

HOUSE OF LORDS

Merits of Statutory Instruments Committee

47th Report of Session 2010-12

Includes 11 Information Paragraphs on 25 Instruments

Ordered to be printed 20 December 2011 and published 22 December 2011

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 243

The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), 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 (2).
- (2) 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.
- (3) 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.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) 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 (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Rt Hon. Baroness Butler-Sloss GBE	Lord Methuen
Baroness Eaton	Rt Hon. Baroness Morris of Yardley
Lord Eames OM	Lord Norton of Louth
Rt Hon. Lord Goodlad (<i>Chairman</i>)	Lord Plant of Highfield
Baroness Hamwee	Rt Hon. Lord Scott of Foscote
Lord Hart of Chilton	

Registered interests

Information about interests of Committee Members can be found in Appendix 3.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/hlmeritpublications

Information and Contacts

If you have a query about the Committee or its work, including concerns or opinions on any new item of secondary legislation, please contact the Clerk of the Merits of Statutory Instruments Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email merits@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Forty-seventh Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this report.

OTHER INSTRUMENTS OF INTEREST

Draft Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2011

1. The purpose of this Order is to test in a pilot scheme the use of direct payments for educational provision for children and young people with special educational needs or a disability. The Explanatory Memorandum (EM) says the pilot is being established as part of a commitment made in the Green Paper, “Support and aspiration: A new approach to special educational needs and disability” (EM paragraph 7.2). The Department for Education has provided further information on this Order (see Appendix 1). The Order will enable the specified local authorities to pilot making direct payments for special educational provision for children with statements of special educational needs and provision for education and training set out in a young person’s learning difficulty assessment as well as transport arrangements.
2. The EM says that the pilot scheme will be undertaken as part of a wider Green Paper pathfinder programme and the Department for Education has appointed a contractor to provide support to the pathfinder areas across the broad range of their activities (EM paragraph 9.1). The pathfinder programme is being managed by a joint working group across the Departments for Education and Health. The pilot would appear to give local authorities extra responsibility, although the authorities taking part have been given a grant (£75,000 per local authority in 2011-12, with funding for 2012-13 confirmed in the New Year). The pilot will be evaluated as part of the wider evaluation of the pathfinder programme by an independent research organisation. The Committee considers that transport provision should receive appropriate focus in this evaluation.
3. The Explanatory Memorandum (EM) says that the Department for Education will be publishing a summary of the responses to the consultation shortly, and this will set out progress in taking forward the Green paper reform and next steps (EM paragraph 8.1). The Committee stresses the importance of publishing this summary in good time for the debate on this draft Order.

Draft Local Authorities (Conduct of Referendums) (England) Regulations 2012, Local Authorities (Referendums) (Petitions) (England) Regulations 2011 (SI 2011/2914) and 11 associated draft Orders on Mayoral Referendums in various English cities.

4. The Localism Act 2011 extended the range of governance models available to local authorities in England and provided for referendums in England's largest cities on whether the local authority should adopt the mayor and cabinet executive model. **The 11 Orders** require the authorities in Birmingham, Bradford, Bristol, Coventry, Leeds, Liverpool, Manchester, Newcastle upon Tyne, Nottingham, Sheffield and Wakefield to hold a mayoral referendum on 3 May 2012 and the result will be binding. (Certain large English cities such as Sunderland or Leicester are not included in the list because they have already held a referendum on this issue). The **Draft Local Authorities (Conduct of Referendums) (England) Regulations 2012** set out the way these and local authority referendums on other governance arrangements should be run, including the wording of the ballot forms. If at least 5% of local electors have signed a petition requesting that their local governance should change to one of the four models set out in the Localism Act 2011 (see EM paragraph 7.2) a referendum must be held. **The Local Authorities (Referendums) (Petitions) (England) Regulations 2011**(SI 2011/2914) set out the conditions for petitions that will satisfy the trigger provision.

Statement of Changes in Immigration Rules (HC 1693)

5. This Statement of Changes in Immigration Rules ("the Statement") makes a number of changes to the Youth Mobility Scheme ("the YMS") under Tier 5 of the Points Based System. The YMS, which was launched in November 2008, is a cultural exchange scheme open to countries that are prepared to sponsor their young people and which meet the qualifying criteria for the scheme. The Statement extends the YMS to qualifying territories as well as countries, allows Taiwan to be added as a participant, and sets the annual allocation¹ of YMS places available to YMS participating countries and territories in 2012. In response to questions from the Committee, the Home Office has provided further information on the proposals (see Appendix 2). They say that the YMS has no significant impact on net migration as it is a reciprocal scheme, and there are currently more young UK nationals going to Australia and New Zealand in particular than their young people come here. For example, in 2010 almost 17,900 entry clearances were issued to YMS participants coming to the UK but participating countries issued 49,000 visas to young UK nationals to go on their reciprocal schemes. The Explanatory Memorandum ("EM") says that all the changes will be monitored on an on-going basis as part of the review of progress towards meeting Public Service Agreement 3: 'ensure controlled, fair migration that protects the public and contributes to economic growth' (EM paragraph 12.1). However, the Committee notes the further information from the Home Office which says that this was included in error.

¹ Australia – 32,500 places, Canada 5,000 places, Japan – 1,000 places, New Zealand – 10,000, Monaco – 1,000 places, and Taiwan – 1,000 places.

Non-Commercial Movement of Pet Animals Order 2011 (SI 2011/2883)

6. This instrument revokes and replaces existing pet legislation in England and Scotland to enforce the revised import requirements that apply to pets (cats, dogs and ferrets) entering Great Britain. The UK is required to align its rabies import requirements with those currently applied by other Member States under Regulation (EC) No 998/2003. The UK must also enforce requirements under separate EU legislation that protect against the risk of other diseases entering the UK via pet movements: highly pathogenic avian influenza, Nipah and Hendra disease, Monkey pox virus and the tapeworm *Echinococcus multilocularis*. The Committee notes the powers of entry in the Order and considers these to be clear and logical.

Excise Duties (Road Fuel Gas) (Reliefs) Regulations (SI 2011/2905)

7. These Regulations give effect to the decision to defer the 1 January 2012 increase in fuel duty to 1 August 2012 as announced by the Chancellor on 29 November. The Regulations provide for partial relief from the payment of excise duty on road fuel gas. In particular, the purpose of the Regulations is to negate, temporarily, the effect of the increases in duty on road fuel gas set out in section 8 of the Hydrocarbon Oil Duties Act 1979, as amended by section 20 of the Finance Act 2011. The amount payable as a result of the application of this relief will be 24.70 pence per kilogram in relation to natural road fuel gas and 31.61 pence per kilogram in relation to other road fuel gas.

Export Control (Sudan and South Sudan Sanctions) and (Miscellaneous Amendments) Regulations 2011 (SI 2011/2925)

8. On 24 November 2011, following the independence of South Sudan on 9 July, the Council of the European Union adopted Council Regulation (EU) No 1215/2011 which replaced the title and amended the scope of the restrictive measures imposed by Council Regulation (EC) No 131/2004 (now known as “the Sudan and South Sudan Regulation”). These Regulations provide for national offences and penalties that are required to supplement Articles 2 and 3 of the Sudan and South Sudan Regulation. These provisions are concerned with prohibiting technical assistance, financing or financial assistance in relation to military activities to any person, entity or body in, or for use in Sudan or South Sudan. The Explanatory Memorandum (EM) says that the Department for Business, Innovation and Skills will monitor the developments in Sudan and South Sudan, the actions taken by the United Nations and the EU, the impact of the Sudan and South Sudan Regulation and give effect to any necessary changes if the sanctions are reviewed (EM paragraph 12.1).

Hydrocarbon Oil and Biofuels (Road Fuel in Defined Areas) (Reliefs) Regulations 2011 (SI 2011/2935)

9. These Regulations, which come into force on 1 January 2012, provide for a relief from excise duty charged on unleaded petrol, diesel, biodiesel, bioblend and bioethanol blend purchased by a retailer for supply within the Inner and Outer Hebrides, the Northern Isles, the Islands in the Clyde and the Isles of Scilly. Retailers registered with HM Revenue and Customs are entitled to claim relief of 5 pence per litre provided it is passed on to end customers.

The Explanatory Memorandum (EM) says that the price of fuel on the Scottish Islands is on average 10 pence per litre (ppl) and on the Scilly Isles is 25 ppl more than in other parts of the UK, due mainly to higher transport and distribution costs; the 5 ppl relief will offer some help to consumers in the areas concerned who are faced with the high costs of petrol and diesel (EM paragraph 7.2).

Wine Regulations 2011 (SI 2011/2936)

10. The primary aim of these Regulations is to facilitate the application and enforcement of EU wine rules and to set out quality specification for the production of English and Welsh wine and sparkling wine. The Explanatory Memorandum (EM) says that a consultation was held between 19 October and 22 November 2011 and the Regulations were well received in draft with almost all comments supporting and helping the drafting process (EM paragraph 8.1). The Committee notes the powers of entry in the Order and considers these to be clear and logical.

Parole Board Rules 2011 (SI 2011/2947)

11. This instrument revises some of the procedural rules that apply to the Parole Board. It facilitates the use of video links and other media which will make the scheduling of oral hearings more efficient. It amends and simplifies the procedure that applies when the hearing involves sensitive material that may be withheld from the prisoner or a prisoner's legal representative on the grounds of national security or the prevention of crime. In addition, the instrument clarifies that the Parole Board's caseload should include consideration of the release of prisoners of determinate sentence who have been recalled to custody or those sentenced under the Criminal Justice Act 1991 and who are eligible to apply for parole at the halfway point of their sentence. These measures are part of a wider programme of initiatives which aim to reduce the waiting time for parole review hearings, which includes a computerised casework database, better prioritisation of case listing and the recruitment of over 100 additional judges and independent members during 2010 to sit on panels. These measures have already reduced the delays in cases being reviewed and further progress will be monitored and included in the Parole Board's Annual Report which is published every July.

Civil Procedure (Amendment No. 3) Rules 2011 (SI 2011/2970)

Community Legal Service (Financial) (Amendment No. 2)

Regulations 2011 (SI 2011/2971)

Rules of the Court of Judicature (Northern Ireland) (Amendment No. 4) 2011 (SR 2011/422)

12. The Terrorism Prevention and Investigation Measures Act 2011 gained Royal Assent on 14 December. These instruments, which were laid on the same day as Royal Assent and came into effect the following day, set out the court procedures in relation to the Terrorism Prevention and Investigation Measures Notices (TPIMs) which now replace "control orders" and seek to restrain the activities of those suspected of terrorism by civil measures. There are currently 9 people subject to control orders.² Under the transitional

² HL Written statement 19 December 2011 (cols WS172-4)

provisions the Home Secretary now has 42 days to apply for TPIMs Notices before the control orders will lapse on 25 January 2012.

- The **Civil Procedure (Amendment No.3) Rules 2011**(SI 2011/2970) set out the procedures to be followed in courts in England and Wales when the Secretary of State applies for the imposition of a TPIM notice – or for the court to confirm one imposed without prior permission – and for the subsequent directions hearings and review hearings that must be held. The Rules also set out the process for an individual to appeal against the TPIM notice or its variation, revocation, revival or extension. These Rules also set out procedures, made under Schedule 4 to the Act, for the use of ‘closed material’ (that is, material the disclosure of which would be contrary to the public interest) and ‘special advocates’ who may be appointed by the Attorney General to represent the interests of anyone other than the Secretary of State in relation to closed evidence and in closed proceedings.
- **Rules of the Court of Judicature (Northern Ireland) (Amendment No 4) 2011**(SR 2011/422) apply the same regime in Northern Ireland. Both instruments are “made affirmatives”, that is, instruments which have immediate effect but will cease to have effect unless approved by affirmative resolution of each House within 40 days (excluding periods during which Parliament is dissolved or prorogued or both Houses are adjourned for more than four days). Parallel Rules are being introduced in Scotland.
- The **Community Legal Service (Financial)(Amendment No 2) Regulations 2011**(SI 2011/ 2971) is a negative instrument which also has immediate effect and carries forward from the regime under the previous legislation the entitlement for anyone subject a TPIM Notice to receive legal aid without being subject to means testing.

Merchant Shipping (Safety of Navigation) (Amendment) Regulations (SI 2011/2978)

13. These Regulations implement certain amendments to Chapter V of the International Convention for the Safety of Life at Sea 1974 and its 1988 Protocol (SOLAS V) which are also given effect in Europe by Directive 2009/17/EC. The chief change is to insert into SOLAS V the new Regulation 19-1, which entered into force on 1 January 2008, to make it mandatory for ships undertaking international voyages to carry LRIT (Long Range Identification and Tracking) Systems, which provide a secure system for flag states to track their vessels globally at 6 hourly intervals. The provision was originally introduced as an anti-piracy measure in 2002, with a requirement for ships to fit Automatic Identification Systems (AIS), however that system is limited to monitoring traffic within VHF range of the coast. LRIT upgrades the technology using satellites and the information that is transmitted can be shared for security functions as well as for Search and Rescue and environmental protection purposes. The Regulations also enable the Marine and Coastguard Agency to enforce the requirement on UK registered ships and make it an offence for any vessel that is not compliant to attempt to leave a UK port.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

Draft Instruments subject to affirmative approval

City of Birmingham (Mayoral Referendum) Order 2012
 City of Bradford (Mayoral Referendum) Order 2012
 City of Bristol (Mayoral Referendum) Order 2012
 City of Coventry (Mayoral Referendum) Order 2012
 City of Leeds (Mayoral Referendum) Order 2012
 City of Liverpool (Mayoral Referendum) Order 2012
 City of Manchester (Mayoral Referendum) Order 2012
 City of Newcastle-Upon-Tyne (Mayoral Referendum) Order 2012
 City of Nottingham (Mayoral Referendum) Order 2012
 City of Sheffield (Mayoral Referendum) Order 2012
 City of Wakefield (Mayoral Referendum) Order 2012
 European Union (Definition of Treaties) (Republic of Korea Framework Agreement) Order 2012
 Immigration (Biometric Registration) (Amendment) Regulations 2012
 Local Authorities (Conduct of Referendums) (England) Regulations 2012
 Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2011

Instruments subject to affirmative approval

SI 2011/2970 Civil Procedure (Amendment No. 3) Rules 2011
 SR 2011/422 Rules of the Court of Judicature (Northern Ireland) (Amendment No. 4) 2011

Instruments subject to annulment

HC 1693 Statement of Changes in Immigration Rules
 SI 2011/2883 Non-Commercial Movement of Pet Animals Order 2011
 SI 2011/2886 Competition Act 1998 (Public Policy Exclusion) (Revocation) Order 2011
 SI 2011/2905 Excise Duties (Road Fuel Gas) (Reliefs) Regulations 2011
 SI 2011/2911 Greenhouse Gas Emissions Trading Scheme (Amendment) (Registries and Fees Etc.) Regulations 2011
 SI 2011/2914 Local Authorities (Referendums) (Petitions) (England) Regulations 2011
 SI 2011/2917 Private Security Industry Act 2001 Regulations (Amendment) Regulations 2011
 SI 2011/2925 Export Control (Sudan and South Sudan Sanctions) and (Miscellaneous Amendments) Regulations 2011
 SI 2011/2928 Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011

- SI 2011/2933 Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011
- SI 2011/2935 Hydrocarbon Oil and Biofuels (Road Fuel in Defined Areas) (Reliefs) Regulations 2011
- SI 2011/2936 Wine Regulations 2011
- SI 2011/2943 Social Security (Electronic Communications) (No. 2) Order 2011
- SI 2011/2944 Protection of the Euro against Counterfeiting (Amendment) Regulations 2011
- SI 2011/2947 Parole Board Rules 2011
- SI 2011/2948 Health and Social Care Act 2008 (Primary Dental Services, Private Ambulance Services and Primary Medical Services) (Regulated Activities) (Transitory and Transitional Provisions) (Amendment) Order 2011
- SI 2011/2954 Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011
- SI 2011/2955 Health Service Branded Medicines (Control of Prices and Supply of Information) Amendment Regulations 2011
- SI 2011/2957 Income-related Benefits (Subsidy to Authorities) Amendment Order 2011
- SI 2011/2971 Community Legal Service (Financial) (Amendment No. 2) Regulations 2011
- SI 2011/2974 South Gloucestershire and Stroud College (Incorporation) Order 2011
- SI 2011/2975 South Gloucestershire and Stroud College (Government) Regulations 2011
- SI 2011/2978 Merchant Shipping (Safety of Navigation) (Amendment) Regulations 2011

APPENDIX 1: DRAFT SPECIAL EDUCATIONAL NEEDS (DIRECT PAYMENTS) (PILOT SCHEME) ORDER 2011

Further information from the Department for Education

Education Department officials have provided the following responses to the questions put by the Committee:

Q. Will there be an additional resource burden for local authorities as a result of the SI?

A. The pilot will be undertaken as part of the wider SEN and Disability Green Paper pathfinder programme. Authorities taking part in the programme have been given a grant (£75,000 per local authority in 2011-12, funding for 2012-13 will be confirmed in the new year) to undertake an agreed range of activities to test the core elements of the Green Paper including the use of personal budgets and the value for money/cost implications of implementing the reforms.

Q. What will be the scope of the review and will it be carried out by the DfE?

A. The pilot will be subject to a full evaluation. The final scope of the evaluation has yet to be decided but we expect it to capture information about the impact and effectiveness of direct payments, including: cost effectiveness; the processes local authorities establish to agree, quantify and cost the services to be delivered by direct payment; and potential barriers to delivery. We will ensure it captures information on age, impairment and type of need as well as take-up by different socio-economic groups. The evaluation will be undertaken by an independent research organisation and will form part of the wider evaluation of the Green Paper pathfinder programme.

Q. Do you envisage any particular difficulties around transport provision, if so how will these be managed?

A. The pilot will help us to establish any common difficulties around transport and ways that they can be managed. We do not envisage any particular difficulties although value for money is likely to be a key consideration for local authorities when deciding whether to agree to make direct payments for transport provision.

Q. How will the Government ensure that this project and the Department of Health personal health budget pilot programme are fully joined up where they need to be?

A. The pilot will be undertaken as part of the SEN and Disability Green Paper pathfinder programme. The 20 pathfinder areas are made up of 31 local authorities and their PCT partners. They will work together to test the use of personal budgets including direct payments for health care (by joining the Department of Health's Personal Budget pilot) and special educational provision (through this pilot) alongside the development of the new Education, Health and Social Care Plan.

The pathfinder programme is managed by a joint working group across the two Departments, and the whole recruitment phase to select the pathfinders and their support and evaluation teams was a joint venture.

Q. Is there any remaining dissatisfaction with the proposals? If so, how will you manage any risks around this?

We recognise that there are a number of potential issues, as well as benefits, around the use of direct payments for special educational provision. That is why we need to trial their use through the pilot scheme, for two years, as set out in the draft Order. We have sought to reduce the risks, identified by respondents to the consultation and in our discussions with groups representing children and young people with special educational needs and/or disabilities, through the inclusion of a number of key safeguards:

- We are clear that the take up of direct payments is optional. The scheme will require the local authority to obtain the written consent of the person receiving the direct payment, and that consent must state the agreed provision that the payment will purchase;
- In addition, local authorities are required, in the draft order, to provide information, advice and support to enable families from all backgrounds to benefit from direct payments. This includes a requirement to provide information on independent organisations that can offer support;
- To address the concerns about impact on other services, value for money and misuse of funds we have included clear requirements on the local authority to consider these issues before agreeing to any individual arrangement for direct payments. There are further requirements for the monitoring of their use once an arrangement has been established.

The Department will provide further advice to the pilots on potential issues and will work with the Green Paper pathfinder support team to address any issues that may arise, and to share learning across the pilot. We have given a commitment to evaluate the pilot as part of the full evaluation of the Green Paper pathfinder programme.

Department for Education

December 2011

APPENDIX 2: STATEMENT OF CHANGES IN IMMIGRATION RULES (HC 1693)

Further information from the Home Office

Home Office officials have provided the following responses to the questions put by the Committee:

Q. How exactly does the YMS operate e.g. can the participants work in the UK? Will they be entitled to use any public services? Are there any specific restrictions on their stay in the UK?

A. The Youth Mobility Scheme (YMS) under Tier 5 of the Points Based System (PBS) was launched in November 2008 as a single, generic cultural youth exchange scheme. It has been designed to ensure it operates in the interests of the UK, so that immigration risk is minimised and reciprocal opportunities for young UK nationals are maximised. The YMS is open to any country or territory which meets the following criteria, and whose government/ authorities agree to sponsor its nationals:

- presenting an acceptably low level of immigration risk under the YMS risk formula (a risk value of 10 or under) and not being subject to the UK's visa regime;
- having satisfactory returns arrangements with the UK; and
- providing reciprocal opportunities for young UK nationals.

The minimum criteria for a reciprocal scheme are that it must provide:

- a minimum stay of 12 months;
- a minimum period of 12 months work;
- engagement in a variety of employment of any type (with some minor restrictions), without participants or their prospective employers having to obtain official approval for the employment concerned;
- participation by UK nationals aged from 18 to at least 30 years with no requirement that they must be graduates or undergraduates; and/or
- participation by UK nationals who are required to have undergraduate or graduate status, including those aged 18 to 30 years ; and
- an annual minimum of 1000 places for UK nationals (if a country chooses to limit the total annual number permitted).

Countries/territories have to request to join the scheme and if they meet the above criteria they are then added to the list of YMS participant countries. All countries are given an annual allocation of places on the scheme. Under the terms of the scheme each country receives a minimum of 1,000 places or an allocation equivalent to the last recorded annual number of initial visas granted to UK nationals under their reciprocal scheme/s, rounded up to the nearest 500, if this is larger. The YMS allocations formula therefore seeks to encourage countries to offer opportunities to UK nationals so that more of their own nationals can take advantage of the UK's scheme.

The YMS provides a two year stay for the young nationals/passport holders of participating countries/territories, aged 18 to 30, and they are free to take

almost any type of work for any amount of their stay. The only restrictions are as follows:

- no employment as a professional sports person (including as a sports coach), and
- no employment as a Doctor or Dentist in Training, unless the applicant has obtained a degree in medicine or dentistry at bachelor's level or above from a UK institution that is a UK recognised or listed body, or which holds a sponsor licence under Tier 4 of the Points Based System, and
- no self employment, except where the following conditions are met:
- the migrant has no premises which he owns, other than his home, from which he carries out his business,
- the total value of any equipment used in the business does not exceed £5,000, and
- the migrant has no employees.

YMS participants are not entitled to public funds but can, as with all categories which allow a stay of over 6 months, register with a GP and have emergency medical treatment. To protect its use as a temporary entry provision, switching from the YMS into other PBS categories or into visitor status is not permitted.

Q. How is the YMS administered and enforced?

A. Once a country/territory has signed up to the YMS, individual applicants have to apply for a Tier 5 YMS entry clearance. Countries/territories with which the UK has experience of operating successful reciprocal youth mobility provisions, and which have a *very* low risk level are eligible for Deemed Sponsorship (DS) status. DS countries/territories demonstrate sponsorship of their nationals by simply providing them with a valid passport. Non- DS countries are required to select their young people for participation on the YMS and issue them with a Certificate of Sponsorship to allow them to make their entry clearance application. As well as meeting the age requirement, YMS applicants also need to meet a funds requirement to ensure that they can support themselves until they start earning in the UK, must have no dependent children and must not previously have spent time in the UK on a working holidaymaker or YMS entry clearance.

The scheme is low risk as it only operates with low risk countries but it is monitored and if we find an increase in breaches of our rules by YMS participants we will talk to the country concerned to allow them to improve their selection of applicants and if necessary remove them from the scheme.

Q. Do the numbers of participants count towards the Government's aim of reducing net migration to under 100,000 a year over the course of this Parliament?

A. The YMS has no significant impact on net migration as it is a reciprocal scheme. At the moment because more young UK nationals go to Australia and New Zealand in particular than their young people come here then the numbers entering the UK on the YMS are more than matched by the numbers of young UK nationals leaving to experience life in one of the participating countries. For example in 2010 almost 17,900 entry clearances were issued to YMS participants coming to the UK but participating

countries issued 49,000 visas to young UK nationals to go on their reciprocal schemes.

Q. Why has Taiwan been added?

A. Taiwan made an approach to ask about joining the YMS and has been accepted onto it as it has demonstrated that it meets the criteria set out under question 1.

Q. What will the effect be of the change from “nationality” and “country” terminology, to broader terminology allowing territories issuing their own passports to participate i.e. will this simply allow for the inclusion of Taiwan or will the effect go further?

A. At this stage the change simply allows for the inclusion of Taiwan. In the future, if any other territories which are responsible for issuing their citizens with their own passports seek to join the scheme and demonstrate that they also meet the qualifying criteria they can also be added.

Q. Have the country allocations changed from last year? If so, what is the reason behind the changes?

A. There has been no change in the allocations awarded to those countries which receive the annual minimum allocation of 1,000 places. Only three countries qualify for allocations bigger than the minimum as their allocations are based on the numbers of young UK nationals going to them on their reciprocal schemes in the previous year. This time Canada’s allocation has increased from 4,000 to 5,000 to reflect the increased numbers of UK nationals going to them but both New Zealand’s and Australia’s have decreased slightly as fewer UK nationals have gone to them. Nonetheless as the figures for UK nationals going to both those countries far exceed their demand for places for their own nationals, the reduced allocations for Australia and New Zealand in 2012 are unlikely to cause a problem.

Q. Regarding paragraph 12.1 of the EM, is UKBA still working to PSA3?

A. Apologies – this was included in the EM in error as of course the Government has dropped the previous Government’s targets. This can be ignored.

Home Office

December 2011

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 Parliamentary Archives.

For the meeting on 20 December 2011 Members declared no interests.

Attendance:

The meeting was attended by Baroness Butler-Sloss, Lord Eames, Baroness Eaton, Baroness Hamwee, Lord Methuen, Baroness Morris of Yardley and Lord Norton of Louth.