HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

30th Report of Session 2012-13

National Health Service (Procurement, Patient Choice and Competition) Regulations 2013

Correspondence:

Rights of Passengers in Bus and Coach Transport (Exemptions) Regulations 2013

Also includes 6 Information Paragraphs on 11 Instruments

Ordered to be printed 5 March 2013 and published 7 March 2013

Published by the Authority of the House of Lords

London: The Stationery Office Limited

£price

HL Paper 136

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.

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Registered interests

Information about interests of Committee Members can be found in Appendix 4.

Publications

The Committee's Reports are published on the internet at 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.

Statutory instruments

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

Thirtieth Report

INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

A. National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 (SI 2013/257)

Date laid: 13 February 2013
Parliamentary Procedure: negative

Although the Government have announced that they intend to revise these Regulations, the Committee decided to publish the report it had prepared so that the Department might be aware of the issues it found of concern. We will examine any subsequent Regulations with particular interest to see how these points have been addressed.

Summary: Rather than the more generalised duty not to be anti-competitive that the health sector evidently expected, these Regulations require the wider use of competitive tendering in the procurement of most services. The contention is over the degree to which, from 1 April 2013, NHS services will have to be commissioned through competitive markets, whether contracts will have to be advertised and how the procurement legislation will be enforced by Monitor, a sector regulator.

A large number of submissions from the professional institutions, unions, and the public point to difficulties in the provision of collaborative health care where considerations of suitability for purpose are wider that just the financial cost. There are also questions about the availability of guidance and how these measures may be affected by the recommendations in the Francis Report. Most significantly, the 2,000 submissions received by the Committee indicated a belief that the Regulations, particularly regulation 5 which requires contracts to be subject to open competition except where there is "extreme urgency" or "technical reasons", do not match up to the undertakings given by Ministers during the passage of the Health and Social Care Act 2012. The Department's response (included in Appendix 1 to the report) robustly defends the Government's position. ***The House will wish to examine the wording of the legislation carefully but it is clear that from the widespread concern that the Department will have a major task in explaining these provisions to health staff and persuading them to accept the Department's interpretation of them.***

This instrument is drawn to the special attention of the House on the ground that it may imperfectly achieve its policy objective

1. These Regulations have been laid by the Department of Health (DH) under provisions of the Health and Social Care Act 2012 accompanied by an Explanatory Memorandum (EM).

Background

2. These Regulations implement aspects of the Health and Social Care Act 2012 ("the Act") by imposing requirements on the NHS Commissioning Board and Clinical Commissioning Groups (CCGs) to ensure good practice when procuring health care services for the purposes of the NHS, to protect

patients' rights to make choices and to prevent anti-competitive behaviour. The Regulations provide scope for complaints to, and enforcement by, Monitor, an independent health regulator, as an alternative to challenging decisions in the courts.

Response from the Health sector

3. There has been an unprecedented reaction from the public and those who work in the health sector, they have sent over 2,000 submissions to the Committee, all of which indicate a widespread belief that these Regulations go beyond what was promised during the passage of the Act: in particular, that they require CCGs to undertake competitive tendering for the procurement of services rather than the more generalised duty not to be anti-competitive that was expected. Regulation 5 is the particular area of contention.

4. The representations received are published on the Committee's website.[1] They come from many of the professional institutions, unions, councils, charities, academics and a very large number of individuals, some of whom work in the sector. The bulk of them are linked to four campaign letters; we publish one example of each citing the number of copies received, but there are also over 300 unique expressions of concern. It should also be noted that several of the submissions claim the support of more than one individual – for example, the TUC submission has 1,125 short comments appended to it that their website received within a 24 hour period [comments not published but available on the TUC's *Going to work* website].

5. The Committee has, as usual, sought a response from the Department to the points raised. Their response is attached in full at Appendix 1, and is quoted in the report. It is essentially a robust defence of the Regulations and maintains that they conform with the Ministerial undertakings given.

Contention over whether there must be competitive tendering

6. The contention is over the issue of whether, from 1 April 2013, most NHS services will have to be commissioned through competitive markets, whether contracts will have to be advertised and how the legislation will be enforced by Monitor, a sector regulator.

7. Regulation 4(2) requires CCGs to publish a contract notice on the website maintained by the National Health Service Commissioning Board for that purpose. Regulation 4(3) states that it must include a description of the services required and the criteria against which any bids for the contract will be evaluated. Regulation 5 allows CCGs to award a new contract without a competition where there is only a single provider capable of providing those services. But the CCGs' discretion is further restricted by regulation 5(2) which states that the services are to be determined as capable of being provided by a single provider only for "technical reasons" or for reasons of "extreme urgency" brought about by unforeseeable events.

8. Other regulations give Monitor extensive powers to investigate a complaint that a CCG has failed to comply with the requirements (reg 13), and to enforce breaches of them either by giving a direction (reg 15) or, in serious cases, by declaring a contract ineffective (reg 14).

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[1] www.parliament.uk/seclegpublications

The Department's position

9. In its submission (see Appendix 1), the Department states that the Regulations aim to make the "commissioning processes... much more transparent and (provide)... safeguards to protect patients from conflicts of interest, discrimination and anticompetitive conduct." DH continues :

> "The Government is absolutely committed to the principle that clinical commissioners will decide how to secure improvements in NHS services because they are best placed to understand patients' needs and to determine which providers are best able to meet those needs. The regulations provide a framework for these decisions that protects patients' interests and is overseen by a specific regulator for the health sector whose main duty is to protect and promote the interests of patients."

In respect to regulation 5, DH states:

> "The intention of regulation 5 is to recognise that in such circumstances commissioners should be able to award contracts without the unnecessary cost and delay of a competitive tendering process where they are satisfied that there is only one provider capable of delivering their requirements.
>
> Where there are several providers capable of meeting a commissioner's request (e.g., to provide a new service), the regulations would protect against commissioners discriminating in favour of a particular provider, and will require a transparent and fair process to determine who can best meet the needs of their populations.
>
> These requirements go no further than existing UK procurement law (the Public Contract Regulations 2006). This law already applies to Primary Care Trusts - and this was reflected in the previous administration's procurement guidance since 2008."

Concerns from the Health Sector

10. The general tenor of the submissions that the Committee received is concern that the clinical discretion of those commissioning the services will be overruled by the mechanics of procurement legislation and that Monitor will not understand the context for a CCG's decisions. Some express concern that the process will substantially increase the costs and time taken over commissioning (for example, Chris Frith, GP) and that "commercial confidentiality would reduce public involvement in the commission process in violation of the NHS constitution and the Public involvement and consultation by clinical commissioning groups provisions of the Health and Social Care Act" (for example, Alison Macfarlane, Professor of Perinatal health, City University, London). Many health professionals who have made submissions are not against transparency and probity in procurement but feel that there are wider considerations when it comes to commissioning health care.

11. The Royal College of Midwives illustrate this in their letter:

> "the Government's mandate to the NHS Commissioning Board, ... requires the Commissioning Board to work with partners to ensure that: "every woman has a named midwife who is responsible for ensuring she has personalised, one-to-one care throughout pregnancy, childbirth and

during the postnatal period, including additional support for those who have a maternal health concern."

12. The College is concerned that compulsory competitive tendering arrangements will lead to the fragmentation of services:

> "The most effective way of ensuring that women are cared for by a named midwife is by commissioning one provider to deliver care across the pathway... under the new regulations this could be ruled out because it effectively restricts competition. The problem is that most independent maternity providers do not provide the full range of maternity care ...or are intent on 'cherry picking' the least expensive and risky elements of care, such as antenatal classes or breastfeeding support (as per AQP policy)."

13. DH's response states:

> "Under the regulations, commissioners have discretion to decide whether, where and when to introduce the conditions needed to stimulate or create a market for services. In particular there is no requirement through the regulations for commissioners to:
>
> - unbundle or fragment services in order to facilitate competition, (i.e. to separate out individual services in order that they could be provided by a larger range of providers); or
> - offer contract terms (eg prices, and contract durations) that enable new providers to enter a market by offering a return on the investment cost of market entry.
>
> When and whether to create these conditions and the services to which they apply remain entirely with a commissioner to decide. So, for example, a commissioner may decide not to create the conditions to enable a market for a fully integrated service (say for End of Life Care, or frail older people with multiple complex problems, or maternity services, or sexual health services – linked to screening, particularly where patients are offered choice of treatment, setting and/or clinician)."

14. While the Regulations do not appear to oblige commissioners to break up contracts to open them to a wider range of providers, their decisions remain open to challenge under regulation 10(2): "an arrangement for the provision of health care services for the purposes of the NHS must not include any restrictions on competition that are not necessary for the attainment of intended outcomes". Any supplier who has not been awarded the contract will have a clear incentive to challenge the procurement process. The general view of the professional institutions, which we assume have technical resources to obtain an expert view of the effect of the legislation and will fully understand the context of the NHS procurement process, is that the Regulations have the effect of making competition the default approach, whilst imposing a burden of proof on commissioners wishing to restrict competition.

15. The Royal College of Nursing points out that collaboration is a key element of health care because many different disciplines can be involved in the care of a patient. They are concerned that focusing on competition, particularly price competition, will make quality standards a secondary consequence and may lead to inequalities in provision. The cheapest provider is not always the most suitable. This is echoed by a number of the individual responses, for

example by Dr Caroline de Cates, in relation to the care of children with special needs or adult mental health services.

16. Help the Hospices raises a particular concern on how these procurement Regulations will operate with charitable organisations which have different accountabilities to the NHS:

> "Local hospices are generally not commissioned in the same way as other NHS funded care. They frequently receive a contribution from the NHS towards the costs of the care that they provide to the local community but that contribution is only very rarely linked to particular services or volumes. The "price" they are paid by the NHS for these services is in no way cost reflective. On average, hospices fund over 60% of the care they provide from charitable sources."

Transition

17. Another key point raised in the submissions we received including Template letter 3, is about the management of the transition. These Regulations will come into force in less than a month's time but the guidance referred to in the Government's Explanatory Memorandum is not fully available yet. Although the DH's additional information in Appendix 1 sets out that the NHS Commissioning Board Authority has developed a series of procurement briefings for CCGs that summarise the key elements of legislation, they are obviously not well known in the health sector. DH adds that Monitor only plans to formally consult on its draft guidance in March and that CCGs will be organising their own staff training on the Regulations but that is yet to be arranged. The Department points out that many of those managing this system will be existing professional procurement staff transferred to CCGs from Primary Care Trusts and that CCGs themselves have not raised any issues about the proposals. However, we have received submissions from individuals involved in CCGs who question the plans, for example Dr Richard Grimes, a patient representative on his local CCG, who is concerned that cherry picking of services "for competition's sake could make other services unsustainable" or Alison Dean who says "We do not have the staff to manage the existing system at the same time as tendering large parts of it".

Timing

18. A number of representations, for example the UNITE union, Mr John Hully and the 29 people who submitted Template letter 3, also make reference to the report of the inquiry by Sir Robert Francis into the Mid-Staffordshire NHS Foundation Trust.[2] They state that a number of the recommendations made (particularly 124-127, 129-132) relate to the procurement of services and to the role of Monitor. The Government have not yet responded to these recommendations and these submissions suggest that those issues should be resolved before Monitor is given further powers.

Ministerial assurances

19. Almost every one of the submissions received conveys the belief that the provisions of these Regulations are at variance with ministerial statements

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[2] http://www.midstaffspublicinquiry.com/sites/default/files/report/Executive%20summary.pdf

made during the passage of the then Health and Social Care Bill about the commissioning arrangements:

- In July 2011, the then Health Minister, Simon Burns MP, insisted that *"it will be for commissioners to decide which services to tender… to avoid any doubt – it is not the Government's intention that under clause 67 [now 75] that regulations would impose compulsory competitive tendering requirements on commissioners, or for Monitor to have powers to impose such requirements"*.[3]
- The then Secretary of State for Health, Andrew Lansley MP, wrote to commissioners in February 2012 to assure them that: *"It is a fundamental principle of the Bill that you as commissioners, not the Secretary of State and not regulators – should decide when and how competition should be used to serve your patients interests"*.
- The following month, Health Minister, Earl Howe reiterated the Government's position: *"Clinicians will be free to commission services in the way they consider best. We intend to make it clear that commissioners will have a full range of options and that they will be under no legal obligation to create new markets"*.[4]

20. Those who have written to us find these statements very hard to reconcile with the narrowness of regulation 5 where a contract can only be issued without a competition in "extreme urgency" or for "technical reasons". It does not help that these limitations are not defined. In their response to the Committee, the Department explains:

> "In many cases, there will only be one provider capable of delivering those requirements for 'technical reasons' as envisaged under Regulation 5 (Paragraph 2(a)). Examples of services where there may typically only be one capable provider include:
>
> - acute hospital services on single sites and accessible 24 hours a day 7 days a week;
> - a range of integrated services delivered in the community;
> - highly specialised care; or
> - services in more rural or remote areas of the country."

21. It is clear to the Committee that awareness of this guidance has not widely penetrated the health sector. We are also uncertain what status this guidance has in law. In our scrutiny of other instruments we have been made aware of the position taken by the courts in a number of recent cases, where the Judge has made a clear distinction between what the legislation states and qualifying provisions set out in guidance or other material.[5] In these cases, the courts have followed the letter of the law: so that law must be clear.

22. A basic reading of regulation 5 seems to indicate relief from the obligation to advertise contracts only in cases of extreme urgency of for technical reasons,

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[3] HL Debates, 12 July 2012, col 442
http://www.publications.parliament.uk/pa/cm201011/cmpublic/health/110712/pm/110712s01.htm

[4] HL Debates, 6 March 2012, col 1691
http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120306-0001.htm

[5] For example Alvi v The Secretary of State for the Home Department; Reilly and Wilson v The Secretary of State for Work and Pensions

terms which are undefined and therefore appear to leave CCGs open to challenge from any supplier who has not been given the opportunity to bid. **The Department clearly perceives a far greater flexibility in this provision than other readers do and the House may wish to press the Government to give a clearer explanation of the legislative provisions that led them to this conclusion.**

Conclusion

23. Whilst those commissioning health services were previously encouraged to use competitive tendering, these new Regulations appear to require them to do so for most services. This is a significant change and rather more than the generalised duty not to be anti-competitive that the health sector evidently expected. A large number of the submissions that this Committee has received all point to difficulties in the provision of collaborative health care where considerations of suitability for purpose are wider than just the financial cost. The Department's response robustly defends its position and maintains that these Regulations fully match the undertakings given by Ministers during the passage of the Bill. It is clear that both the professional institutions and a wide range of individuals across the country do not share that view. **The House will wish to examine the wording of the legislation carefully. It is clear that from the degree of concern in the health sector and beyond that the Department will have a major task in explaining these provisions to health staff and persuading them to accept their interpretation of them**: **on that basis we draw the regulations to the special attention of the House on the grounds that they may imperfectly achieve their objective.**

CORRESPONDENCE: RIGHTS OF PASSENGERS IN BUS AND COACH TRANSPORT (EXEMPTIONS) REGULATIONS 2013 (SI 2013/228)

24. The Committee's 28th Report[6] drew this instrument to the special attention of the House on the ground that it may inappropriately implement EU legislation. This was because the Committee was unable to consider properly the potential effects of the derogations proposed, due to the fact that the Department for Transport failed to provide either the final Impact Assessment or the analysis of consultation when they laid the instrument. We also found the Explanatory Memorandum to be inadequate and wrote to the Minister for an explanation. The Committee's letter and the Minister's response are published at Appendix 2.

[6] 28th Report of Session 2012-13 HL Paper 123

OTHER INSTRUMENTS OF INTEREST

Draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013

25. On 29th October 2012, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 was laid in Parliament. A motion approving the Order was passed by the House of Commons but the Order was voted down by the House of Lords.[7] The debate revolved around a particular provision that restricted civil legal aid for a welfare benefit appeal to only being available when the First-tier Tribunal had identified an error of law in its own decision. The House felt that this was narrower than an undertaking given in the Commons during the passage of the Bill had indicated. The Ministry of Justice states that it has no plans for this aspect of the previous Order to be brought forward in secondary legislation.

26. However, the previous Order also contained several other provisions, which are being put before the House again (Articles 5, 6 and 7 of this instrument on international maintenance agreements and judicial review) which were not included in the prayer motion. The revised instrument also includes two new provisions: Article 3 deals with appeals on council tax reductions setting out that legal aid will only be available for advice and assistance (known as Legal Help) for appeals on a point of law in the High Court, payment for Legal Representation (advocacy) will be limited to appeals to the Court of Appeal and Supreme Court. Article 4 would apply the revised, cross-Government definition of domestic violence.

Six instruments related to the restructuring of the NHS

27. These six instruments all contribute to the implementation of the next stage in the transformation of the National Health Service as set out in the Health and Social Care Act 2012:

28. The **National Treatment Agency (Abolition) and the Health And Social Care Act 2012 (Consequential, Transitional And Savings Provisions) Order 2013** (SI 2013/235) abolishes the National Treatment Agency, a Special Health Authority established under the NHS Act 2006, on 1 April 2013 and transfers its functions to the Secretary of State as part of the creation of Public Health England, a new executive agency of the Department of Health. It also revokes a number of instruments and amends nearly 200 others from across Whitehall and the devolved administrations. The provisions which are most extensively amended by the instrument are the National Health Service (Direct Payments) Regulations 2010 (SI 2010/1000) which are due to be revoked and re-made when the pilot period comes to an end later this year.

29. The **National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013** (SI 2013/259) similarly implement provisions of the 2012 Act to put well-established bodies on a firmer statutory footing and make them more transparent. They also extend the

[7] HL Debates, 3 December 2012, cols 464- 491

scope of their functions to include social care for NICE and adult social care and supporting the delivery of health and care IT systems for the Information Centre.

30. Several of these instruments also serve to make the institutions more autonomous. For example, the **National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013** (SI 2013/261), amongst other things, make the Clinical Commissioning Groups responsible for commissioning most NHS services, supported by, and accountable to, a new non-departmental public body, the NHS Commissioning Board, which in turn will be accountable to the Secretary of State who will set strategic direction and objectives for the Board but will no longer have extensive general powers to intervene in the NHS.

31. Similarly the **National Health Service Trust Development Authority (Establishment and Constitution) Amendment Order 2013** (SI 2013 /260) provides for the transfer of staff from the Department of Health, Strategic Health Authorities, Primary Care Trusts and the NHS Institute for Improvement and Innovation to the National Health Service Trust Development Authority with effect from 1 April 2013. The Authority will exercise certain functions of the Secretary of State, primarily in managing the performance, assuring and improving clinical performance, governance and risk in NHS trusts and assisting NHS trusts to become foundation trusts. It will carry out the Secretary of State's role in making certain appointments to NHS trusts and appointments of trustees to various bodies established under the Act.

32. The **Transfer of Undertakings (Protection of Employment) (Transfers of Public Health Staff) Regulations 2013** (SI 2013/278) effect the transfer, from 1 April 2013, of public health staff from NHS Trusts, Foundation Trusts and universities into Public Health England. The purpose of the Regulations is to transfer the relevant staff contracts to the Secretary of State, and to provide protection of existing terms and conditions of employment for the staff affected, in line with the treatment of staff who will be transferring into Public Health England from other employers.

33. **National Health Service (Revision of NHS Constitution-Principles) Regulations 2013 (SI 2013/317)** The NHS Constitution was first published in 2009 to bring together the principles, values, rights and responsibilities that underpin the NHS. The Constitution is a 'declaratory document', codifying rights contained in existing legislation and drawing them together in one place. It does not, itself, create new rights. Following a review in 2012[8] and consultation on how it should be strengthened, these Regulations revise and republish the NHS Constitution ready for the new structure of the NHS that commences on 1 April 2013.

[8] Report on the Effect of the NHS Constitution (2012) www.dh.gov.uk/health/2012/07/nhs-constitution/

Timber and Timber Products (Placing on the Market) Regulations 2013 (SI 2013/233)

34. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations. They enforce the EU Timber Regulations[9] which prohibit the placing of illegally harvested timber and timber products on the EU market and require those first placing timber and timber products on the EU market to exercise due diligence. We sought further information from Defra about certain definitions used in the Regulations, and about the provisions on powers of entry. We publish that information in Appendix 3; we note that the explanation of the definition of "director" seems lacking in clarity to us.

Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013 (SI 2013/240)

35. When the original Order was introduced in 2001[10] it was not envisaged that wind farms would be built beyond 12 miles from the UK coastline or that other offshore energy work activities would be undertaken. As new industries evolved, temporary Orders were introduced in 2009 and 2011 to cover work activities in a Renewable Energy Zone. The 2013 Order will consolidate the previous legislation and provide legal clarity for duty holders that health and safety legislation applies to offshore activities associated with emerging energy and climate change technologies (for example, combustible gas storage, carbon dioxide storage and underground coal gasification) including those situated beyond the territorial sea).

Civil Legal Aid (Preliminary Proceedings) Regulations 2013 (SI 2013/265)

36. These Regulations continue the Government's policy of limiting the scope of Legal Aid. They prescribe that, on a welfare benefits matter, an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal is not to be regarded as preliminary to the proceedings described in paragraph 8 of Part 1 of Schedule 1 to the Act. The effect is that Legal Aid will not be available for such applications. However, Legal Aid is available under paragraph 8 of Part 1 of Schedule 1 to the Act for applications for permission to appeal to the Upper Tribunal on a welfare benefits matter when the application is made to the Upper Tribunal.

Police (Complaints and Misconduct) Regulations 2013 (SI 2013/281)

37. These Regulations are necessary to give effect to the powers inserted into the Police Reform Act 2002 by the Police (Complaints and Conduct) Act 2012 which allow the Independent Police Complaints Commission (the IPCC) to require witnesses to attend an interview without needing to seek the approval of a chief officer. By placing a statutory duty directly on the serving officer to comply with these Regulations, they enable the IPCC to call witnesses from several categories of individuals, including members of police forces, special constables and police staff (including Police Community Support Officers) and the Serious Organised Crime Agency. Before the introduction of this

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[9] Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

[10] Health and Safety at Work etc. 1974 (Application outside Great Britain) Order 2001 (SI 2001/2127)

power by the 2012 Act, those serving with the police who had witnessed incidents which were referred to the Commission as a result of a complaint or conduct matter but were not themselves under investigation could not be compelled to attend an interview where they refused to do so. These Regulations represent a significant extension to the IPCC evidence-gathering ability, as it will enable the Commission to exercise this power as part of any investigation managed or carried out independently by it. It is envisaged that this will form a key element of the IPCC's current investigations into the Hillsborough disaster.

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

Electoral Registration (Disclosure of Electoral Registers) Regulations 2013

Electoral Registration (Postponement of 2013 Annual Canvass) Order 2013

Immigration and Nationality (Fees) Regulations 2013

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013

Non-Domestic Rating (Levy and Safety Net) Regulations 2013

Official Statistics Order 2013

Instruments subject to annulment

SI 2013/233	Timber and Timber Products (Placing on the Market) Regulations 2013
SI 2013/235	National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013
SI 2013/236	Foreign Compensation Commission (Winding Up) Order 2013
SI 2013/238	Parliamentary Commissioner Order 2013
SI 2013/240	Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013
SI 2013/258	Motor Vehicles (Driving Licences) (Amendment) Regulations 2013
SI 2013/259	National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013
SI 2013/260	National Health Service Trust Development Authority (Establishment and Constitution) Amendment Order 2013
SI 2013/261	National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013
SI 2013/264	Food Safety (Sampling and Qualifications) (England) Regulations 2013
SI 2013/265	Civil Legal Aid (Preliminary Proceedings) Regulations 2013
SI 2013/266	Income-related Benefits (Subsidy to Authorities) Amendment Order 2013

SI 2013/271	Road Vehicles (Testing) (Miscellaneous Amendments) Regulations 2013
SI 2013/278	Transfer of Undertakings (Protection of Employment) (Transfers of Public Health Staff) Regulations 2013
SI 2013/281	Police (Complaints and Misconduct) Regulations 2013
SI 2013/282	Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2013
SI 2013/300	Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2013
SI 2013/317	National Health Service (Revision of NHS Constitution – Principles) Regulations 2013
SI 2013/339	Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2013

APPENDIX 1: NATIONAL HEALTH SERVICE (PROCUREMENT, PATIENT CHOICE AND COMPETITION) REGULATIONS 2013 (SI 2013/257)

Department of Health memo to the Secondary Legislation Scrutiny Committee

Brief Summary of the Policy Intention

The Government is absolutely committed to the principle that clinical commissioners will decide how to secure improvements in NHS services because they are best placed to understand patients' needs and to determine which providers are best able to meet those needs. The regulations provide a framework for these decisions that protects patients' interests and is overseen by a specific regulator for the health sector whose main duty is to protect and promote the interests of patients.

As a result of these regulations patients' rights to choice under the NHS Constitution would be protected. Commissioning processes would be much more transparent and there would be safeguards to protect patients from conflicts of interest, discrimination and anticompetitive conduct.

The requirements of the regulations continue the approach put in place by the previous administration which established a sector-specific framework known as *The Principles and Rules for Cooperation and Competition.*

Consistency with previous commitments given to Parliament

Commissioners' flexibility to decide where and how to use competition

Andrew Lansley's letter to prospective clinical commissioning groups on the 16 February 2012 committed that commissioners would be able to determine where integrated services are required and commission them accordingly.

Firstly, the regulations make clear that commissioning decisions must be in the best interests of patients:

- The overarching objective for procurement under Regulation 2 is that commissioners must act to secure provision of services that meet patients' needs and improve quality and efficiency.
- Regulation 10 prohibits anticompetitive conduct that is against the interests of patients. This means that arrangements that are necessary to achieve benefits for patients will not be prohibited even where they involve restrictions on competition. This approach reinforces the principle that commissioners should decide on how best to meet patients' needs and should not be forced to fragment services in the name of promoting competition and at the expense of integration.

Secondly, with regard to procurement, the regulations reinforce the fact that commissioners are best placed to determine requirements for improving services and to decide which provider or providers are best able to deliver those requirements:

- For example, it must be for commissioners to decide where services should be provided as a bundle, for example:

  - to enable patients to access a broad range of hospital services on a single site, or
  - delivered in an integrated way as part of primary medical care or by multidisciplinary teams of clinicians working in the community.
- Commissioners should also be free to decide when it may be appropriate to unbundle services, for example, to increase patient choice or enable smaller providers to offer more bespoke services tailored around the needs of particular patient groups. This principle is enshrined under Regulation 3.
- Regulation 3 also requires that commissioners act transparently and non-discriminatorily in determining the provider or providers best able to deliver their requirements for meeting patients' needs and improving services. This requirement establishes important safeguards for protecting patients' interests. It would prevent commissioners from arbitrarily favouring particular providers and ensure that their decisions are transparent and based on fair and objective criteria. These safeguards are further reinforced by Regulation 6, which seeks to prevent commissioning decisions being influenced by conflicts of interest.

The creation of markets

Ministers gave assurances that commissioners would not be forced to create markets (Lords Hansard, Tuesday 6 March 2012 Col 1689). Andrew Lansley's letter of 16 February 2012 committed that it would be for commissioners to take decisions on when and how to use competition.

Under the regulations, commissioners have discretion to decide whether, where and when to introduce the conditions needed to stimulate or create a market for services. In particular there is no requirement through the regulations for commissioners to:

- unbundle or fragment services in order to facilitate competition, (i.e. to separate out individual services in order that they could be provided by a larger range of providers); or
- offer contract terms (eg prices, and contract durations) that enable new providers to enter a market by offering a return on the investment cost of market entry.

When and whether to create these conditions and the services to which they apply remain entirely with a commissioner to decide. So, for example, a commissioner may decide not to create the conditions to enable a market for a fully integrated service (say for End of Life Care, or frail older people with multiple complex problems, or maternity services, or sexual health services – linked to screening, particularly where patients are offered choice of treatment, setting and/or clinician).

Commissioners will also have the discretion to set criteria for service requirements to ensure quality standards, guarantee access or promote integration which in practice may limit the potential for competition. For example, a commissioner could restrict the number of providers to ensure that clinical volumes are maintained to protect patient safety. These limits on competition would not be unreasonable, disproportionate or unfair - they would be entirely legitimate and necessary.

Just as there is no requirement imposed by the regulations for commissioners to unbundle services, there is discretion for commissioners to decide that services should be provided in an integrated way for the benefit of patients. This would allow, for example, a clinical commissioning group to procure a fully integrated service (say for musculo-skeletal services) replacing some services offered under patient choice of any qualified provider, where this was in patients' interests in improving outcomes and experience.

The ability to award a contract without a competition

Andrew Lansley's letter of the 16 February 2012 was clear commissioners would not be forced to fragment services, or put services out to tender against the interests of patients. The Department is aware that it has been suggested that the regulations would prevent commissioners from ever awarding contracts without a competitive tender, or extending contracts with providers that are performing well. This is absolutely not our intention and this would not be the effect of the regulations:

- Regulation 5 specifically provides for commissioners to award a contract without a competition where there is only one provider capable of delivering their requirements. The requirements would be those specified by the commissioner as necessary to meet patients' needs, improve quality and efficiency, enable patients to access services in particular locations, to deliver services in an integrated way or to improve health outcomes. In many cases, there will only be one provider capable of delivering those requirements for 'technical reasons' as envisaged under Regulation 5 (Paragraph 2(a)). Examples of services where there may typically only be one capable provider include:
    - acute hospital services on single sites and accessible 24 hours a day 7 days a week;
    - a range of integrated services delivered in the community;
    - highly specialised care; or
    - services in more rural or remote areas of the country.

The intention of Regulation 5 is to recognise that in such circumstances commissioners should be able to award contracts without the unnecessary cost and delay of a competitive tendering process where they are satisfied that there is only one provider capable of delivering their requirements.

Where there are several providers capable of meeting a commissioner's request (e.g., to provide a new service), the regulations would protect against commissioners discriminating in favour of a particular provider, and will require a transparent and fair process to determine who can best meet the needs of their populations.

These requirements go no further than existing UK procurement law (the Public Contract Regulations 2006). This law already applies to Primary Care Trusts - and this was reflected in the previous administration's procurement guidance since 2008 - and will continue to apply to clinical commissioning groups in the future.

European Competition Law will not apply to commissioners

Turning to the application of competition law to commissioners, Ministers previously made clear that commissioners would not be undertakings for the

purposes of competition law. Earl Howe said in the House on 13 December 2011 (Col 1142) that:

> ''My noble friend Lord Clement-Jones cited the BetterCare and FENIN cases as an example of how NHS commissioners might act as undertakings. As we have previously made clear, the Government's view is that the NHS Commissioning Board and CCGs will not be undertakings. Unlike in the BetterCare case, neither the board nor the CCGs will be able to provide services. They will only be responsible for commissioning services for the NHS, which will not be an economic activity for the purposes of competition law.''

The Department's view has not changed and nothing in the regulations would extend the application of competition law (i.e. the Competition Act 1998) to clinical commissioning groups or the NHS Commissioning Board. For example, the regulations do not give Monitor any powers to apply the Competition Act 1998 to commissioners.

Regulation 10 continues the approach under the previous administration's Principles and Rules for Cooperation and Competition by providing a sector-specific protection for patients from anticompetitive behaviours that are against their interests.

Monitor's powers

The regulations provide for Monitor to oversee the regulations as an expert health-sector regulator with an overarching statutory duty to protect and promote patients' interests. We have argued that this would be preferable to a situation where the only means of redress for poor procurement practice was through the Courts. The powers given to Monitor by the regulations are consistent with the Health and Social Care Act 2012 (section 76):

- The Government amended the Health and Social Care Bill to remove provisions for these regulations to give Monitor power to direct commissioners to put services out to competitive tender. We did this in response to the NHS Future Forum's recommendations that Monitor's role should not be to promote competition.
- In line with our commitments the regulations would give Monitor the power to direct a commissioner to take measures to prevent a breach of the regulations or to mitigate the impact of a breach, including by varying or withdrawing a tender or varying a contract for the provision of services.
- As a last resort, Monitor would have the power to declare a contract ineffective as a result of it having been awarded in breach of the regulations. This would mean that the contract would need to be wound up in an orderly manner. However, Monitor would not have power to go further and direct a commissioner to put a particular set of service requirements out to tender. It would therefore be for the commissioner to reconsider its options for how best to meet their patients' needs, including options for revising its requirements and whether to competitively tender for a new contract or vary an existing contract to secure those requirements. The relationship between Monitor and the commissioner is therefore regulatory rather than managerial, with there being no circumstances in which Monitor taking decisions on behalf of the commissioner.

Furthermore, it should be noted that Monitor has a general duty to exercise its functions with a view to enabling health care services to be provided in an integrated way where this would improve quality or reduce inequalities. Monitor is already acting on this, for example, through the new provider licence that was published on 14 December 2012. The licence includes a condition which has the purpose of ensuring Monitor can protect patients' interests by being able to step in where integrated care is not being delivered, in spite of decisions and efforts made by commissioners.

Guidance and Advocacy

Finally, Ministers gave assurances that a key benefit of having a sector specific regulator would be that Monitor could support the system with guidance.

Monitor and the NHS Commissioning Board will support commissioners through advice and guidance. The two organisations have committed to doing this jointly. This will include guidance to help commissioners make decisions on the circumstances in which competitive tendering would be likely to be effective and where this would not be appropriate. *[see further questions below]* In addition, Monitor is required (under section 78 of the Health and Social Care Act 2012) to publish guidance explaining how it will use its investigative and enforcement powers under the regulations. This will reduce uncertainty for commissioners and give them greater confidence that decisions in patients' best interests should not lead to regulatory intervention. Monitor is required to consult on this guidance, including any subsequent revisions, and the guidance must be approved by the Secretary of State.

Department of Health

27 February 2013

Additional questions:

Q: In the EM it says that the Board will publish guidance early in 2013 - is it yet available? If so please provide the link.

A: The NHS Commissioning Board Authority has already published guidance on procurement to support clinical commissioning groups. An overview of the content of the guidance is below with the link to the guidance itself:

''Procurement of healthcare (clinical) services: Briefings for CCGs

Working with CCGs and others, the NHS Commissioning Board Authority has developed a series of procurement briefings for CCGs that summaries the key elements of legislation and guidance currently governing NHS procurement of healthcare services. These briefings also provide an overview of the different procurement approaches that CCGs may adopt and outlines some of the key considerations when undertaking a procurement process.

The briefing papers cover:

- How does procurement fit with the different stages of commissioning?
- How should a procurement process be conducted?
- Introduction: Why do CCGs need to understand procurement?
- Summary of the decision-making process.

- What are the procurement options?
- Which rules apply to a procurement process?"

http://www.commissioningboard.nhs.uk/resources/resources-for-ccgs/

A briefing for clinical commissioning groups and providers, as part of the Choice and Competition Framework, on matters of choice and competition is expected to be available from the NHS Commissioning Board and Monitor in March 2013.

Further procurement guidance is planned to be published shortly.

Q: In the note it says that Monitor must consult on its guidance before it is published - has that consultation yet commenced?

A: The consultation has not yet commenced. Monitor plan to formally consult on its draft guidance in March.

Q: What are the plans for the implementation of these Regulations - they come into effect on 1 April - what provision is being made to train CCG procurement staff in its requirements?

A: The NHS Commissioning Board is responsible for authorising clinical commissioning groups. As part of the authorisation process CCGs were required to demonstrate that they have:

- systems and processes established to translate commissioning plan into contracts and delivery.
- Aware of current procurement requirements, with systems in place to handle those requirements.
- Systems in place to track and manage performance and providers including taking action when required standards are not met, and responding to concerns raised about safety, quality or other risk issues.

The NHS Commissioning Board has confirmed that these requirements have not been an issue for clinical commissioning groups during authorisation.

It is important to note that the staff with an expertise in procurement and contracting are within Primary Care Trusts and these will either be transferring into clinical commissioning groups or their supporting Commissioning Support Units (CSUs)

The NHS Commissioning Board via the CSU Managing Directors will be arranging training for their teams on the regulations.

Department of Health

28 February 2013

APPENDIX 2: CORRESPONDENCE: RIGHTS OF PASSENGERS IN BUS AND COACH TRANSPORT (EXEMPTIONS) REGULATIONS 2013 (SI 2013/228)

Letter from Lord Goodlad to Simon Burns MP

The Committee is familiar with the Department's general policy intention in this sector having seen previous legislation relating to passenger services on trains, ships and planes. However I am writing to you because the Committee was unable to undertake proper scrutiny of this instrument because much of the required supporting documentation was not ready when the instrument was laid on 7 February:

- Paragraph 8.4 of the Explanatory Memorandum (EM) states that the Government's formal response to the consultation would be available "shortly" — it was finally published on 20 February. However what was provided is simply a numeric analysis and does not aid the House, as it should, in validating whether the policy solution addresses the concerns expressed by respondents;
- The Impact Assessment (IA) that was provided with the instrument is dated February 2012 and is from the consultation stage of the process. Paragraph 10.3 of the EM states that the final IA is currently with the Regulatory Policy Committee and will be published "in due course";
- On page 10 of the interim IA provided it states that there could be a "medium negative impact" on the disabled and people with reduced mobility from applying the available exemptions but the Department had not discussed that with interested parties at the interim stage. Paragraph 8.2 of the EM states that the disadvantage to passengers will be mitigated by the requirements of existing domestic equality law. However without access to the analysis of consultation responses, all that the Committee has to rely on is the Department's unsupported assertion that that is the case.

The Committee's guidance on this has always been explicit: all documents that are relevant to the scrutiny of an instrument should be available when the instrument is laid. The Committee's Secretariat put these points to the Department on 8 February requesting the missing information and had received no formal response by the time the Committee's papers were circulated, a fortnight after the instrument was laid. The EU Regulation was agreed in February 2011 and the consultation exercise closed on 11 October 2012; there appears to be no obvious reason, other than poor management by the DfT, why the necessary material was not available for scrutiny.

The Committee also invites your comments on paragraph 10.1 of the original Explanatory Memorandum, which states that the benefit to employers is £8.2m, but which neglects to explain that the offsetting costs of £9.3m would result in a net deficit of £1.1m (if the figures in the interim IA are correct). At best this is careless; at worst it might be interpreted as misrepresentation of the data to Parliament.

Following our query to officials a revised EM was laid on 25 February but this only adds that there is a "net £1.1m disbenefit" that is "almost entirely a cost to Government of appointing enforcement bodies to enforce the entire Regulation".

In the absence of a Final Impact Assessment we would have expected the Department to make rather more effort to set out clearly for the House what the costs and benefits for all affected parties are.

Because we lacked sufficient material to properly scrutinise the instrument, the Committee has drawn this matter to the special attention of the House in our 28th report of this session on the grounds that it may inappropriately implement EU legislation.

The Committee would be grateful for your explanation of this unacceptably poor practice and your assurances on the steps you will take to ensure that it does not recur.

Lord Goodlad

27 February 2013

Letter from Norman Baker MP to Lord Goodlad

Thank you for your letter of 27 February to Simon Burns, about your scrutiny of Statutory Instrument (SI) 2013/228 on the Rights of Passengers in Bus and Coach Transport (Exemptions) Regulations 2013. I should explain that this matter falls within my portfolio and that Simon signed the SI in his capacity as Duty Minister.

I accept that there have been administrative failings and take your concerns very seriously. I can assure you that there was no intention to prevent proper scrutiny of this SI by your committee.

My initial timetable would have been to introduce secondary legislation to deal with all aspects of this Regulation at once. However, officials discovered only late in the day that an SI dealing specifically with exemptions needed to be made before the Regulation came into force. Regrettably, this meant that the associated documentation, including the final Impact Assessment was not complete at the time the SI was laid, although we provided a copy of consultation stage impact assessment and explained that the Government's response to the consultation would be published shortly. The final Impact Assessment has not yet been passed through all the processes associated with Cabinet committee clearance but in case it may be helpful to your committee, I attach a copy of the version for which clearance has been sought.

It may be helpful if I were to explain a little of the background to this Regulation. The Regulation is directly applicable and comes into force on 1 March 2013. There is provision in the Regulation for Member States to apply exemptions to certain parts of the Regulation for a period of 4 or 5 years (the 4 year periods are renewable once). SI 2013/228 places those exemptions that the Government is applying on a legislative footing. Government policy is normally to apply exemptions when implementing EU legislation wherever possible and my approach in this case is consistent with that policy.

We held a consultation exercise last year to seek opinion on the implementation of this Regulation. The consultation exercise not only asked about applying exemptions but other aspects of this Regulation such as enforcement, which are not dealt with in this SI. A further SI will be laid later in the year which will deal with these other aspects of the Regulation. The aim of the consultation was to ensure that respondents had a full opportunity to make us aware of any relevant considerations they wished to draw to our attention before we reached a final

decision on how to apply the potential exemptions. As reflected in the summary of responses published on the website, we did not receive any representations that justified our departing from the general policy of applying exemptions. I consider the published summary to be an accurate assessment of the consultation responses and a clear indication of the Government's plan for giving effect to this Regulation.

The most substantial consultation response objecting to the use of exemptions came from the Royal National Institute of Blind People and related to the requirement that bus drivers receive mandatory disability awareness training. In response to their concerns, I have agreed to review disability awareness training in 12 months' time. Industry representatives tell me that approximately 75% of bus drivers have received disability awareness training and I expect that number to increase over the next 12 months and will be writing to the industry to that effect.

Turning to your specific questions, you ask about comments in paragraph 10.1 of the Explanatory Memorandum (EM) on costs and benefits. In response to your initial concerns about section 10.1 of the EM, the Department submitted a revised version which was intended to cover the points raised. On reflection, this may not have been detailed enough and the following paragraph provides further clarification.

The Impact Assessment used a baseline of the EU Regulation being fully in force. Against that baseline, option 2, the preferred option, sets out the costs and benefits of applying all of the exemptions. The cost over 10 years of applying all of the exemptions is £9.3m, approximately 90% of which is the cost to the Government of a national enforcement body. The remaining part of this cost reflects the inability of passengers to claim compensation in the event of delay or cancellation of a journey. The benefits of £8.2m are to bus and coach operators who will not have to comply with the Regulation in full. In fact, we believe that these monetised benefits may be underestimated and so the net disbenefit of this option could be lower than reported. In line with Government policy that all exemptions should be applied where there is a cost to business, option 2 is the preferred option and has been taken forward as it is the option which is least burdensome on business.

You also ask about page 10 of the consultation stage Impact Assessment. You will see from the final Impact Assessment that this section has been reworded and no longer refers to a 'medium negative impact on disabled and people with reduced mobility'.

I would like to reiterate that I fully understand the importance of the scrutiny process and apologise once again that fuller documentation was not available at the time the instrument was laid. I will ensure that when time comes to lay the second SI on this subject that the procedures are followed correctly. In the meantime, I am copying your letter and this reply to the DfT's Permanent Secretary, Philip Rutnam, for his information.

I hope this is helpful.

Yours sincerely

Norman Baker

4 March 2013

APPENDIX 3: TIMBER AND TIMBER PRODUCTS (PLACING ON THE MARKET) REGULATIONS 2013 (SI 2013/233): FURTHER INFORMATION

Information from Department for Environment, Food and Rural Affairs

Q1. Definitions of "director" and "officer" in regulation 1(3) of the Timber Regulations

The Committee considered that the expression "a body corporate whose affairs are managed by its members" was unusual, notably in its use of the word "managed", and that the definition of "director" does not seem to sit readily alongside the definition of "officer"… Could you comment further on this, and provide examples of where these terms have in fact already been used in SIs.

A1.1 Definition of "director"

The purpose of this definition is to extend the meaning of "director" so that any reference to a director must be interpreted as including not only formally appointed directors of bodies corporate but also any members where the affairs of the body corporate are managed by such members rather than formally appointed directors.

The definition of "officer" is wider than the definition of "director" but is complementary in that it includes "director" (as separately defined) as well as "secretary or other similar officer of the body corporate".

We have conducted a search of primary and secondary legislation since the beginning of 2010 which provides examples of where the term "body corporate whose affairs are managed by its members" has already been used. The results are set out in Table A. This lists all relevant provisions of the *Acts of Parliament* we have identified and, as regards the *statutory instruments* we have identified, the full references for the two (other) instruments made in 2013, instrument reference numbers and relevant provisions of those made in 2012 and the number of instruments made in 2011 and 2010.

Table A

	Acts of Parliament	**Statutory instruments**
2013	None	The Belarus (Asset-Freezing) Regulations 2013 (SI 2013/164) reg. 12(2) The Transmissible Spongiform Encephalopathies (England) (Amendment) Regulations 2013 (SI 2013/336) reg. 2(2)
2012	Civil Aviation Act 2012 (c. 19) Sch. 2 para. 28(6) and Sch. 6 para. 8(3)	SI 2012/2629 reg. 27 SI 2012/1511 reg. 12 SI 2012/1515 reg. 12 SI 2012/1301 reg. 12 SI 2012/925 reg. 20 SI 2012/1489 reg. 12 SI 2012/1517 reg. 12 SI 2012/1516 reg. 12 SI 2012/1657 reg. 25 SI 2012/1508 reg. 12 SI 2012/2461 reg. 4 SI 2012/1507 reg. 12 SI 2012/129 reg. 17
2011	Charities Act 2011 (c. 25) s. 346(2) Energy Act 2011 (c. 16) s. 88(12)	Number of instruments: 28
2010	Bribery Act 2010 (c. 23) s. 14(4) Cluster Munitions (Prohibitions) Act 2010 (c.11) s. 26(4) Equality Act 2010 (c. 15) s. 175(4)(c) Financial Services Act 2010 (c. 28) s. 5(7) Terrorist Asset-Freezing etc Act 2010 (c. 38) s. 34(2)	Number of instruments: 9

A1.2 Definition of "officer"

We have also conducted a search of primary and secondary legislation since the beginning of 2010 which provides examples of a similar definition of "officer" (or "relevant individual" in the less common but analogous formulation) in relation to a body corporate. The results are set out in Table B. Similarly to Table A, this lists all relevant provisions of the *Acts of Parliament* we have identified and, as regards the *statutory instruments* we have identified, the full references for the two (other) instruments made in 2013, instrument reference numbers and relevant provisions of those made in 2012 and the number of instruments made in 2011 and 2010.

Table B

	Acts of Parliament	**Statutory instruments**
2013	None	The Guinea Sanctions) (Overseas Territories) Order 2013 (SI 2013/244) art. 3(1) The Transmissible Spongiform Encephalopathies (England) (Amendment) Regulations 2013 (SI 2013/336) reg. 2(2)
2012	None	SI 2012/2629 reg. 27(10)
2011	Charities Act 2011 (c. 25) s. 346(2) Energy Act 2011 (c. 16) s. 88(11)	Number of instruments: 12
2010	Bribery Act 2010 (c.23) s. 14(4) Cluster Munitions (Prohibitions) Act 2010 (c.11) s. 26(3) Equality Act 2010 (C. 15) s. 175(4)	Number of instruments: 18

Q2. Regulation 7 (powers of entry)

The Committee cited regulation 7(1) and (11) of the Timber Regulations:

"(1) An inspector may, on serving reasonable notice, enter premises at any reasonable hour, except premises used wholly or mainly as a private dwelling house, for the purpose of enforcing the Timber Regulation and the Implementing Regulation.

…

(11) An inspector may require a vehicle, vessel, aircraft or hovercraft that the inspector has reasonable grounds to believe is transporting timber to stop to allow the inspector to exercise the powers conferred by these Regulations."

The Committee queried whether, if there were a barge moving large amounts of timber on which someone also lived, the exception from the powers of entry for private dwellings would mean that no enforcement would be possible in relation to such a vessel.

A2. In line with Home Office policy, the powers of entry granted to inspectors under regulation 7 do not extend to "premises used wholly or mainly as a dwelling house". Regulation 1(3) defines "premises" as including "any vehicle, vessel, aircraft, hovercraft, tent or moveable structure". Whether a particular vessel is used wholly or mainly as a dwelling house will be a question to be determined on the facts of each particular case. An example of a vessel which would constitute premises used "wholly as a dwelling house" might be a houseboat which is permanently moored and occupied. In contrast, a barge moving large amounts of timber on which someone also lived could not properly be described as being used "mainly as a dwelling house" and inspectors would therefore be able to exercise their powers of entry and enforcement in relation to such a vessel.

APPENDIX 4: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 5 March 2013 Members declared no interests.

Attendance:

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