

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

8th Report of Session 2012-13

**Draft Criminal Injuries
Compensation Scheme 2012**

Plus 6 Information Paragraphs on 7 Instruments

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

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,
 with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).
- (2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (3) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

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

Registered interests

Information about interests of Committee Members can be found in Appendix 2.

Publications

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

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.

Eighth Report

INSTRUMENTS 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. Draft Criminal Injuries Compensation Scheme 2012

Date laid: 2 July

Parliamentary Procedure: affirmative

Summary: The Criminal Injuries Compensation Scheme makes payments to eligible victims of violent crime according to a published tariff for each description of injury. Demand for compensation payments currently outstrips the Scheme's allocated budget of £200m per year. The effect of the 2012 Scheme is to revise the terms of the current Scheme to reduce expenditure and focus limited resources on the most seriously injured. It does this by reducing eligibility, removing the lowest five tariff bands (relating to less serious injuries) and revising other aspects of the way compensation under the Scheme is calculated, for example dependency payments and loss of earnings. The 2012 Scheme is intended to come into force on 30 September 2012 or two weeks after the day on which it is made, whichever is the later. We publish on our website evidence received from the Communication Workers Union and from the Union of Shop, Distributive and Allied Workers ("USDAW") expressing concern that the reduction in the Scheme's coverage will leave postmen and shop workers without compensation in a wide range of situations.

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

1. This Scheme has been laid by the Ministry of Justice accompanied by an Explanatory Memorandum (EM) and an Impact Assessment (IA).
2. The Criminal Injuries Compensation Scheme makes payments to eligible victims of violent crime. The revisions proposed in this instrument aim to reduce the future cost of the Scheme whilst ensuring that compensation is still available for those applicants most seriously affected by their injuries.
3. The current Scheme, last revised in 2008, makes payments based on a tariff setting out the amount of compensation for each description of injury. It also permits payments for loss of earnings, special expenses and fatal cases. Applications are decided, and payments are made, by the Criminal Injuries Compensation Authority. The current Scheme also provides applicants with a right to a review of the determination of their application and a right of appeal to the First-tier Tribunal.
4. Demand for compensation payments currently outstrips the Scheme's allocated budget of £200m per year. Applications outstanding under the current and previous statutory Schemes have reached an estimated total value of £260m. The effect of the 2012 Scheme is to revise the scheme in order to focus limited resources on the most seriously injured. It does this in a number of ways:

- First, it tightens eligibility to apply for compensation, for example, by introducing residency criteria for applicants who are not in certain exempted categories (including British citizens, members of the armed forces and EU/EEA nationals and their families). In addition those with an unspent criminal record attracting a custodial or community sentence will no longer be eligible to apply.
 - Second, it reduces the range of injuries for which compensation can be claimed. Under the 2008 Scheme the tariff is made up of 25 bands of compensation. The 2012 Scheme removes the lowest five tariff bands, relating to less serious injuries, and reduces the amount of compensation in some of the remaining bands (bands 6-12 of the current Scheme tariff). Tariff payments for the most seriously injured, and for sexual assaults and physical abuse, are preserved at the same level as under the 2008 Scheme.
 - Third, the 2012 Scheme also makes changes to the way in which loss of earnings and dependency payments are calculated. Changes have also been made to the time limits for review and to the requirements on production of evidence in support of an application.
5. The Government anticipate that the 2012 Scheme will lead to savings of around £50m per year. These savings will be directed toward paying claims outstanding under the current and previous Schemes as they are determined until 2014, when the annual budget will be reduced.
6. We received evidence from the Communication Workers Union and from the Union of Shop, Distributive and Allied Workers (“USDAW”) expressing concern that the reduction in the scheme’s coverage will leave postmen and shop workers without compensation in a wide range of situations and that payments for loss of earnings for those most seriously injured, who require more than 28 weeks off work, will be cut from their average earnings to the level of Statutory Sick Pay. This evidence is published on the Committee’s website¹.

¹ See www.parliament.uk/seclegpublications

OTHER INSTRUMENTS OF INTEREST

Draft Child Support Maintenance Calculation Regulations 2012

Draft Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012

7. These instruments (together with provisions of the Child Maintenance and Other Payments Act 2008) make changes intended to simplify the statutory child support scheme, improve service to customers, reduce costs to the taxpayer and increase the flow of child maintenance payments to children. They will apply to applications for child maintenance made under the new scheme after amendments made by the 2008 Act come into force. The majority of maintenance calculations in the new scheme will be based on gross weekly income information provided by Her Majesty's Revenue and Customs via an automated system which should reduce delays in obtaining information. The range of allowances and deductions considered in the calculation is also being amended. For example, Tax Credits awarded to a non-resident parent's second household will no longer be considered as income for these purposes; and unearned income from savings, property or investments will now be included. The calculation also reduces the percentage by which a non-resident parent's gross income is reduced to take account of relevant other children, so that that income is shared in a fairer way between children living with and those living apart from a parent. The Regulations also revise the weekly default maintenance rates (imposed on a non-resident parent when there is insufficient information regarding their circumstances) to £39 for one child, £51 for two children and £64 for three or more children.

Draft Electricity and Gas (Smart Meters Licensable Activity) Order 2012

8. The Government are committed to the roll-out of smart meters, which provide consumers with real-time information on their energy consumption, enabling them to manage their energy use, save money and reduce emissions. The Government's programme aims to support the roll-out of some 53 million gas and electricity meters to domestic properties and to medium-sized non-domestic sites in Great Britain, affecting some 30 million premises, by the end of 2019.
9. A new body, the Data and Communications Company ("the DCC"), will organise the communications and data transfer and management required to support smart metering. The DCC will be a national monopoly provider of services and will be regulated by the Office of Gas and Electricity Markets (Ofgem). This draft Order, laid by the Department for Energy and Climate Change (DECC), provides the basis to regulate the DCC by introducing a new smart metering licensable activity into the Electricity Act 1989 and the Gas Act 1986, which it will be unlawful to undertake without holding a licence.
10. In the Explanatory Memorandum, DECC states that this is the first of a number of measures to be taken to provide the regulatory framework for the roll-out of smart meters, including measures under the Energy Act 2008, which allows for the amendment of electricity and gas licences. DECC intends to lay a further statutory instrument setting out the licence application process, to support the competitive process for appointing the

DCC, which will then be granted a licence to carry out the new licensable activities.

Draft Late Night Levy (Application and Administration) Regulations 2012

11. These Regulations set out the detail for the introduction and administration of the late night levy which was included in Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011. A local authority may introduce the levy if it considers it desirable to raise revenue in relation to the costs of policing crime and disorder connected to the supply of alcohol in its area between midnight and 6am. The holder of a premises licence or club premises certificate which authorises the supply of alcohol during those hours will be required to pay a fixed sum, set out in the Schedule to the Regulations, according to its rateable value. A similar scheme - Alcohol Disorder Zones (ADZs) – was introduced in 2008 but no ADZs were set up as local authorities found the process too complex. The Home Office states that the late night levy is designed to avoid the problems experienced with ADZs by applying the levy to the whole of a licensing authority’s area and by being much simpler to adopt: it will not require ‘action plans’ from premises and it will not have such a high evidential hurdle. The Impact Assessment estimates that 94 licensing authorities would each raise enough from the levy to make collecting it worthwhile and it is understood that a number of licensing authorities have indicated that they will commence formal consultation with a view to introducing a levy in their area later in the year.

Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)

12. Section 161A of the Criminal Justice Act 2003 allows for a surcharge to be collected in all cases where a court deals with a person, subject to exceptions specified in secondary legislation. The victim surcharge was implemented in April 2007 with the intention that offenders should make a contribution to the cost of services for victims. For administrative reasons, in 2007 the surcharge was payable only where an offender was fined and the charge was imposed at a flat rate of £15. This current Order extends the range of offences for which the surcharge would be payable. A substantial upgrade to the computer system used by Her Majesty’s Courts and Tribunal Service now means that more sophisticated deductions are possible. Under the 2012 Order the surcharge will be set at a flat rate of £15 for a conditional discharge; at 10% of the value of a fine, subject to a minimum £20 and a maximum of £120; at a flat rate of £60 for a community sentence; and at between £80 and £120 for an immediate or suspended sentence of imprisonment depending on the length of the sentence imposed. This revised scheme is expected to raise about £20m per year which will be used to reduce the reliance of victim services (which currently cost about £66m per year) on central government funding.

Childcare (Inspections) (Amendment and Revocation) Regulations 2012 (SI 2012/1698)

13. Under the Childcare Act 2006 (“the 2006 Act”), the Secretary of State has the power to prescribe intervals at which early years provision must be inspected. The Childcare (Inspections) Regulations 2008 (SI 2008/1729) (“the 2008 Regulations”) prescribed the intervals for inspection of early years provision, with the effect that, as a minimum, all such provision would be

inspected just over every three years.² The Childcare (Inspections) (Amendment and Revocation) Regulations 2012 (“the Amending Regulations”) have been laid by the Department for Education (DfE). In relation to the 2008 Regulations, they revoke the requirements on the intervals at which early years provision must be inspected (as well as related requirements about not inspecting such provision at independent schools and notification of inspections). Requirements relating to inspection reports for early and later years providers are also omitted.

14. The Government consider that, if the requirement for fixed intervals between inspections were to be maintained, Ofsted would be required to inspect providers in approximately the same order in which they inspected them previously, regardless of the providers’ quality. In the EM to the Amending Regulations, DfE states that the Government are keen to reduce the need for regulations where these are not mandatory and to ensure that inspections are appropriately targeted. Under the 2006 Act, the Secretary of State also has the power to require the Chief Inspector to inspect early years provision at any time. DfE states that in future the Secretary of State will use this power, and the requirements will be set out in a letter to the Chief Inspector. We have received additional information from DfE, including confirmation that the Secretary of State’s letter to the Chief Inspector will be published before August, when these Regulations come into force. We are publishing that information in Appendix 1.

Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012 (SI 2012/1745)

15. The Consumer Credit Directive 2008³ (“the 2008 Directive”) requires lenders to ensure that consumers are aware of the annual percentage rate of charge (“APRC”) when entering into consumer credit agreements. The APRC is the total cost of credit to the consumer expressed as an annual percentage of the total amount of credit. The 2008 Directive stipulates that the APRC should be made available in advertising of credit products and in both pre-contractual information and in the credit agreement itself. The 2008 Directive was transposed into domestic legislation in 2010 by means of amendments to the Consumer Credit Act 1974 and by secondary legislation which included the Consumer Credit (Total Charge for Credit) Regulations 2010 (“the TCC Regulations”).
16. The standardisation of the assumptions used to produce the APRC, set out in the 2008 Directive, was intended to promote the comparability of different consumer credit products across Member States. However, differing interpretations of the APRC calculations across the EU have impeded such comparisons. A further EU Directive⁴ (“the 2011 Directive”) has been published to address this problem. These Regulations, laid by the Department for Business, Innovation and Skills (BIS), implement the changes made by the 2011 Directive, by amending the assumptions used for calculating the APRC contained in the TCC Regulations. In the Explanatory

² Ofsted has published an informative guide to inspection of early years provision: “Are you ready for your inspection?” It can be found at:

<http://www.ofsted.gov.uk/resources/are-you-ready-for-your-inspection-guide-inspections-of-provision-ofsted-childcare-and-early-years-r>

³ Directive 2008/48/EC

⁴ Directive 2011/90/EU

Memorandum, BIS states that the APRC is mentioned in a variety of consumer credit legislation, such as that relating to the content of credit advertisements and consumer credit agreements, and that the changes to the assumptions made by these Regulations have a general impact.

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

Child Support Maintenance Calculation Regulations 2012
Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012
Electricity and Gas (Smart Meters Licensable Activity) Order 2012
Late Night Levy (Application and Administration) Regulations 2012
Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 3) Regulations 2012
Official Secrets Act 1989 (Prescription) (Amendment) Order 2012

Instruments subject to annulment

SI 2012/1672 INSPIRE (Amendment) Regulations 2012
SI 2012/1688 Pension Protection Fund (Miscellaneous Amendments) Regulations 2012
SI 2012/1693 Designation of Features (Notices) (England) Regulations 2012
SI 2012/1696 Criminal Justice Act 2003 (Surcharge) Order 2012
SI 2012/1698 Childcare (Inspections) (Amendment and Revocation) Regulations 2012
SI 2012/1699 Childcare (General Childcare Register) (Amendment) Regulations 2012
SI 2012/1713 National Police Records (Recordable Offences) (Amendment) Regulations 2012
SI 2012/1715 Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012
SI 2012/1742 Food Hygiene (England) (Amendment) Regulations 2012
SI 2012/1745 Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012
SI 2012/1748 Easton and Otley College (Incorporation) Order 2012
SI 2012/1749 Easton and Otley College (Government) Regulations 2012
SI 2012/1764 Digital Economy Act 2010 (Transitional Provision) Regulations 2012
SI 2012/1767 Video Recordings (Labelling) Regulations 2012

APPENDIX 1: CHILDCARE (INSPECTIONS) (AMENDMENT AND REVOCATION) REGULATIONS 2012 (SI 2012/1698)

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

Q1: The Explanatory Memorandum (at 8.1) says: “An informal consultation via email has also been carried out with stakeholders representing provider organisations...”

- why was no formal consultation process carried out?

- why was the informal consultation targeted at provider organisations? Did this exclude organisations representative of parents?

A1: Para 8.1 explains that the Minister of State did formally consult the Chief Inspector on these changes as required. We also carried out a targeted consultation with the groups set out below (and in para 8.1). These do not only represent providers, for example, 4children regularly hold parent forums and the Day Care Trust provides information for parents as well as childcare providers, employers, trade unions and local authorities:

- National Childminding Association (NCMA)
- Pre-School Learning Alliance (PLA)
- 4Children
- National Day Nurseries Association (NDNA)
- Day Care Trust

We consider that this was a proportionate approach, given that the intention of the change is to cease using a statutory instrument when a letter from Secretary of State to the Chief Inspector (HMCI) will suffice and to continue the existing policy that Ofsted should have the flexibility to arrange the timing of inspections that will have the greatest impact.

Q2: Are there no organisations directly representative of parents of children in pre-school education? If there are in fact such organisations, why would you not include them alongside the groups that you mention? The impact assessment states that among the risks identified for the action that the Government are taking is that “parents feel less well informed about [providers’] performance”.

A2: Not to our knowledge; there may be, of course, parents’ groups set up in all sorts of circumstances (e.g. around individual nurseries or infants schools, or even as parents’ fora for big private chains of nursery providers), but they are all in connection with a specific locale or set of circumstances, and therefore no more representative of “parents of children in pre-school education” than the parents’ fora for the Daycare Trust or 4Children.

Naturally, we are extremely seized of the importance of consulting parents appropriately. As you may be aware, the wider reforms of the Early Years Foundation Stage (which sets out the requirements that Ofsted inspect against) were the subject of very broad and intensive consultation over an extended period of time. Against that background, we are confident that the targeted consultation undertaken in connection with this relatively minor change has been proportionate. Parents can still be assured that their child’s nursery or other provider will still be inspected regularly, in proportion to the quality of that provision, and parents will continue to have the ability to complain to Ofsted and, from September, potentially to trigger a full Ofsted inspection if they have (or develop) sufficient grounds for concern about their child’s provision. These

arrangements will be secured in future by means of a Ministerial letter rather than Regulations.

Q3: The EM (at 9.1) also says: “The Secretary of State will write to the Chief Inspector setting out the requirements relating to the inspection of early years providers, the arrangements under which the Chief Inspector is not required to inspect independent schools and the requirement to send copies of inspection reports to local authorities. The intention is that the letter will be published.”

Given that these Regulations are scheduled to come into force on 1 August 2012, can you confirm that publication will be before 1 August?

A3: Yes. The Secretary of State’s letter has already been sent to HMCI, with the request for a reply before the end of July. As soon as the correspondence is complete, we will put it on the Department’s website and ask Ofsted to do the same.

Department for Education

12 July 2012

APPENDIX 2: 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 17 July 2012 Members declared no interests.

Attendance:

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