HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

34th Report of Session 2012-13

Inter-authority Recoupment (England) Regulations 2013

Correspondence:
Teachers' Pensions (Amendment) Regulations 2013

Also includes 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
Baroness Eaton
Lord Eames
Rt Hon. Lord Goodlad *(Chairman)*
Baroness Hamwee
Lord Hart of Chilton
Lord Methuen
Rt Hon. Baroness Morris of Yardley
Lord Norton of Louth
Lord Plant of Highfield
Rt Hon. Lord Scott of Foscote

Registered interests

Information about interests of Committee Members can be found in Appendix 5.

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.

Thirty-Fourth Report

INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

A. Inter-authority Recoupment (England) Regulations 2013 (SI 2013/492)

Date laid: 11 March
Parliamentary Procedure: negative

Summary: We consider that the Department for Education's approach to consultation on these Regulations was unsatisfactory. The legislative background is that the Education Act 2002 provides for Regulations requiring the authority to which a pupil belongs (the "home authority") to pay to an authority making educational provision (the "providing authority") such amount as the authorities may agree; if there is no agreement, the amount is determined under the Regulations. These provisions underlie the arrangements for "inter-authority recoupment".

These Regulations make new provision for the circumstances in which recoupment is required or permitted between "home authorities" in England and "providing authorities" in England or Wales. The main change is to end recoupment arrangements between local authorities in England for education provided for children with special educational needs. Before laying the Regulations, the Department for Education carried out a consultation lasting only three weeks, a period which included the half-term week.

We draw these Regulations to the special attention of the House on the grounds that they give rise to issues of public policy likely to be of interest to the House and may imperfectly achieve their policy objective.

1. The Department for Education (DfE) has laid these Regulations, with an accompanying Explanatory Memorandum (EM).

Inter-authority recoupment

2. In the EM, DfE explains that the Education Act 2002 ("the 2002 Act") provides for Regulations requiring the authority to which a pupil belongs (the "home authority") to pay to an authority making educational provision (the "providing authority") such amount as the authorities may agree; if there is no agreement, the amount is determined under the Regulations. These provisions underlie the arrangements for "inter-authority recoupment". The legislation applies to primary and secondary education and to education provided to persons with special educational needs.

3. DfE states that the Government intend to simplify the local funding system, and to establish a new approach to funding for pupils and students with high cost special educational needs, learning difficulties and disabilities. The Department is ending inter-authority recoupment in England, except in

limited circumstances. Institutions that provide for pupils and students with high needs will in future get base funding from their maintaining authority, or if they are not a maintained institution from the Education Funding Agency (EFA); funding above the base level ("top-up funding") will in future pass directly between the providing local authority and the institution.

New provision under the Regulations

4. Against this background, the Regulations make new provision for the circumstances in which recoupment is required or permitted between "home authorities" in England and "providing authorities" in England or Wales. The main change is to end recoupment arrangements between local authorities in England for education provided for children with special educational needs.

Consultation

5. In the EM, DfE states that it carried out "a short technical consultation" on the Regulations with local authorities and other interested parties between 4 and 25 February 2013. Fourteen responses were received, all from local authorities. The Department summarises the outcome as follows: "The majority of responses were concerned about recoupment continuing for looked after children and wanted further clarity on aspects of the Regulations. It was also suggested that a specific arbitration method might be included in the Regulations, for situations in which authorities are unable to agree on the amount of funding."

6. We asked DfE why it allowed only three weeks for the consultation process, and which other interested parties were invited to comment. We are publishing the Department's response in Appendix 1. We are not persuaded that so short a period for consultation is acceptable. At our request, DfE also provided us with a summary of consultation responses that it had not yet published. One of the respondents commented to DfE: "The lateness of your consultation is far from ideal, only a few weeks before the start of the new financial year, neither is the length in which you are giving LAs to respond, only 22 days in total of which 16 are working days and this includes a 5 day half term week. This is not helpful or conducive to a meaningful consultation." In our view, this criticism is entirely justified.

7. More generally, we note that at least five of the 14 responses offered criticism of DfE's proposals, citing for example an increase in bureaucracy, complication and confusion in the new arrangements, and greater administrative burden upon schools. We asked DfE to explain its decision to go ahead despite criticism from a large proportion of consultation respondents; its response to this question is also published in Appendix 1.

Conclusion

8. The Department has stated its aim to simplify the local funding system, and to establish a new approach to funding for pupils and students with high cost special educational needs. It has told us that it has received positive feedback from local authorities to the changes that it is making. However, the consultation responses show that its proposals have generated a good deal of concern, and a sense that the new approach will bring complication, not simplicity. Even without the evidence of at least one critical reaction, quoted

above, we would have taken the view that holding a consultation over three weeks is not acceptable, and is more likely to provoke resistance to new arrangements than to facilitate their introduction. In short, we consider that the DfE needs itself to learn more about handling consultation processes effectively. In our 22nd Report of this Session[1], we reported on the Government's new approach to consultation and made a number of recommendations bearing on the review of this approach: our findings are highly relevant to DfE's handling of consultation in this case.

[1] 22nd Report, session 2012-13, HL Paper 100

CORRESPONDENCE: TEACHERS' PENSIONS (AMENDMENT) REGULATIONS 2013 (SI 2013/275)

9. In our 32nd Report we published information about these Regulations, commenting that we were not persuaded that the Explanatory Memorandum laid by the Department for Education gave an adequate account of consultation responses. We put our concern to the Minister. We have now received a reply which, while stressing the Department's commitment to openness and transparency, endorses what we continue to regard as an unacceptably partial description of the outcome of the consultation process. The correspondence is published in Appendix 2.

OTHER INSTRUMENTS OF INTEREST

Draft Duty to Participate in Education or Training (Alternative Ways of Working) Regulations 2013

10. The Education and Skills Act 2008 ("the 2008 Act") places a duty on all young people (16 and 17 year-olds) in England to participate in education or training until the age of 18. This is known as Raising the Participation Age ("RPA"). The change is happening in two phases: from summer 2013 all young people will be required to participate in education or training until the end of the academic year in which they turn 17, and from summer 2015 onwards, they will be required to participate until their 18th birthday. The 2008 Act sets out three ways in which a young person may meet the duty: by participating in appropriate full-time education; under an Apprenticeship contract; or by combining employment of more than 20 hours per week with part-time education or training.

11. In the Explanatory Memorandum to these draft Regulations, the Department for Education (DfE) states that there are other activities that young people engage in which can help them to gain similar skills and experiences to employment: self-employment, holding an office and working not for reward. In order to avoid discouraging young people from engaging in these three activities, the Regulations define them as equivalent to employment for the purposes of RPA.

12. DfE states that, in relation to the Regulations, it carried out a 12-week public consultation between January and April 2012, and held consultative meetings with key representative bodies. 176 responses were received, of which 40% were from local authorities; colleges, the voluntary and community sector, representative bodies and parents provided the next most numerous responses. Over 90% of respondents agreed that self-employment, volunteering and holding an office could combine with part-time study to meet the duty to participate. The Department has published an analysis of consultation responses on its website.[2]

Statement of Changes in Immigration Rules (HC 1039)

13. The instrument is presented as a mixed bag of minor and technical changes to the Immigration Rules. There are, however, a number of more significant policy changes which are rather buried in the volume of material covered in this instrument. In particular, the Committee noted the provisions on page 62 of the instrument and paragraph 7.9 of the Explanatory Memorandum (EM) about changes to the salary thresholds used for determining if a job can be offered to an external person which include the introduction of a 10 percentile salary band and a wider definition of "new entrant" to include anyone under 26 years old. The Rules also change the visitor rules to prevent abuse by visitors who are effectively living in the UK through frequent, successive visits (see EM paragraph 7.24). Although all the information is given in the EM, it would be helpful if the Home Office could give more

[2] See: http://www.education.gov.uk/childrenandyoungpeople/youngpeople/participation/rpa/a00210946/consultation-response

prominence to changes in policy than to simple administrative changes, such as deleting temporary immigration rules that applied for the 2012 Olympic Games.

National Health Service (Clinical Commissioning Groups – Payments in Respect of Quality) Regulations 2013 (SI 2013/474)

14. Once again the Committee found that an Explanatory Memorandum (EM) failed to give them sufficient information to consider whether the instrument is likely to achieve its policy objective. The EM refers to payments to Clinical Commissioning Groups for quality but does not explain how quality is defined in this context.

15. We learned from the additional material provided (reproduced in Appendix 3) that the Act states that "quality" could include improvements in "relevant services", or "improvements in outcomes identified" but that left us none the wiser. Further information reveals that the criteria for judging quality for financial year 2013-14 were published in draft by the NHS Commissioning Board in December 2012 and will be based on four national measures and three local measures.[3] The national measures, all of which are based on measures in the NHS Outcomes Framework, will be:

- reducing potential years of lives lost through amenable mortality (12.5% of quality premium):
- reducing avoidable emergency admissions (25% of quality premium):
- ensuring roll-out of the Friends and Family Test and improving patient experience of hospital services (12.5% of quality premium) and
- preventing healthcare associated infections (12.5% of quality premium).
- The three local measures should be based on local priorities identified in joint health and wellbeing strategies, and will be agreed between individual CCGs and the area teams of the NHS Commissioning Board.

Even this information contains an element of obscurity in introducing the concept of "amenable mortality". **The Committee now understands the objective of the instrument and that the process, involving the publication of draft provisions and wide consultation, follows what it regards as good practice. We remind the Department of Health, however, that the Committee, and the House, should not have to work quite so hard to find this out.**

Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2013 (SI 2013/476)

16. These Regulations, laid by the Department for Communities and Local Government (DCLG), serve two purposes: to help local authorities manage liabilities for equal pay compensation payments; and to amend the provisions that require local housing authorities to pay to Government a proportion of capital receipts derived from the sale of housing land.

17. In the accompanying Explanatory Memorandum, DCLG states that it was not possible to allow more than about five weeks for consultation of

[3] The Board has provisionally published its procedure for 2013/14, *Quality Premium: 2013/14 guidance for CCGs* (December 2012) http://www.commissioningboard.nhs.uk/files/2012/12/qual-premium.pdf

authorities and other interested parties on the equal pay amendments, although the norm for technical amendments of this kind is six weeks. We regard shortening of accepted consultation periods as bad practice; generally speaking, we consider that the need to do so can be avoided if Government Departments plan their policy-making processes effectively.

Countryside and Rights of Way Act 2000 (Review of Maps) (England) Regulations 2013 (SI 2013/514)

18. Under the Countryside and Rights of Way Act 2000 ("the 2000 Act"), a right of public access on foot for open-air recreation is provided to any land shown as open country and registered common land in England, on the eight conclusive maps published by the Countryside Agency in 2004-05. About 900,000 hectares of land in England were mapped. The 2000 Act[4] requires Natural England (as the successor body) to review the conclusive map within ten years and no less frequently than every ten years thereafter.

19. These Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra), amend the existing time-limits in relation to England, so that the first review of any conclusive map for England is to be undertaken not more than 15 years after its issue, and any subsequent review is to be undertaken not more than 20 years after the previous review.

20. The Explanatory Memorandum (EM), as laid by Defra alongside the Regulations, gave little information about the policy background, or about consultation. The Department has told us that the decision to defer the review was taken in the light of other priorities and the budgetary situation; and that the deferment will allow time to consider the scope and extent of any Regulations necessary in relation to the procedures to be followed on a review. Defra has also stated that, while it did not carry out a public consultation about the deferment, the Department and Natural England held discussions with the British Mountaineering Council, Open Spaces Society and the Ramblers; and that these organisations accepted the decision to delay the review, so that a thorough inspection of the areas currently mapped could be carried out, and those areas where mapping errors and discrepancies in the initial maps may have been identified could be properly investigated. The Department has now laid a revised EM containing this information.

Cattle Identification (Amendment) Regulations 2013 (SI 2013/517)

21. In amending an instrument from 2007,[5] these Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra), expand the choice of official channels available to cattle-keepers to use, in order to comply with existing duties to notify cattle births, movements and deaths to the British Cattle Movement Service (BCMS). They also remove a requirement for the official veterinarians of the Food Standards Agency or their representatives to collect cattle passports for all cattle slaughtered in slaughterhouses and return them to BCMS; these will now be returned by slaughterhouse operators.

22. In the accompanying Explanatory Memorandum, Defra states that the change will improve the efficiency of the cattle tracing system, making it

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[4] Section 10(2).

[5] SI 2007/529: the Cattle Identification Regulations 2007 (as amended by SI 2007/1046 and SI 2012/2897).

cheaper and more accurate, and decreasing the costs to businesses of complying with legislation. The Department adds that "the cattle industry supports the changes, as it reduces its costs".

23. Against the background of recent concern about the integrity of meat production and processing systems, we sought further information about these changes from Defra, and we are publishing the Department's response in Appendix 4.

Infrastructure Planning (Miscellaneous Prescribed Provisions) (Amendment) Regulations 2013 (SI 2013/520)

24. The Department for Communities and Local Government (DCLG) has laid these Regulations, which streamline the development consent process by bringing fully within the development consent regime certain non-planning consents. In the Explanatory Memorandum (EM), DCLG states that the non-planning consents system was reviewed in 2010, and that this led to a programme to remove unnecessary consents and simplify others. The Department has built on this work by bringing forward proposals to simplify the process of obtaining development consent, by expanding and improving a "one stop shop" concept for non-planning consents. DCLG refers to a consultation process which it carried out over six weeks from 22 November 2012, and to the 46 responses which were received which, overall, supported the proposal to which the Regulations give effect. The EM states that the Government have published a response to the consultation, but adds "available at [insert link when available]".

25. We note that the Department allowed a shortened period for the consultation process, which spanned the holiday period over Christmas and the New Year. We do not regard this as good practice. We also note that the Government's consultation response is now available, at:

https://www.gov.uk/government/consultations/nationally-significant-infrastructure-planning-expanding-and-improving-the-one-stop-shop-approach-for-consents

Benefit Cap (Housing Benefit) (Amendment) Regulations 2013 (SI 2013/546)

26. Following a commitment made in the Autumn Statement on 5 December 2012, these Regulations provide that Housing Benefit paid to households in supported or "exempt" accommodation[6] will be disregarded from the benefit cap. Various types of supported housing help people to live independently, move out of institutional care or provide emergency housing in a crisis. The costs are typically higher than for other types of housing and the level of Housing Benefit awarded is not subject to the Local Housing Allowance rules that otherwise limit the level of entitlement to Housing Benefit of people in privately rented accommodation. The Government recognised the concern that the cap would have an adverse impact on certain, particularly vulnerable, groups, for example, claimants who are fleeing domestic violence.

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[6] A resettlement place; or accommodation provided by a non metropolitan county council, housing association registered charity or voluntary organisation where that body or person acting on their behalf provides the claimant with care, support or supervision. (Paragraph 4(10) of Schedule 3 of the Housing Benefit and Council Tax Benefit(Consequential Provisions) Regulations 2006 (SI 2006/217))

To avoid the cap being applied twice where Housing Benefit is paid alongside Universal Credit, in these cases the cap will be applied through Universal Credit only. Some claimants in supported exempt accommodation may still reach the threshold for the benefit cap because the other welfare benefits they receive exceed the threshold but, by not including Housing Benefit in the calculation, the Government expect that the majority of these cases will no longer be affected by the cap.

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

Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Part 1 of the Education and Skills Act 2008) Order 2013

Children's Hearings (Scotland) Act 2011 (Consequential Transitional Provisions and Savings) Order 2013

Duty to Participate in Education or Training (Alternative Ways of Working) Regulations 2013

Instruments subject to annulment

HC 1038	Statement of Changes in Immigration Rules
HC 1039	Statement of Changes in Immigration Rules
SI 2013/457	Legal Aid (Disclosure of Information) Regulations 2013
SI 2013/472	Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013
SI 2013/473	West Earlham Infant School and West Earlham Junior School (School Day and School Year Regulations) Order 2013
SI 2013/474	National Health Service (Clinical Commissioning Groups – Payments in Respect of Quality) Regulations 2013
SI 2013/476	Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2013
SI 2013/488	Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2013
SI 2013/494	Plant Health (Fees) (England) Regulations 2013
SI 2013/497	National Health Service (Clinical Negligence Scheme) Amendment Regulations 2013
SI 2013/498	Infrastructure Planning (Fees) (Amendment) Regulations 2013
SI 2013/499	Residential Family Centres (Amendment) Regulations 2013
SI 2013/504	Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013
SI 2013/506	Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2013
SI 2013/507	Recovery of Costs (Remand to Youth Detention Accommodation) Regulations 2013

SI 2013/510	Damages for Bereavement (Variation of Sum) (England and Wales) Order 2013
SI 2013/511	Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013
SI 2013/512	Legal Aid (Financial Resources and Payment for Services) (Legal Persons) Regulations 2013
SI 2013/514	Countryside and Rights of Way Act 2000 (Review of Maps) (England) Regulations 2013
SI 2013/515	Civil Procedure (Amendment No.2) Rules 2013
SI 2013/516	Port Security (Port of Milford Haven) Designation Order 2013
SI 2013/517	Cattle Identification (Amendment) Regulations 2013
SI 2013/518	National Assistance (Sums for Personal Requirements and Assessment of Resources) Amendment (England) Regulations 2013
SI 2013/520	Infrastructure Planning (Miscellaneous Prescribed Provisions) (Amendment) Regulations 2013
SI 2013/522	Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013
SI 2013/523	Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2013
SI 2013/524	Loss of Tax Credits (Specified Day) Order 2013
SI 2013/525	Medical Devices (Fees Amendment) Regulations 2013
SI 2013/526	Marine Licensing (Exempted Activities) (Amendment) Order 2013
SI 2013/527	Social Security Revaluation of Earnings Factors Order 2013
SI 2013/528	Social Security Pensions (Low Earnings Threshold) Order 2013
SI 2013/529	Social Security Pensions (Flat Rate Accrual Amount) Order 2013
SI 2013/530	Family Procedure (Amendment) Rules 2013
SI 2013/532	Medicines (Products for Human Use) (Fees) Regulations 2013
SI 2013/534	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013
SI 2013/536	Copyright and Performances (Application to Other Countries) Order 2013
SI 2013/538	Patents (Convention Countries) (Amendment) Order 2013
SI 2013/546	Benefit Cap (Housing Benefit) (Amendment) Regulations 2013

SI 2013/554	Trafficking People for Exploitation Regulations 2013
SI 2013/560	Apprenticeships (the Apprenticeship Offer) (Prescribed Persons) Regulations 2013
SI 2013/572	Plant Health (Export Certification) (England) (Amendment) Order 2013
SI 2013/575	Apprenticeships (Modifications to the Specification of Apprenticeship Standards for England) Order 2013
SI 2013/590	Council Tax (Administration and Enforcement) (Amendment) (England) Regulations 2013
SI 2013/599	Social Security Benefits Up-rating Regulations 2013
SI 2013/603	Energy Performance of Buildings (England and Wales) (Amendment) (Fees) Regulations 2013
SI 2013/604	Pensions Increase (Review) Order 2013
SI 2013/606	Tribunal Procedure (Amendment No. 2) Rules 2013
SI 2013/607	Education (Student Loans) (Repayment) (Amendment) Regulations 2013
SI 2013/610	Civil Aviation Act 2012 (Regulation of Operators of Dominant Airports) (Consequential Amendments) Regulations 2013
SI 2013/617	Immigration and Nationality (Cost Recovery Fees) Regulations 2013
SI 2013/619	Social Security (Contributions) (Re-Rating) Consequential Amendment Regulations 2013
SI 2013/621	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) (Amendment) Regulations 2013
SI 2013/622	Social Security (Contributions) (Amendment and Application of Schedule 38 to the Finance Act 2012) Regulations 2013

APPENDIX 1: INTER-AUTHORITY RECOUPMENT (ENGLAND) REGULATIONS 2013 (SI 2013/492)

Information from the Department for Education

Q1: Why did DfE allow only 3 weeks for the consultation process? Which other interested parties were invited to comment?

A1: We ran a 3 week consultation as local authorities were already aware that we were planning to make these changes to recoupment. The changes were included in Departmental publications in March and June 2012, (these publications are referred to in the Explanatory Memorandum), and have been discussed extensively with individual local authorities since September 2012, as the Department and Education Funding Agency have actively supported the implementation of a range of school funding reforms from April 2013.

We consulted all local authorities, faith groups and a number of stakeholder groups involving education provider interests, such as Special Education Consortium, the Local Government Association, New Schools Network, National Association of Independent Schools and Non-Maintained Special Schools, Freedom and Autonomy for Schools National Association, The Association of National Specialist Colleges, The Independent Schools Council and the Association of Colleges.

Q2: Why did the Department decide to go ahead despite criticism from a large proportion of consultation respondents?

A2: Please find attached the consultation responses.[7] A guidance note published on the Department's website was produced in response to some of the points raised in the consultation. We aim to publish a summary of the responses very soon on the Department's website.

We noted these responses and slightly amended the regulations post consultation as a result. Regulation 5 was amended to make recoupment compulsory between two English local authorities only where education is provided to certain looked after children where a "providing authority" incurs cost by making provision for the education of the child in another (third) local authority area in England or Wales. In those cases the "home authority" must pay the "providing authority" such amount as the "home authority" and the "providing authority" may agree. The effect of this is that recoupment is optional where only two local authorities are involved, so as to remove bureaucracy and complication.

Out of all the local authorities consulted only a handful were motivated to respond critically and [we] have subsequently received positive feedback from local authorities about the changes we have made.

19 March 2013

[7] Not included in this Report.

APPENDIX 2: CORRESPONDENCE: TEACHERS' PENSIONS (AMENDMENT) REGULATIONS 2013 (SI 2013/267)

Letter from Lord Goodlad, Chair of the Secondary Legislation Scrutiny Committee, to Rt. Hon. David Laws MP, Minister of State for Schools

The Secondary Legislation Scrutiny Committee considered these Regulations at its meeting yesterday, and is publishing information about them, including additional material obtained from your Department, in its Report this week. The Committee agreed that I should write to you to flag up a concern.

In scrutinising the Regulations, the Committee considered the Explanatory Memorandum (EM) laid by your Department. In relation to the consultation process on the proposed changes carried out between October and December 2012, the EM states that 41 responses were received and that "those responding to the consultation did not propose modifications to the Department's proposals".

An analysis of the consultation responses is available on your Department's website. This shows that the majority of the respondents voiced opposition to the policy of increasing pension contributions and to the proposed amendments to the earlier Regulations. The EM, in the sentence quoted above, fails to convey that this was the overwhelming tenor of the responses.

The Committee was clear that such a partial account of the outcome of a consultation process in an EM is unacceptable, and that the EM falls well short of the level of information that it should provide to Parliament and is likely to prompt doubts about your Department's commitment to openness in the minds of a wider readership.

Lord Goodlad

13 March 2013

Letter from Rt. Hon. David Laws MP, Minister of State for Schools, to Lord Goodlad

Thank you for your letter of 13th March, from which I note that the Secondary Legislation Scrutiny Committee feel that the Explanatory Memorandum (EM) to these Regulations failed to convey the overwhelming tenor of the responses to the consultation undertaken on the most recent legislative amendments to the Teachers' Pensions Regulations 2010 (SI 2010/990).

As the Committee appreciates, the consultation focussed on secondary legislation implementing a further stage in a policy long since announced in the Government's 2010 Spending Review. It focussed on the recommendation, accepted by the Government, to increase member contribution rates across the public sector by an average of 3.2% by 2015 and that those increases were to be introduced incrementally on a 40%; 80%; 100% basis. The recommendation is an interim measure alongside wider reforms to public sector pension schemes.

It is well known that those with an interest in teachers' pensions have very publicly voiced their concerns about the new pension arrangements and that the Department for Education has worked extensively with interested parties in developing this Department's implementation of wider Government policy.

In light of the specific nature of these particular amendment Regulations, and therefore the consultation, the Department felt that the description of the consultation in the EM was appropriate as it needed to focus on the particular element of Government policy being implemented by these Regulations rather than on wider issues.

I would like to assure the Committee of my Department's continued commitment to openness and transparency in policy development and delivery.

David Laws MP

18 March 2013

APPENDIX 3: NATIONAL HEALTH SERVICE (CLINICAL COMMISSIONING GROUPS – PAYMENTS IN RESPECT OF QUALITY REGULATIONS 2013 (SI 2013/474)

Supplementary information from the Department of Health

Background

The Health and Social Care Act 2012 gives the NHS Commissioning Board (the 'Board') the power to make payments to CCGs for the quality of patient care and the outcomes this leads to, including reducing inequalities in health outcomes.

The Act states that, in determining whether to make a payment, and if so, the amount, the Board must assess at least one of the following:

- quality of relevant services provided during the financial year;
- improvement in quality of relevant services provided during the financial year compared to previous financial years
- the outcomes identified during the financial year as having been achieved from the provision at any time of relevant services; and
- improvements in outcomes, identified during the financial year as having been achieved from the provision at any time of relevant services when compared to outcomes identified in previous financial years.

The Board may also take into account any relevant inequalities identified during that year and any reduction in inequalities identified during that year in comparison with relevant inequalities identified over previous financial years.

The Act also provides for regulations to cover:

- the factors that the Board either may or must take into account when assessing quality, outcomes and reducing inequality;
- circumstances in which the Board may choose not to make a payment, or to reduce the amount of such a payment;
- how payments may be spent by the clinical commissioning group.

The key points that the regulations cover are:

Principles or other matters that the Board should take into account

In assessing quality, outcomes and reducing inequalities, the Board will have to take into account the following:

- objectives or requirements in relation to quality or services or outcomes and reducing inequalities specified in the Mandate between the Government and the Board;
- the extent to which the CCG has contributed to delivering priorities identified in a relevant joint health and well-being strategy.
- any document published by the Secretary of State in relation to the Board's duty to improve the quality of services (such as the NHS Outcomes Framework).

The Board may also consider relevant quality standards prepared by the National Institute for Clinical Excellent (NICE), and any performance indicators proposed by the CCG that relate to the priorities identified in a joint health and well-being strategy that the CCG has contributed to preparing and which the NHS agrees would be relevant to improving quality and reducing inequalities.

The Board could also take account other matters as long as it considered that such matters are relevant and consistent with those above.

Grounds for reducing/withholding payments

The regulations allow the Board to reduce or withhold a payment that a CCG would otherwise qualify for. This includes the Board doing so on the basis that they have failed to meet their financial duties under the 2006 Act, or if they have failed to fulfil rights or pledges in the NHS Constitution specified by the Board.

Procedure

The regulations require the Board to be transparent in its approach to assessing CCGs, publishing its procedure, so that CCGs are clear about the 'rules of the game' from the outset. In addition, the measures against which CCGs will be assessed and the Board's methodology in undertaking the assessment and determining eligibility of a CCG for a payment must be made available to CCGs before the start of the financial year.

How CCGs could use the quality premium

The regulations require that quality premium payments may only be spent by a CCG in ways that relate to securing improvements in the quality of NHS services or health outcomes or in reducing health inequalities.

Questions from the House of Lords Secondary Legislation Scrutiny Committee

Q. What will the quality criteria be ?

A. Taking account of the requirements of the Health and Social Act 2012 and the National Health Service (Clinical Commissioning Groups – Payments in Respect of Quality) Regulations, it is the responsibility of the NHS Commissioning Board to set the actual criteria against which a CCG will be assessed.

Q. What is the intention behind these additional payments to CCGs?

A. The quality premium is intended to reward CCGs for:

- improving the quality of services commissioned for local populations;
- improving outcomes for patients; and
- reducing inequalities in access to health care and outcomes from health care.

Q. Are there any limitations on how they can spend the additional payment?

A. The regulations require that quality premium payments may only be spent by a CCG in ways that relate to securing improvements in the quality of NHS services or health outcomes or in reducing health inequalities.

Q. If a CCG satisfies more than one of the criteria, will they get a double payment?

A. This will be subject to how the NHS Commissioning Board designs the operating model. However it is likely that the Board will base the payment of the premium on a number of measures and that a CCG would have to achieve each measure to be able to receive the full quality premium.

Q. When is the NHS Commissioning Board going to publish the procedure and the amount of the payment if the accounting period begins at the end of this month?

A. The NHS Commissioning Board published draft guidance in December 2012 covering the 2013/14 Quality Premium. The guidance was draft subject to the content of the regulations and the guidance being published as final. A copy is available at)

http://www.commissioningboard.nhs.uk/files/2012/12/qual-premium.pdf

The draft guidance sets out what a CCG would need to achieve during 2013/14 to attract a quality premium.

The Board is expected to publish its final procedure before the end of March 2013. This will also set out the financial envelope for the quality premium.

Department of Health

March 2013

APPENDIX 4: CATTLE IDENTIFICATION (AMENDMENT) REGULATIONS 2013 (SI 2013/517)

Information from Department for Environment, Food and Rural Affairs

Q. Given the concern that has arisen over horsemeat and the failure of the regulatory process in that context, I would ask you to set out more fully: how the cattle passports system works; the extent to which it provides assurance to regulators and consumers about the integrity of the beef production system; and, against this background, why the Department has decided to pass responsibility for this element of the cattle passports system from the regulator to the operators.

The EM presents the changes almost solely from the perspective of the producers, e.g., "The cattle industry supports the changes, as it reduces its costs." Have you sought the views of consumers and regulators on the changes? If so, what do they say? If not, why not?

A. The Cattle Identification Regulations 2007 (as amended), which this proposed SI would amend further, enforce a system of cattle identification and tracing which is required in all Member States by EU Council & Parliament Regulation (EC) No 1760/2000. The tracing system has been in place since 1998. The requirements of Regulation 1760/2000 are that cattle keepers have to: report all births, movements and deaths within given deadlines; ensure all cattle are identified with two ear tags with the same unique ID number within given deadlines; keep a register in the holding with certain information; and ensure that an animal's movements are recorded in its passports and the passport accompanies the animal in all its movements. The Regulation also provides for the requirement for passports for animals that are not subject to export to be revoked.

The Annex below explains how the whole cattle identification and tracing system operates in the UK. Cattle passports are only one element of the system. Many Member States, and Northern Ireland in the UK, run their cattle tracing systems efficiently without passports. The EU Commission has proposed an amendment to Regulation 1760/2000 which, if adopted, will abolish the requirements for cattle passports for domestic trade, while enabling the use of electronic identifiers (tags, boluses or injectables) for cattle (as is currently done for sheep and goats).

Currently, when a cattle keeper reports the birth of an animal within the statutory deadline, the British Cattle Movement Service (BCMS) issues a passport to the keeper. Cattle keepers have to report in the passports the movements 'on' and 'off' holdings and the passport accompanies the animal in all its moves. When an animal is sent to slaughter, the slaughterhouse operator checks the number on the ear tags against the passport, and if satisfied that the animal is properly identified and fit for entering the food chain, proceeds to slaughter. At the moment the slaughterhouse operator reports the death of the animal by writing in the passport and gives the passports to the official veterinarian of the Food Standards Agency (FSA), who forwards passports to BCMS in pre-paid pouches provided by BCMS.

The main purpose of these proposed amendments to the Cattle Identification Regulations 2007, and the project behind it, is to make further improvements to the cattle identification and tracing system in England (alongside Scotland and Wales) by enabling and encouraging the use of automated electronic and telephony channels of communication to the central tracing database for data capture and sharing. By allowing reporting of deaths by electronic means (rather than just in writing in the passport) it more clearly separates cattle keepers' duties

to report deaths and to return passports after an animal is dead or killed. Cattle keepers have always been responsible under Regulation 1760/2000 to return passports of killed or dead animals to the competent authority, even if the proposed amendments change the current procedure for their return from slaughterhouses. We believe that the impact of these changes will be to increase the reliability of the cattle ID and tracing system, and the changes to enforcement are minimal and do not affect food safety in slaughterhouses.

The national Cattle Tracing System (CTS) computer database, run by BCMS, underpins both food safety and animal disease controls. Its usefulness in doing so is affected by the accuracy of its data, and how up-to-date the data is. For both accuracy and speed, there is no doubt that electronic data capture and transfer far outstrips paper and post. It is clear from analysis of reporting patterns that when a keeper is using electronic channels, notifications are more timely, many being made well within deadlines, whereas paper/post reporting tends to be late. Both the internet reporting facility, CTS Online (run through the Government Gateway) and the bespoke automated telephony service, the Self Service Line (SSL) check the information being given by the cattle keeper as it is given. For example, when a farmer needs to register a calf's birth on CTS, he must give the official tag number of the mother ('dam id'). On a paper form, he must write down a 14-character tag number copied from his farm records. It is not hard to make mistakes when doing this. By contrast, if the farmer uses CTS Online, he clicks on a menu which presents to him a list of the identification numbers of the 'dams' registered to his farm, and he ticks one of them. If he picks one which CTS 'sees' cannot be the right dam (for example, perhaps it is too young to calve, or it has already calved too recently), the website immediately tells him that he has made a mistake and invites him to correct it.

Cattle keepers (farmers, market and slaughterhouse operators) must notify to CTS all births, movements and deaths within set deadlines, so using CTS Online or SSL is easier, cheaper and faster for them. This is a win/win situation for every party concerned in cattle tracing – everyone saves money, all the important data is available faster and more accurately for use in any situation where cattle need to be located or traced. BCMS staff have to check the accuracy of the data on CTS, so electronic channels with their pre-validated entry save resource in checking and manually in-putting data to CTS. The volume of traffic (GB only figures) is roughly 2.5 million births, 13 million movements and 2.5 million deaths are reported to CTS annually. See the annex for other data on cattle tracing.

How does this provide assurance about the integrity of beef production? This part of the tracing and labelling system deals with live cattle up to the point of slaughter and reporting the death to CTS. The animal's identification number is used to provide the link to post-slaughter beef production, which, taken with the labelling rules, allows traceability from 'farm to fork'. It is the job of the cattle tracing system to ensure that all cattle have a unique identity registered on the database, that this is maintained throughout their lives and that its movements throughout its life are known. The integrity and efficacy of the system in the UK has not been called into question during the recent problems with processed beef products. These rules do not cover the labelling of processed beef and beef products, such as 'beef lasagne', or indeed any of those processed beef products which are the current focus of concerns over horsemeat mislabelling.

Under the EU regulations, the responsibility for reporting the death of an animal and, separately, for returning its passport to the 'competent authority' lies firmly with the cattle keeper, which in slaughterhouses is the 'slaughterhouse operator'.

Therefore, it has always been and still remains their responsibility to do this. Both BCMS and the FSA are equally part of the 'competent authority' in the UK for enforcing cattle identification, but their roles are different and it is BCMS' responsibility to ensure the efficiency and effectiveness of the cattle tracing system. It is for them to ensure that cattle deaths are reported and passports are returned to them. The FSA are responsible for ensuring that only fully traceable cattle go through to the food chain. The proposed SI does not change those responsibilities.

The checking of animals going through to the food chain is the responsibility of FSA inspectorate under separate food hygiene legislation, and, where appropriate, BSE control legislation. It is not controlled by the Cattle Identification Regulations 2007, and this SI does not affect those responsibilities. Under the food hygiene rules, it is the slaughterhouse operator's responsibility to ensure that the cattle received at the slaughterhouse are identified in accordance with current regulations. They must report any discrepant animals to the FSA inspectors. None of this is changed by this SI. Since 2010, FSA inspectors undertake spot checks on cattle ear tags and passports for 10% of animals being slaughtered on the day (randomly selected), rising to higher levels if they find the operator has failed to report a discrepant animal. Previously, before incidence of BSE dropped to insignificant levels, they had checked all cattle tags and passports. FSA inspectors (official veterinarians and meat hygiene inspectors) are warranted as inspectors under the Cattle Identification Regulations 2007, and have full powers to inspect any documents (passports or records), tags and animals for any purposes to do with the regulations. This is in addition to their powers and duties under food hygiene legislation. So, the FSA still have full access to any passports they need to check, and will continue to undertake the random checks and have full enforcement powers. The 'identification check' is only one of a number of other checks on cattle at slaughterhouses.

Under these circumstances, there is no reason why FSA inspectors should act as a post-box for cattle passports. BCMS will continue to provide pre-paid pouches to slaughterhouses for the return of passports, as they have always done for the FSA to use, so there will be no disincentive to return them. But even more importantly, because most slaughterhouses have or will change to electronic reporting of deaths (including every large plant which accounts for over 80% of beef production), BCMS will know already of the death and has the facility to check that all passports are returned. This is not the case where the operator gives the passport to FSA and BCMS has to wait for FSA to return them. They cannot know how many animals have been slaughtered in advance, and cannot anticipate how many passports should come back to them. Under the current system, cattle deaths can take well over a week to be uploaded on to the database. The new system of electronic reporting and return of passports by the operator will be more secure than current practice, not less.

Referring to presenting the changes from the perspective of producers, in making these changes Defra has been responding to two drivers; first, the Government's drive to reduce regulation on farmers and the cattle industry generally, and second, advances in technology which mean that an improved level of traceability can be delivered faster, more cheaply and with less effort by cattle keepers. We did not, in this instance, specifically seek the views of consumers, if by that you mean consumer associations representing food purchasers. There are no changes to the requirements on keepers to report to the database that would affect our ability to identify and trace cattle and be of direct interest to consumers, only additions to the ways a keeper can choose to make the notification. The requirement to return passports is unchanged, and the change in slaughterhouses as to who puts the

passports in the pre-paid pouches does not affect enforcement powers of the FSA or any other agency, which again would be a matter of direct interest to consumers. The only potential adverse impact of these changes could have been to impose costs on farmers, markets and slaughterhouse operators – and that is not the case as our Impact Assessment shows. The benefits to traceability from any point of view were unquestionable and did not affect consumers. However, BCMS host regular triennial meetings with representatives of all parts of the cattle industry and consumer representatives, so they have regular opportunities to raise any concerns direct with us about the cattle tracing system. They have not raised any objection to electronic or telephony reporting. With regard to regulators, which we take to mean enforcement agencies, we work closely with our enforcement agencies at all times and their views on electronic reporting reflect ours and the industry's – that it is exponentially better than relying on paper and post. They too attend regular meetings with BCMS and ourselves. BCMS and FSA support the changes.

Annex 2: Information from Defra

Cattle identification and tracing in the United Kingdom (England, Scotland, Wales and Northern Ireland)

A mature system of cattle tracing already exists in the EU. Under current regulations:

- Every bovine has an approved tag in each ear from 20 days old (15 days of import from outside EU) or before leaving birth holding. Each tag bears the same unique identification number (allocated centrally and kept throughout lifetime, from which birth holding can be identified);
- Every MS has a central tracing database to which keepers report the births, movements between holdings and deaths of all bovines as they happen (within statutory deadlines); birth registrations can result in cattle passports being issued, which must accompany the cattle when they move between holdings;
- Every cattle keeper must keep an up-to-date herd register, recording identification number, date of birth, dam's identification (mother), sex, breed, details of movements, date of death/slaughter.

A cattle keeper is anyone with responsibility for cattle; a holding is any place where cattle are kept. The bulk of cattle keepers and holdings are farms, markets and slaughterhouses. There are approximately 108,000 cattle keepers cattle farms, 224 markets and 303 slaughterhouses in UK; the national cattle herd averages between 9-10 million at the moment (trend is downwards).

There are two systems of cattle tracing in the UK. In Great Britain (GB), the Cattle Tracing System (CTS) computer database registers all births, movements and deaths, and the Cattle Ear Tag Allocation System (CETAS) allocates ear tag numbers. Both are administered by the British Cattle Movement Service (BCMS) division of the Rural Payments Agency (RPA), based in Workington, Cumbria. BCMS administers the system on behalf of Defra, the Scottish Government and the Welsh Government. Cattle in GB are issued with "cattle passports" which mirror their registration details on CTS.

In Northern Ireland (NI), the Animal and Public Health Information System (APHIS) computer database registers all births, movements and deaths, and allocates ear tag numbers. This is run by the Department for Agriculture and Rural Development (DARD) of the Northern Irish Assembly. Cattle in NI do not need official passports, because APHIS is recognised by the EU Commission as able to operate without passports. Defra had applied to the EU Commission in late 2010 for permission to operate in GB without passports, but the Commission published a proposal in August 2011 which will abolish passports except for animals traded between Member States. The application was dropped as unnecessary.

The two systems are linked by a web facility, UK Cattle Movements, which allows the user to trace cattle using data from APHIS and CTS if they have moved between NI and GB.

Some 3 million births and deaths are registered each year, and some 14 million cattle movements on the UK databases.

The costs of the current system are approximately £15 million a year for GB administrations; £4 million for NI. We estimate that industry costs are in the region of £10-£12 million a year, including the purchase of tags and administrative costs of reporting, passports and herd registers.

In the UK, tags are sold commercially through 19 suppliers. Details of official tag orders are loaded on to the number allocation databases. They record the types of tags issued and dates of orders. Tags are approved through the British Standards Institute to ensure durability and that they are tamperproof. They are also subject to welfare tests before approval. When lost or damaged, tags must be replaced with ones bearing the same number. The current average replacement rate is about 5% annually.

Cattle Identification Inspections are undertaken by central government inspectorates. Farms are selected by computer risk analysis programs, the criteria to be followed are set out in EU regulations. Tags, passports and on-farm records are checked against the database registration. 3% of farms must be inspected annually, and the results reported to the EU Commission by 31 August each year.

This year's results showed that two thirds of the farms inspected had no or minor problems with compliance. Only 118 out of 4283 farms were subject to further enforcement measures.

DEFRA

15 March 2013

APPENDIX 5: 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 26 March 2013 Members declared no interests.

Attendance:

The meeting was attended by Lord Bichard, Lord Goodlad, Lord Hart of Chilton, Lord Methuen, Lord Norton of Louth, Lord Plant of Highfield and Lord Scott of Foscote.