HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

9th Report of Session 2012-13

Draft Jobseeker's Allowance (Sanctions) (Amendment) Regulations 2012

Statement of Changes in Immigration Rules (Cm 8423)

Statement of Changes in Immigration Rules (HC 514)

Further Education Loans Regulations 2012

Plus Information Paragraphs on 9 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.

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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.

Ninth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

A. Draft Jobseeker's Allowance (Sanctions) (Amendment) Regulations 2012

Date laid: 2 July, relaid 9 July
Parliamentary Procedure: affirmative

Summary: These Regulations are part of a wider package of measures which seek broadly to align the Jobseeker's Allowance (JSA) and Employment and Support Allowance (ESA) sanctions regimes with the model to be introduced under Universal Credit from April 2013. These Regulations make no changes to the current requirements imposed on jobseekers, however they impose stronger sanctions on JSA claimants who fail to meet the conditions of their claim in respect of actively seeking a new job or making themselves available for work or training. The sanctions are for fixed periods, ranging between 4 and 156 weeks, and get longer for second and third failures to comply with the conditions for claiming benefit.

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. These Regulations have been laid by the Department for Work and Pensions (DWP) accompanied by an Explanatory Memorandum (EM) and an Impact Assessment (IA).

2. The reform of the Jobseeker's Allowance (JSA) sanctions regime is part of a wider package of measures which seek broadly to align the JSA and Employment and Support Allowance (ESA) sanctions regimes with the model to be introduced under Universal Credit. Universal Credit will be phased in through "pathfinder areas" from April 2013 and nationwide from October 2013. (We understand that the parallel changes to the ESA sanctions regime will be made through a separate negative instrument that will be laid around 29 October 2012 to take effect from 3rd December 2012.)

3. DWP intend the revised sanction regime to make the consequences of non-compliance clearer and impose stronger sanctions on claimants who repeatedly fail to meet their responsibilities. These regulations make no changes to the current requirements imposed on jobseekers or the flexibilities already built into the system which allow requirements to be tailored to suit their circumstances, for example, to allow for caring responsibilities.

4. The Regulations set out three categories of sanctionable failure:

   - When a claimant fails to comply with the most important jobseeking requirements: for example, loses employment through misconduct or voluntarily leaves employment without a good reason; neglects to avail

himself of a reasonable opportunity of employment; or fails to participate in Mandatory Work Experience (new provision). These actions are currently sanctioned with a variable suspension of between 1-26 weeks. The revised sanction structure will be for fixed periods so that claimants will be clearer about the consequences of not meeting requirements, as follows:

1) 13 weeks suspension for a first failure;

2) 26 weeks for a second failure committed within 52 weeks of the previous failure; and

3) 156 weeks (3 years) for a third or subsequent failure committed within 52 weeks of a previous failure that resulted in a 26 week sanction. 3 year sanctions will apply only in the most extreme cases where claimants have serially and deliberately breached their most important requirements, and they have not changed behaviour after receiving previous sanctions.

If a claimant commits multiple failures within the same two weekly signing period then the sanction will not escalate to the next level, this applies to all 3 sanction categories. This rule aims to ensure claimants do not accumulate lengthy sanctions over a short period.

- When a claimant loses JSA entitlement for not being available or actively seeking work: currently they can reclaim JSA straightaway, losing benefit for only a few days. Under the revised regime claimants can still re-apply straightaway but they will be subject to a loss of benefit for 4 weeks for a first failure and 13 weeks where there has been a previous disentitlement sanction within the previous 12 months.

- When a claimant fails to comply with a requirement designed to improve their chances of finding work or preparing for work: for example, failing to attend an adviser interview at the Jobcentre; failing to attend or take up a training place; or losing such a place through misconduct. Again current sanctions are variable and can end sooner if claimants re-engage with requirements. The revised sanction for these failures will be set at a period of 4 weeks for a first failure, and 13 weeks for a second or subsequent failure within 52 weeks of the previous failure.

5. Other aspects of the current regime will remain broadly the same although JSA claimants engaged in a scheme under the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (SI 2011/917) will now be included in the hardship payments provisions if they are subject to a fixed period sanction. DWP are also changing their administrative approach to ensure that a sanction will be applied to the next payment due after the infringement to tighten the connection between non-compliance and its consequences.

B. Statement of Changes in Immigration Rules (Cm 8423)

Date laid: 19 July
Parliamentary Procedure: negative

Summary: This Statement of Changes in Immigration Rules (Cm 8423) has been laid at short notice in reaction to a judgment of the Supreme Court on 18 July in the case of Mr Alvi who had been refused leave to remain under Tier 2 of the Points Based System because his level of skills and salary did not meet the published criteria. The Supreme Court quashed that decision on the grounds that the list of skilled occupations and salary was not part of the Immigration Rules as laid before Parliament under section 3(2) of the Immigration Act 1971 but was published in guidance not subject to any Parliamentary procedure. Cm 8423 contains 290 pages of the material previously published as guidance and brings it into immediate effect as Rules to enable the Points Based System to continue to function as intended. ***The House may wish to seek clarification about the status of all cases decided on the basis of the guidance since 2008, when the last complete revision of the Immigration Rules was laid.*** *As the Supreme Court judgment makes clear, there have recently been a "rapid succession" of cases in the courts that have turned on the legal status of a particular element of the Immigration Rules and accompanying guidance. While the laying of Cm 8423 will provide a short term solution for the latest problem, wider questions remain. For example, the Committee's 6th Report on a previous Statement of Changes in Immigration Rules (HC 194), published just three weeks ago, included a number of still unresolved questions about the interaction between Immigration Rules and the European Convention on Human Rights. Until such matters are resolved to the satisfaction of the courts we must inevitably conclude that* ***the current Rules may imperfectly achieve their policy objective. In light of the Committee's previous Reports and the Supreme Court judgment, the House may therefore wish to seek urgent clarification from the Minister about how the Home Secretary plans to revise the legislation to put its application beyond question.***

These Rules are drawn to the special attention of the House on the ground that they may imperfectly achieve their policy objective.

6. This Statement of Changes in Immigration Rules (Cm 8423) has been laid at short notice in reaction to a judgment of the Supreme Court on 18 July in the case of Mr Alvi.[1] Mr Alvi, an assistant physiotherapist, applied for leave to remain under Tier 2 of the Points Based System. He was refused it on the grounds that his skills and salary fell below the requirements set out in the relevant Code of Practice document. He applied for judicial review of the decision on the grounds that the list of skilled occupations and salary was not part of the Immigration Rules as it has not been laid before Parliament under section 3(2) of the Immigration Act 1971. The Court endorsed this view, stating "any requirement which, if not satisfied will lead to an application for leave to enter or remain being refused is a rule within the meaning of section 3(2) so ... [that] requires that it should be laid before Parliament" (paragraphs 57, 94, 97, 122 and 128 of the judgment).

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[1] R (on the application of Alvi) (Respondent) *v* Secretary of State for the Home Department (Appellant) [2012] UKSC 33 Supreme Court 18 July 2012.

7. In consequence the Home Secretary has laid all the previous guidance which set out the criteria such as which documents, English tests and occupations are accepted under the Points Based System, before the House under section 3(2) of the Immigration Act 1971 to give it the full status of Rules, subject to the negative resolution procedure in Parliament. We are told that the material in Cm 8423 is unchanged from the previously published guidance or lists that were external to the Immigration Rules but due to the volume of the material, this Committee has not been able to verify that. We would have expected the Home Office to have made some distinction between what needs to be in the Rules and what might legitimately remain in guidance, rather than import all material on a wholesale basis.

8. The Home Office has introduced the legislation with immediate effect to enable the Points Based System to continue to function as intended. **However, in the light of this judgment, the House may wish to seek clarification about the status of all cases decided on the basis of the guidance since 2008, when the last complete revision of the Immigration Rules was laid.**

9. The Supreme Court was concerned about inappropriate sub-delegation of powers given to Ministers under the Immigration Act 1971. It should be noted that Statements of Changes in Immigration Rules are not Statutory Instruments so fall outside the remit of the Joint Committee on Statutory Instruments, which means their legal drafting and use of powers have not been scrutinised in the way a Statutory Instrument would have been. The Supreme Court accepted "that it is open to the Secretary of State to refer in a Rule to another document which was available when the rule was laid before Parliament. But it would be so only if that other document was fixed and not open to change at the Secretary of State's discretion without further reference to Parliament" (paragraph 23 of the judgment). The issue is that until now the guidance has been provided on the UK Borders Agency (UKBA) website with the deliberate intention of giving UKBA flexibility in administering the provisions.[2] In the light of the judgment we would have expected the Home Office to have made some distinction between what needs to be in the Rules and what may legitimately remain in guidance, rather than import all the guidance material on a wholesale basis.

10. The Committee has also received evidence from Mr Gary Burgess querying the basis on which the salary threshold for IT workers is calculated for applicants under Tier 2 of the Points Based System, asserting that it is well below the average UK salary for this type of job. The evidence is published in full on our website.[3] **As such thresholds are now subject to Parliamentary scrutiny the Home Office may wish to make their method for deriving them more transparent.**

Previous reports by the Committee

11. The judgment makes a number of references to the reports of the then Merits of Statutory Instruments Committee. In particular it quotes some of our previous reports on Statements of Immigration Rules where we have

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[2] See for example information from UKBA on this point in Appendix 1 of our 4th Report of the Merits of Statutory Instruments Committee of Session 2010-12, HL Paper 17

[3] www.parliament.uk/seclegpublications

made similar objections, for example our Report of 16 July 2010[4] about Statement of Changes in Immigration Rules (HC 59 of 2010) relating to applications under Tier 1 of the Points Based System. Among the changes HC59 introduced was a provision which enabled a limit to be set on the number of grants of entry allowed during each allocation period. HC59 stated that the interim limit for the purposes of Tier 1 would be published on UKBA's website. We commented adversely in that Report because the limit was not given in the material laid before the House for scrutiny and the information available on the website at that date did not disclose what the actual limit was (and did not actually appear for some time).

12. The Committee is also surprised that the Home Office has not acted before this, to address the distinction between Rules and guidance in a planned and orderly fashion. Almost exactly two years ago, Statement of Changes in Immigration Rules (HC 96 of 2010) was laid on an urgent basis, following two court judgments concerning the extent to which requirements under the Points Based System should be set out in the Immigration Rules rather than in UK Border Agency guidance.[5] At the time the Committee noted that HC 96 took the same approach for Tier 2 as HC 59 took for Tier 1 providing in the Statement for there to be limits, but leaving the actual limits themselves to guidance.

13. Our next report[6] included a letter from the Home Secretary explaining why another Statement of Immigration Rules (HC 382 of 2010) was being brought in with immediate effect. HC 382 addressed the need for Tier 2 requirements under the Points Based System relating to qualifications, maintenance and the minimum level of course of study for non-EEA students to be set out in the Immigration Rules, rather than in UK Border Agency guidance following the *Pankina* judgment[7], a position similar to the one currently before the House.

Practicality of the legislation

14. It should also be noted that Cm 8423 adds a further 290 pages to the 488 pages already in the Rules. Although we have commended the Home Office for keeping an on-line informal consolidation of the Rules thus far, we note the Supreme Court judgment's view that that the ease of updating material on a website should not lead the Department to forget the need to make it clear what is a Rule, and therefore has "quasi-legal status", and what is not (paragraph 43 of the judgment).

15. We also question the practicality of 778 pages of Rules for both the applicants and staff who need to use it and the Home Office may wish to give urgent consideration to how it presents the revised Immigration Rules to make the material accessible and make it absolutely clear what are Rules and what is only guidance. We have previously raised with the Home Office the need for consolidation. In addition we now question whether simplification is necessary to make the Rules more efficient and effective. The Supreme Court also questioned this stating "The court questions whether the current

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[4] Merits of Statutory Instruments Committee, 4th Report Session 2010-12 HL Paper 17

[5] Merits of Statutory Instruments Committee, 6th Report Session 2010-12 HL Paper 28

[6] Letter dated 22 July 2010 in Appendix 4 of 7th report of 2010-12 (HL Paper 33) relating to a previous Statement of Immigration Rules HC 382 of 2010

[7] SSHD v Pankina & others [201 OJ EWCA Civ 719]

system, which is now over forty years old, is still fit for purpose today. But any changes to it must be a matter for Parliament" (judgment paragraphs 65, 109 and 128).

Conclusion

16. As the judgment makes clear there have recently been a "rapid succession" of cases in the courts that have turned on the legal status of a particular element of the Immigration Rules and accompanying guidance. While the laying of Cm 8423 will provide a short term solution for the latest problem, wider questions remain. For example, the Committee's 6th Report[8] on a previous Statement of Immigration Rules (HC 194), published on 4 July 2012, included a number of still unresolved questions about the interaction between Immigration Rules and the European Convention on Human Rights. **Until such matters are resolved we must inevitably conclude that the current Rules may imperfectly achieve their policy objective. In light of the Committee's previous Reports and the Supreme Court judgment, the House may therefore wish to seek urgent clarification from the Minister about how the Home Secretary plans to revise the legislation to put its application beyond question.**

C. Statement of Changes in Immigration Rules (HC 514)

Date laid: 9 July
Parliamentary Procedure: negative

Summary: The purpose of these changes is to make provision for an Entry Clearance Officer (ECO) to be satisfied that an applicant is a genuine student before granting entry clearance under Tier 4 of the Points Based System. The proposed change is made on the basis of a pilot exercise which identified that 32% of the Tier 4 visas granted under existing rules could have been refused if these powers had been in place, many on the basis of poor English language competence. The new approach is resource intensive for staff overseas but, given the considerable difficulties of removing an overstayer from the UK, the House may wish to ask the Home Office to explain why it would not be a more effective use of their resources to pursue this initiative more vigorously than just on the 3-5% of high-risk applicants they currently plan to interview under the scheme.

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.

17. Statement of Immigration Rules (HC 514) has been laid by the Home Office accompanied by an Explanatory Memorandum (EM). At the same time they have published Occasional Paper 104 which gives the results of the pilot exercise on which this legislation is based.[9]

18. The purposes of these changes are to make provision for an Entry Clearance Officer (ECO):

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[8] Secondary Legislation Scrutiny Committee, 6th Report HL Paper 26

[9] www.homeoffice.gov.uk/publications/science-research-statistics/researchstatistics/immigration-asylum-research/occ104

- to be satisfied that an applicant is a genuine student before granting entry clearance under Tier 4 of the Points Based System;
- to refuse to issue entry clearance where the applicant fails to attend an interview without providing a reasonable explanation.

19. Since the Points Based System (PBS) for Tier 4 was implemented in 2009 applicants have not generally been interviewed as part of the decision making process. A pilot exercise was run from December 2011 to the end of February 2012 to assess the potential impact of interviewing more Tier 4 applicants, and of a new power to refuse entry clearance where ECOs doubted the applicant was a genuine student. Data was collected on 2,316 interviews from 13 posts (Bangladesh, Burma, China, Colombia, Egypt, the Gulf, India, Kenya, Nigeria, Pakistan, Philippines, Sri Lanka and USA/Canada) involving both high and low risk applicants.

20. The pilot exercise found that:

- Just over a sixth (17%) of applicants interviewed were refused entry using existing Tier 4 PBS rules. Some applicants could have been refused on papers alone. For others, such as those lacking basic English language competence, refusals were only possible on the basis of an interview.
- More than one fifth (24%) of refusals were made on the basis of English language ability. The exercise highlighted concerns over the number of applicants in possession of an approved English language testing certificate who were unable to answer basic interview questions without the aid of an interpreter.

21. For the purposes of the pilot exercise ECOs were asked to assess applicants who had already been granted a visa on the basis of existing PBS rules. They tested credibility based on applicants' intention to study their proposed course, intention to leave the UK at the end of the course, ability to maintain themselves and their dependants for the duration of the course, and ability to study the proposed course.

22. The data shows that ECOs could potentially have refused 32% of those visas granted in this study on the basis of applicants' credibility. These were hypothetical refusals, as a visa had already been granted under existing PBS rules.

23. Around three in five applicants to privately funded Further and Higher Education colleges (61%) could potentially have been refused on credibility grounds after interview, compared with around one in seven (14%) applicants to universities. During the pilot, rates of potential refusals on credibility grounds were high for diplomas (56%), business/administration courses (48%) and banking/finance related courses (42%) - particularly those offered by private colleges.

24. ECOs were provided with a standard format for interviews, but were given flexibility to deviate from this as they felt appropriate. Interviews took place in the native language of the applicant, but contained some questions designed to test their English language ability. The majority (73%) were conducted face-to-face, with the remainder conducted over the telephone, where face-to-face interviews were not possible. Interviews took an average of around 30 minutes across all posts and telephone interviews generally took longer than those conducted face-to-face. Increased interviewing impacted negatively on the productivity of some posts, with ECOs in Pakistan

suggesting that the end-to-end application process took up to five times longer in some cases during the pilot than under normal circumstances.

25. These changes are intended to operate as a supplement to the current sponsorship controls, to be used sparingly, based on risk assessments, to tackle any remaining abuse in Tier 4. Applicants from low-risk countries (listed in Appendix H to the Immigration Rules) who already benefit from a streamlined visa application process will be exempt from the genuine student test.

Conclusion

26. We commend the Home Office on its use of a pilot study to assess the benefit of making a change to the procedure. The results demonstrate that a significant percentage of dubious applications could be refused in the country where the application is made. We understand from the Home Office that the interview scheme will initially operate within existing resources and that it will be used, across all posts, on about only 3-5% of applicants selected by risk assessment. We understand that the process is time consuming and resources are limited, but given the considerable difficulties of removing an overstayer from the UK the House may wish to ask the Home Office whether it would not be a more effective use of their resources to pursue this initiative more vigorously.

D. Further Education Loans Regulations 2012 (SI 2012/1818)

Date laid: 12 July
Parliamentary Procedure: negative

Summary: The Further Education Loans Regulations 2012 come into force on 1 September 2012. They provide for financial support for students taking designated further education courses in respect of courses beginning on or after 1 August 2013. Loans will be available for students who are 24 years or over and studying for qualifications at Level 3 or above.

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.

27. In November 2010, the Minister for Further Education, Skills and Lifelong Learning announced the Government's intention to offer loans in Further Education (FE), in a report on "Skills for Sustainable Growth".[10] A consultation process carried out in 2011 has culminated in these Regulations. In a Written Statement on 12 July 2012, the Minister said that the Regulations would allow adults over 24 to benefit from loans for fees in further education ("24+ Advanced Learning Loans"). He stated that "from the 2013-14 academic year, loans will be available for learners aged 24 and above studying courses at level 3 and above, replacing grant funding for this group as we focus our state investment on those under 24 years of age, those without basic skills, and those seeking work".[11]

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[10] HC Deb 16 November 2010 col 33WS.

[11] HC Deb 12 July 2012 cols 35-36WS.

28. The Department for Business, Innovation and Skills (BIS) has provided an Explanatory Memorandum (EM) and Impact Assessment (IA) to accompany the Regulations. The EM states that the loans will be repaid on an income-contingent basis in the same way as the loans available in Higher Education (HE) from 2012-13; they will be repaid through the tax system, once the individual has left the course and is earning over £21,000; repayments will be 9% above this threshold irrespective of the loan amount; and interest rates will be variable, up to a maximum of RPI +3% for those earning over £41,000.

29. The loans will cover all FE courses, starting on or after 1 August 2013, at Level 3 (advanced) and Level 4 (higher), including A-Levels, Access to HE Diplomas, and Advanced and Higher Apprenticeship Frameworks. The loans will be available to learners aged 24 or over at the start of the course. Access to loans will not be based on prior attainment and there will be no impact on subsequent access to HE loans where learners have taken out a loan for 24+ advanced or higher level learning. Learners will submit their applications for support to the Student Loans Company and these will be assessed and payment made to the college or training organisation on behalf of the learner following confirmation of their attendance.

30. In the EM, BIS states that consultation on 24+ Advanced Learning Loans was undertaken as part of wider public consultation in August 2011, to which overall there were 217 responses from representative bodies and individuals. Among key areas raised by respondents, BIS identifies the following: the need for widespread and clear information on how loan funding will work; concerns about the potential impact on certain groups of people; the potential impact on progression from FE to HE; and keeping bureaucracy to a minimum, the frequency of payments to providers and overall budget control.

31. The funding background is set out in accompanying IA, which states that, as a result of the Spending Review 2010, the overall FE and Skills budget will be reduced by 25% between 2011-12 and 2014-15, and that Government must ensure that the remaining investment in this area is targeted so as to maximise economic impact and value for money. The IA stresses the need to reassess the balance of contributions to the costs of FE. It states that "the proposed changes prioritise available grant funding on young people, those without basic skills, and those seeking work; and remove grant funding for learners aged 24 and over, at Level 3 and above", at the same time as income-contingent loans are made available in order to provide access to the necessary finance to afford contributions upfront (page 1 of IA: "policy objectives and intended effects").

32. Noting that the potential impact of the changes on certain groups was a concern raised by consultation respondents, the EM explains that BIS has made available a more detailed analysis of this impact, using research by TNS-BMRB.[12] BIS has published an Equality Impact Assessment[13] in which the research findings are set out in some detail. They show that, given the planned introduction of 24+ Advanced Learning Loans, younger age groups (23-39) were more likely to say that they would participate in future learning

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[12] On its website, TNS-BMRB describes itself as "a leading social research agency for UK and international policymakers".

[13] See Equality Impact Assessment on the website.

than the average, but that those aged 40 and over were less likely to say they would participate or take a loan (paragraph 49). Moreover, while the research found that most people felt that they would not be put off taking out a 24+ Advanced Learning Loan once they understood the full details, "those aged 40 and over seeking a route back into the labour market were still negative": only a minority in this age group thought that they would be likely to take out a loan (paragraph 51).

33. In the EM, BIS states that, while the research showed "little evidence of disadvantage" for most groups, the Government will do more to investigate the impact on those in the 40 plus age group; we consider it important that this research is conducted and made generally available. **The House may wish to hear more from the Government about the further research, and about its views of the desirability of FE participation by those aged 40 and over.**

OTHER INSTRUMENTS OF INTEREST

Draft Victims of Overseas Terrorism Compensation Scheme 2012

34. This instrument establishes a new scheme to compensate British, EU and EEA citizens who reside in the UK, who are injured, or who have a relative who is killed, in acts of overseas terrorism covered by the scheme.[14] During the passage of the Crime and Security Act 2010, Ministers in the previous Government announced that they would introduce a new compensation scheme for victims of overseas terrorism, which would broadly mirror the domestic Criminal Injuries Compensation Scheme.[15] Since 16 April 2012, the Government has been operating a temporary *ex gratia* scheme to make payments to certain victims of overseas terrorism. The scheme set out in this instrument will replace the temporary one on a permanent basis as a source of compensation for victims who have been caught up in acts of terrorism overseas which they could not have reasonably anticipated. Those who travel to a country at a time when the published FCO guidance advises against it may not be eligible for compensation.

Draft Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012

35. In a Written Statement (WS) on 1 March 2012[16] the Minister of State in the Department for Environment, Food and Rural Affairs (Defra) confirmed the Government's intention to pursue a ban on ethical grounds on wild animals performing in circuses. In a further WS on 12 July 2012[17] the Minister referred to the laying of these draft Regulations which will introduce a new licensing scheme in the intervening period before a ban can be brought into effect. The licensing scheme is intended to protect the welfare of wild animals while they are in use in travelling circuses.

36. The Regulations provide that any travelling circus in England that includes wild animals must first obtain a licence from Defra; that circuses will be required to pay an administrative fee for a licence, and for the cost of inspections; that an initial inspection must be carried out the issue of a licence, which can be suspended or revoked; and that circuses must adhere to detailed licensing conditions covering all aspects of welfare in a travelling circus. The Government intends that the Regulations should be in force from the start of the 2013 touring season.

School Staffing (England) (Amendment) Regulations 2012 (SI 2012/1740)

37. The School Staffing (England) Regulations 2009 ("the 2009 Regulations") contain a range of provisions relating to the staffing of schools, including, in particular provisions for the appointment, discipline, suspension and dismissal of teachers and other staff in maintained schools. This instrument inserts a new provision into the 2009 Regulations which requires the

[14] This is an EU requirement and other Member States (Austria, Denmark, France, Italy, Luxembourg and Portugal), plus Norway and Switzerland, have similar schemes.

[15] HC Deb 18 January 2010, col 24

[16] HC Deb 1 March 2012, col 41WS

[17] HC Deb 12 July 2012, col 43WS

governing body of a maintained school to confirm whether or not a teacher has been the subject of capability procedures within the last two years, and, if so, provide details, if asked to do so by the governing body or proprietor of a maintained school or an Academy School to which that person has applied for a teaching post. We have exchanged correspondence with the Minister of State for Education about the Government's decision not to give schools one full term's notice of the introduction of this new requirement, and we publish that correspondence in Appendix 1.

Local Government Officers (Political Restrictions) (Amendment) (England) Regulations 2012 (SI 2012/1772)

38. These Regulations, laid by the Department for Communities and Local Government (DCLG), amend Regulations from 1990[18] to limit the restrictions which apply to the Deputy Mayor for Policing and Crime in London. While the post-holder is still prohibited from standing for election to various legislative bodies or acting as an election agent, the Regulations remove the following prohibitions: being an officer or committee member of a political party; canvassing on behalf of a political party; and speaking or writing with the intention of furthering the fortunes of a particular political party.

39. In the Explanatory Memorandum, DCLG states that, if left unchanged, the 1990 Regulations would restrict the Deputy Mayor for Policing and Crime's ability to pronounce verbally or in writing on political matters, which would stop him from performing his role effectively as one London's leaders, responsible for safety of the capital and its citizens. We sought additional information from the Department on the Regulations, and we publish the information received as Appendix 2.

Costs in Criminal Cases (General) (Amendment) Regulations 2012 (SI 2012/1804)

40. Currently, where the court awards costs to a person acquitted in criminal proceedings, it may award whatever amount it considers "reasonably sufficient to compensate" that person for any costs properly incurred. Where the person pays privately for legal representation, the cost to the public purse is often several times greater than it would have been had the person received legal aid instead. Attempts by the previous government to cap payments at the legal aid rate were quashed by Judicial Review.[19] The present Government included amendments to the relevant primary legislation in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to enable the Lord Chancellor, with the consent of the Treasury, to set rates for the calculation of legal costs. These rates will be set out in a separate document to be published shortly, that will be available on the Ministry of Justice website. New regulation 7(6) in this instrument requires the court, when calculating the amount of an award in respect of legal costs to an individual to do so in accordance with the rates set by the Lord Chancellor, whether or not that results in an amount the court considers reasonably sufficient to compensate the individual. The Committee also noted with concern that the

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[18] The Local Government (Political Restrictions) Regulations 1990 (SI 1990/851).

[19] See R (Law Society of England & Wales) v The Lord Chancellor [2010] EWHC 1406 (Admin)

newly inserted regulation 7(3) states that "where the appropriate authority has any doubts as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant" – as this does not seem to be an objective test and has the potential to lead to unfairness. The **Costs in the Court Martial Appeal Court Regulations 2012** (SI 2012/1805) set out for the first time similar procedures governing payments out of public funds in respect of costs incurred in the Court Martial Appeal Court.

Employers' Duties (Implementation) (Amendment) Regulations 2012 (SI 2012/1813)

41. The Pensions Act 2008 places a duty on employers to automatically enrol qualifying workers into a workplace pension. The Employers' Duties (Implementation) Regulations 2010 are part of a package of instruments which underpin those reforms and provide the arrangements for employers to be brought incrementally into the reforms according to their size (determined by the number of people in their Pay as you Earn scheme). Under the existing instrument, employers with fewer than 50 workers would be brought into the reforms from August 2014 onwards. In light of the current economic circumstances this amending instrument gives smaller employers more time to adjust to the reforms by amending the dates in the table at regulation 4 of the 2010 Regulations so that employers with fewer than 50 workers will not be brought into the reforms until June 2015 at the earliest. Whilst some respondents to the consultation exercise recognised the benefits of the longer timetable for small businesses, about one third of respondents thought that delay would be detrimental to individuals' pension savings.

Social Fund Maternity Grant Amendment Regulations 2012 (SI 2012/1814)

42. In its 20th report of Session 2010-12 the Committee commented on the original Maternity Grant Regulations[20] in robust terms drawing attention to a number of inadequacies in the policy's formulation and explanation. Those Regulations restricted the Sure Start Maternity Grant of £500, which had previously been available to women on certain income-related benefits to assist with the costs of each new child, so that a Grant could only be paid where the baby would be the sole child in the household aged under16. Amongst a range of other issues, we drew attention to the anomaly that if the first pregnancy resulted in a multiple birth the mother could receive a Grant for each of the babies but if there was an older child in the family already no grant at all would be payable for a later multiple birth. Following further representations from external organisations the current Regulations address that anomaly by allowing the payment of a maternity grant for the additional baby in multiple births even where there is an older child in the family, that is, one payment if there are twins, two payments if there are triplets. We welcome this as a more logical approach to the situation.

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[20] Social Fund Maternity Grant Amendment Regulations 2011 (SI 2011/100) see Merits of Statutory Instruments Committee 20th Report session 2010-12 (HL Paper 95)

Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012 (SI 2012/1825)

43. These Regulations implement several of the recommendations for reform of the Alternative Provision (AP) sector contained in a report by Charlie Taylor, the Government's Expert Adviser on behaviour, published in March 2012. The Regulations give the Secretary of State the power to direct a local authority to close a pupil referral unit (PRU) requiring significant improvement; and constitute the management committee of a PRU so that it consists of interim executive members if the PRU requires significant improvement or special measures, or where the Secretary of State considers it to be underperforming. One of the other changes made by these amending Regulations is to ensure that schools are fully represented on PRU management committees We have exchanged correspondence with the Minister of State for Education about the Government's decision not to give schools one full term's notice of the introduction of this new provision, and we publish that correspondence in Appendix 3.

Academies (Land Transfer Schemes) Regulations 2012 (SI 2012/1829)

44. Under the Academies Act 2010, the Secretary of State for Education has the power to make a scheme to transfer, to a person concerned with running an Academy, local authority land that a local authority has identified as a possible site for a new school, or existing or former school land that is no longer needed for the school. These Regulations, laid by the Department for Education (DfE), set out what information a local authority must provide, and what steps it must take, where such a transfer scheme is made. In the Explanatory Memorandum (EM), DfE states that, in most cases, it is anticipated that local authorities will transfer the land to the Academy in a timely manner; and that the policy objective behind these Regulations is to ensure that the existing land of the school can be properly identified when transferred to the successor Academy, if the local authority concerned fails to co-operate over providing the necessary information.

45. In the EM, DfE also states that the impact of the Regulations on the public sector is that land currently held by individual local authorities may be transferred to those concerned with the running of an Academy; and that the land would remain public land, which the Secretary of State may determine should return to the authority when it is no longer needed for the Academy. We sought additional information from the Department on this aspect of the Regulations, and we publish the information received in Appendix 4.

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

Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 (Consequential Modifications) Order 2012
Victims of Overseas Terrorism Compensation Scheme 2012

Draft Instrument subject to annulment

Slough (Electoral Changes) Order 2012

Instruments subject to annulment

SI 2012/1726 Criminal Procedure Rules 2012

SI 2012/1734 Charities (Exception from Registration) (Amendment) Regulations 2012

SI 2012/1736 Education (School Teachers) (Qualifications and Specified Work) (Miscellaneous Amendments) (England) Regulations 2012

SI 2012/1740 School Staffing (England) (Amendment) Regulations 2012

SI 2012/1743 Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

SI 2012/1769 Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2012

SI 2012/1770 International Recovery of Maintenance (Hague Convention 2007) (Rules of Court) Regulations 2012

SI 2012/1772 Local Government Officers (Political Restrictions) (Amendment) (England) Regulations 2012

SI 2012/1773 Protections of Wrecks (Designation) (England) Order 2012

SI 2012/1791 Payment Services Regulations 2012

SI 2012/1796 Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012

SI 2012/1803 Whole of Government Accounts (Designation of Bodies) Order 2012

SI 2012/1804 Costs in Criminal Cases (General) (Amendment) Regulations 2012

SI 2012/1805 Costs in the Court Martial Appeal Court Regulations 2012

SI 2012/1807 Protection of Wrecks (Designation) (England) (No. 2) Order 2012

SI 2012/1809 Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012

SI 2012/1811 Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012

SI 2012/1813 Employers' Duties (Implementation) (Amendment) Regulations 2012

SI 2012/1814 Social Fund Maternity Grant Amendment Regulations 2012

SI 2012/1816 Indication of Prices (Beds) (Revocation) Order 2012

SI 2012/1817 Occupational and Personal Pension Schemes (Prescribed Bodies) Regulations 2012

SI 2012/1821 Housing (Right to Manage) (England) Regulations 2012

SI 2012/1825 Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012

SI 2012/1829 Academies (Land Transfer Schemes) Regulations 2012

SI 2012/1833 Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2012

SI 2012/1848 Customs Disclosure of Information and Miscellaneous Amendments Regulations 2012

SI 2012/1851 Gambling (Licence Fees) (Miscellaneous Amendments) Regulations 2012

SI 2012/1868 National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012

SI 2012/1870 Child Trust Funds (Amendment) Regulations 2012

APPENDIX 1: SCHOOL STAFFING (ENGLAND) (AMENDMENT) REGULATIONS 2012 (SI 2012/1740): CORRESPONDENCE

Letter from Nick Gibb MP, Minister of State for Schools, to Lord Goodlad

I am writing to you to bring to your attention the School Staffing (England) (Amendment) Regulations 2012 ("the 2012 Regulations") which amend the School Staffing (England) Regulations 2009, and the explanatory memorandum relating to them. It was our intention to make the 2012 Regulations amendment before the start of the summer term and I apologise for the delay. Schools, however, have been notified of the changes to be made.

The amendment made by the 2012 Regulations places a new requirement on maintained schools, when asked to do so, to tell a maintained school or an Academy, to which a teacher has applied for a teaching post, whether that teacher has been in capability procedures during the previous two years, and to pass on details.

The 2012 Regulations bring into a force a key component of our policy to raise the standard of teaching through tackling teacher underperformance. Giving head teachers access to more information about the competence of applicants for teaching posts supports this aim. It will help address the inadvertent recruitment of teachers with a history of underperformance and the consequential burden this imposes on head teachers who have to tackle it. That is why it is important that the requirement is brought into force at the same time as new arrangements for teacher appraisal and capability which we have already put in place, and which will come into force on 1 September 2012.

Our intention to introduce the requirement is already in the public domain. We announced it in a public consultation paper earlier in the year and there is an expectation that it will come into force this autumn. Many schools and Academies already follow the practice required by the amendment by including it within procedures for obtaining references from current or previous employers. Therefore, for some the impact will be neutral whilst for others it will merely require a minor change to procedures for providing references.

It is important to recognise that the new requirement will only impact on recruitment procedures commenced from September and that schools and Academies generally ask for the information in respect of applicants they decide to interview. Therefore, in practice, it will be several weeks or possibly months into the new academic year before schools are affected. Furthermore it is also worth noting that schools and Academies will already have undertaken their recruitment for the start of the new academic year prior to the requirement coming into force so will not immediately be affected.

I recognise that this new requirement falls within the scope of my commitment to give schools at least one full term's notice of the imposition of a new requirement. However, this amendment is not likely to place a significant burden on schools and Academies as little or no action will be needed to meet the requirement. Where change is needed I believe that schools and Academies have sufficient time to amend their policies to prepare for its introduction, therefore, meeting the new duty will not be unduly onerous.

Nick Gibb MP

11 July 2012

Letter from Lord Goodlad to Nick Gibb MP

Thank you for your letter of 11 July, in which you referred to these Regulations which were laid before Parliament on 10 July, to come into force on 1 September of this year.

The effect of the Regulations is to require governing bodies to share information about whether or not a teacher or head teacher has been the subject of capability procedures, when this is requested by prospective employers. You say that it is important that this requirement comes into force in September 2012, at the same time as the new arrangements for teacher appraisal and capability which were published in January 2012.

You say that you had intended to make these Regulations before the start of the summer term, and you recognise that the requirement which they place on schools falls within the scope of your commitment to give schools at least on full term's notice of the imposition of a new requirement.

Your Department carried out a consultation on this requirement over a six week period in January and February of this year. I understand that, in the relevant consultation paper, your Department stated that, subject to the outcome of consultation, it proposed to publish revised Regulations in April 2012, for implementation from September 2012.

While your letter, and the Explanatory Memorandum to the Regulations, set out the case for introducing this new requirement from September of this year, neither document appears to explain why you have been unable to keep to your original intention to lay the Regulations in April. I would ask you to write again to explain the delay.

We both recognise that exceptional circumstances will arise when the Government see a need to introduce new requirements on schools with less than one term's notice. In this case, however, it would be helpful to have greater clarity about the factors which prevented you from confirming this requirement in April, as was your intention at the start of the year.

I would ask that you reply by 18 July 2012.

Lord Goodlad

13 July 2012

Letter from Nick Gibb MP to Lord Goodlad

Thank you for your letter of 13 July, in which you ask for clarification about the delay in making these Regulations.

The sharing of information between schools is an important component of our teacher appraisal and capability reforms. Accordingly it is only right that all of the changes we have made to the policy come into force at the same time.

As you know it was our intention to publish the revised Regulations at the beginning of April in accordance with the timetable we set out that the beginning of the year. However, in March the National Association of Schoolmasters/Union of Women Teachers (NASUWT) contested the new capability procedures through a Pre-action Protocol for Judicial Review. As part of this action the NASUWT's solicitors challenged the decision to create a duty of information sharing with prospective employers by way of amendment to the School Staffing Regulations.

In order to avoid a full Judicial Review, which would have created uncertainty about the policy and potentially caused a delay in implementation, we worked with NASUWT to address the union's concerns. Unfortunately these deliberations delayed the timetable and meant that we were unable to lay the amendment to the Regulations until earlier this month.

I trust this response provides you with the clarification you have sought.

Nick Gibb MP

17 July 2012

APPENDIX 2: LOCAL GOVERNMENT OFFICERS (POLITICAL RESTRICTIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2012 (SI 2012/1772)

DCLG officials have provided the following response to the question put by the Committee:

Q1: As the Explanatory Memorandum to the Regulations states, they amend the Local Government (Political Restrictions) Regulations 1990 to limit the restrictions which apply to the Deputy Mayor for Policing and Crime. In all there are 7 Deputy Mayors. Does DCLG see no need to amend the provisions on political restrictions as they affect the other 6 Deputy Mayors? If not, why not?

A1: DCLG does not see the need to alter the provisions on political restrictions for the other Deputy Mayors. This is because the Deputy Mayor for Policing and Crime is a unique statutory position created by, and singled out in the Police Reform and Social Responsibility Act 2011 ("the 2011 Act"). Schedule 3 (section 4(4)) of the 2011 Act specifically says that where the Deputy Mayor for Policing and Crime is not an Assembly member, he will be regarded as a member of staff of the Mayor's Office for Policing and Crime. This means that he is captured by the political restrictions laid out in the Local Government (Political Restrictions) Regulations 1990 ("the 1990 Regulations") which came out of the Local Government and Housing Act 1989. As none of the other Deputy Mayors are singled out in this way, they can continue to operate as they have under previous Mayoral administrations.

Q2: The EM states inter alia: "If left unchanged the 1990 Regulations would restrict the Deputy Mayor for Policing and Crime's ability to pronounce verbally or in writing on political matters, which would stop the Deputy Mayor performing his role effectively as one London's leaders, responsible for safety of the capital and its citizens." Can you explain more fully why you consider that this is the case?

A2: In London the Mayor is also automatically designated as the occupant of the Mayor's Office for Policing and Crime, providing direct public accountability to the Metropolitan Police Service. Owing to his other responsibilities he has the power to delegate these functions to the Deputy Mayor. The Deputy Mayor then needs to provide the level of political leadership that the Mayor has delegated to him in order to perform his role effectively. He cannot do this if bound by political restrictions.

Q3: The EM further states: "These restrictions would only apply to the post-holder if they are not a member of the London Assembly; a fact which, if left unchanged, restricts who the Mayor is able to appoint to this post if they are to be able to perform the role fully and effectively." Can you explain what would be the position if the post-holder were to be a member of the London Assembly?

A3: If the Deputy Mayor for Policing and Crime were a member of the Assembly he would not be classified as "staff" of the Mayor's Office for Policing and Crime (according to schedule 3 of the Police Reform and Social Responsibility Act 2011), and is therefore not captured by the political restrictions of the 1990 regulations. They therefore would already be free of the restrictions (and indeed under the previous incumbent was free of the restrictions) these Regulations place on a Deputy Mayor for Policing and Crime who is not also a member of the Assembly.

APPENDIX 3: PUPIL REFERRAL UNITS (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2012 (SI 2012/1825): CORRESPONDENCE

Letter from Nick Gibb MP, Minister of State for Schools, to Lord Goodlad

In my letter to you of 27 October 2010, I confirmed the commitment to adopt 1 September as the commencement date for all schools-related statutory instruments, and to give schools at least one full term between the notification of a new requirement in a statutory instrument and the commencement of that requirement (except in exceptional circumstances).

I am now writing to you to bring to your attention a statutory instrument relating to Pupil Referral Units (PRUs). The statutory instrument has four purposes.

First, it allows the Secretary of State to intervene in underperforming and failing PRUs. It allows the Secretary of State to constitute the management committee of a PRU so that it consists of interim executive members (constituting an Interim Executive Board (IEB)) where a PRU is failing (where Ofsted has judged that the PRU requires special measures or significant improvement), or where the Secretary of State considers that the PRU is underperforming.

Second, it updates the legislation which allows the Secretary of State to direct a local authority (LA) to close a failing PRU which Ofsted has judged to be requiring special measures, so that it now also includes PRUs that Ofsted has judged to be requiring significant improvement. This change will bring PRU legislation further into line with the legislation on mainstream schools.

Third, it updates regulations on PRU in three ways:

- it amends regulations which set out the process that LAs need to follow when the Secretary of State directs them to close a PRU requiring special measures, so that LAs also have to follow this process when the Secretary of State directs a LA to close a PRU requiring significant improvement;
- it amends regulations which require a LA to seek the consent of the Secretary of State when closing a PRU requiring special measures, and extends this to PRUs requiring significant improvement and to PRUs where the Secretary of State has constituted the management committee as an IEB; and
- it makes minor technical amendments (including the revocation of an out of date set of defining regulations) pursuant to making these regulations.

None of the provisions above impose a duty on PRUs or schools. I therefore consider that these regulations fall outside the commitment and that it is appropriate to bring them into force from September 2012.

Finally, the instrument amends regulations to ensure that schools are fully represented on the management committees of PRUs. This proposal was recommended by Charlie Taylor (the Government's expert adviser on behaviour) in his review of alternative provision published in March 2012. This recommendation was made to allow PRUs greater autonomy from LAs, to meet the needs of their pupils and to be responsive to the needs of local schools. The instrument amends the definition of a PRU management committee 'community member' to state explicitly that school representatives can be and that LA employees (apart from school staff) cannot be community members. It also states

that when appointing a community member the management committee or LA should first seek to appoint a school representative.

I consider that the regulations in this instrument which relate to amending the composition of PRU management committees do fall within the scope of the commitment outlined at the start of this letter. This is because they amend the process by which PRU management committees and LAs appoint management committee community members. However, these changes will not be onerous as PRU management committees and LAs will initially only need to follow the new process when making new community member appointments. PRU management committees will then have a year (until 1 September 2013) to ensure they fully meet these new requirements (e.g. replacing any LA employees who are currently appointed as community members). Furthermore, as our priority must be to ensure that PRUs have the autonomy they need to improve standards for the vulnerable pupils that they educate, I therefore consider the time-frame allowed for implementation is not unreasonable.

Nick Gibb MP

10 July 2012

Letter from Lord Goodlad to Nick Gibb MP

Thank you for your letter of 10 July, in which you referred to these Regulations which were subsequently laid before Parliament on 13 July, to come into force on 1 September of this year.

You explain the four purposes of the Regulations, setting out that the first three purposes bear upon the powers of the Secretary of State and requirements on local authorities in relation to Pupil Referral Units (PRUs).

However, as regards the fourth purpose, of amending Regulations to ensure that schools are fully represented on PRU management committees, you state that this does fall within the scope of your commitment to allow schools on full term's notice before a new requirement on them is brought into force. You set out the reasons why you think that the time-frame for implementation allowed in this case is nonetheless reasonable.

The Explanatory Memorandum (EM) to the Regulations explains that the changes made in them implement several of the recommendations contained in Charlie Taylor's March 2012 report on Alternative Provision, and that your Department carried out a six week consultation on them to mid-May of this year. The EM states that the intention was to publish the Regulations before the end of the academic year "so that the sector has time to make the changes before they come into force in September".

Given that the Taylor report was published only in March, it must always have been clear that there would be limited time available to carry out consultation, assess the responses and decide on the resulting secondary legislation. While it may well be that the changes to be implemented by schools are not onerous, as you say in your letter, it would be helpful to know whether earlier in the year you considered a later implementation date; and if not, why you decided to adopt September of this year.

I have written to you separately in reply to your letter of 11 July about the School Staffing (England) (Amendment) Regulations 2012, which are also being brought

into force in September with less than one term's notice. As in that case, I would ask that you reply to this letter by 18 July.

Lord Goodlad

16 July 2012

Letter from Nick Gibb MP to Lord Goodlad

Thank you for your letter of 16 July regarding The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012. The instrument in question was laid before Parliament on 13 July, to come into force on 1 September 2012. In your letter you asked whether I considered a later implementation date for those regulations which ensure that schools are fully represented on Pupil Referral Unit (PRU) management committees, and why September was adopted.

Charlie Taylor's review of alternative provision (AP) made a persuasive case for the urgent need to reform the sector. PRUs and AP providers educate some of the most vulnerable pupils in our society. These pupils have some of the most complex needs, and many come from the most deprived homes. The fact that in 2010/11 only 1.5% of pupils in PRUs and AP achieve 5 or more GCSEs at grace A*-C, compared to 59% of their peers, suggests that delaying these important reforms would leave too many pupils in provision which is unable to give them the support they need to succeed.

Improving the quality assurance and commissioning of AP by giving schools a greater role, is the keystone of the review, and the recommendation that "head teachers or senior managers from schools should sit on the management committees of their local PRU" is vital to implementing this. Until we make this change PRUs will remain on the outskirts of local education provision, lacking the input from local schools who know best what provision is needed for their pupils. As outlined in the review, the current influence of local authorities on management committees can also stop PRUs that want to become AP Academies from applying. In light of all of this, I considered that implementation should occur as soon as possible and we consulted on proposals to bring these regulations into force in September 2012, with transitional arrangements for recently established committees.

I also reconsidered the September implementation date in light of the responses to this consultation. The results showed clear support for this measure, with 61% of respondents agreeing with the proposals as opposed to 18% against and 20% not sure. In order to address the concerns raised by the minority of respondents, as outlined in my previous letter the transitional arrangements now include all management committees (not just those recently established) and the new AP guidance (to be published this week) will include advice about implementing this change. To ensure PRUs are aware of the change it will be included in an end of term communication being sent this week.

Nick Gibb MP

17 July 2012

APPENDIX 4: ACADEMIES (LAND TRANSFER SCHEMES) REGULATIONS 2012 (SI 2012/1829)

Department for Education officials have provided the following response to the question put by the Committee:

Q: Could the situation arise that land to be transferred to an Academy is currently held by a local authority and is kept open to the public for amenity purposes, and that after transfer to an Academy the new owners could prevent its continued use for public amenity purposes? Or, if such a possibility does exist, would the Secretary of State ensure that it was precluded in using his powers to make a scheme of transfer?

A: This is to confirm that we anticipate that the scheme-making powers will be exercised extremely rarely. There have already been some 2000 conversions to Academy status without the need to make a scheme to transfer the land. But the power is a necessary reserve power to ensure that the land is available to the Academy if a local authority refuses to transfer the land voluntarily. That is why the powers have been on the statute-book since the Learning and Skills Act 2000.

The central effect of these ancillary regulations is to specify the information an authority might be required to provide to the Secretary of State in order to properly identify the land that is to be transferred to the Academy in the event that a scheme needs to be made. The powers themselves are exercisable in the absence of the regulations, but the regulations make clear what information may be needed, and that the authority is required to provide it if asked.

The powers apply only to land that has been used for the purposes of a school in the last eight years, but is no longer so used (including because the school is to cease to be a maintained school and become an Academy).

On the specific questions, it is unlikely that there would be unrestricted public access to school playing fields, but if there were, either a local authority in the case of maintained school land, or an Academy Trust once the land had transferred, could decide that any such access was no longer appropriate. However, if any public use of the land was such that those using the land had a legal or equitable right over the land, then paragraph 3 of Schedule 1 to the Academies Act 2010 (as amended by Schedule 14 to the Education Act 2011) provides that the scheme must make provision as to the transfer of any right or liability held by the local authority as holder of the land, which may include a right of way, easement or right under a lease.

Land and facilities such as sports halls would not fall within the scope of the powers if they were not used primarily for the purposes of the school, and so would not be transferred to the Academy. If the school were the primary user, but the facilities were also used by the community - a sports hall in dual use, for example - we would expect that the community use would continue once the land was in possession of the Academy. Experience of conversions so far indicates that there is normally not a problem.

Overall, we would stress that these powers are a last resort and we would wish that use of land for Free Schools and Academies could be arrived at through a process of negotiation, as they have been so far. However, the powers have been in successive Acts since 2000 because without them it could not be ensured that a school could convert to Academy status and retain the use of its land and buildings. The regulations are not absolutely essential to exercise of the powers,

but will make the process simpler and quicker if the land in question is not immediately obvious (or any associated rights and liabilities).

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 24 July 2012 Members declared the following interests:

Statement of Changes in Immigration Rules (HC 514)

Lord Plant of Highfield, as Professor of Jurisprudence and Philosophy, and Fellow, King's College, London.

Attendance:

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