through the process. There are a number of direct contact points with the customer to explain the process, what is happening next and what they can expect. This takes account of lessons learned from the introduction of ESA.

Customer segmentation work [identification of subsets of claimants with distinctive characteristics] has also been done to help inform aspects of migration. This work will aid Jobcentre Plus in identifying the appropriate help needed for different claimant groups.

Q19. The migration of people from IB is likely to result in an increased demand on voluntary services for advice and support, for example in relation to appeals, what assistance is being given to bodies like the Citizens' Advice or charities such as MIND?

A19. As outlined in the Act Paper the Department will be providing a suite of products, produced in consultation with advice services, prior to migration. This will provide those supporting customers with the necessary information to advise and issue material to their customers directly, ensuring a greater focus and reach than is possible through Departmental communications alone. The Department is also planning a formal consultation event with customer representative groups will is scheduled to take place shortly and attendees will have the opportunity to influence and inform how this work is taken forward. Furthermore the Department will continue to engage with these organisations throughout the development of the migration process and once this commences.

Q20. The transition period is likely to cause claimants to make more demands on their health professionals for supporting evidence – particularly where there is an appeal. What estimates have been made of this? Are DH content? What information is being supplied to GPs?

A20. When migration commences, health care professionals working for Atos Healthcare will review cases in line with the current case review timetable. Therefore claimants are being reviewed at the broadly same time as they would usually have had a review of their case for IB. When reviewing a case, the health care professional will be able to use medical information that is already available, such as previous incapacity benefits examinations. Therefore health care professionals may not need to contact GPs in the same volumes as for new claims.

The Department is currently finalising communications to ensure that GPs are aware of the changes and know where they can access further information.

June 2010

APPENDIX 2: AIR QUALITY STANDARDS REGULATIONS 2010 (SI 2010/1001): EVIDENCE

First submission from ClientEarth

Incorrect transposition of European air quality legislation

We are writing on behalf of ClientEarth in relation to the incorrect transposition of the Ambient Air Quality and Cleaner Air for Europe Directive 2008[11] (the 'Directive') into English legislation under the Air Quality Standards Regulations 2010 (the 'Regulations').

The Directive came into force on 11 June 2008 and must be transposed by member states into national legislation by 10 June 2010. It consolidates and repeals previous ambient air quality legislation which imposes legal limits, known as 'limit values' on ambient concentrations of various harmful pollutants.

The Department for Environment, Food and Rural Affairs ('Defra') published draft transposing regulations for public consultation on 9 November 2009. By a letter dated 29 January 2009, ClientEarth responded to this public consultation, proposing a number of substantive amendments to the draft regulations. The Regulations were subsequently laid before Parliament on 30 March 2010 and are scheduled to come into force on 11 June 2010, subject to parliamentary scrutiny.[12]

The Regulations incorporate some of ClientEarth's proposed amendments, but two key issues we raised were either inadequately addressed or ignored by Defra. Consequently, in ClientEarth's view, the Regulations fail to adequately transpose the Directive.

The transposition of the Directive comes at a key juncture in UK air quality policy. The European Commission has already commenced infringement action against the UK for repeated noncompliance with limit values for dangerous airborne particles (known as 'PM10') in Greater London, and in December 2009, rejected the UK's application to postpone the deadline for compliance with these limit values until 2011. Meanwhile levels of nitrogen dioxide are over double the legal limits at a number of locations in central London.

Air quality legislation is in place to protect both human health and the environment. A report by the Environmental Audit Committee, published in March this year, estimated that poor air quality results in 50,000 premature deaths each year in the UK.[13]

In view of these ongoing problems, it is imperative that the Regulations accurately transpose the Directive in order to establish a robust and effective legal framework.

ClientEarth is a non-profit environmental law organisation based in London and Brussels. We bring together law, science and policy to develop legal strategies and tools to address major environmental issues. Our 'CleanAir for London' campaign aims to ensure that London is fully compliant with all relevant air quality laws in time for the 2012 Olympic Games.

Article 30 of the Directive

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[11] DIRECTIVE 2008/50/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008 on ambient air quality and cleaner air for Europe

[12] The consultation documents are available at:

http://www.defra.gov.uk/corporate/consult/airquality-transposition/index.htm

The Regulations and explanatory memorandum are available at:

http://www.opsi.gov.uk/si/si201010

[13] This report is available at:

http://www.publications.parliament.uk/pa/cm200910/cmselect/cmenvaud/229/229i.pdf

Article 30 requires that member states 'lay down the rules on penalties applicable to infringements.' These penalties must be 'effective, proportionate and dissuasive.' However this provision has not been transposed in the Regulations. In the summary of consultation responses, Defra stated:

> *'We do not consider it necessary to transpose Article 30 of the Directive as public law remedies exist to address any breach of the obligations applying to the Secretary of State. This approach is fully consistent with the UK's obligations under the Aarhus Convention and related EU legislation.'*

In ClientEarth's view the failure to transpose Article 30 is a clear and substantive failure by the UK to adopt transposition measures which conform to the minimum requirements of the Directive. Further, the reliance on public law remedies is not, in our view, consistent with the UK's obligations under the Aarhus Convention.

Article 30 is based on a well established principle of EU law: where a directive does not specifically provide any penalty for infringement, Article 4.3 of the Treaty on European Union ('TEU') (formerly Article 10 EC) requires the member state to take all appropriate measures to ensure fulfilment of its treaty obligations.[14] This principle has been articulated by the European Court of Justice as follows:

> *'…It should be observed that where Community legislation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the Treaty [now Article 4.3 TEU] requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law… For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.'*[15]

Public law remedies in England and Wales are neither effective nor dissuasive. There is no independent statutory body with responsibility for ensuring that the Secretary of State complies with his statutory duties in relation to air quality. The Secretary of State will therefore only be held to account for breaches of his statutory duty where concerned individuals or groups apply to the High Court for judicial review.

However, it is very difficult for citizens in England and Wales to obtain judicial remedies for infringements of environmental law. First, the risk of incurring costs in the event of an unsuccessful claim acts as a significant deterrent to claims being made in the first place. The general rule in England and Wales is that an unsuccessful claimant has to pay the costs of the respondent, in addition to their own.[16] The risk of incurring these costs means that bringing a legal challenge is prohibitively expensive for the vast majority of individuals and non-governmental organisations.

This is in contravention of the UK's obligations under Article 9(4) of the Aarhus Convention,[17] an international treaty which obliges parties to make sure that access to justice is not 'prohibitively expensive' or unfair. ClientEarth has submitted a communication to the Aarhus Convention's Compliance Committee regarding the UK's non-compliance which highlights these issues. In March this year the European

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[14] Nunes en de matos (C-186/98): [1999] E.C.R. I-4883

[15] Commission v Greece (C-68/88): [1989] E.C.R. 2965

[16] Civil Procedure Rules, Rule 44.3

[17] The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998

Commission issued a reasoned opinion relating to the UK's failure to implement EU access to justice legislation.

Second, even where judicial review claims against a Secretary of State are made, appropriate judicial remedies are rarely available. Remedies for judicial review are discretionary. Usually, where a court finds that there has been a breach of statutory duty, it will give a declaratory judgement that there has been a breach. However, this in itself would not amount to an effective and dissuasive penalty, as required by Article 30. Injunctive relief, in the form of a mandatory order requiring the secretary of state to take specific action to remedy the breach, would be required. However, injunctive relief is rarely awarded by courts in England and Wales. This is also in contravention of Article 9(4) of the Aarhus Convention which requires that adequate and effective remedies are available, including injunctive relief.

In view of the prohibitive cost of obtaining judicial review for infringement of the Regulations, and in the absence of judicial remedies which ensure the availability of dissuasive penalties, there is a clear need for the Regulations to transpose the provisions of Article 30. It is simply not adequate to claim that transposition of Article 30 is not required. The Regulations must at least guarantee the availability of substantive and procedural review and mandatory injunctive relief. Unless these provisions are included in the finalised Regulations, the UK will be vulnerable to infringement action from the Commission under Article 226 EC.

We recognise the challenges involved in establishing an effective system of penalties within the existing institutional framework. Under this framework, the Secretary of State is responsible for making the Regulations in accordance with section 2(2) of the European Communities Act 1972 and is the 'responsible authority' for the purposes of the Directive. Through the Regulations, the Secretary of State imposes a legal duty on himself to achieve compliance with the various limit values, target values and other objectives. As the 'responsible authority', the Secretary of State is also responsible for assessing ambient air quality. Under this structure, the Secretary of State would be responsible for monitoring his own compliance and imposing penalties against himself for infringements. This would inevitably lead to a conflict of legal duties. However, this can be overcome by ensuring that the Regulations guarantee the requisite basis for effective, proportionate and dissuasive judicial remedies.

In the longer-term, this institutional framework needs to be comprehensively restructured. ClientEarth's submission to the Environmental Audit Committee's recent investigation into air quality in the UK contains a number of proposals which would overhaul the legislative and institutional framework. In particular, our submission recommended that responsibility for monitoring compliance with the Regulations and imposing penalties for infringements be given to an autonomous non-governmental agency.[18] Such a system is essential if the Regulations are to be enforced effectively and credibly.

Obviously, structural reform of this kind is necessarily a long-term project, particularly as primary legislation would be required. Therefore in the interim, to achieve compliance with the Directive by the transposition deadline of 11 June 2010, the Regulations need to establish a system of penalties for infringement by the Secretary of State using the existing institutional framework.

Article 15(2) of the Directive

Article 15(2) states that:

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[18] ClientEarth's submission to the EAC available at:
http://www.clientearth.org/reports/cleanair-eac-submission.pdf

> *'Member States shall ensure that the average exposure indicator for the year 2015 established in accordance with Section A of Annex XIV does not exceed the exposure concentration obligation laid down in Section C of that Annex.'*

This imposes an unqualified duty on the member state to ensure that its citizens are not exposed to concentrations of a particular category of pollutant above a certain level. The category of pollutant in question comprises very fine airborne particles, known as 'PM2.5' which are believed to be particularly harmful to human health.

However, Article 15(2) has been transposed by Regulation 25(3) as follows:

> *'The Secretary of State must ensure that* ***all appropriate measures are taken*** *in relation to England* ***with a view to ensuring*** *that the [average exposure indicator] for 2015 does not exceed 20 micrograms/m3' (emphasis added)*

This wording significantly weakens the legal duty on the Secretary of State. An obligation to take all appropriate measures with a view to achieving a given outcome is very different to an unequivocal obligation to achieve that outcome. The former introduces a great deal of uncertainty, first as to what constitutes an 'appropriate measure', and secondly as to whether such measures must actually ensure that a given outcome is achieved, or merely work towards achieving it. This would make it much more difficult to take legal action against the Secretary of State if these statutory obligations were subsequently breached.

This is particularly important in the context of the Regulation's failure to transpose Article 30 in favour of relying on public law remedies.

Conclusion

The Regulations do not accurately transpose Articles 30 and 15(2) of the Directive and as a consequence, seriously dilute the Secretary of State's legal duties in relation to compliance with air quality standards in England and Wales. By making it more difficult to monitor and enforce compliance with these duties, the Regulations increase the likelihood that air quality in the UK will continue to breach European standards and put the health of thousands of UK citizens at risk.

By failing to properly transpose the requirements of the Directive, the Regulations leave the UK vulnerable to infringement action by the Commission under Article 226 EC. ClientEarth will be contacting the Commission to notify it of our concerns with the Regulations and will urge it to take appropriate action in the event that these concerns are not adequately dealt with.

For these reasons, we should be grateful if you would draw this statutory instrument to the special attention of the House.

We appreciate that public submissions are meant to be made within a week of the instrument being laid before Parliament, however we were unable to respond within this period due to other work commitments. We trust that the committee will have time to consider this matter at its first meeting following its reappointment after the general election.

23 April 2010

Second submission from ClientEarth

Incorrect transposition of European air quality legislation

We write further to our letter dated 23 April 2010, to clarify the points we made in relation to the transposition of Article 15(2) of Directive 2008/50/EC.

You will recall that Article 15(2) states that:

> *'Member States shall ensure that the average exposure indicator for the year 2015 established in accordance with Section A of Annex XIV does not exceed the exposure concentration obligation laid down in Section C of that Annex.'*

Our previous letter explained that Article 15(2) has been transposed by Regulation 25(3) as follows:

> *'The Secretary of State must ensure that* ***all appropriate measures are taken*** *in relation to England* ***with a view to ensuring*** *that the [average exposure indicator] for 2015 does not exceed 20 micrograms/m3' (emphasis added)*

However, we omitted to explain that Regulation 25(4) then goes on to state:

> *'Where it appears necessary and after consultation with the relevant administrations as appropriate, the Secretary of State must take measures in relation to the UK to ….(b) ensure that the AEI for 2015 does not exceed 20 micrograms/m3.'*

This wording reflects the fact that the devolved administrations in Scotland, Wales and Northern Ireland have responsibilities for action on air quality in their countries, but that the Secretary of State has an overriding duty to attain these UK-wide obligations. However, we do not believe that the Regulations achieve this with any degree of clarity; even when viewed in its entirety, Regulation 25 does not correctly transpose Article 15(2).

The Secretary of State's duty under Regulation 25(4) in relation to the UK, while stronger than that under 25(3) in relation to England, is still qualified by the words 'where it appears necessary.' This is a further significant dilution of the requirements of Article 15(2) as it appears to give the Secretary of State discretion as to whether to take measures to achieve the AEI in the UK. Further, we do not understand why the duty in relation to England has been formulated differently than that in relation to the UK.

21 May 2010

Response from the Department for Environment, Food and Rural Affairs

We are responding to comments made by Client Earth, in their letter of 23 April to you, on the transposition of the Ambient Air Quality and Cleaner Air for Europe Directive (2008/50/EC) (the "Directive") into English legislation through the Air Quality Standards Regulations 2010 (the "2010 Regulations").

We would first like to address points made in the introduction to their letter about UK compliance with EU limit values for particulate matter (PM_{10}) and nitrogen dioxide (NO2).

The UK like most other member states faces challenges in meeting the limits for PM10 and NO2, especially in densely populated urban areas, such as London. This is why provision was made in the Directive for member states to extend the deadline for meeting these limits to 2011 for PM_{10} and 2015 for NO2, subject to Commission approval of air quality plans to achieve this.

In relation to PM_{10}, infraction proceedings were initiated against the UK and a number of other member states in 2009 but the Commission accepted in their Decision of December 2009[19] that the UK is now meeting limits for PM10 outside London. The Decision was in response to a UK application under Article 23 of the Directive for additional time to meet PM10 limit values in eight areas of the UK where there have been exceedences since 2005. However the Decision also made clear that more evidence was needed to demonstrate compliance with daily limit value in London by 2011. In response to this,

[19] http://ec.europa.eu/environment/air/quality/legislation/pdf/uk_en.pdf

Defra has been working with the Greater London Authority and Transport for London, and updated projections show that compliance with the daily limit value is expected to be achieved by 2011. This information has now been submitted to the Commission with a view to securing the extension to 2011.

Meeting the limits for NO_2 (which came into force this year) is more challenging still. In 2008 the annual limit was exceeded alongside 27% of major roads in urban areas, many of these being in London, where concentrations are comparable with other major European cities. The UK therefore like other member states needs the additional time available to meet the limit values. There is increasing evidence that European diesel vehicle engine standards have not been delivering the expected improvements in urban driving conditions.

On transposition of the Directive, ClientEarth states that two key issues in their response to Defra's consultation have been inadequately addressed or ignored. Defra's summary of consultation responses was published in March[20] and includes comments on both the issues raised by ClientEarth. Further comments explaining our approach to transposition of the relevant parts of the Directive (Article 30 and Article 15 (2) are provided below.

In drafting the 2010 Regulations, although the subject matter is technical and scientific in places, we have taken a great deal of care to try and make them clear and easy to follow as well as ensuring accurate transposition. It is hoped that this approach will allow stakeholders to identify the relevant legal limits and to clearly identify the duties of the Secretary of State.

Article 30: Penalties

ClientEarth are of the view that the 2010 Regulations do not accurately transpose this Article. Article 30 of the Directive requires member states to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive. The penalties must be effective, proportionate and dissuasive.

The Directive requires member states to assess air quality and to take action to comply with various limits, target values and long term objectives. Because of the nature of these obligations, duties have been imposed by the Regulations upon the Secretary of State. If the Secretary of State fails to comply with the duties in the Regulations, then the only available 'sanction' lies in public law and 'penalties' such as fines or imprisonment are plainly not appropriate. In order to achieve compliance with various air quality limits etc. set out in the Regulations, it may be appropriate for central government or local government to adopt other measures which can include, for example, traffic orders. In appropriate cases penalties can be imposed in the event of a breach of these requirements by individuals.

A complaint is also made about the effectiveness of Judicial Review remedies in this context. As ClientEarth point out, complaints have already been made both to the Aarhus convention compliance committee in relation to the convention and also to the European Commission in relation to the implementation of the Public Participation Directive and a Reasoned Opinion has recently been issued in relation to this Directive.

Defra is obliged to implement the requirements of Directive 2008/50 on time and has done so. It is not possible in the context of that work to review government policy in relation to costs in judicial review proceedings. Furthermore, there is no reason to suppose that the courts would be unable or unwilling to grant appropriate relief in appropriate cases. We do not therefore accept that it is reasonable or indeed possible for the 2010 Regulations to attempt to guarantee mandatory injunctive relief.

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[20] http://www.defra.gov.uk/corporate/consult/airquality-transposition/index.htm

As ClientEarth themselves point out, it is difficult to conceive of an alternative structure for penalising the Secretary of State given that he is the responsible authority under the 2010 Regulations and cannot therefore be responsible for monitoring his own compliance or imposing penalties against himself for infringements.

Article 15(2) Average Exposure Indicator for fine particulate matter for 2015

In the opinion of ClientEarth, Article 15 (2) has not been accurately transposed in the 2010 Regulations. Article 15 introduces for the first time national exposure reduction targets for fine particulate matter ($PM_{2.5}$). The requirement is for exposure of the population in urban background areas to $PM_{2.5}$ to be assessed and then reduced over time. The national exposure reduction target and the Average Exposure Indicator (AEI) are to be defined at the UK level and Defra has worked with the devolved administrations in Scotland, Wales and Northern Ireland to ensure a co-ordinated UK approach to transposing these provisions.

The wording in regulation 25 of the 2010 Regulations is a genuine attempt to reproduce the requirements of article 15(2) and is not intended to dilute or evade those requirements. The 2010 Regulations impose a duty on the Secretary of State to take appropriate measures in England, and across the UK if deemed necessary, to ensure that the AEI is achieved by 2015. If the AEI for 2015 exceeds 20 ug/m^3 then the UK will be in breach of its obligations under the Directive.

It is within the power of the Secretary of State to see to it that the necessary measures are put in place, but it is not necessarily possible for the Secretary of State to know with certainty in advance that such measures will be effective. Therefore work will continue to ensure a co-ordinated approach to the implementation of these provisions.

17 May 2010

APPENDIX 3: SOCIAL SECURITY (CLAIMS AND PAYMENTS) AMENDMENT (NO. 2) REGULATIONS 2010 (SI 2010/870): CORRESPONDENCE

Letter from Lord Rosser to Jonathan Shaw MP

The Merits Committee yesterday gave consideration to this instrument and expressed concerns about the proposed test methodology. Because we are on the brink of the Dissolution, the Committee decided to make a brief report and seek further information from the Department which our successor Committee may wish to publish in its first report of the new Parliament.

We note the reservations of the Social Security Advisory Committee (SSAC) in the Act paper that accompanies the instrument, which, we assume, are based on rather more information than has been made available to Parliament. We have quite recently made clear to DWP the need to give a much stronger justification for its proposals in Explanatory Memoranda (EM), and to support its assertions with evidence.[21] We therefore find it strange that the Government response to the SSAC's comments is limited to assertions that the methodology will be robust and the evaluation strategy will follow HMRC and DWP practice. The material in the EM is equally vague. **I would be grateful if you would set out more clearly the methodology and the evaluation protocol for this deduction trial. What advice have you sought about the design of the trial?**

5,000 eligible claimants will be invited to participate in the trial. Those who decline will become the control group. We are not clear how this correlates with the statement at paragraph 7.7 of the EM: "If a customer does not wish to take part in the trial or no reply is received then no further action regarding the trial will be taken in respect of that customer." **Please can you explain how the control group is to be assessed?**

What percentage of the 5,000 are you expecting to take up the opportunity? If the trial is truly voluntary, and you have given undertakings that your communications to claimants will be very clear on this point, then you may end up with very few willing participants. What cadre do you regard as the minimum necessary to give robust data from which wider conclusions can be drawn? As a number of the volunteers may go off benefit during the pilot period, what is the minimum number of weeks for making deductions that can be regarded as significant?

We note that the concept of the trial has generally been welcomed and do not question the objective, but have concerns as to whether the proposed methodology can deliver sufficiently meaningful data to support its extension. As our successor Committee in the new Parliament would also be scrutinising any regulations to roll out the pilot more widely, we wish DWP to be aware in advance of the level of evidence that the Committee will wish to see with those regulations: we are not yet persuaded that this trial is capable of providing it.

The Committee would be interested to hear more about how the DWP plan to address these problems. **I would be grateful for a reply by the end of May.**

7 April 2010

[21] 5th Report (with oral evidence) session 2009-10, in particular the draft Jobseeker's Allowance (Skills Training Conditionality Pilot) Regulations on which we questioned whether the pilot data offered was sufficiently robust to justify an extension of the programme.

Response from Steve Webb MP, Secretary of State for Pensions

On 7 April 2010 you wrote to the then Parliamentary Under Secretary of State, Jonathan Shaw, asking for additional information in respect of the proposed test methodology for the voluntary trial to recover tax credit overpayments and self assessment debt by deductions from some DWP benefits.

The information that was requested is enclosed. I trust that it provides all the information that has been requested. You will no doubt be aware that we are considering our spending priorities. It is therefore possible that we may decide not to go ahead with this pilot at this time.

I would like to take this opportunity to give an assurance to the Committee that we are committed to monitoring and evaluating this voluntary trial, and that we have given an undertaking to the Social Security Advisory Committee to keep them informed of progress.

Annex to letter

Q1. *I would be grateful if you would set out more clearly the methodology and the evaluation protocol for this deduction trial.*

A1. The purpose of this trial is to offer customers who have a tax credit overpayment or self assessment tax debt an additional method of repaying Her Majesty's Revenue and Customs (HMRC). This method is to agree to voluntary deductions being made from the following Department for Work and Pensions' benefits: Income Support, Jobseeker's Allowance (income-based), State Pension Credit, Employment and Support Allowance (income-related).

The trial aims to approach 5,000 tax credit customers and 5,000 self assessment customers who are in receipt of one these benefits. There will be three groups for evaluation purposes:

i. Approached customers who volunteer to take part in the trial.

The evaluation will look at how much was recovered, the spread of weekly deduction rates, how long a person is in receipt of a relevant benefit and what could have been recovered had they been taking part in the trial for the whole two years taking account of expected levels of movement on and off benefit.

DWP Debt Management will provide an analysis of their costs in running the trial. HMRC will do the same to permit an overall cost to Government to be calculated. In addition the performance of new joined up operational processes between HMRC and DWP will be assessed.

As part of the evaluation HMRC will seek feedback from its customers on the effectiveness of the trial and their overall customer experience.

ii. Approached customers who choose not to take part in the trial.

HMRC will note these cases and then deal with them under their current recovery processes, and track whether they subsequently repay their debt or overpayment by other means. For these cases HMRC will assess how much could have been recovered over two years had they taken part in the trial, taking account of the spread of weekly deductions and movements on and off benefit.

iii. A separate control group who will not be approached to volunteer for the trial but will follows the current HMRC recovery process. The control group will consist of 500 tax credit overpayment customers and 500 self assessment debtors. All control groups will be taken from the sample of cases on an in scope benefit.

The second and third groups will provide baselines to measure the potential for additional recovery, net of costs and improved customer experience from the trial.

By having three customer groups HMRC will be able to compare the recovery rates, costs and customer experience across the different groups. They will be able to ascertain how successful the recovery of the debt/overpayment from benefit was compared to current methods.

To get a better understanding of why someone declined to take part in the trial HMRC will ask such customers to complete a tick box form identifying the principle reason why they declined to join the trial. HMRC may follow these up in a selection of cases to obtain further insight. In such cases, HMRC will make it clear to the customer that they are only being contacted to see if they are willing to help with the evaluation of the trial. It would be made clear that they are not being asked to reconsider their decision not to participate, and that if they would prefer not to give a reason they do not have to do so.

HMRC will be able to compare how much debt is collected via this trial compared to current recovery routes. They will also look at the customers who decline to take part in the trial and whether being contacted regarding this additional payment option prompts any of them to repay their debt/overpayment by an alternative route, or to contact HMRC to discuss other options.

If customers taking part in the trial come off benefit then they will be removed from the trial with the necessary explanations being provided. They will not be re-approached if they return to benefit.

Additionally, DWP will evaluate any impact, positive or negative on any DWP benefit overpayment recovery.

Q2. *What advice have you sought about the design of the trial?*

A2. Both HMRC and DWP analytical experts have assisted with the design of the trial and have provided assurance that 1,000 customers for each tax or tax credit group is a viable and valid sample size for this trial.

Q3. *Please can you explain how the control group is to be assessed?*

A3. As explained above there will be two separate control groups that follow the current HMRC recovery process. One will be those who were approached and declined. The second will be a group who were not approached. Both will be tracked through HMRC current recovery processes.

The second control group will consist of 500 tax credit overpayment customers and 500 self assessment debtors. This group will provide a baseline to measure the potential for additional recovery, reduced costs and improved customer experience. Details of the sum owed, payments methods used and time taken to repay the debt will be noted and compared with data derived from those participating in the trial at its conclusion. We intend to compare customer experience by contacting a proportion of the groups with a set of questions on customer experience.

Q4. *What percentage of the 5,000 are you expecting to take up the opportunity?*

A4. The planning assumption is to aim for a maximum of 1,000 of each group. This may mean that HMRC will need to approach more than 5,000 if voluntary take up rates are below 20 per cent.

Q5. *What cadre do you regard as the minimum necessary to give robust data from which wider conclusions can be drawn?*

A5. Data analysts with experience of running such trials in HMRC have recommended a minimum sample size of 500 customers with tax credit overpayments and 500 customers

with self assessment debt for this particular trial. HMRC intend to approach 5,000 debtors in each group in an effort to reach a minimum 10 per cent take up.

If take up is lower, then our advice is that we can accept having smaller sample sizes, and still produce robust data. We will attempt to reach the target 500 by increasing the number of invitations to participate if necessary. We accept that the smaller the sample, the less able we will be to draw definitive conclusions. The number of potential participants we approach will depend on the number of on benefit customers identified with suitable tax credit and self assessment debts.

The data generated will be analysed and quality assured by the Insight and Analytics team within HMRC.

Q6. *As a number of the volunteers may go off benefit during the pilot period, what is the minimum number of weeks for making deductions that can be regarded as significant?*

A6. There is no minimum number of weeks for which deductions have to be made in order to regard the participant and repayments made as significant for evaluation purposes. Part of the evaluation will be to ascertain the benefit patterns of these customers and see how often they go on and off-benefit, and so enable us to determine how useful this additional payment option might be. For the purposes of the trial once deductions have ceased the customer will not be approached again if they go back onto benefit.

31 May 2010

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 15 June 2010 Members declared no interests on any of the instruments of interest.

Attendance:

The meeting was attended by Baroness Butler–Sloss, Lord Goodlad, Baroness Hamwee, Lord Lucas and Lord Scott of Foscote.