HOUSE OF LORDS

Merits of Statutory Instruments Committee

14th Report of Session 2010-11

Drawing special attention to:

Draft Higher Education (Basic Amount) (England) Regulations 2010

Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, and D) Order 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 Plant of Highfield
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 3.

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.

Fourteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

A. Draft Higher Education (Basic Amount) (England) Regulations 2010

Summary: These draft Regulations set a limit of £6,000 on the 'basic' charges that higher education institutions may make to full time undergraduates for tuition on courses beginning on or after 1 September 2012. (There is also a 'higher' limit, which can be raised through a separate process under which both Houses of Parliament must first pass a resolution specifying the higher amount and the date on which it will come into effect; and then regulations can be made giving effect to the new amount but which are subject to no further parliamentary procedure.) These draft Regulations follow the publication of the Browne review and are part of a broader package of reforms of higher education. The Regulations have been laid with an interim Impact Assessment and Interim Equality Impact Assessment. Given the importance of higher education in society, and the large amount of evidence submitted to the Browne review, this report identifies areas which the House may wish to consider during the debate.

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

1. The Higher Education Act 2004 ("the 2004 Act") provides that higher education institutions (HEIs) can charge up to a 'basic amount' threshold or up to a 'higher amount' threshold for tuition charges in relation to full-time courses. HEIs wishing to charge up to the higher amount threshold are required to draw up an access agreement with the Office for Fair Access (OFFA), whose role is defined in the 2004 Act. These draft Regulations set a limit of £6,000 on the 'basic amount' which HEIs without approved access plans may charge full time undergraduates for tuition on courses beginning on or after 1 September 2012. They also set a limit of £3,000 that will apply in certain circumstances, such as for a sandwich year. The draft Regulations have been laid with an Explanatory Memorandum (EM).

A broader package of reform

2. The draft Regulations are part of a broader package of reform of higher education funding and student finance. The higher amount can be raised by more than the rate of inflation, subject to an unusual procedure in the 2004 Act. Regulations raising the higher amount can only be made after both Houses of Parliament have passed a resolution specifying the new higher amount, and a date on which it is to come into effect. The 2004 Act does not prescribe any further Parliamentary procedure for those Regulations. The Committee understands that the Government's intention is for the motion on the higher amount to be considered at the same time as these Regulations on the basic amount.

3. The Government has laid an Interim Impact Assessment (IA) for the proposed changes to the basic and higher amounts and the broader finance and funding package. The EM says that primary legislation enabling changes to the interest rate for students starting their courses from 2012/13 will be introduced this Parliamentary session; and regulations specifying the details of loans and grants will be laid before Parliament in Summer 2011, with regulations on the repayment of loans being brought forward later in 2011. The Government also intends publishing a White Paper on Higher Education in 2011, and anticipates including any further changes to the higher education funding and student finance system that require primary legislation in a future Bill (see EM paragraph 7.13).

4. The Government has published an Interim Equality Impact Assessment (EIA) on the package of reforms to higher education funding and student finance which the Government proposes to put in place before the start of the Academic Year 2012/13[1]. The Government will also conduct a full EIA in conjunction with the Government White Paper on Higher Education in 2011.

Context

5. On 9 November 2009, Lord Browne of Madingley was appointed by the then Government to chair an independent review of higher education funding and student finance[2]. The review's first call for evidence ran from 7 December 2009 to 31 January 2010. The review team also issued a call for proposals for future funding of teaching within the UK higher education system, and met a range of people with an interest in higher education. A large body of evidence[3] was submitted to the review which will assist the House in the consideration of these draft Regulations. The review reported on 12 October 2010. The review recommendations are summarised in the EM as being that: rather than the Government providing a block grant for teaching, the majority of funding should follow the student who has chosen and been admitted to study at an HEI; HEIs should not be limited in what they charge for tuition; and the Government should provide upfront loans to cover the full cost of tuition and recover this from graduates when they are earning over £21,000 (EM paragraph 7.3).

Policy objectives

6. The Government endorsed the main thrust of the review's recommendations[4], although it does not agree that there should be no limit on what an HEI can charge (EM paragraph 7.4). The Government therefore proposes to implement the new basic amount through these draft regulations and the new higher amount through separate regulations, following a resolution of both Houses, as per paragraph 2 above. A letter from the Minister for Universities and Science to the Committee, printed in Appendix 1, states that the Government are bringing forward the Regulations now "so

[1] Interim Equality Impact Assessment: Urgent reforms to higher education funding and student finance, November 2010. Available at http://www.bis.gov.uk/assets/biscore/further-education-skills/docs/i/10-1310-interim-equality-impact-assessment-he-funding-and-student-finance.pdf

[2] The full Terms of Reference can be viewed at: http://hereview.independent.gov.uk/hereview/written-ministerial-statement/

[3] The review has made 162 submitted documents available at:

http://hereview.independent.gov.uk/hereview/2010/03/submissions-to-the-first-call-for-evidence/

[4] HL Written Statements 12 October 2010: WS 22 to 23

that changes to the limits on graduate contributions can be made in time for academic year 2012/13" and that "we need to allow sufficient time following the legislative changes to ensure that ... appropriate systems are in place for autumn 2012, and so that students, parents and universities are able to plan accordingly". The EM says that this "means that the timetable for laying the draft Regulations has been highly compressed, and this has prevented a separate external consultation exercise on the Government's proposals" (EM paragraph 8.1).

7. The policy objectives for the changes to the basic and higher amounts and the broader finance and funding package are set out in the IA (IA page 1). They are:

- To put the English higher education system on a sustainable financial footing so that it can maintain its world-class status;
- To promote teaching quality by making institutional income more responsive to student choice and enable those institutions that do this well and are popular to expand; and
- To introduce a student support system which is affordable and more progressive, offers greater support to the most disadvantaged and enables participation to be maintained.

8. The role of the Committee is to examine the merits of the draft Regulations against the stated policy objectives, not to reach a view on the policy objectives themselves. The Committee notes that the Government's policy objectives for the changes are broad, and there will inevitably be challenges in measuring the effectiveness of this draft instrument. The IA provides assistance in this regard as it provides some detailed analysis of the costs and benefits of the reforms. The British Medical Association (BMA) has submitted evidence to the Committee which raises a number of issues about the impact of the changes on medical training (see Appendix 1).

9. The EIA also provides useful information on the impact of the reforms – the Government's assessment is that they will have an overall likely positive effect on female, disabled and ethnic minority individuals who are considering participation in higher education (although a possible negative effect on some Muslim students is recognised) (EIA page 4).

Analysis

10. Higher education has a pivotal role in society. Given the widespread interest in this issue, and in light of the wealth of evidence submitted to the Browne review, the House may wish during the debate on the draft Regulations to examine a number of key issues relating to their potential impact, including:

- Any impact of higher tuition fees on recruitment for the various professions. A number of representative bodies (including the BMA[5]; the Association of Teachers and Lecturers (ATL)[6]; and the British Dental Association (BDA)[7]) raised concerns about this issue in response to the Browne review's call for evidence;

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[5] BMA evidence pages 4 and 5

[6] ATL evidence page 14

[7] BDA evidence page 1

- Consideration of the Government's assumption that student numbers will not change as a result of the reforms (IA pages 2 and 14). The assumption is based on any deterrent effect of higher fees being offset by other aspects of the Government's changes (including access to the necessary finance and borrowing, and increasing the availability of grants) (IA page 16). The IA also includes some sensitivity analysis, indicating possible financial consequences of a rise or fall in student numbers (IA page 23);
- The Government says that there is evidence that higher education contributes to the wider economy through innovation and economic growth (IA page 10), and that there is a spillover effect in ensuring that there are skills to ensure international comparative advantage (IA page 6). The House may wish to consider any effect these Regulations might have on those wider benefits;
- A number of responses to the Browne review's call for evidence raised concerns about the rise in personal debt which will result from the higher tuition fees (e.g. Association of Graduate Recruiters (AGR)[8]; Catholic Education Service (CES)[9]; and Church of England Board of Education (CEBE)[10]). The House may wish to ask whether the Government has made an assessment of possible consequences of a rise in personal debt for society at large; and
- The issue of the impact of higher education on social mobility is an important but complex one. The House may therefore wish to give particular consideration to this issue, taking into account the conclusions of the EIA, and the broad range of comment in response[11] to the Browne review's call for evidence.

Consideration

11. In debating these draft Regulations, the House may wish to examine the robustness of the policy development processes behind the instrument, in view of the compressed timetable. The House may also wish to consider:
    - The timing of this element of the reforms, noting on the one hand the Government's reasons for bringing forward the Regulations now (see paragraph 6 of this report), and on the other hand that other elements of the package will not be progressed until 2011; and
    - How effectively the draft Regulations will contribute to achieving the Government's policy objectives, as set out in paragraph 7 (noting the issues referred to in paragraph 10).

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8 AGR evidence page 2

9 CES evidence page 2

10 CEBE evidence page 2

11 For example: Unison evidence page 3; Million + evidence page 3; Sutton Trust evidence page 4; UK Youth Parliament evidence page 3; and Liverpool Hope University page 4

B. Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, and D) Order 2010

Summary: This Order implements changes to PACE Codes A, B and D. The representative organisations we contacted seemed sympathetic to the need to make policing less bureaucratic but remain concerned that the right balance with an individual's rights should be achieved. Those amendments being made in response to judgements appeared accepted as a step in the right direction. However the organisations all expressed continuing concern, not so much with the legislation itself, as the variability in the ways it is interpreted by police forces across the country. In the course of the debate on the Order Members may wish to press the Home Office for more specific detail on how these changes will be applied in practice and their efficacy and consistency monitored. On such a sensitive issue the Home Office could have made more effort to make clear to the public exactly what changes are being proposed and how they will check that they are having the intended effect.

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

12. This draft affirmative instrument has been laid by the Home Office under the Police and Criminal Evidence Act 1984, along with the three revised Codes that it brings into effect and an Explanatory Memorandum (EM).

13. The current instrument implements changes to PACE Codes A, B and D:

- **Code A:** Deals with the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. It also deals with the need for a police officer to make a record of a stop or encounter. The revisions remove the national requirement to record "stop and accounts", devolving the decision to local level, and reduce the amount of information that needs to be recorded for stop and search encounters with the aim of reducing bureaucracy. Other revisions amend the use of stop and search powers under the Terrorism Act 2000 in the light of the ECHR judgement in *Gillan & Quinton v UK*[12] and impose stricter limits on the use of searches of persons and vehicles made under section 60 of the Criminal Justice and public Order Act 1994.
- **Code B:** Deals with police powers to search premises and to seize and retain property found on premises and persons. The revisions respond to the judgment in *Khan vs the Commissioner of the Metropolis*[13] on the police's powers to enter and search premises.
- **Code D:** Concerns the main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records. The revisions make amendments to the powers to take fingerprints and samples for recordable offences in the light of the Equality Impact Assessment and also allow the use of new mobile fingerprinting technology. Additionally they take into account the judgements of *R vs Chaney*

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[12] Gillan & Quinton v UK http ://www.bailii.org/eu/cases/ECHR/2010/28.html

[13] Khan v Commissioner of Police of the Metropolis [2008] EWCA Civ 723 http://www.bailii.org/ew/cases/EWCA/Civ/2008/723.html

and *R vs Smith*[14] by making new distinctions between visual identification taken from images such as CCTV and that from eye-witness recognition.

14. The draft Codes are not themselves subject to Parliamentary procedure but are to be brought into effect by an affirmative instrument.

15. In particular the changes to Code A (see, for example, para 2.18 A) make permanent the measures announced by the Secretary of State in an oral statement to the House of Commons on 8 July that the test for authorisation for the use of section 44 powers of stop and search under the Terrorism Act 2000 was being raised from "expedient" to "necessary" which requires a greater degree of suspicion that the person stopped is a terrorist.[15] This was in response to the European Court of Human Rights finding in *Gillan and Quinlan* that the powers were drawn too broadly.

16. Other measures follow up the changes made by the Crime and Security Act 2010 to reduce the amount of information which must be recorded for stop and search encounters to produce savings in police bureaucracy; the Home Office estimate that the reduction of the number of items to be recorded from 12 to 7 will save around 350,000 hours of time each year. It is also estimated that this, in combination with scrapping the stop and account form, will free up to 800,000 hours of police time.[16] We note from the Home Office Statistical Bulletin[17] published on 28 October that some reduction has already been achieved administratively:

- 1,224 stops and searches were carried out by the Metropolitan Police Service in 2009/10 under the powers in Section 43 of the Terrorism Act, a fall of 24 per cent on 2008/09.
- In 2009/10 there were 101,248 stops and searches made under Section 44 of the Terrorism Act in Great Britain, 60 per cent lower than in 2008/9.
- Of those stopped and searched under Section 44 in 2009/10 the majority defined themselves as White (59%). A further 17 per cent defined themselves as being Asian or Asian British, 10 per cent Black or Black British and four per cent self-classified as being Chinese or other.
- These stops and searches resulted in a total of 506 arrests which represents 0.5 per cent of Section 44 stops and searches, and compares with 10 per cent of stops and searches made under section 1 of the Police and Criminal Evidence Act 1984 resulting in an arrest in 2008/09. No arrests under Section 44 were identified as being terrorism related.

17. The low percentage of arrests in comparison with the use of other powers would also seem to indicate that the Section 44 power has been used too

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[14] R v Chaney [2009] EWCA Crim 21 http://www.bailii.org/ew/cases/EWCA/Crim/2009/21.html R. V Smith [2008] EWCA Crim 1342 http://www.bailii.org/ew/cases/EWCA/Crim/2008/1342.html

[15] http://www.homeoffice.gov.uk/publications/parliamentary-business/oral-statements/stop-and-search-statement/?view=Standard&pubID=821759

[16] News item Home Office website 17 November http://www.homeoffice.gov.uk/media-centre/news/stop-and-search

[17] http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1810.pdf

widely in the past and improved targeting would also make simple efficiency gains.

Consultation

18. Consultation on these changes was only for 4 weeks and involved a limited group of consultees. There has been not been full public consultation on the revisions: while this is not uncommon where changes to regulations simply respond to the outcome of a court case, this exclusiveness could be viewed with suspicion by those interest groups not included.

19. Some of the changes proposed respond to recent judgements that found flaws in the existing version of the Codes; these procedural changes appear to be regarded favourably by commentators (although they are referred to in the EM without links to the case or explanation of their objective or significance which would have been helpful). Some of the proposals initially promulgated in June 2010 were seen as having the potential to increase discrimination: it is understood that the most controversial of these elements have been modified or dropped in the final version (see paragraphs 7.4-5 of the EM) but commentators remain dubious about the way the rules will be applied in practice.

20. Because there had been significant changes in the proposals since the original consultation, the Committee contacted certain interest groups on individual rights for comment on the final versions of the Codes[18]:

- **Liberty**, said – "It is a relief that the Home Office appears to have heard our warning against including an overt licence for race discrimination in stop and search guidance" but added that the section 60 power is still too broad and open to abuse and that the scrapping of the stop and account form will make the monitoring of equal treatment in policing harder to monitor. "This will see a direct reversal of a recommendation of ...the Inquiry into the death of Stephen Lawrence just over a decade ago" and "ignore recommendations of later inquiries, including Sir Ronnie Flanagan's independent review of policing in 2008, that this record be maintained, even in the context of rolling back centralised bureaucracy".
- **Justice** made a number of specific comments on the stop and search powers in Code A: in particular that there should be a clearer reminder that there is no police power to compel a person to account for themselves or to detain them to ask them to do so. "We are concerned that the absence of a recording requirement may mean that disproportionate use of 'stop and account' against particular groups, [including those under 18] may go unmonitored and unaddressed." They also stressed that section 60 powers should not be used routinely but only at a time of particular risk of offences being committed – the maximum period of the authorisation points to this. They concluded that reducing the items of information recorded to 7 does little to reduce the overall bureaucracy and that a reduction in the number of such stops would be a more effective way of saving costs.

[18] The full text of these submissions are published on the Merits Committee webpage

- **The Equality and Human Rights Commission** pointed to their recent "Stopwatch" report that compared the approach to stop and search in a number of police forces across England and Wales and found that a Black person is six times more likely to be stopped than a white person, and an Asian twice as likely as a white person.[19] Certain police forces were also found to have stopped far more Black and Asian youths than the ethnic profile in their area warranted. The Commission felt that the proposed modification of the requirement for a "witness description" in paragraph 2.2 of PACE Code A is drawn too widely to prevent abuse. They also expressed concern that the reduction in data collection would weaken observers' ability to hold police forces to account.

Openness

21. It should be noted that the only mention of the revised PACE Codes on the Home Office site was in a brief news item on 17 November when the instrument was laid before the House and there is currently no linkage to the text of the proposed revised Codes there or anywhere else on the Home Office site.[20] The instrument is on the OPSI website and the draft PACE Codes deposited with it can be found on the TSO official documents site[21] but this is not an obvious place for external groups to look. The Home Office Explanatory Memorandum says that the revisions will be on the PACE page of their website from the commencement date i.e. after the Order has been made. This is not helpful to those who may wish to comment to Parliamentarians before the debate happens. It is also notable that comment in the press still largely related to the proposals put forward in July, key interest groups did not appear to be aware that the initial proposals had changed. On such a sensitive issue the Home Office could have made more effort to make clear to the public exactly what changes are being proposed and how they will check that they are having the intended effect.

22. The representative organisations we contacted seemed sympathetic to the need to make policing less bureaucratic but remain concerned that the right balance with an individual's rights should be achieved. Those amendments being made in response to judgements appeared accepted as a step in the right direction. However the organisations all expressed continuing concern, not so much with the legislation itself, as in the variability in the ways it is interpreted by police forces across the country. In the course of the debate on the affirmative instrument, Members may wish to press the Home Office for more specific detail on how these changes will be applied in practice and their efficacy and consistency monitored.

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[19] "Stop and Think. A critical review of the use of stop and search powers in England and Wales."

[20] News item Home Office website 17 November http://www.homeoffice.gov.uk/media-centre/news/stop-and-search

[21] http://www.official-documents.gov.uk/menu/other2010.htm

OTHER INSTRUMENTS OF INTEREST

Draft Breaks for Carers of Disabled Children Regulations 2010

23. These draft Regulations prescribe how local authorities should carry out their statutory duty to provide a short breaks service to carers of disabled children. This includes: the matters to which local authorities must have regard when performing their duty (based on a judgement as to whether breaks would effect a carer's ability to provide care); the range of breaks which must form part of an overall service; and the way in which local carers must be informed of that service. The Explanatory Memorandum (EM) says that the draft Regulations do not provide carers with an entitlement to a service, but are intended to ensure that those who are most in need are able to access the support they need (EM paragraph 7.8). In response to questions from the Committee, the Department for Education has supplied further information (see Appendix 2). The Committee has also received a submission from 'Every Disabled Child Matters'[22] setting out their support for the draft Regulations (see Appendix 2). As the draft Regulations are the first to prescribe how local authorities should carry out this particular duty, the House may wish to satisfy itself that any review mechanisms for the policy are sufficiently robust.

Draft European Union (Definition of Treaties) (Partnership and Cooperation Agreement) (Republic of Indonesia) Order 2010

24. The Agreement provides a framework aiming to consolidate and strengthen the European Union and its Member States' political, economic and trade relations with the Republic of Indonesia, and promote democratic reforms, economic growth, sustainable development and action against poverty there. Other clauses on organised crime and corruption, human rights and combating the proliferation of weapons of mass destruction are treated as essential elements of the Agreement. By declaring the Agreement to be an EU Treaty as defined in section 1(2) of the European Communities Act 1972, the proposed Order would provide the necessary powers for the United Kingdom to implement all the provisions of the Agreement prior to ratifying it. The Agreement must be ratified by each of the Member States as well as by the European Union before it can come into force.

[22] EDCM is the campaign for rights and resources for disabled children and their families. It is a consortium campaign run by four of the leading organisations working with disabled children and their families: Contact a Family, the Council for Disabled Children, Mencap and the Special Educational Consortium

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

Draft Instruments requiring affirmative approval

Draft Breaks for Carers of Disabled Children Regulations 2010

Draft European Union (Definition of Treaties) (Partnership and Cooperation Agreement) (Republic of Indonesia) Order 2010

Instruments subject to annulment

SI 2010/2690	European Communities (Designation) (No. 5) Order 2010
SI 2010/2760	Social Fund Maternity Grant Amendment Regulations 2010
SI 2010/2769	Housing (Right to Buy) (Service Charges) (Amendment) (England) Order 2010
SI 2010/2785	Medicines for Human Use (Prescribing by EEA Practitioners) (Amendment) (No. 2) Regulations 2010
SI 2010/2790	Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) (No. 2) and Civil Enforcement of Parking Contraventions Designation (No. 4) Order 2010
SI 2010/2797	Visits to Former Looked After Children in Detention (England) Regulations 2010
SI 2010/2798	Health Service Branded Medicines (Control of Prices and Supply of Information) Amendment Regulations 2010
SI 2010/2804	Harbour School (Amendment) Order 2010
SI 2010/2817	Flavourings in Food (England) Regulations 2010
SI 2010/2826	Police Authority (Amendment No. 2) Regulations 2010

APPENDIX 1: DRAFT HIGHER EDUCATION (BASIC AMOUNT) (ENGLAND) REGULATIONS 2010: CORRESPONDENCE AND EVIDENCE

Letter from David Willetts MP, Minister for Universities and Science, to Lord Goodlad

I am writing to ask if your Committee could consider the draft Higher Education (Basic Amount) (England) Regulation 2010 at its meeting on 7th December. This is because we are aiming to complete the parliamentary process associated with the student fee rates before Christmas recess, so that changes to the limits on graduate contributions can be made in time for academic year 2012/13. Failure to complete the parliamentary process at this time would be very likely to mean that changes to the graduate contribution limit - and therefore the whole finance package which depends on it, with all the attendant savings - would need to be delayed until Academic Year 2013/14. Furthermore, we need to allow sufficient time following the legislative changes to ensure that our delivery partners are able to have the appropriate systems in place for autumn 2012, and so that students, parents and universities are able to plan appropriately.

26 November 2010

Submission from the British Medical Association

The British Medical Association (BMA) is a voluntary, professional association that represents doctors from all branches of medicine all over the UK. It has a total membership of over 143,000, including over 22,000 medical student members.

The BMA believes that it is inappropriate for the Secretary of State to make legislative changes to amend the current system before a full analysis of the impact of the £3,000 fees, set from the beginning of the 2006/07 academic year, has been undertaken. The BMA feels strongly that, in setting a date of 1 January 2010 after which an increase in tuition fees would be allowed,[23] insufficient consideration was given to the situation of students on longer courses. A standard medical degree is five years in duration, meaning that the first students to graduate, having paid £3,000 per year in tuition fees, will not do so until 2011.

The Government's own explanatory memorandum acknowledges that 'there is evidence of price sensitivity among students' but that this can be off-set by comparable increases in student support. The BMA would welcome assurances that there has been a separate analysis of this issue for long and, therefore, more expensive courses, such as medicine, and the extent to which price sensitivity is affected by access to part-time work.

All graduates will see their debt burden increase if the fees level rises. The BMA has calculated that medical students graduate with an estimated £37,000 worth of debt under the current system[24]. Graduation debt may therefore become more influential in the decision-making process of prospective medical students, dissuading students from lower and middle socio-economic groups from entering the profession. UCAS data[25] shows that in 2008 the proportion of applicants to Higher Education from lower socio-economic groups was 29.9%. Medicine is particularly under-represented with only 13% of medical students in 2008 coming from the lowest three socio-economic groups[26]. We recognise the

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[23] Higher Education Act 2004, clause 26 (2)(b)(ii)

[24] BMA student debt calculator, BMA Health Policy and Economic Research Unit

[25] http://www.ucas.co.uk/website/news/media_releases/2008/2008-02-14

[26] The BMA's most recent research shows a slight increase in participation for 2009, however there is no comparative data, British Medical Association, Survey of Medical Student Finance, 2008/09

Government's commitment, in the explanatory note, to measure the proportion of students from disadvantaged background entering higher education as part of their success criteria and would ask that this is separately measured for medicine. In addition, although only 7% of the population attends independent schools, the medical profession continues to be dominated by those from independent schools.[27]

We would be particularly concerned if institutions charged different rates for different courses as, assuming medicine will attract high fees, this could act as a further barrier to students from low income families choosing to study medicine. In addition, we would seek reassurances that fees paid for medical courses are used to support medical education and not to subsidise other degree courses, not least because of a medical degree's very close relationship with the development and quality of the medical workforce for the NHS.

The BMA recognises the Government's commitment to supporting those from disadvantaged backgrounds in accessing higher education. We note the reference in the explanatory memorandum to the proposals for access agreements for those HE Institutions wishing to charge the higher amount, as proposed in Lord Browne's Report following his review of Higher Education Funding. The BMA would want assurances that such access agreements must specifically address access to medical degrees. We are also concerned that there is no further detail on access agreements nor is there any detail on the sanctions available to the Office for Fair Access if a Higher Education Institution fails to comply. The Government should be asked to outline the possible sanctions in the course of the debate.

The BMA is also concerned about the lack of consideration of other widening participation measures that could counteract the anticipated negative impact of higher tuition fees. The BMA believes that initiatives should be analysed, together with other measures to support participation, before any decision can be taken about a rise in tuition fee contribution.

The Higher Education (Higher Amount) (England) Regulations 2010 will allow Higher Education Institutions to charge fees of up to £9,000 in 'exceptional circumstances'. The BMA estimates that if universities charge the £9,000 rate allowed under these plans, medical students will see their debts increase to around £70,000[28]. This figure only includes debts incurred from student loans and does not take into account overdrafts, credit cards and professional loans which many students depend on for additional support. In addition, inadequate detail has been provided on what widening participation measures Higher Education Institutions will be required to employ in order to allow them to charge the highest rates of fees. Any plans to increase the contributions graduates make towards the education from which they eventually benefit must be considered alongside our concerns that an increase in fees will restrict access to the medical profession to the most affluent rather than the most intelligent.

The final proposals from the Government Review of the NHS Bursary have not yet been announced. Under the current system of Higher Education funding, the Government pays tuition fees for years five and six of the five or six year degree and years two to four of the four year graduate entry course for medical students under the NHS Bursary. The Government has not announced whether it will meet the additional cost for doing this if tuition fees rise. It would be premature to allow institutions to raise fees before details of the new NHS Bursary scheme are agreed or there has been some reassurance from the Government that the full fees for these years will be met by the bursary.

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[27] Unleashing Aspiration: The Final Report of the Panel on Fair Access to the Profession (p18)s. http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf

[28] BMA student debt calculator, BMA Health Policy and Economic Research Unit

The BMA is extremely concerned that parliamentarians are being asked to vote on an increased level of tuition fees without such important information about the overall higher education finance package having been disclosed.

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APPENDIX 2: DRAFT BREAKS FOR CARERS OF DISABLED CHILDREN REGULATIONS 2010: FURTHER INFORMATION AND A SUBMISSION

Further information from the Department for Education

Funding

1. Will all central Government funding to LAs for this particular service end in April 2011?

We expect funding to continue for the duration of the next Spending Review period. Short breaks funding features in this Department's settlement letter, but the final figure has not yet been agreed by the Secretary of State for Education.

2. Will LAs have to fund the service from their general budgets after April 2011?

It is likely that short breaks funding will be devolved to local authorities through the new Early Intervention Grant, which is not ring fenced. As above, we intend to announce the short breaks funding within that grant later in the week.

3. Will there be a reduction in central Government funding to LAs over the CSR period? If so, how much will it be (or by what percentage)? And if so, how will you manage any risks around reduced funding for LAs?

We will confirm the figures later in the week. We are not expecting a reduced amount of funding, although as it will not be ring-fenced it will be up to local authorities how they choose to prioritise spending from funds available.

Consultation

4. The consultation pre-dates the CSR. What are LAs current views of the changes in the draft Regulations?

We convened a meeting of local authorities two weeks ago to discuss changes to the regulations. The local authorities who joined the discussion were content with the changes, and understood the reasoning. No concerns were raised at that meeting, and those authorities have agreed to support us in writing guidance which reflects the changes in a practical way.

We have also discussed the changes with key stakeholders, and no concerns have been raised by them either.

Implementation

5. How are you managing the risks around quantifying the costs of short breaks (IA page 13)? Is this being managed by the Department for Education or is it being passed down to LAs to manage?

The risks of quantifying the costs of short breaks are to be managed by local authorities. We will continue to promote best practice in this area, and have commissioned Together for Disabled Children (TDC- the current field force) to work with local authorities to look at getting the best value out of short breaks funding.

All local authorities have significantly increased the number of children accessing short breaks within the available funding over the last three years.

6. How will the 'draw down' support in Option 3 operate (IA page 8)?

The Department for Education is currently undertaking an exercise to procure support for short breaks through the voluntary sector. The initial scoping document for the whole Department's voluntary sector commissioning was published this week, and we will be working through the detail in coming months.

7. Through what process will parents be able to challenge LAs in Option 3 (IA page 8)?

Short breaks services have been part of a wider programme to improve services for disabled children over the last three years. The Department has also funded parent forums as part of the wider programme, to support groups of parents to have a greater involvement in service design, and to engage with local authorities at a strategic level. We would expect parents to be able to challenge local authorities through their local authority's complaints procedure in the first instance. Each local authority has a duty to establish a procedure for considering complaints received by parents in respect of the discharge of their functions in accordance with the Children Act 1989 and the Children Act 1989 Representations Procedure (England) Regulations 2006. The way in which a local authority makes general provision for short breaks and the way in which the authority decides whether and how short breaks are provided in particular circumstances are also matters which are in principle subject to judicial review and we would expect LAs to be held to account through legal processes where necessary.

8. How will the Government ensure consistency in service provision in Option 3 (IA page 8)?

Service consistency in short breaks is about ensuring that in every area a prescribed range of short breaks is available for disabled children and their carers. We are actively encouraging local authorities to engage with parents to design services which suit local needs, and so it is not our intention that the regulations would introduce uniformity of service.

Review

9. The NDTi review will report in Summer 2011. As these draft Regulations will not come in until April 2011, how will you review their impact?

Under the current funded programme, local authorities have been asked to build up their short breaks services with a view to these regulations coming into force. All local authorities were asked to ensure that they had a 'full service offer' in place by April 2011 so that they would already have built services which meet the new legal requirements.

We have monitored progress of local authorities carefully, with local authorities receiving intensive support where they were finding it difficult to overcome particular delivery issues. We have accrued a large amount of good practice, and a number of local authorities are supporting each other in networks. As discussed above, we are reviewing how we will continue to support local authorities once the regulations are live through a contract with the voluntary sector.

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Submission from Every Disabled Child Matters

Why are short breaks important?

Caring for a disabled child can be a full time job. Many disabled children require one-to-one care, have long term sleeping problems and it can be very difficult and expensive to get childcare for a disabled child. This often leaves parents of disabled children little time to do day-to-day tasks such as cleaning, taking a shower and sitting down to eat a meal. Many parents of disabled children also find that their caring responsibilities mean that their relationships can become strained - both as a couple and with friends and family. Short breaks provide a time for parents and carers to do day to day activities, to rest and to build their relationships. Having this break means that a family is more likely to be able to cope with their caring responsibilities and makes it is less likely that the family will need to access crisis support such as residential care. Short breaks are also very important for

siblings of disabled children. Below are comments from some parents and disabled children about the value of short breaks:

On living ordinary lives –

"I am fortunate to finally receive respite. What a wonderful relief. One night a week we can be a normal family. Go to the cinema, pub or for a meal or just be. No strict routine, no bathtime, no struggle to medicate, no getting up four or five times in the night. Bliss."[29]

On risk of relationship breakdown –

"Our family are facing break up as a result of the lack of support from services."[30]

On building independence for disabled children -

"Disabled children are being short changed and often underestimated. Many could work and make a worthwhile contribution to society if better school/college provision was made. The more effort put in as children, the more rewards can be reaped as adults."[31]

"You can tell your buddy anywhere you want to go, so you go there with your buddy not your Mum and Dad"[32]

Background

In 2006 a series of Parliamentary Hearings took place which assessed the services available for disabled children. In these hearings parents told parliamentarians that 'the lack of short breaks was the biggest single cause of unhappiness with service provision'.

Following this a Government investment and policy programme began, the funding for this programme will cease to be ringfenced in April 2011. £280 million of the original *Aiming High for Disabled Children* funding was ring fenced to transform short break provision, to enable local areas to expand the types of short break service available and increase accessibility to disabled children, young people and their families. Since 2007/08 47,000 more disabled children have received short breaks and an additional 123,500 more nights and 3.7 million more day time hours have been given.

The Short Break Duty – Section 25 of the Children and Young Person Act 2008

Section 25 of the Children and Young Person Act 2008, introduced a duty on local authorities to provide short break services. This duty is historic for disabled children and their families and will *'ensure that short break services lose their Cinderella status and become an essential local authority service.'*[33]

EDCM strongly welcomes the draft regulations on Breaks for Carers of Disabled Children. The regulations introduce many rights that will ensure families with disabled children are supported to effectively care for their children.

Subsection 3 – Duty to make provision

EDCM is supportive of this subsection because it recognises the important role that short breaks have in preventing families from going into crisis. Section B recognises that carers may be more effective if they are given breaks to allow them to undertake education, training or any leisure activity, meet the needs of other children in the family more effectively or carry out day to day tasks which they must perform in order to run their

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[29] Parliamentary Hearings, Full Report, 2006

[30] Parliamentary Hearings, Full Report, 2006

[31] Parliamentary Hearings, Full Report, 2006

[32] EDCM, Disabled Children s Manifesto for Change, 2009

[33] Lord Adonis, 2008:

http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80317-0005.htm#08031725000009

household. Allowing carers to undertake these tasks not only allows families with disabled children to move toward living ordinary lives, but also allows parents with disabled children to begin to prepare to return to work. Preparing to re-enter work can help build parents relationships, confidence and reduces households' chances of living in poverty – thus improving the life chances for all members of the household.

Subsection 4 – Types of services which must be provided

Over the last few years the rhetoric around short breaks for disabled children has changed. In the past short breaks have been referred to as 'respite', however the literal definition of 'respite' is 'the laying down of a burden' or a 'temporary cessation of something that it tiring or painful'. This language is not positive. The term 'respite' reinforces the view that disabled children are passive recipients who have things done to them, rather than active citizens with lives to live. EDCM believe that the wider transformation for services for disabled children must be cultural, not just financial. The language of disability has rightly changed over the years, and the term 'short breaks' is part of that process. The crucial difference in short breaks is that both the parent and the child get a break that suits their individual needs. As we move towards transformation, the child's break is valid and valued by all.

EDCM believes that by specifying that local authorities need to make a range of short breaks available this is makes clear that different types of breaks suit different people – as each family, and each disabled child, is an individual. EDCM welcomes the movement towards direct payments for short breaks. Many families have found that moving to direct payments has been a successful way of allowing them more freedom and control over their breaks. However other families have not had positive experiences of direct payments. This is a particular issue in areas where local authorities struggle to offer alternative provision such as in rural areas. Some families have reported that managing direct payments can take up a lot of time. Successful use of direct payments can rely on families being able to find staff that they are happy to employ. Issues around parents having to spend time training staff they have employed through direct payments have also been raised. Subsection 4 is to be welcomed because it encourages local authorities to make short breaks available through a variety of routes and reaffirms that one type of short break does not fit all.

Subsection 5 – Short Breaks services statement

We warmly welcome this subsection setting out the requirement for a short breaks service statement. This represents a move away from a deficit or crisis model towards a more proactive 'local offer' approach.

EDCM has been undertaking research on parents' experiences of short breaks over the course of *Aiming High for Disabled Children*. This research found that parents do not feel that their local authorities are transparent about short breaks and that parents were concerned and confused about eligibility criteria on short breaks.[34] For example, parents reported confusion about why families received differing levels of support.

Following this EDCM undertook a study of 60 local authorities' eligibility criteria for short breaks. This raised some concerning findings. Analysing eligibility criteria against current good practice guidance produced by the Council for Disabled Children[35] found that 28% of analysed eligibility criteria may be at risk of legal challenge. EDCM were concerned that 8% of local authorities did not have eligibility criteria – this leaves the assessment and resource allocation process untransparent and at risk of awarding support inconsistently.

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[34] EDCM, No going back! Parent's expectations of short breaks, 2010

[35] CDC, Developing eligibility criteria- areas to consider, 2009

Local authorities want more clarity from the Government on eligibility criteria, an evaluation of short break pathfinder authorities said:

"Almost all Pathfinder sites stated that they are waiting for and expecting some further national guidance and/or clarity on (eligibility criteria) and so local innovation and initiative has perhaps been suppressed because of this expectation."[36]

Parents of disabled children have also called for clarity on eligibility criteria:

"Families found eligibility criteria confusing, illogical and likely to change without notice. They believed that services could not explain why certain criteria applied in one service but not in another. It seemed that far from ensuring that services were there for the people who need them, eligibility criteria and defined access routes existed in order to keep families out of contact with services and were based on arbitrary decisions."[37]

Subsection 5 introduces clear duties on local authorities to produce and publish eligibility criteria. These regulations for the first time will give parents the legal right to clear and transparent information on what services are available in their local area and information on which children will be eligible for services.

We strongly welcome that „local authorities must have regard to the views of carers in their area" when revising their short breaks services statement. This embeds in law the good practice of parental participation and consultation that many local authorities have already been exhibiting.

It is vital that the Government, in line with the 2009 recommendations of Mrs Justice Black in the case R (JL and LL) v Islington, includes clear guidance for local authorities on their legal obligations when setting eligibility criteria, as part of the statutory guidance that will be produced to support the Breaks for Carers of Disabled Children Regulations 2010.

About Every Disabled Child Matters:

EDCM is the campaign for rights and resources for disabled children and their families. EDCM is a consortium campaign run by four of the leading organisations working with disabled children and their families: Contact a Family, the Council for Disabled Children, Mencap and the Special Educational Consortium. The campaign has over 34,000 supporters, the campaign partners represent over 770,000 disabled children and young people in the UK, and our Campaign Network is made up of 75 organisations from across the disabled children's sector.

December 2010

[36] DCSF (2010) Short Breaks Pathfinder Evaluation: Interim Report - End of Phase One

[37] Audit Commission (2003) Services for Disabled Children

APPENDIX 3: 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 7 December 2010 Members declared the following interests on instruments reported to the House:

Draft Higher Education (Basic Amount) (England) Regulations 2010

Baroness Butler-Sloss: as Chancellor of the University of the West of England and Visitor, St Hilda's College, Oxford.

Lord Hart of Chilton: as Chancellor of the University of Greenwich and as a member of various committees at University College London

Baroness Morris of Yardley: as an employee of the University of York and as a council member of Goldsmith's College, University of London

Lord Plant of Highfield: as an employee of Kings College London and a fellow at St Catherine's College, Oxford

Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, and D) Order 2010

Baroness Butler-Sloss: Daughter is chairman of Liberty.

Attendance:

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