

# HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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3rd Report of Session 2012-13

## **Public Bodies Orders:**

**Draft Public Bodies (Abolition of the  
Commission for Rural Communities)  
Order 2012**

**Draft Public Bodies (Abolition of Crown  
Court Rule Committee and Magistrates'  
Courts Rule Committee) Order 2012**

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**Draft Data Protection (Processing of  
Sensitive Personal Data) Order 2012**

**Draft Police and Crime Commissioner  
Elections Order 2012**  
and one associated instrument

Plus 5 Information Paragraphs on 8 Instruments

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*Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)*

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
  - (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 secondary legislation 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*

Lord Bichard	Lord Methuen
Baroness Eaton	Rt Hon. Baroness Morris of Yardley
Lord Eames	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 2.

*Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

*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 Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email [seclegscrutiny@parliament.uk](mailto:seclegscrutiny@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.

# Third Report

## PUBLIC BODIES ORDERS

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### A. Draft Public Bodies (Abolition of the Commission for Rural Communities) Order 2012

#### *Introduction*

1. The Draft Public Bodies (Abolition of the Commission for Rural Communities) Order 2012 (“the draft Order”) was laid on 16 May under section 1 of the Public Bodies Act 2011 (“the 2011 Act”). The draft Order was laid by the Department for Environment, Food and Rural Affairs (Defra) with an Explanatory Document (ED). Copies of the consultation responses and an Impact Assessment have also been provided. Defra has also provided additional information which is enclosed in Appendix 1.
2. The purpose of the draft Order is to abolish the Commission for Rural Communities (CRC). The Committee has received a submission of evidence from Jon Carling, Chief Executive of the CRC, and has published this submission on its website<sup>1</sup>.

#### *Overview of the proposal*

3. The Commission for Rural Communities (CRC) was established under the Natural Environment and Rural Communities Act 2006 (the NERC Act), retaining the research and policy functions of the Countryside Agency when the latter body saw its socio-economic functions transferred to the Regional Development Agencies, and its other functions transferred to Natural England. The Chairman of the CRC has also had the role of Rural Advocate (RA), a role created separately from the CRC (following a commitment in the Rural White Paper of 2000), as an independent and non-political designation (not a public appointment).
4. Following an announcement in June 2010 that Ministers would lead rural policy from within Defra, the Department’s Rural Communities Policy Unit (RCPU) has been expanded, and now comprises staff from the pre-existing rural policy team and from both the CRC and the former Government Offices. Defra sees the RCPU as “a centre of rural expertise within Government”, capable of cross-Whitehall influence.
5. During the passage of the 2011 Act through Parliament, concern was expressed that abolition of the CRC would result in the loss of independent challenge to Government policy-making on behalf of rural communities, though this concern was linked to the cessation of the role of the Rural Advocate which, as explained above, is not based in the statute relating to the CRC.

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<sup>1</sup> <http://www.parliament.uk/seclegscrutiny>

*Role of the Committee*

6. The Committee's role, as set out in its Terms of Reference, is to "report on draft orders and documents laid before Parliament under section 11(1) of the 2011 Act in accordance with the procedures set out in sections 11(5) and (6)". A key aspect of this role is the Committee's power to trigger the enhanced affirmative procedure which would require the Government to have regard to any recommendations made by the Committee during a 60 day period from the date of laying. The Committee may also consider taking oral or written evidence in order to aid its consideration of the orders.

*Consultation*

7. Defra carried out a consultation exercise between November 2011 and January 2012, receiving 41 responses. 12 respondents supported abolition of the CRC (of these, five set out conditions for that support); 12 respondents opposed abolition; 17 did not expressly support or oppose abolition

*Tests in the Public Bodies Act 2011: assessment of the proposals*

8. A Minister may only make an order under sections 1 to 5 of the 2011 Act if he considers that the order serves the purpose of improving the exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy, and (d) securing appropriate accountability to Ministers (section 8 of the 2011 Act).

*Effectiveness*

9. The Government consider that basing rural policy functions within a core Department, rather than within an arm's-length body, will enable staff carrying out those functions to have earlier and greater involvement in the development of policies and programmes across Whitehall (paras. 7.21 to 7.24 of ED).

*Economy and efficiency*

10. The Government consider that consolidating rural policy functions within Defra, rather than retaining two separate publicly funded teams, will remove duplication. They believe that rural evidence should be drawn from a wide range of sources rather than provided by a single arm's-length body and that policy functions should be subject to the direct oversight of Ministers (paras. 7.19 and 7.20 of ED). The ED states that the CRC's annual budget for 2010-11 was just under £6m; the CRC used its 2010-11 budget to cover closure and staff departures costs. The initial transition reduced Defra's annual spending on its rural policy function (the Defra RCPU and the streamlined CRC) by approximately 60%. In 2011-12 the CRC cost approximately £600,000. The Government estimate that full implementation of the new approach to the rural policy function will generate total net savings of some £17m over the CSR period (2010-15) (paras. 7.25 to 7.27 of ED).

*Accountability*

11. The ED states that the changes proposed will enable Defra's Ministers to be held directly accountable by Parliament for the exercise of Government's rural policy functions; and also that the transparency with which the RCPU

will operate, together with the variety of non-Governmental organisations capable of speaking up on behalf of rural communities, will ensure an appropriate degree of public accountability (paras. 7.28 and 7.29).

### *Safeguards*

12. Section 8(2) of the 2011 Act requires that a Minister may make an order only if the Minister considers that (a) the order does not remove any necessary protection and (b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.
13. In confirming that the Minister considers that these safeguards are met, the ED states that necessary protection is provided by the establishment of the RCPU within Government to operate as a centre of rural expertise. It adds that Defra Ministers are committed to ensuring that they hear from a wide range of non-Governmental organisations on behalf of rural communities nationally and at a more local level; that the consolidation of rural policy resources increases rather than removes the protection afforded to rural communities; and that it avoids an over-reliance on the advocacy of a single publicly funded arm's-length body. As regards the exercise of rights or freedoms, the ED states that the RCPU will operate transparently and provide opportunities for interested parties to influence its work.

### *Conclusion*

14. The Committee accepts that the Government have demonstrated that the draft Order meets the statutory tests set out in the 2011 Act in abolishing the Commission for Rural Communities. However, it also considers that the link that existed between the post of Chairman of the Commission for Rural Communities, and the role of Rural Advocate, while not rooted in the statute governing the CRC, provided reassurance about the existence of independent challenge to the Government's rural policy-making.
15. It seems clear that the proposed abolition of the CRC, and with it the post of Chairman, has made the cessation of the role of Rural Advocate more apparent, and it has heightened concern about the effectiveness of such independent challenge in the future. Mr Carling has commented, for example, that "there continues to be a role for a small, independent body to provide an objective 'watchdog' view of developing policy relating to rural communities across Government...".
16. **We do not propose that the CRC should be retained. However, we do recommend that, in the Rural Statement which is now in preparation, the Government should set out not only their policy intentions but also robust structures for incorporating stakeholder input into policy development and implementation; and that the Rural Statement should provide specific details of the steps which the Government intend to take to deliver independent scrutiny of rural-proofing.**
17. Nonetheless, the Committee is content to clear the Draft Public Bodies (Abolition of the Commission for Rural Communities) Order 2012 within the 40 day affirmative procedure.

## **B. Draft Public Bodies (Abolition of Crown Court Rule Committee and Magistrates' Courts Rule Committee) Order 2012**

18. The Order was laid before Parliament by the Ministry of Justice (MOJ) along with an Explanatory Document covering both bodies. It seeks to abolish two similar institutions, the Crown Court Rule Committee (CCRC) and the Magistrates' Courts Rule Committee (MCRC).

### *Overview*

19. The **Crown Court Rule Committee** (CCRC) is an advisory non-departmental public body established under the Senior Courts Act 1981 to examine any proposed amendments to Crown Court rules. The Committee's role in making criminal rules has been superseded by the Criminal Procedure Rule Committee, leaving it with a role only in relation to civil rules which are now rarely amended (the last such rules having been made in 2009). The proposal is that this body be discontinued and any residual functions transferred to the Lord Chief Justice, who may act in consultation with other rule committees.
20. The **Magistrates' Courts Rule Committee** (MCRC) is an advisory body, established under the Magistrates' Courts Act 1980. Section 144 of that Act required the Lord Chief Justice to consult the MCRC before making rules, however the scope of that provision has been significantly diminished by the creation of the Criminal Procedure and Family Procedure Rule Committees under the Courts Act 2003. Due to other changes the primary function of the MCRC is now to be consulted on rules relating to civil non-family proceedings in the magistrates' courts which is rarely required: the MCRC was called upon twice in 2009, not at all in 2010 and twice in 2011. The Government argue that this does not justify the maintenance of a dedicated Committee.

### *Consultation*

21. A combined consultation was run for all the MOJ bodies included in the Public Bodies Act 2011 from 12 July to 11 October 2011.
- In relation to CCRC there were nine responses of which a minority opposed the proposal, the main concern being that the Lord Chief Justice would not receive advice from people with appropriate experience.
  - A total of 10 responses were received on the proposed abolition of the MCRC. The proposal was supported by five of those who responded; two were opposed to the proposal, with the remainder neither supporting nor opposing but raising some concerns regarding the transfer of the MCRC's functions. Those favouring the proposal argued that the reduced remit of the MCRC justified its abolition and that it would remove duplication of work, whereas there was no common theme among the responses from those opposed to the proposal. It should be noted that both the Law Society and the Magistrates' Association are content with the proposal to abolish the MCRC.

### *Tests in the Public Bodies Act 2011: Assessment of the Proposals*

22. A Minister may only make an order under sections 1 to 5 of the 2011 Act if the Minister considers that the order serves the purpose of improving the

exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy and (d) securing appropriate accountability to Ministers (section 8 of the 2011 Act).

- *Efficiency and effectiveness:* In paragraph 7.12 of the Explanatory Document MOJ states that efficiencies will be realised from the removal of the duplication and unnecessary administration. Both Committees have met infrequently. The same tasks can be absorbed by existing Rule Committees with a wider remit, and MOJ state that this will improve effectiveness as they include a wider range of expertise. Before making rules for either court, the Lord Chief Justice is required to consult whomever he thinks appropriate, including, but not limited to, the Criminal Procedure Rule Committee and the Family Procedure Rule Committee. Each of these committees includes one district judge (magistrates' courts), one lay magistrate and one justices' clerk.
- *Economy:* Paragraph 7.12 of the Explanatory Document states there will be no direct financial savings as a result of abolishing the Committees as they do not hold a budget, membership is not remunerated and the Committees do not meet in person but are consulted by post. Administrative overheads are therefore limited to routine mail and telephone charges, which are absorbed into departmental running costs
- *Accountability to Ministers:* All rules are made under the supervision of the Lord Chancellor and this provision remains unchanged.

#### *Safeguards*

23. Paragraph 7.13 of the Explanatory Document states that (a) the order does not remove any necessary protection and (b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The key determinants in the Cabinet Office review of public bodies was to assess the extent to which their functions were still necessary, technical and required a degree of impartiality. By these measures, court rule making should continue to be performed by a public body; however, they do not need to be performed by the CCRC or MCRC specifically, but may be transferred to or performed by other existing bodies or persons with the requisite technical expertise and impartiality. It would therefore seem that the necessary safeguards are maintained.

#### *Conclusion*

24. The content of the Explanatory Document was adequate to explain the draft Order but the Committee found its presentation confusing and repetitive. However it is clear that these Committees are rarely used and alternative consultative Committees are already available to advise the Lord Chief Justice. Nor does the legislation limit him only to consulting these Committees and other key players such as the Magistrates' Association and the Law Society are content with the proposed abolition. **We therefore conclude that the proposals appear to meet the tests set out in the Act and are content to clear the draft Order within the 40 day affirmative procedure.**

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

### **C. Draft Data Protection (Processing of Sensitive Personal Data) Order 2012**

*Date laid: 14 May*

*Parliamentary Procedure: affirmative*

*Summary: The function of the draft Order is to clarify the position under Data Protection legislation where information to be published by the Hillsborough Independent Panel contains “sensitive personal data” relating to individuals. The Panel’s existing protocol and the Order are consistent and should operate as a two stage process to ensure that the disclosure of material relating to individuals is properly handled. Given the context in which the draft Order is proposed, the Committee is disappointed that its title fails to be transparent and does not make clear the Hillsborough connection; and we take the view that the title of the instrument should be amended.*

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

25. The Hillsborough Independent Panel was established on 15 December 2009 to ensure maximum possible public disclosure of information relating to the Hillsborough disaster. It has access to Hillsborough documentation held by Government and local agencies relevant to events surrounding the tragedy in advance of the normal 30-year point for public disclosure. Its fundamental principle is the full disclosure of documentation and no redaction of content, except in the limited legal and other circumstances outlined in the full terms of reference and disclosure protocol which are available on line at <http://hillsborough.independent.gov.uk/terms-of-reference/index.html>. The function of the current Order is to clarify the position under Data Protection legislation where the information in question is “sensitive personal data” relating to individuals. The protocol and the Order are consistent and should operate as a two stage process to ensure that the disclosure of redacted and unredacted material relating to individuals is properly handled.
26. Although the change to the legislation proposed is simply to provide clarification and seems otherwise unremarkable, the context in which the draft Order is made is important. The Committee is disappointed that the title of legislation does not make clear the Hillsborough connection. Those with an interest in the investigation of the Hillsborough disaster should be able easily to find related information. More generally, we are concerned that the titles of statutory instruments should be clear and transparent and this is particularly important in an age when many people use electronic search engines to assist their research.

### **D. Draft Police and Crime Commissioner Elections Order 2012**

**Draft Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations 2012**

*Date laid: 16 May*

*Parliamentary Procedure: affirmative*

*Summary: The draft Police and Crime Commissioner Elections Order sets out the rules for the conduct of the elections for the new post of Police and Crime Commissioner to be held on 15 November 2012 and every 4 years thereafter in 41 Police areas in England and Wales. It also makes provisions for the regulation of the campaign, including limits on spending by candidates and the donations they may receive in connection with the election. The Committee notes several variations to normal electoral practice, in particular the presumption of candidates' campaign information being communicated by website unless a voter specifically requests a printed version.*

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

27. The draft **Police and Crime Commissioner Elections Order** sets out the rules for the conduct of the elections for the new post of Police and Crime Commissioner. These are to be held in 41 Police areas in England and Wales on 15 November 2012 and every 4 years thereafter. Schedules to the draft Order set out the specific rules for the ballot including, for example, a model ballot paper at Schedule 3 form 8a which allows the voter to express a first and second preference where there are three or more candidates. The draft Order also makes provision for the regulation of the campaign, including limits on spending by candidates and the donations they may receive in connection with the election. The Explanatory Memorandum highlights variations to normal electoral practice including the slightly different arrangements required for the coordination of the vote in Police areas, which are significantly larger than parliamentary constituencies. The Committee notes in particular the presumption of candidates' campaign information being communicated by website (article 52) unless a voter specifically requests a printed version (Schedule 8 Part 1 paragraph 13). The Home Office rationale for preferring website communication is based on survey data of internet penetration among different age/race/sex groups<sup>2</sup>. We also note that the Electoral Commission's normal requirement that legal arrangements for an election should be in place at least 6 months before the vote will not be met.

The companion **Draft Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations 2012** set out the general functions and duties of a Police Area Returning Officer, who has overall responsibility for the running of the election within each police force area and a Local Returning Officer, who has responsibility for the conduct of the poll in each local voting area. The Regulations require them both to take steps to encourage participation in the elections (regulation 7) and allow them to appoint clerks and deputies to assist them in carrying out their duties (regulation 5).

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<sup>2</sup> see analysis at <http://www.homeoffice.gov.uk/publications/police/pcc/pcc-policy-equality-statement>

## OTHER INSTRUMENTS OF INTEREST

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### ***Draft Social Security (Civil Penalties) Regulations 2012***

28. The Welfare Reform Act 2012 introduced legislation to allow for a civil penalty scheme to operate where a claimant is overpaid benefit either because they have failed to correct inaccurate information on their claim or they have failed to report changes in their circumstances without reasonable excuse. The purpose of this instrument is to set the amount of a civil penalty at £50 as was indicated by the Minister during the passage of the Bill.

### ***Draft Terrorism Act 2000 (Codes of Practice for the Exercise of Stop and Search Powers) Order 2012***

29. Following the European Court of Human Rights' judgment in *Gillan and Quinton* in 2010 and the Government's review of counter-terrorism and security powers which reported on 26 January 2011, the stop and search powers provided by the Terrorism Act 2000 were significantly modified by the Protection of Freedoms Act 2012. The revised stop and search powers have a higher threshold for authorisation and the safeguards are strengthened depending on the degree of "reasonable suspicion". The practical application of this legislation is set out in two codes which will be brought into force by this Order.<sup>3</sup>

### ***Draft Counter-Terrorism Act 2008 (Code of Practice for the Video Recording with Sound of Post-Charge Questioning) Order 2012***

### ***Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, G and H) Order 2012***

### ***Draft Terrorism Act 2000 (Video Recording with Sound of Interviews and Associated Codes of Practice) Order 2012***

30. These draft Orders introduce a new Code of Practice for the video recording with sound of interviews conducted under section 41 of and Schedule 7 to the Terrorism Act 2000 and post-charge questioning of terrorist suspects authorised under section 22 or 23 of the Counter-Terrorism Act 2008. Currently in England and Wales in order to comply with the Police and Criminal Evidence Act 1984 (PACE) all questioning of a person must cease when they are charged or a decision has been taken to refer the case to a prosecutor. Provisions to allow the post-charge questioning of terrorist suspects are included in sections 22 to 27 of the Counter-Terrorism Act 2008, although those provisions have not yet been commenced. The Government review of counter-terrorism and security powers published on 26 January 2011 confirmed the need for these provisions because there may be a substantial delay before evidence collected in terrorism investigations can be put to the suspect, e.g. where the prosecution team has had to decrypt material or obtain results from a forensic analysis. There was widespread

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<sup>3</sup> "Code of Practice (England, Wales and Scotland) for the Exercise of Stop and Search Powers under Sections 43 and 43A of the Terrorism Act 2000, and the Authorisation and Exercise of Stop and Search Powers Relating to Section 47A of, and Schedule 6B to, the Terrorism Act 2000 For Great Britain and "Code of Practice (Northern Ireland) for the Exercise of Stop and Search Powers under Sections 43 and 43A of the Terrorism Act 2000, and the Authorisation and Exercise of Stop and Search Powers Relating to Section 47A of, and Schedule 6B to, the Terrorism Act 2000" for Northern Ireland

support for the proposal during the passage of the Counter-Terrorism Bill but subject to appropriate safeguards being put in place. The Government accepted a number of recommendations made by the Joint Committee on Human Rights which included that any such interview must be video recorded, and the video recording must be with sound.<sup>4</sup> The Code brought into effect by these Orders sets out how such questioning should be conducted. The draft **Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, G, and H) Order 2012** introduces, among other things, a number of consequential changes that correspond with these new provisions on post-charge questioning of terrorists. The relevant provisions of the Counter-Terrorism Act 2008 will be commenced after these revisions to the PACE Codes are in place.

***Environmental Protection Act 1990 (Amendment of Fixed Penalty Amount) (England) Order 2012 (SI 2012/1150)***

***Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012 (SI 2012/1151)***

31. Under the Environmental Protection Act 1990 (“the 1990 Act”), local authorities may instruct householders how to present their rubbish for collection. Where these instructions are not followed, local authorities may prosecute and apply a fine of up to £1,000; as an alternative, they may apply a fixed monetary penalty of £75 to £110. The Government would like to see local authority powers in this area made more proportionate; they intend to replace the criminal sanctions applying to householders who present their rubbish incorrectly with civil sanctions, and to ensure that the level of penalties is appropriate. As an interim measure, in line with the Government’s wish to reduce the level of fixed penalties to a fairer level, the **Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012** reduce the range and level of fixed penalties from £75-110 to £60-80, and reduce the minimum amount that applies upon early payment of the penalty, from £60 to £40. The **Environmental Protection Act 1990 (Amendment of Fixed Penalty Amount) (England) Order 2012** makes a proportionate reduction to the default amount, from £100 to £60.
32. At present there is no right of appeal against fixed penalties under the 1990 Act relating to a failure to present domestic waste for collection as required by local authorities. If an individual does not pay the fixed penalty he or she may be prosecuted and present his or her case in Court. However, the Government are looking to make longer-term changes to local authority enforcement powers in this area and have this year consulted on options for changing the enforcement regime, including the option of introducing a route to appeal through a First Tier Tribunal (or other appellate body) against a penalty imposed by a local authority. Primary legislation would be required to make such changes.

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<sup>4</sup> See: Joint Committee on Human Rights: Counter-Terrorism Policy and Human Rights: 28 days, Intercept as Evidence and Post-Charge Questioning, Nineteenth Report of Session 2006 – 07 (HL Paper 157 HC 394)

***Education (Exemption from School Inspection) (England) Regulations 2012 (SI 2012/1293)***

33. Section 5 of the Education Act 2005 (“the 2005 Act”) sets out the duty of the Chief Inspector to inspect schools at such intervals as may be prescribed. The Education (School Inspection) (England) Regulations 2005, made under that section, provide that the maximum interval between school inspections is five years. The Education Act 2011 amended section 5 of the 2005 Act, so as to provide that the Chief Inspector’s duty to inspect schools need not apply to prescribed categories of schools in prescribed circumstances: such schools are to be known as “exempt schools”. The intention was that schools judged outstanding in their previous inspection might be exempt from routine inspection.
34. This is the first set of Regulations to be made under the new power. Regulation 3 prescribes the categories of schools which may become exempt schools: (a) community, foundation and voluntary schools; (b) Academy schools; (c) city technology colleges; and (d) city colleges for the technology of the arts. Regulation 4 provides that these prescribed categories of schools will become exempt schools if they received the highest grading in their latest inspection by the Chief Inspector (currently, that is an “outstanding” grading). If an Academy school which has never been inspected under section 5 of the 2005 Act has one or more predecessor schools, it will be an exempt school if each predecessor received the highest grading in its last inspection.
35. During the passage of the Education Act 2011 through Parliament a concern was that, since the categories of schools to be exempt were not on the face of the Bill and the Regulations which would prescribe the exemptions were subject to negative procedure, the Secretary of State could exempt, for example, all academies or faith schools without proper parliamentary scrutiny. A Government amendment was introduced so that any subsequent changes to the first set of Regulations made under the new power would require Parliamentary approval through the draft affirmative procedure.

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

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

### **Draft Instruments subject to affirmative approval**

Counter-Terrorism Act 2008 (Code of Practice for the Video Recording with Sound of Post-Charge Questioning) Order 2012

Office of Qualifications and Examinations Regulation (Determination of Turnover for Monetary Penalties) Order 2012

Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, G and H) Order 2012

Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012

Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Prescribed Criteria) Regulations 2012

Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012

Social Security (Civil Penalties) Regulations 2012

Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012

Terrorism Act 2000 (Codes of Practice for the Exercise of Stop and Search Powers) Order 2012

Terrorism Act 2000 (Video Recording with Sound of Interviews and Associated Code of Practice) Order 2012

### **Draft Instruments subject to annulment**

Oxfordshire (Electoral Changes) Order 2012

Surrey (Electoral Changes) Order 2012

Proposal by the Secretary of State for Culture, Olympics, Media and Sport to designate Sir Quentin Thomas, Gerard Lemos, Alison Hastings and David Cooke jointly as the authority to determine the suitability of video works for classification

### **Instruments subject to annulment**

SI 2012/1150 Environmental Protection Act 1990 (Amendment of Fixed Penalty Amount) (England) Order 2012

SI 2012/1151 Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012

- SI 2012/1264 Channel Tunnel (International Arrangements) (Amendment) Order 2012
- SI 2012/1267 Social Security and Child Support (Supersession of Appeal Decisions) Regulations 2012
- SI 2012/1271 Road Vehicles (Individual Approval) (Fees) (Amendment) Regulations 2012
- SI 2012/1274 Education (School Performance Information) (England) (Amendment) Regulations 2012
- SI 2012/1275 Magistrates' Courts (Detention and Forfeiture of Cash) (Amendment) Rules 2012
- SI 2012/1277 Local Justice Areas Order 2012
- SI 2012/1293 Education (Exemption from School Inspection) (England) Regulations 2012
- SI 2012/1301 Guinea-Bissau (Asset-Freezing) Regulations 2012
- SI 2012/1302 Burma/Myanmar (Financial Restrictions) (Suspension) Regulations 2012

## APPENDIX 1: DRAFT PUBLIC BODIES (ABOLITION OF THE COMMISSION FOR RURAL COMMUNITIES) ORDER 2012

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### Additional information from DEFRA

*On the issue of Independent review or the Government's performance on rural issues:*

Public Bill Committee debate, 13 September 2011:

Mr David Heath, MP, Parliamentary Secretary, Office of the Leader of the House of Commons:

“There will be the application of the Select Committee on Environment, Food and Rural Affairs, which has already indicated that it wishes to scrutinise the work of the RCPU. We welcome that. It is further evidence of the importance that many people in the House and elsewhere attach to the interests of those living and working in rural areas. (Col. 82)

“One perfectly legitimate concern that hon. Members have expressed is about independence. We have to establish independence to ensure that Ministers in the Department can convincingly argue their case on the basis of good advice. We have rural-proofing mechanisms, but they have not always worked terribly well, and I want them to work better. Of course, I have an interest in that, but for reasons of good governance we need to make sure that rural-proofing works better, because too often legislation has appeared to be based on an urban and suburban model without really understanding what happens in rural areas. Ministers in DEFRA are still exploring options to ensure a degree of independent advice. (Col. 83)

“When we debate the future of the CRC, if this Bill becomes law, following consultation Ministers will be clear about how they will be given independent advice and how we ensure proper audit of the rural-proofing that the Department is carrying out on behalf of rural communities.” (Col. 84)

Report Stage, House of Commons debate, 25 October 2011:

Rt Hon Jim Paice, MP, Minister of State, Defra:

“The work programme of the rural communities policy unit will shortly be published on the DEFRA website and the unit will be using a range of methods to provide public updates about progress and impact. I emphasise that we believe it is DEFRA Ministers who are primarily responsible for ensuring that rural issues are championed within the whole of Government. There are many rural commentators and independent organisations who already advocate strongly, work to us and see us regularly, and all of us are Ministers with strong rural backgrounds. It is our job to be accountable to Parliament for the way that we fulfil our role as rural champions. We will publish various documents and policy proposals over the coming weeks and months to demonstrate clearly that we understand the real needs of rural communities.

“I am pleased to say that the Environment, Food and Rural Affairs Committee has indicated that it will wish to scrutinise the work of the

rural communities policy unit. The Government welcome that as further evidence of the importance that many in this House and in the other place attach to the interests of rural communities.” (Col. 222)

*On Government encouragement of independent review of its work on rural policy:*

Defra public consultation – 1 November 2011 to 30 January, 2012:

“Defra Ministers are exploring further means by which the Government’s support for rural communities can be made as transparent as possible. These include the proposed Government-wide Rural Statement and the scope to encourage independent scrutiny of Government’s approach to rural proofing.”

*A Rural Statement.*

Defra is preparing a Government-wide Rural Statement, intended to reaffirm the Government’s commitment to rural communities; outline how Government policies and programmes are already working for these communities; and explain what Defra is doing to promote rural needs and interests.

The Rural Statement will be supplemented by a refreshed approach to Rural Proofing at a national Government level.

As requested by those responding to the 90 day public consultation, the new package of support offered to policy makers will be practical and robust, showcasing examples of good practice. It will be accompanied by the results of the Local Rural Proofing project undertaken with partner organisations focused on local level delivery, such as the Local Government Association, National Association of Local Councils and Action for Communities in Rural England.

*The Rural Communities Policy Unit – its staff make-up*

The Commission for Rural Communities (CRC) had 80 staff (72 full-time equivalents) all of whom received individual letters on 30 June 2010 advising them that they were at risk of redundancy. Defra and the Commission identified those staff within the Commission with a right to transfer to the Rural Communities Policy Unit within Defra and made arrangements for those who wished to take up that right to transfer. Defra accepted 17 people as having a right to transfer, 15 people exercised that right, and, of these, 11 took up roles in the new Unit with 4 securing other posts within Defra.

Defra advertised all vacant posts in the Rural Communities Policy Unit (following the automatic transfer of some CRC staff as described above) on Civil Service Vacancies (now referred to as the Civil Service Jobs Portal) to enable CRC staff without a right to transfer to the department (alongside other surplus civil servants) to apply for roles within Defra and OGDs. The Rural Communities Policy Unit contains around 35 posts, including the three staff supporting the Rural Development Programme for England Network activity required by the European Rural Development Regulation, which was previously hosted by the CRC. Of these 35 posts, 11 staff are from CRC, some of whom had a right to transfer, and some of whom applied for posts in open competition. Roles have also been filled by 6 former GO staff who applied via open competition.

## APPENDIX 2: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 29 May 2012 Members declared the following interests:

### ***Education (Exemption from School Inspection) (England) Regulations 2012 (SI 2012/1293)***

Lord Norton of Louth, as Governor, King Edward VI Grammar School, Louth.

Lord Plant of Highfield, as Governor, Pilgrims' School, Winchester.

### ***Attendance:***

The meeting was attended by Lord Bichard, Lord Eames, Baroness Eaton, Lord Goodlad, Baroness Hamwee, Lord Hart of Chilton, Lord Methuen, Baroness Morris of Yardley, Lord Norton of Louth, Lord Plant of Highfield and Lord Scott of Foscote.