HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

10th Report of Session 2012-13

Draft Benefit Cap (Housing Benefit) Regulations 2012

Statement of Changes in Immigration Rules (HC 565)

Education (School Government) (Terms of Reference) (England) (Amendment) Regulations 2012

Waste (England and Wales) (Amendment) Regulations 2012

London Legacy Development Corporation (Planning Functions) Order 2012

Money Laundering (Amendment) Regulations 2012

and one other instrument

Plus 17 Information Paragraphs on 25 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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Registered interests

Information about interests of Committee Members can be found in Appendix 8.

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.

Tenth 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 Benefit Cap (Housing Benefit) Regulations 2012

Date laid: 16 July
Parliamentary Procedure: affirmative

Summary: Section 96 of the Welfare Reform Act 2012 allows for the introduction of a benefit cap. The Government's intention is that the total amount of welfare benefits that a household on out of work benefits receives will not exceed the average weekly wage for working households. The implementation of the Act will be phased and these Regulations provide for the cap initially to be administered by Local Authorities reducing a claimant's Housing Benefit to offset payments of specified benefits above the cap of £350 per week for single-person households and £500 per week for couples and those with dependant children. The Impact Assessment provided indicates that the cap will contribute savings of £275m per annum in its first two years of operation. Reduction in benefits may be offset from the Discretionary Housing Payments Scheme but we note that the additional funding announced for people affected by the benefit cap cannot be ring fenced. We draw attention to a number of forthcoming reports about the proposed implementation of Universal Credit which will include a different permutation of the benefit cap and note that DWP expects to bring forward its regulations on Universal Credit in December 2012. We also publish evidence from Shelter which, among other things, questions the cost-effectiveness of the short term administration of the benefit cap through Housing Benefit staff when the function will transfer shortly to DWP staff.

These Regulations are drawn to the special attention of the House on the grounds that they give rise to issues of public policy likely to be of interest to the House.

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). A short letter covering relevant points from the Social Security Advisory Committee's (SSAC) forthcoming report on Universal Credit has also been provided and is published at Appendix 1.

2. Currently there is no limit to the total amount of benefit a household can receive in state support. Section 96 of the Welfare Reform Act 2012 allows for the introduction of a benefit cap and the Government's intention is that the total amount of welfare benefits that a household on out of work benefits receives will not exceed the average weekly wage for working households.

3. The implementation of the Welfare Reform Act 2012 will be phased and these Regulations provide for the cap initially to be administered by Local Authorities reducing a claimant's Housing Benefit to offset payments of specified benefits above the cap. The current Regulations do not apply the benefit cap to claimants paid under State Pension Credit Housing Benefit

regulations, and Ministers announced during the passage of the Bill exemptions for claimants entitled to Disability Living Allowance, Working Tax Credit and war widow or widower pensions. At a later stage DWP intend to apply the cap as part of the Universal Credit calculation.

4. The effect of the current Regulations will be that from 15 April 2013 for working-age households, a household's welfare payments will be limited to £350 per week for a single-person household where no children are present and to £500 per week for couples and those with dependant children. One-off payments will be excluded from the calculation as will non-cash benefits, passported benefits, such as free school meals, and also Council Tax Benefit (subject to the changes proposed in the Local Government Finance Bill 2011 to replace Council Tax Benefit with new localised council tax support from April 2013.)

5. Where the total amount of a household's welfare benefits exceeds the cap, the local authority will reduce the entitlement to Housing Benefit by the amount of the excess. However, Housing Benefit will not be taken below the minimum amount payable of £0.50 under the current rules, to ensure that claimants are still able to access discretionary help from their Local Authority (through the Discretionary Housing Payment Scheme) and other services where eligibility is dependent on being in receipt of Housing Benefit.

Additional sums to the Discretionary Housing Payment Scheme

6. The Discretionary Housing Payment (DHP) Scheme is intended to act as transitional help for existing claimants, for example to tide them over while they make alternative housing arrangements or to allow a family to wait until July to move into a new home so their children's education is not disrupted. Discretionary Housing Payments will not themselves be subject to the cap.

7. In paragraph 7.9 of the EM it states that the Government will provide additional funding for the Discretionary Housing Payments Scheme of up to £75m in 2013–14 and up to £45m in 2014–15 *"solely to support those who will be affected by this measure"*. However the Committee has noted previously that additional funding to the DHP cannot be ringfenced. We therefore asked DWP to clarify this point. They said:

> "The guidance to local authorities on the DHP scheme is being revised to provide examples of where the Government believes DHPs could support claimants while they look for work or adjust their housing needs. We will monitor local authorities' use of the additional funding and provide advice where helpful. This will not be proscriptive as we believe local decision makers are best placed to make decisions on individual circumstances.
>
> New data sharing regulations came into effect on 5 July 2012 and will enable Local Authority contacts to share data internally, as appropriate, including the Troubled Families Coordinator, Social Services etc, so that all relevant departments will know who is affected by the cap."

Impact of the changes

8. The Impact Assessment provided with the Regulations indicates that the cap will contribute savings of £275m per annum in its first two years of operation.

9. The Impact Assessment also suggests that around 56,000 households will have their benefits reduced by the policy in 2013–14 (that is, about 1% of the out of work benefit caseload). Families affected are likely to be larger than average and be situated in high-rent areas, with 49% of affected households likely to be in Greater London. By comparison around 3% of affected households are in Wales and around 4% in Scotland.

10. Paragraph 21 of the Impact Assessment states that in 2013–14 the mean reduction in benefit is estimated to be around £93 per week. The median reduction is around £62 per week. (Further detail of the expected distribution of cuts is illustrated in the IA by charts.)

Timetabling

11. DWP expects to bring forward regulations on Universal Credit for Parliamentary scrutiny in December 2012. However, as Universal Credit will be phased in over a number of years, DWP proposes to operate the benefit cap via the administration of Housing Benefit where necessary, until all claimants have moved over to the new Universal Credit rules. New claims to Universal Credit will be subject to the cap from October 2013 (and in the Universal Credit "pathfinder" areas from April 2013). Existing claimants subject to the benefit cap will migrate over to Universal Credit between October 2013 and 2017.

Wider investigations on the implementation of Universal Credit

12. The House may wish to note that in mid-August the Social Security Advisory Committee (SSAC) sent to the Secretary of State a wide-ranging report on the proposals for Universal Credit, which includes material on the benefit cap proposals. The report will be published alongside the key instruments to implement Universal Credit which are expected to be laid in December 2012. To assist this Committee's consideration of the current instrument, DWP sent a letter which explains the main issues raised in the SSAC report. The letter explains how the Government have modified their initial proposals to respond to the specific concerns expressed. This is attached at Appendix 1.

13. In addition we received evidence from Shelter on 20 July which states their concerns about these specific Regulations. This is published on our website[1]. Shelter's evidence highlights concerns about:

- Regional variations in rent;
- How the cap will operate for people who are temporarily homeless, because they have little scope to reduce their housing costs and under the 'Homelessness Code of Guidance' Local Authorities cannot ask people to make up the shortfall through other benefits if this would deprive the household of "basic essentials such as food, clothing heating, transport and other essentials". There is no explicit exemption for these people in this category;
- The use and effectiveness of Discretionary Housing Payments to prevent homelessness. They suggest it should be included in the one year review of the cap;

[1] http://www.parliament.uk/seclegpublications

- Whether £500 is the most appropriate figure at which to set the cap as there is a distinction between average household earnings (the figure used) and average household income which as well as wages also takes into account child benefit, working tax credit and similar additional sources of income; and
- Whether the proposal to administer the benefit cap via Local Authority housing benefit staff will be cost effective when this will be taken over shortly by the Job Centre Plus staff who will administer Universal Credit.

14. The House will also wish to note that on 17 July the Commons Work and Pensions Select Committee issued a call for evidence on the Implementation of Universal Credit with a deadline of 17 August, which attracted 70 responses and some media attention. During September that Committee held three evidence sessions, including one with the Secretary of State about his plans for implementation. The evidence is available on the Work and Pension Committee's website[2].

B. Statement of Changes in Immigration Rules (HC 565)

Date laid: 5 September
Parliamentary Procedure: negative

Summary: This Statement of Changes in Immigration Rules, HC565, is linked to previous Statements which this Committee has recently drawn to the attention of the House. First, this Statement has specific links to a previous Statement, Cm 8423 (see our 9th Report) which, in the light of a Supreme Court Ruling, converted without change provisions previously published only in guidance to legislation placed before the House. Second, these current Rules are also covered by wider concerns about the interaction between Immigration Rules and the European Convention of Human Rights highlighted in our 6th Report on an earlier Statement, HC 194. The inclusion of a substantial volume of additional material after the Commons debate on that issue may further muddy the waters. A prayer motion on limited aspects of HC 194 has been tabled in the Lords. ***Until the issues raised in our 6th and 9th Reports are resolved to the satisfaction of the courts we must inevitably conclude that the current Rules may imperfectly achieve their policy objective.***

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

15. The previous Statement of Changes in Immigration Rules (Cm 8423) was laid at short notice in reaction to a judgment of the Supreme Court in the case of Mr Alvi who had been refused leave to remain under the Points Based System because his level of skills and salary did not meet the published criteria. On 18 July the Supreme Court quashed that decision on the grounds that the criteria were not part of the Immigration Rules as laid before Parliament under section 3(2) of the Immigration Act 1971 but published separately in guidance not subject to any Parliamentary procedure. The Government responded by publishing Cm 8423, which included 290 pages of the material previously published as guidance converting it to legislation subject to the negative procedure and brought it into immediate effect. The

[2]http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news/uc-tor/

current Statement, HC 565, similarly converts further guidance material omitted from the first instrument to legislation. It therefore raises the same questions set out in our 9th Report[3] in relation to Cm 8423, that is whether these changes are sufficient to satisfy the courts' continuing concerns.

16. In our 6th Report[4] we raised a number of wider concerns about the interaction between Immigration Rules and the European Convention of Human Rights highlighted in relation to another previous Statement, HC 194. The inclusion of a substantial volume of additional material, by means of Statements Cm 8423 and HC 565, after the Commons debate on the issue may further muddy the waters. A prayer motion on limited aspects of HC 194 has been tabled in the Lords. **Until the issues raised in our 6th and 9th Reports are resolved to the satisfaction of the courts we must inevitably conclude that the current Rules may imperfectly achieve their policy objective.**

17. In addition the current Statement, HC 565, includes a number of more routine changes to the Immigration Rules including an expansion of the compulsory pre-entry screening for tuberculosis for migrants from certain specified countries, and some minor operational revisions to the Tier 1 (Exceptional Talent) category of the Points Based System following a review of its first year.

C. Education (School Government) (Terms of Reference) (England) (Amendment) Regulations 2012 (SI 2012/1845)

Date laid: 17 July
Parliamentary Procedure: negative

Summary: The Regulations remove the obligation on head teachers of maintained schools to produce a curriculum policy and review it yearly. The Department for Education (DfE) laid the Regulations before Parliament on 17 July and brought them into force on 1 September. We are concerned that the Department's approach to making these Regulations may have not have been consistent with effective parental engagement.

We draw this instrument 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 and that it may imperfectly achieve its policy objective.

18. In the Explanatory Memorandum (EM) to these Regulations, DfE states that in the Schools White Paper of November 2010 the Government announced their intention to require schools to put key information online, and that this was achieved by the School Information (England) (Amendment) Regulations 2012 (the Amendment Regulations: SI 2012/1124) which were laid before Parliament on 20 April 2012 and came into force on 1 September 2012. The Amendment Regulations impose an obligation on governing bodies to publish details of their curriculum provision, content and approach, by year and by subject, on a website.

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[3] Secondary Legislation Scrutiny Committee, 9th Report HL Paper 40

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

19. Under the Education (School Government) (Terms of Reference) (England) Regulations 2000 (SI 2000/2122), a head teacher is required to formulate a curriculum policy for adoption by the governing body and to review each year whether any changes need to be made. Governing bodies are required to consider a policy put forward by the head teacher and consider whether to make any changes to it, and also to monitor, evaluate and review the implementation of the policy. In the EM to the latest Regulations, DfE states that the Government no longer see a need for schools to comply with these additional obligations, since schools are now required to put information about their curriculum online and can be more easily held to account for their provision.

20. Referring to the commitment previously made by DfE Ministers to the Merits of Statutory Instruments Committee, to give schools a full term's notice of statutory instruments requiring implementation by schools, the Department states that it considers that these Regulations fall outside the spirit of the commitment, since they remove, rather than impose, a duty on schools.

21. We put a number of queries about the content and timing of the Regulations to DfE, and we are publishing the answers received at Appendix 2.

22. We take the point that the Department sees the effect of these Regulations as helpful to schools. However, this does little to mitigate the concern that we have in two respects:

    - first, that schools should be given sufficient time to plan for changes which are determined by the Government. The Department was able to lay the Amendment Regulations in April, and we are disappointed that it failed to lay the latest Regulations at the same time. The timing was all the more regrettable since the Regulations were laid on the last sitting day of the House of Commons before the summer recess, and brought into force before either House resumed sitting;

    - second, that interested parties should be effectively consulted on changes of concern to them. The Department has said that, as the removal of the separate curriculum policy requirement is part of a logical process, it did not consider it necessary to consult on it specifically. We would comment that what the Government see as logical may not necessarily be perceived as such by interested parties; and that, in this case, parents might reasonably be invited to express their views on the change made by the Regulations, and also on the assumption that schools can be more easily held to account for their curriculum provision because they are now required to put information about their curriculum online.

23. In the EM to the Regulations, in the context of curriculum provision, the Department refers to the objective of enabling parents to hold schools to account. We are concerned that the manner in which the Department has taken forward making these Regulations may have hindered, rather than helped, securing this objective. The House may wish to seek further explanation from the Government of why they felt it necessary to bring these Regulations into force at such short notice, without giving parents an opportunity to express their views on them in advance.

D. Waste (England and Wales) (Amendment) Regulations 2012 (SI 2012/1889)

Date laid: 19 July
Parliamentary Procedure: negative

Summary: The Regulations impose a duty on establishments, from 1 January 2015, for the separate collection of waste paper, metal, plastic and glass, and they impose a duty on waste collection authorities, from that date, to ensure that arrangements to collect such waste are by way of separate collection. However, they also provide that collection may be by other means (for example, "co-mingling") if certain considerations apply. The effect of these Regulations is uncertain in light of the potential continuation of judicial review proceedings.

We draw this instrument to the special attention of the House on the grounds that it may imperfectly achieve its policy objective.

24. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations in order to ensure proper implementation of the revised EU Waste Framework Directive ("the Directive").[5] The Waste (England and Wales) Regulations 2011 (SI 2011/988: "the 2011 Regulations") transposed provisions of the Directive relating to the separate collection of waste paper, metal, plastic and glass, and provided that "co-mingled collection" (collecting recycling waste streams together, with a view to subsequent separation) was a form of separate collection.

25. In the Explanatory Memorandum to the latest Regulations, Defra states that judicial review proceedings were brought in relation to the way the 2011 Regulations transposed the Directive's requirements relating to the separate collection of waste, and that those proceedings were stayed in December 2011 on the undertaking of the Government to consult on proposals to amend the 2011 Regulations. Defra and the Welsh Government subsequently accepted that those Regulations did not properly implement the requirements of the Directive, and needed to be amended.

26. The effect of the latest Regulations is to impose a duty on establishments, from 1 January 2015, for the separate collection of waste paper, metal, plastic and glass; and also to impose a duty on waste collection authorities, from that date, to ensure that arrangements to collect such waste are by way of separate collection. Defra states that these duties will apply where separate collection is "necessary" to ensure that waste undergoes recovery operations in accordance with the Directive; and where it is "technically, environmentally and economically practicable". Where such collection is not so necessary or not so practicable, the duties relating to separate collection do not apply, and collection may be by other means. We understand that these other means may include "co-mingled collection".

27. Given that the Government have recognised inadequacies in the secondary legislation brought forward in 2011 to implement the revised EU Waste Framework Directive, it is appropriate that they should take steps to remedy those inadequacies though amending Regulations.

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[5] Directive 2008/98/EC.

28. However, while the judicial review proceedings were stayed until June 2012, the claimants are now seeking to continue the proceedings. If the proceedings resume, there is a risk that the Government's approach to implementation of the Directive will have to be reconsidered again. In view of this uncertainty, which would affect the operations of collection authorities and others involved in the waste-processing chain, we question whether these Regulations will achieve the policy objective of effective collection of waste for recycling.

E. London Legacy Development Corporation (Planning Functions) Order 2012 (SI 2012/2167)

Date laid: 28 August
Parliamentary Procedure: negative

Summary: The Order makes the London Legacy Development Corporation (LLDC) the local planning authority for an area in East London including the Olympic Park, in order to offer "clear legacy leadership". Three of the four local authorities whose planning functions are being transferred to the LLDC expressed opposition to the transfer. The Mayor of London decided on balance that the LLDC could not meet its responsibilities without the transfer, and the Order gives effect to that decision.

We draw this instrument 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.

29. The Department for Communities and Local Government (DCLG) has laid this Order, coming into force on 1 October 2012. It has also provided an accompanying Explanatory Memorandum (EM).

30. The Order makes the London Legacy Development Corporation (LLDC) the local planning authority for an area in East London including the Olympic Park, covering parts of the London Boroughs of Hackney, Newham, Tower Hamlets and Waltham Forest (the development area), by conferring on the LLDC the planning functions in the development area currently exercised by those London Boroughs, by the London Thames Gateway Development Corporation (LTGDC) and by the Olympic Delivery Authority (ODA). This will include development control (e.g., determination of planning applications) and development plan-making. Outside the development area, the planning functions of the LTGDC and the ODA will return to the former local planning authorities (that is, the London Boroughs).

31. The LLDC was established on 9 March 2012[6] to act as a single body possessing the necessary powers to achieve the regeneration of this area: as stated in the EM, "to offer clear legacy leadership". In the EM, DCLG says that the LLDC was set up before the planning functions were conferred on it so as to enable the new organisation to build capacity in advance of taking up those functions; and also that it was intended that the ODA would exercise planning functions in relation to the Olympic Park until the conclusion of the Olympic and Paralympic Games.

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[6] See: SI 2012/310: the London Legacy Development Corporation (Establishment) Order 2012.

32. DLCG states in the EM that, under the Localism Act 2011 (the 2011 Act), the Mayor of London has the power to designate any area of land in Greater London as a Mayoral development area, provided that certain criteria are met. The 2011 Act requires the Secretary of State, if notified by the Mayor that he has designated a Mayoral development area, to make an order establishing a Mayoral Development Corporation (MDC) for this area with the name notified by the Mayor; and also giving effect to any decisions made by the Mayor regarding the planning functions of the MDC.

33. In the EM, DCLG explains that the Mayor consulted on his proposals for an MDC, including those relating to planning functions, between February and April 2011. There were 56 submissions in response to the consultation. As regards the consultation questions relating to the proposed planning functions of the LLDC, DCLG states that:

- two private individuals and one local business objected to the establishment of the LLDC, and by extension to the proposal that the LLDC should have development control powers; all other respondents who expressed an opinion on this proposal supported it;
- three of the four affected local authorities (all but Newham) disagreed with the proposal that the Corporation should have plan-making powers, as did the London Assembly member for Islington, Hackney and Waltham Forest and the two private individuals and one local business mentioned above. All other respondents that expressed an opinion on plan-making powers supported this proposal.

However, DCLG also states that the Mayor concluded on balance that the MDC could not meet its responsibilities without having both development control and plan-making powers, and that none of the responses had changed his mind on this point. Details of the Mayor's consultation and his response to submissions have been published on-line.[7]

34. We have obtained further information from DCLG about the opposition expressed by the three local authorities to the transfer of plan-making powers to the LLDC, and also about the basis for the appointment of the Chairman of the LLDC. That information is enclosed as Appendix 3.

35. The House will be interested to see the decisions that have been taken on the powers of the London Legacy Development Corporation, which will play a central role in shaping the future of the Olympic Park, by offering "legacy leadership". The House may be aware that, on 12 September 2012, the Mayor of London announced that he would himself take on the chairmanship of the LLDC, replacing Mr Daniel Moylan who had been appointed to the post in June of this year.[8]

F. Money Laundering (Amendment) Regulations 2012 (SI 2012/2298)

Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) (No.2) Order 2012 (SI 2012/2299)

Date laid: 10 September
Parliamentary Procedure: negative

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[7] See: http://www.london.gov.uk/mdcconsultation

[8] See: http://www.london.gov.uk/media/press_releases_mayoral/mayor-chair-legacy-corporation

Summary: The first of these instruments - SI 2012/2298 - amends the Money Laundering Regulations 2007 (SI 2007/2156) which implements the EU's Third Money Laundering Directive. The second instrument – SI 2012/2299 – makes a consequential change to the definition of "regulated sector" in the Terrorism Act 2000 and the Proceeds of Crime Act 2002. Two of the amendments made by SI 2012/2298 remedy elements of "gold-plating" that were effected by the Money Laundering Regulations 2007.

We draw these instruments to the special attention of the House on the grounds that they are legally important and give rise to issues of public policy likely to be of interest to the House.

36. HM Treasury (HMT) has laid these two statutory instruments (SIs), which come into force on 1 October 2012. HMT has provided an Explanatory Memorandum (EM) and Impact Assessment (IA) to accompany the SIs.

37. SI 2012/2298 ("the Amendment Regulations") makes various amendments to the Money Laundering Regulations 2007 (SI 2007/2156: the 2007 Regulations). These amendments in turn mean that the definition of "regulated sector" in the Terrorism Act 2000 and the Proceeds of Crime Act 2002 needs to be changed, and this change is made by SI 2012/2299.

38. The 2007 Regulations implemented the EU's Third Money Laundering Directive[9] and provided for various steps to be taken by the financial services sector to detect, deter and prevent money laundering and terrorist financing. The aim of the 2007 Regulations was to allow businesses flexibility in protecting themselves from the risks posed by money laundering and terrorist financing, and to encourage them to focus their resources in an effective and proportionate way.

39. In the EM, HMT states that it conducted a post-implementation review of the 2007 Regulations two years after they came into force, looking at the regulatory burden placed on firms. The review was followed by consultation on proposals for amending the 2007 Regulations. The Amendment Regulations reflect the outcome of the review and the subsequent consultation.

40. The measures being taken forward include:

- extending the use of reliance, a mechanism by which a firm can rely on the customer due diligence carried out by a third party, to minimise the duplication of checks;
- exempting from the scope of the 2007 Regulations credit institutions that offer time to pay for non-refundable services but do not lend or advance money;
- bringing UK estate agents selling overseas property within the scope of the 2007 Regulations;
- amending the fit and proper persons test applied by HMRC to decide whether a person is suitable to run a Money Service Business;
- clarifying the right of an individual to appeal against an HMRC decision that he or she is not a fit and proper person; and

[9] Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

- amending the enforcement powers of the Office of Fair Trading, HMRC and the Financial Services Authority to ensure compliance with the Regulations.

41. In the IA, HMT provides further information about the changes made by the Amendment Regulations. In particular, as regards the change to extend the use of reliance, HMT states that, in transposing the EU Directive, the UK did not make full use of the provision allowing Member States to decide which firms could be relied upon by others to reduce duplication of customer identity checks; by making this change, the Government now propose to apply this derogation fully. HMT recognises that the previous transposition represented "gold-plating" of the Directive and the Amending Regulations seek to remove that.

42. As regards exempting certain credit institutions, the IA says that, while the EU Directive requires businesses that lend money to be regulated, it does not require Member States to regulate businesses that allow customers time to pay for goods and services. The 2007 Regulations regulated these businesses inadvertently, by reference to the Consumer Credit Act 1974; the Government now propose to exempt these businesses. HMT states that, in this respect as well, the 2007 Regulations "gold-plated" the Directive.

43. One of the grounds on which we may draw an SI to the House's attention is that it may inappropriately implement European Union legislation. There have been relatively few examples of our use of this ground in reporting to the House. We welcome the fact that, in this case, the post-implementation review has led the Government to recognise that the initial implementation of EU legislation through an earlier SI was inappropriate; and that the Government are now amending the previous instrument. We urge the Government to ensure that the lessons learnt from this review will be applied where relevant to other secondary legislation serving to implement EU requirements.

OTHER INSTRUMENTS OF INTEREST

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

44. In our 9th Report we published information about these draft Regulations which introduce a licensing scheme to protect the welfare of wild animals while they are in use in travelling circuses. We sought additional information from Defra about definitions used in the Regulations, and we publish that information as Appendix 4.

Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

45. The Department for Communities and Local Government (DCLG) has laid these draft Regulations which consolidate and amend earlier Regulations[10] in relation to England. The amendments include raising fees for planning applications by 15% to address the cost inflation that has occurred since the fees were last raised in 2008. In addition, the Regulations introduce two new fees: the first is in respect of applications for urgent crown development, and is to be paid to the Secretary of State (rather than to a local planning authority); the second is in respect of applications for certificates of appropriate alternative development, which require specialist work when considered by the local planning authority.

46. In the Explanatory Memorandum to the Regulations DCLG says that fees for planning applications are currently set at a national level; and that a public consultation, held from November 2010 to January 2011, on the options for proceeding with fee-setting in the future, included allowing such fees to be set at a local level by local authorities. DCLG states, however, that its consideration of the case for decentralisation of planning fees saw this as an option that could be pursued, but one which needed significant further development and assessment with local planning authorities. The Department does not intend to pursue this at present because of what it sees as an urgent need to address the continuing gap on cost-recovery for planning application fees.

Draft Modifications to the Standard Conditions of Electricity Generation Licences

47. In the Explanatory Memorandum to these modifications, the Department for Energy and Climate Change (DECC) states that National Grid (NG) has responsibility to ensure that the transmission network in Great Britain is kept in balance at all times, on a national and regional level, and that it usually fulfils this duty by accepting "balancing services" offered by generators to increase or decrease planned generation. The resulting costs to NG are recovered from all generators and suppliers in proportion to their share of the market across Great Britain, resulting in a "socialised" charge which is ultimately paid by all consumers.

[10] Principally, the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (S.I. 1989/193).

48. DECC states that, during periods of transmission constraint,[11] competition for balancing services is reduced; generators may propose excessive charges; and NG may be forced to accept these in order to balance the system. While most constraint payments are legitimate, the Office of the Gas and Electricity Markets (Ofgem) has estimated that the costs of such undue exploitation in 2008-09 could have been as much as £125m. DECC states that Ofgem concluded that it would be difficult and time-consuming to use its powers under the Competition Act to investigate such instances of alleged exploitative behaviour; the Government therefore took enabling powers in the Energy Act 2010 to modify electricity generators' licences to prevent behaviour allowing them to profit unfairly at the expense of consumers during periods of transmission constraint.

49. The Transmission Constraint Licence Condition, embodied in these modifications, is intended to prevent two specific types of behaviour by generators: making uneconomic dispatch decisions that artificially create or exacerbate a transmission constraint; and obtaining an excessive financial benefit from the bids made to NG to reduce their output during periods of transmission constraint. We obtained further information from DECC about the costs of undue exploitation during periods of transmission constraint; we are publishing it as Appendix 5.

Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012 (SI 2012/1869)

50. The allocation provisions in the Localism Act 2011, which came into force on 18 June 2012, give local housing authorities the power to set their own rules determining who qualifies for social housing. These Regulations, laid by the Department for Communities and Local Government (DCLG), ensure that local housing authorities cannot apply a local connection criterion to disqualify: persons who are serving in the regular forces or have done so in the five years before their application; members or former members of the reserve forces who are suffering from a serious injury, illness, or disability which is attributable to their service; or bereaved spouses or civil partners leaving Ministry of Defence accommodation following the death of their spouse or partner where the death is attributable to the spouse's or partner's service. In the Explanatory Memorandum, DCLG states its view that a local connection criterion is likely to disadvantage those who have been discharged from the armed forces, as well as serving personnel because of the requirements to move from base to base.

51. The Department carried out consultation on the Regulations from January to March 2012.[12] The vast majority of respondents agreed that members of the armed forces and former service personnel should not be disqualified on grounds of residency. However, some local authority respondents considered it important for former service personnel to demonstrate a connection to the area where they had chosen to apply for social housing, through, for example, employment or family ties; and some respondents thought that local housing authorities should have the flexibility to set their own residency

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[11] Transmission constraint occurs when system limitations (primarily insufficient network) mean that not all the available electricity can be transmitted from where it is produced to where the demand exists.

[12] DCLG has published an analysis of the responses – see:

www.communities.gov.uk/publications/housing/allocationaccommodationresponses

restrictions in relation to former service personnel, so as to balance the needs of everyone in their community.

Enterprise Act 2002 (Merger Fees) (Amendment and Revocation) Order 2012 (SI 2012/1878)

52. In amending an earlier instrument,[13] this Order increases the amounts of fees payable by enterprises for the regulatory consideration of mergers, work done primarily by the Office of Fair Trading (OFT) and the Competition Commission (CC).[14] The Department of Business, Innovation and Skills (BIS), in the accompanying Explanatory Memorandum, states that the fee increases are being imposed not for reasons of inflation, but in order to provide for a greater proportion of cost recovery for the merger regime. The Government consulted on the proposed increase in fees between March and June 2011. BIS states that businesses, who opposed the latest increases, argued that a substantial increase in merger fees would lead to a chilling effect on merger activity. However, BIS says that, while the Government recognise the strength of feeling against significantly increasing merger fees to achieve full cost recovery, and the potential impact on growth, they wish to reduce the burden to taxpayers, and have responded by increasing merger fees to approximately 60% recovery (the average cost recovery over the three years from 2008-09 to 2010-11 is 41%).

53. In the impact assessment (IA) provided with the Order, BIS states that fee increases imposed in 2006 were intended to achieve full cost recovery, but generally did not do so. The IA indicates that the main reason for this was a significant fall in the total number of mergers qualifying to pay a fee, as a result of reduced merger activity, and perhaps increased familiarity with the regime which meant that more companies chose not to notify. In the IA, BIS notes the suggestion that the number of notifications in 2006-07 fell in response to the increase in merger fees, but stresses that there are many other drivers that affect the number of notifications, including the level of merger activity in the economy.

National Health Service (Pharmaceutical Services) Regulations 2012 (SI 2012/1909)

54. The NHS is being widely reformed and these regulations complete the implementation of the review recommendations[15] of the way in which the provision of local pharmacies will be regulated. The Health Act 2009 included requirements for primary care trusts (PCTs) to develop and publish pharmaceutical needs assessments (PNAs) to be used for determining entry to PCTs' pharmaceutical lists. The PNA must describe the population profiles and local characteristics as well as providing an assessment of unmet needs for, and possible improvements and better access to, pharmaceutical services provision in the PCT's area. As a first step in the review process Regulations[16] about the development of PNAs came into force in May 2010

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[13] The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (SI 2002/1370)

[14] The Government have decided to create a new Competition and Markets Authority and transfer the functions of the CC and the competition functions of the OFT to it; provisions to this effect are included in the Enterprise and Regulatory Reform Bill.

[15] See para 3.22 NHS White Paper *Equity and Excellence: Liberating the NHS* published July 2010

[16] NHS(Pharmaceutical Services and Local Pharmaceutical Services) Amendment Regulations 2010 (S.I. 2010/914)

and all PCTs have met the requirement to have published their first PNA by 1 February 2011.

55. These Regulations implement the rest of the reform plan – first by requiring a PCT to make decisions on additions or amendments to its pharmaceutical list by reference to its PNA. Second by reforming the arrangements for remedial actions that PCTs can take against pharmacy and dispensing appliance contractors who breach their contractual terms of service. The Regulations introduce local dispute resolution into the pharmacy and dispensing appliance contractors' terms of service but where this process has failed, PCTs will be able to issue breach and remedial notices, similar to those which already exist in other areas of NHS primary care. The Regulations additionally permit sanctions such as the withholding of payment for services not properly delivered and, ultimately, removal of the firm from the PCT's pharmaceutical list. The Department of Health's Impact Assessment states that these new provisions are expected to make the system more efficient and reduce costs by £952m over the next 10 years.

Export Control (Amendment) (No. 2) Order 2012 (SI 2012/1910)

56. The Order implements a number of changes to internationally agreed lists of controlled products, in line with the European Directive on the transfer of defence-related products within the Community (2009/43/EC) and the Wassenaar Arrangement. Under previous amendments to the Order, several human and veterinary medicinal products have been prohibited for export to the USA, because of their possible use as lethal injections in executions. This Order adds the medicinal product propofol to that list; earlier this year, it was reported that the State of Missouri would allow propofol to be used in lethal injections.

National Curriculum (Exceptions for First, Second, Third and Fourth Key Stages) (England) Regulations 2012 (SI 2012/1926)

57. The Department for Education (DfE) laid these Regulations on 30 July 2012, to come into force on 1 September 2012. The Regulations provide that the current programme of study, attainment targets and assessment arrangements for the National Curriculum subject of Information and Communication Technology (ICT) will cease to apply at all four key stages in maintained schools from September 2012 to August 2014. During this period schools will continue to be required to teach ICT, but teachers will have the freedom to teach a programme of study of their choice. DfE has stated that, as the Regulations have the effect of removing rather than imposing a duty on schools, it sees no need to give schools a full term's notice before implementation. The Department considers it preferable that the programmes of study and associated attainment targets and assessment arrangements should be dis-applied as soon as possible.

School Premises (England) Regulations 2012 (SI 2012/1943)

58. The Department for Education (DfE) laid these Regulations on 30 July 2012, to come into force on 31 October 2012. Following a process of consultation, the Regulations replace the Education (School Premises) Regulations 1999, and set out simplified standards for school premises at maintained schools in England. The Regulations cover seven elements of school premises: toilet and washing facilities; medical accommodation;

health, safety and welfare; acoustics; lighting; water supplies; and outdoor space. We have received additional information from DfE about the revised requirements for outdoor space, and we publish that information as Appendix 6.

Land Registration Fee Order 2012 (SI 2012/1969)

59. HM Land Registry has laid this Order, with an accompanying Explanatory Memorandum (EM) and Impact Assessment (IA). In replacing a 2009 Order (SI 2009/845: the Land Registration Fee Order 2009), it decreases all fees for applications to, and services provided by, the Land Registry (except for the loss of a particular discount of limited impact), by an overall average of 10%.

60. The EM states that the Land Registry became a trading fund in 1993 and, as such, is required to cover its costs and provide a dividend on capital to HM Treasury. Since 1993, the Land Registry has generally reduced fees. There have been only two Orders increasing fees: the 2006 Fee Order, which increased fees for preliminary services only; and the 2009 Fee Order, which increased all fees. In the EM, the Land Registry says that the increases in 2009 were needed because of the dramatic fall in the number of property transactions in 2008/09, which meant that work intakes and fee income were significantly reduced. However, the fees set in 2009 are now generating income well in excess of Land Registry's requirements, as its operating costs have been cut significantly since 2009: the surplus for 2011/12 is £67.8 m. In the IA, the Land Registry states that the fee reductions would have been greater, if HM Treasury had not increased the rate of return on capital employed from 3.5% to 6.29% in April 2012.

Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089)

61. These Regulations were laid by the Department for Communities and Local Government (DCLG) on 15 August 2012 and came into force on 10 September. They replace Regulations made in 2000 (SI 2000/3272: the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000), to establish the presumption that meetings of a local authority executive, its committees or sub-committees, must be held in public.

62. The 2000 Regulations required key decision-making meetings to be held in public except in certain broadly defined circumstances, where it was open to the executive to decide to hold the meeting in private. In its Explanatory Memorandum, DCLG states that the Government believe that this has resulted in more meetings being held in private than could be justified on the basis of well founded reasons. DCLG has not undertaken a consultation exercise on the Regulations, but they have been the subject of "a short, focussed informal soundings exercise with partners". This showed that the Local Government Association was opposed to the Regulations and considered them unnecessary, since in its view current requirements allowed for maximum transparency. The Government do not agree, and have therefore introduced the Regulations.

Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2012 (SI 2012/2112) and five other regulations[17]

63. The Safeguarding Vulnerable Groups Act 2006 set out the process by which the Independent Safeguarding Authority (ISA) must bar certain people from working in 'regulated activity', which is a set of roles and activities involving work with children and vulnerable adults. The Protection of Freedoms Act 2012 reduced the range of work or other activity to which barring applies, repealed the provisions in the Safeguarding Act which required those who wanted to work in regulated activity to register with a central scheme and to be monitored, and made other amendments to the ISA's barring process. These instruments make a number of changes in consequence of the Protection of Freedoms Act, make further provision as to the definition of regulated activity, fulfil a commitment that the ISA will in certain cases be able to provide to the police the information which informed its barring consideration, and make some other minor amendments. However, the Government has decided that those activities which fell into the former (unamended) definition of regulated activity should remain eligible for enhanced criminal records disclosures, so that employers and voluntary organisations will still be able to obtain criminality information for those positions/activities but they will not be told whether someone is barred.

Further Education Teachers' Continuing Professional Development and Registration (England) (Revocation) Regulations 2012 (SI 2012/2165)

Further Education Teachers' Qualifications (England) (Amendment) Regulations 2012 (SI 2012/2166)

64. The Department for Business, Innovation and Skills (BIS) laid these Regulations on 22 August, to come into force on 30 September 2012. In the accompanying Explanatory Memorandum (EM), BIS states that Regulations introduced in 2007[18] took forward a policy for professionalising the Further Education (FE) workforce. In broad terms, they required new teachers to gain a recognised teaching qualification and achieve either Associate or Qualified Teacher Learning and Skills status within five years of taking up their first teaching post; and they required teachers to undertake at least 30 hours of continuous professional development per year, and provide a record of it to the Institute for Learning. BIS states that the interim report of an independent review of professionalism in the FE teaching workforce, published in March 2012, recommended revoking the 2007 Regulations, from September 2012; the Government accepted the recommendation in principle.

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[17] Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2012(SI 2012/2113), Police Act 1997 (Criminal Records) (Amendment No. 2)Regulations 2012(SI 2012/2114) Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order (Northern Ireland) 2012 (SR 2012/320),Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (Northern Ireland) 2012 (SR 2012/322),Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2012 (SR 2012/323)

[18] SI 2007/2116: the Further Education Teachers' Continuing Professional Development and Registration (England)

Regulations 2007; and SI 2007/2264: the Further Education Teachers' Qualifications (England) Regulations 2007.

65. A consultation exercise on these proposals was carried out between April and June 2012. BIS received 1,063 responses, 670 (63%) of which were from individuals; a large majority of these respondents opposed revocation of the 2007 Regulations. The Department comments, however, that once the responses from the major representative organisations in the sector – the Association of Colleges, and the Association of Employment and Learning Providers - were considered separately from those of individuals, a more complex picture of views about the 2007 Regulations emerged. The Government have taken the view that the existing requirements for core teaching qualification should remain in place for the time being, pending development of an alternative approach. The Department is retaining but amending one of the 2007 instruments (SI 2007/2264: the Further Education Teachers' Qualifications (England) Regulations 2007), while revoking the other instrument in its entirety (SI 2007/2116: the Further Education Teachers' Continuing Professional Development and Registration (England) Regulations 2007).

66. We flag up these instruments because of the varied nature of the responses to the consultation exercise, and the interpretation of these responses which underlies the decisions subsequently taken by the Department.

Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2012 (SI 2012/2257)

Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012 (SI 2012/2274)

Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2012 (SI 2012/2275)

67. The Department for Communities and Local Government (DCLG) has laid these instruments, which all bear on the operation of the planning system.

68. The first of these, SI 2012/2257, in amending an earlier Order,[19] allows buildings used as shops, or for financial and professional services, to change to a mixed use incorporating up to two flats (increased from one), and to revert back to those non-residential uses, without the need to apply for planning permission. In the accompanying Explanatory Memorandum (EM), DCLG states that, while the current provision allows for converting such building spaces into a single flat, the Government now want this provision to be extended to no more than two flats, so as to incentivise the conversion to housing of vacant space above retail units in town centres and elsewhere. This intended change was announced in the Government's response to the Mary Portas Review of the High Street published in March 2012.[20]

69. As regards the other instruments, SI 2012/2274 and SI 2012/2275, the amendments made by them allow applicants with unimplemented extant permissions granted on or before 1 October 2010 to apply for a replacement planning permission for the same development, subject to a new time-limit ("an extension application"). Planning permission is typically granted subject to a three-year time-limit on implementation. In 2009 the Government

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[19] The Town and Country Planning (General Permitted Development) Order 1995.

[20] http://www.communities.gov.uk/publications/regeneration/portasreviewresponse

amended legislation to introduce a new category of planning application, allowing developers with an unimplemented planning permission to apply for an extension application. The vast majority of extant permissions which could be the subject of an extension application will expire on 1 October 2012. These instruments carry the arrangements forward.

70. In the EM, DCLG states that the original measures were introduced in 2009 as a temporary response to current economic circumstances; given that the economic outlook remains uncertain, the Department has laid these instruments to extend the scope of these measures by one year. We sought further information from DCLG about the impact of these instruments, and are publishing that information as Appendix 7.

Companies and Limited Liability Partnerships (Accounts and Audit Exemptions and Change of Accounting Framework) Regulations 2012 (SI 2012/2301)

71. The Department for Business, Innovation and Skills (BIS) has laid these Regulations, in part to remedy gold-plating in previous implementation of EU legislation.[21] The Regulations amend provisions in primary and secondary legislation,[22] in order to widen the existing exemptions from audit for small companies and Limited Liability Partnerships (LLPs) and to create new exemptions from the audit, preparation and filing of the individual accounts of subsidiary companies and LLPs for a given financial year, provided they meet qualifying conditions. The Regulations also make other amendments to give companies and LLPs more flexibility to change from preparing individual or group accounts in accordance with international accounting standards to Companies Act accounts.

72. BIS states that, at present, audit requirements in the UK do not offer as much flexibility to companies as is currently available under EU requirements. In the Impact Assessment that accompanies the Regulations, the Department says that, although the UK has adopted many of the available exemptions in the relevant EU legislation, there remain some elements of gold-plating in relation to both small companies and subsidiaries. Removing this gold-plating will address an element of Government failure which currently imposes unnecessary costs on business.

Town and Country Planning (Control of Advertisements) (England) (Amendment) Regulations 2012 (SI 2012/2372)

73. The Department for Communities and Local Government (DCLG) has laid these Regulations, to permit a wider range of flags, and flag advertisements, to be displayed without the need for specific consent from the local planning authority. In the accompanying Explanatory Memorandum, DCLG states that the Government believe that planning controls over the display of flags are unnecessarily onerous, and a barrier to individuals and communities being able to express their identity and to businesses wishing to display flags.

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[21] Council Directive 78/660/EEC ("the Fourth Directive on the annual accounts of certain types of companies").

[22] The Companies Act 2006; the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (SI 2008/1911); the Registrar of Companies and Application for Striking Off Regulations 2009 (SI 2009/1803); the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (SI 2009/1804); and the Unregistered Companies Regulations 2009 (SI 2009/2436).

The objective of these Regulations is to allow a wider range of flags to be flown without advertisement consent by individuals, institutions and businesses, to the extent that this is possible without causing harm to local amenity or causing offence. DCLG published a discussion paper with the proposed changes, which was open for comment from January to March 2012. The majority of respondents supported the proposed additions to the range of flags and flag advertisements which these Regulations take forward.

Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012 (SI 2012/2414)

74. The Government have a programme 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. In our 8th Report of the current Session, we included information about the draft Electricity and Gas (Smart Meters Licensable Activity) Order 2012, which introduced a new "smart metering" licensable activity into the Electricity Act 1989 and the Gas Act 1986. The Order provided the basis to regulate a new body, the Data and Communications Company ("the DCC"), which is to be set up, as a regulated monopoly, to organise the communications and data transfer and management required to support the programme. It will provide a service of remotely communicating with smart meters on behalf of parties including electricity and gas suppliers.

75. These Regulations have been laid by the Department for Energy and Climate Change (DECC). In the accompanying Explanatory Memorandum, DECC states that the DCC will not operate these services itself, but will contract with data and communications companies for their provision, following competitive tenders. The Regulations set out the competitive application process to award licences for the provision of a service of communicating with smart energy meters on behalf of all licensed energy suppliers. They detail the required procedure for each of up to four stages of the tender exercise.

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 Instrument subject to affirmative approval

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

Draft Instruments subject to annulment

Modifications to the Standard Conditions of Electricity and Gas Supply Licences
Modifications to the Standard Conditions of Electricity Generation Licences
Modifications to the Standard Conditions of Electricity Generation Licences (No. 3 of 2012)

Instruments subject to annulment

SI 2012/1751 Air Navigation (Amendment) Order 2012

SI 2012/1754 Copyright and Performances (Application to Other Countries) (Amendment) Order 2012

SI 2012/1759 European Communities (Designation) Order 2012

SI 2012/1815 Product Safety (Revocation) Regulations 2012

SI 2012/1844 Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) (Amendment) Regulations 2012

SI 2012/1849 Nitrate Pollution Prevention (Amendment) Regulations 2012

SI 2012/1852 Glasgow Commonwealth Games Act 2008 (Ticket Touting Offence) (England and Wales and Northern Ireland) Order 2012

SI 2012/1865 M62 Motorway (Junctions 25 to 30) (Actively Managed Hard Shoulder and Variable Speed Limits) Regulations 2012

SI 2012/1869 Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012

SI 2012/1877 National Savings Stock Register (Amendment) Regulations 2012

SI 2012/1878 Enterprise Act 2002 (Merger Fees) (Amendment and Revocation) Order 2012

SI 2012/1880 Savings Certificates (Children's Bonus Bonds) (Amendment) Regulations 2012

SI 2012/1882 Savings Certificates (Amendment) Regulations 2012

SI 2012/1886 Fire and Rescue Authorities (National Framework) (England) Order 2012

SI 2012/1907 Registrar of Companies (Fees) (Companies, Overseas Companies and Limited Liability Partnerships) Regulations 2012

SI 2012/1908 Registrar of Companies (Fees) (European Economic Interest Grouping and European Public Limited-Liability Company) Regulations 2012

SI 2012/1909 National Health Service (Pharmaceutical Services) Regulations 2012

SI 2012/1910 Export Control (Amendment) (No. 2) Order 2012

SI 2012/1914 Hinkley Point Harbour Empowerment Order 2012

SI 2012/1915 Health and Social Care Act 2008 (Consequential Amendments) (Council Tax) Order 2012

SI 2012/1916 Human Medicines Regulations 2012

SI 2012/1919 Education (Information about Individual Pupils) (England) (Amendment) Regulations 2012

SI 2012/1926 National Curriculum (Exceptions for First, Second, Third and Fourth Key Stages) (England) Regulations 2012

SI 2012/1927 Conservation of Habitats and Species (Amendment) Regulations 2012

SI 2012/1928 Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012

SI 2012/1943 School Premises (England) Regulations 2012

SI 2012/1955 Allocation and Transfer of Proceedings (Amendment) (No. 2) Order 2012

SI 2012/1960 Police (Amendment No. 3) Regulations 2012

SI 2012/1961 Special Constables (Amendment) Regulations 2012

SI 2012/1969 Land Registration Fee Order 2012

SI 2012/1977 Bluetongue (Amendment) Regulations 2012

SI 2012/1984 Caernarfon Harbour Trust (Constitution) Harbour Revision Order 2012

SI 2012/1989 Local Government Pension Scheme (Miscellaneous) Regulations 2012

SI 2012/2015 Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012

SI 2012/2017 Financial Services and Markets Act 2000 (Gibraltar) (Amendment) Order 2012

SI 2012/2018 Magistrates' Courts (Sexual Offences Act 2003) (Miscellaneous Amendments) Rules 2012

SI 2012/2030 Neighbourhood Planning (Prescribed Dates) Regulations 2012

SI 2012/2046 Family Procedure (Amendment No. 3) Rules 2012

SI 2012/2051 School Teachers' Pay and Conditions Order 2012

SI 2012/2055 Education (School Teachers' Appraisal) (England) (Amendment) Regulations 2012

SI 2012/2067 Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment No. 2) Order 2012

SI 2012/2087 Police and Crime Commissioner (Disqualification) (Supplementary Provisions) Regulations 2012

SI 2012/2088 Police and Crime Commissioner Elections (Returning Officers' Accounts) Regulations 2012

SI 2012/2089 Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

SI 2012/2111 Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012

SI 2012/2112 Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2012

SI 2012/2113 Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2012

SI 2012/2114 Police Act 1997 (Criminal Records) (Amendment No. 2) Regulations 2012

SI 2012/2125 Export Control (Syria and Burma Sanctions Amendment) and Miscellaneous Revocations Order 2012

SI 2012/2134 M25 Motorway (Junctions 7 to 16) (Variable Speed Limits) Regulations 2012

SI 2012/2165 Further Education Teachers' Continuing Professional Development and Registration (England) (Revocation) Regulations 2012

SI 2012/2166 Further Education Teachers' Qualifications (England) (Amendment) Regulations 2012

SI 2012/2168 Childcare (Fees) (Amendment) Regulations 2012

SI 2012/2208 Civil Procedure (Amendment No.2) Rules 2012

SI 2012/2257 Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2012

SI 2012/2261 Schools Forums (England) Regulations 2012

SI 2012/2262 European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No.2) (Revocation) Regulations 2012

SI 2012/2263 Cosmetic Products (Safety) (Amendment) Regulations 2012

SI 2012/2264 Insolvency (Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2012

SI 2012/2267 Merchant Shipping (Compulsory Insurance of Shipowners for Maritime Claims) Regulations 2012

SI 2012/2268 Feed-in Tariffs (Specified Maximum Capacity and Functions) (Amendment No. 3) Order 2012

SI 2012/2269 Local Authorities (Capital Finance and Accounting) (England) (Amendment) (No. 4) Regulations 2012

SI 2012/2270 Teachers' Pension (Amendment) (No.2) Regulations 2012

SI 2012/2271 Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012

SI 2012/2272 Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012

SI 2012/2273 National Health Service (Primary Dental Services) (Amendments Related to Units of Dental Activity) Regulations 2012

SI 2012/2274 Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012

SI 2012/2275 Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2012

SI 2012/2276 Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2012

SI 2012/2277 Removal and Disposal of Vehicles (Amendment) (England) Regulations 2012

SI 2012/2278 Protection of Freedoms Act 2012 (Consequential Amendments) Order 2012

SI 2012/2279 Protection of Freedoms Act 2012 (Relevant Official Records) Order 2012

SI 2012/2280 Social Fund Cold Weather Payments (General) Amendment Regulations 2012

SI 2012/2281 Smoke Control Areas (Authorised Fuels) (England) (No. 2) Regulations 2012

SI 2012/2282 Smoke Control Areas (Exempted Fireplaces) (England) (No. 2) Regulations 2012

SI 2012/2283 Scallop Fishing (England) Order 2012

SI 2012/2290 Licensing Act 2003 (Forms and Notices) (Amendment) Regulations 2012

SI 2012/2300 European Economic Interest Grouping and European Public Limited-Liability Company (Fees) Revocation Regulations 2012

SI 2012/2301 Companies and Limited Liability Partnerships (Accounts and Audit Exemptions and Change of Accounting Framework) Regulations 2012

SI 2012/2320 Controlled Waste (England and Wales) (Amendment) Regulations 2012

SI 2012/2336 National Assistance (Assessment of Resources) Amendment (England) Regulations 2012

SI 2012/2371 National Health Service (Pharmaceutical Services) Regulations 2012 (Amendment) Regulations 2012

SI 2012/2372 Town and Country Planning (Control of Advertisements) (England) (Amendment) Regulations 2012

SI 2012/2379 Social Fund Cold Weather Payments (General) Amendment (No. 2) Regulations 2012

SI 2012/2394 Misuse of Drugs (Supply to Addicts) (Amendment) Regulations 2012

SI 2012/2413 Transfer of Undertakings (Protection of Employment) (RCUK Shared Services Centre Limited) Regulations 2012

SI 2012/2414 Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012

Instruments subject to annulment (Northern Ireland)

SR 2012/319 Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 2012

SR 2012/320 Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order (Northern Ireland) 2012

SR 2012/322 Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (Northern Ireland) 2012

SR 2012/323 Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2012

APPENDIX 1: DRAFT BENEFIT CAP (HOUSING BENEFIT) REGULATIONS 2012

Letter from DWP about the SSAC's views on the Benefit Cap (Housing Benefit) Regulations – based on their wider report

PARLIAMENTARY AND SOCIAL SECURITY ADVISORY COMMITTEE SCRUTINY OF A CAP ON BENEFITS

This note summarises the Parliamentary and Social Security Advisory Committee's scrutiny to date of the Government's plans for a cap on benefits. Its purpose is to give an overview of responses to the proposals and the resulting changes the Government has made.

Parliamentary scrutiny

The benefit cap policy was subject to considerable debate and scrutiny during the passage of the Welfare Reform Bill. The Government listened to concerns and considered ways of easing the transition for families and providing assistance in difficult cases.

Early proposals for the benefit cap included exemptions for claimants entitled to Disability Living Allowance, Working Tax Credit and war widows and widowers pensions. Following the debates and consultation with external stakeholders, the Government announced at the Commons consideration stage of the Welfare Reform Act 2012 on 1st February a number of additional measures of support. These are an exemption for those in receipt of the support component of the Employment Support Allowance, a grace period of nine months for people who lose their job, and additional funds for Discretionary Housing Payment. At the same time Ministers agreed to publish in 2014 a review of the cap after the first year of operation (April 2013 – April 2014).[23]

Social Security Advisory Committee scrutiny

The Social Security Advisory Committee (the Committee) has had a number of presentations on the benefit cap from officials from the Department for Work and Pensions (the Department) since the policy was first announced in 2010. At its meeting on 11 January 2012 the Committee made the following recommendations during that discussion:

- claimants in receipt of the support component of the Employment Support Allowance should be exempt from the cap;
- a period of grace should be granted before applying the cap for people who have been made redundant;
- further funding should be made available to the Discretionary Housing Payment fund specifically for benefit cap cases.

The Government's package of support for capped households announced in Parliament on 1st February 2012 responded to these concerns.

The draft Regulations that provide for a cap on benefits are not subject to statutory referral to the Committee as it is planned that they will be made within 6

[23] http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120201/debtext/120201-0002.htm

months of the commencement of the relevant enabling power. However, in recognition of the importance of the changes encompassed by these measures, the Secretary of State for Work and Pensions asked the Committee to consider them.

The Committee considered the revised proposals at its meeting on 13 June 2012, giving further feedback. This included comment on the requirement set out in the Housing Benefit (Benefit Cap) Regulations 2012 that claimants are engaged in remunerative work of 16 hours in the final week of work before the grace period of 39 weeks could apply. As a result of the Committee's comment, the Department reconsidered the policy and consequently dropped the 16-hour requirement in the final week of work.

Social Security Advisory Committee consultation

As part of the Committee's consideration of the Universal Credit draft regulations (which will include the benefit cap as Universal Credit is progressively rolled out between 2013-2017), the Committee called for views from a broad range of organisations and individuals. The Committee then submitted its Report to the Secretary of State for Work and Pensions in mid-August and this is currently being considered. The Government will formally respond and publish the Committee's full Report and its own response when the main Universal Credit regulations are laid before Parliament (expected to be in early December, after the Chancellor's Autumn Statement).

In relation to the benefit cap, the Committee have noted that they are pleased the Government is putting in place an evaluation strategy. They have made one detailed recommendation on the monitoring and evaluation, requesting that the totality of costs to the taxpayer is, wherever practicable, considered as part of that exercise. The Department is currently exploring what will be included in both the full evaluation and interim review for the benefit cap in 2014.

Department for Work and Pensions

25 September 2012

APPENDIX 2: EDUCATION (SCHOOL GOVERNMENT) (TERMS OF REFERENCE) (ENGLAND) (AMENDMENT) REGULATIONS 2012 (SI 2012/1845)

Information from the Department for Education

Q1: The Explanatory Memorandum links the effect of these Regulations to the School Information (England) (Amendment) Regulations 2012 (SI 2012/1124). The latter Regulations were laid on 20 April 2012. Why were the Education (School Government) (Terms of Reference) (England) (Amendment) Regulations 2012 laid only on 17 July (three months later)?

A1: It is regrettable that this instrument was not laid at the same time as the School Information (England) (Amendment) Regulations 2012 (SI 2012/1124) and that it will come into force before the Committee has had the chance to scrutinise it. However, we want schools to enjoy the benefit of the freedom provided by the SI from this September. The SI lifts a requirement and is a logical consequence of the School Information (England) (Amendment) Regulations, rather than imposing a burden. We therefore consider that the commitment to give schools a minimum of a term's notice before new legislation becomes effective does not apply.

Q2: The EM also says:

- *first, that "The obligation in the Education (School Government) (Terms of Reference) (England) Regulations 2000 requires the head teacher to formulate a curriculum policy for adoption by the governing body and to review each year whether any changes need to be made. Governing bodies are required to consider a policy (or changes to a policy) put forward to them by the head teacher and consider whether to make any changes to it. They are also required to monitor, evaluate and review the implementation of the policy"; and*
- *second, that "Given that schools are now required to put information about their curriculum online and can be more easily held to account for their provision, the Government considers it is no longer necessary for them to comply with these additional obligations."*

It is not obvious that the second statement is a logical conclusion from the first. Can you explain this more fully, please?

A2: The new requirements introduced in the School Information (England) (Amendments) Regulations to publish specified information on a website include publication of the 'whole school' approach to its curriculum. This should include content of the curriculum by subject and academic year, details of any phonic and reading schemes, list of courses provided leading to a GCSE qualification and list of courses offered at Key Stage 4 and the qualifications that may be acquired. This in effect duplicates the current requirement to produce a curriculum policy under the Education (School Government) (Terms of Reference) (England) Regulations 2000. The School Information Regulations requirements also include a provision to ensure details of how any additional information relating to the curriculum may be obtained.

Q3: Finally, the EM says: "The Government believes that parents should have access to good quality information so they can make informed choices and hold schools to account." But it also says: "The Department considered that consultation was not necessary before removing this particular burden from schools". Why did you not consult parents before

taking this step, given your belief that they should have access to good quality information?

A3: The effect of this removal and the new School Information Regulations requirement is that information will be more readily available online for parents. A school must also provide a paper copy of the information published on the website without charge to parents on request. Schools must also arrange for the information published on the website to be updated as soon as is reasonably practicable following a change to that information and, in any event, at least annually. In this way, we are therefore ensuring that parents have readier access to high quality information. As the removal of the separate curriculum policy requirement is part of a logical process, the Department did not consider it necessary to consult on it specifically. The intention to repeal this requirement was emphasised in an email to all schools in January 2012, when the Department published a "Statutory Policies for Schools" document which made clear the policies and other documents that schools must have in place. There was no adverse reaction to the lifting of this requirement, merely a small number of queries about when it would come into effect.

Department for Education

25 July 2012

APPENDIX 3: LONDON LEGACY DEVELOPMENT CORPORATION (PLANNING FUNCTIONS) ORDER 2012 (SI 2012/2167)

Information from the Department for Communities and Local Government

Q1: At 8.4, the Explanatory Memorandum states: "Three of the four affected local authorities (all but Newham) disagreed with the proposal that the Corporation should have plan-making powers, as did the London Assembly member for Islington, Hackney and Waltham Forest and the two private individuals and one local business mentioned above. Of those respondents that expressed an opinion on plan-making powers, all others supported this proposal." Could you spell out more fully what the plan-making powers mentioned cover, and what were the grounds on which the three local authorities objected; and also, given that the SI confers these powers on the LLDC, to what extent, and in what form, the LLDC intends to work with the local authorities concerned in making use of the plan-making powers.

A1: These matters were addressed in the Mayor's response to the consultation in relation to question 4, which asked: "In order to meet the objectives set out in this document, do you agree that the Olympic Park Legacy Corporation [now the LLDC] should take the full range of planning functions? If not, what other arrangements could be put into place to ensure a single, integrated and consistent planning framework for the area?"

Of the affected local authorities, who currently have plan-making powers for the area, all but one were opposed to these powers transferring to the Corporation. The plan-making powers provide for a local planning authority to keep under review the matters which may be expected to affect the development of their area or the planning of its development. These are contained in Part 2 of the Planning and Compulsory Purchase Act 2004. In the main, the authorities objected on the grounds that they would lose, in some cases a large proportion of their planning area; continuity with the remaining areas of their borough and the links to infrastructure provision.

The Mayor stated that he understands the nervousness in these local authorities about the transfer of plan-making powers. It is a new approach, compared to the existing urban development corporation model where only development control powers were transferred; local authorities are naturally reluctant to cede direct plan-making power in favour of an arrangement in which they are only one of several participants and where the final decisions are not in their sole control.

However, none of the responses from objectors to this element of the Mayor's proposals were able to propose an alternative approach that addressed the Mayor's two fundamental concerns which led him to make this proposal: first, the risks of inconsistent planning policies in respect of four different authorities, being made to different timetables and with potentially different policy approaches; and second, the ability of the Corporation to take a central role in developing the Community Infrastructure Plan and therefore administer the Community Infrastructure Levy for the area inside its boundary, functions which – as set out in the Planning Act 2008 – can only be carried out by the plan-making authority for any given area.

In the Mayor's view, the Corporation's responsibilities must include sustaining and strengthening the confidence of current and future investors in the Park and surrounding area, and co-ordinating investment in infrastructure. In making his proposals, he believed the Corporation could not meet these responsibilities

without plan-making powers, and none of the responses to the consultation has changed his mind on this important point. The Mayor therefore was not inclined to amend his proposals on this point.

Even among those respondents that support the Corporation taking plan-making powers, the consensus is that the Corporation's policy should build on existing borough policy where this is working well. The Mayor accepts this and expects the Corporation to take such an approach, as part of a wider co-operative approach between the Corporation and local authorities on planning and other matters, which is discussed later in this statement.

As stated in his proposals for consultation, the Mayor places particular importance on a trusting and co-operative relationship between the Corporation and the four local authorities covered by its area. With this in mind, he and LLDC have put in place specific arrangements to ensure that those authorities are involved in, and have a chance to influence, the emerging proposals for the Corporation in all the key areas where their roles and interests overlap. This includes regular high-level engagement with the chief executives as well as a specific working-level focus on key issues such as regeneration, planning, park stewardship and employment and skills. These arrangements build on the links to the boroughs already established, including through those members of the board with borough connections. The Mayor expects that the Corporation will further develop these arrangements when it is formed, to forge close long-term working relationships with the boroughs individually and collectively.

Finally on the plan-making issue, the LLDC will be bound by the requirements of Section 11 of the Localism Act 2011 which introduced a duty to cooperate. The duty is a new requirement on local authorities and other public bodies to work together constructively, actively and on an ongoing basis in relation to planning for strategic cross boundary matters in plan making. The duty forms the cornerstone of the Government's locally-led approach to strategic planning. The duty took effect when the Localism Act gained Royal Assent on 15 November 2011.

Q2: Press reports indicate that the Mayor of London has decided himself to replace the existing chairman of the LLDC. Could you let me know whether all appointments to the LLDC are in the Mayor's gift or, alternatively, whether the Secretary of State has any role in making or confirming any appointments.

A2: The appointment of the LLDC's chair is set out in Schedule 21, Section 1 of the Localism Act 2011; the appointment of members to a Mayoral development corporation, and the appointment of one of those members as Chair, is for the Mayor and Mayor alone to make. There is no role for the Secretary of State.

DCLG

19 September 2012

APPENDIX 4: DRAFT WELFARE OF WILD ANIMALS IN TRAVELLING CIRCUSES (ENGLAND) REGULATIONS 2012

Further information from DEFRA

There is no one consistent definition already in law which fully describes the animals to which these draft regulations will apply. Consequently we have taken an approach which provides the most practical consistency with existing legislation and guidance, and the greatest clarity for those concerned with circus animal welfare.

"Wild animal" is defined in regulation 2 of the draft Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 as "an animal that is a member of a species not normally domesticated in Great Britain". This definition is consistent with that used in section 21(1) of the Zoo Licensing Act 1981. Defra has produced guidance on the operation of the Zoo Licensing Act 1981 (http://www.defra.gov.uk/publications/files/zoo-licensing-act-guide.pdf) which, at Annex A, sets out the Defra view on which animals are considered to be normally domesticated or not normally domesticated in Great Britain. Using a definition consistent with the Zoo Licensing Act 1981 will mean this existing and already well understood guidance will be equally useful to circus operators in determining whether a given animal is a "wild animal" within the meaning of the draft Regulations.

The term "wild animal" is not defined in the Animal Welfare Act 2006. Section 1 of the Act clarifies that "animal" means a vertebrate other than man. Section 2 of the Act sets out three further criteria, any one of which will make an animal a "protected animal" for the purpose of the Act. Therefore, all animals in circuses, wild or otherwise, will be "protected animals" by virtue of section 2(b) of the Act as they are under the control of man. Section 2(a) of the Act concerning domestication in the British Islands will not be relevant. Consequently, there is no risk that circus operators will be confused by use of the term "not normally domesticated in Great Britain" in the definition of "wild animal" found in the draft Regulations. Circus operators can simply be directed to Annex A of the Defra Zoos guidance for clarity on which animals will come within the definition of "wild animal" in the draft Regulations.

DEFRA

13 September 2012

APPENDIX 5: DRAFT MODIFICATIONS TO THE STANDARD CONDITIONS OF ELECTRICITY GENERATION LICENCES

Information from the Department of Energy and Climate Change

Q: At paragraph 7.2 of the Explanatory Memorandum, the Department states that Ofgem estimated that the costs of "undue exploitation" could have been as much as £125m in 2008-09. Have Ofgem or the Government acted to recoup this amount and return it to consumers? Also, Figure 1 in the impact assessment shows that constraints costs have continued at high levels since 2008-09, notably in 2011-12. Would an element of these costs also have been "undue exploitation", and, if so, are the Government acting to get such sums back for consumers?

A: Most constraint payments are reasonable, are determined under competitive market conditions and compensate generators for having to reduce or increase the amount of electricity they have planned and committed to provide to suppliers. However, following the concerns to which you refer, the Government have acted by seeking to introduce the Transmission Constraint Licence Condition (TCLC). The Government have been supported by Ofgem in taking forward this measure.

As regards any undue exploitation that may previously have occurred, the TCLC cannot provide for retrospective action. Any action to prove and potentially recoup costs associated with such earlier undue exploitation would have to be taken under wider competition law, and, as Ofgem has previously noted, "the likelihood of making an infringement decision under the Competition Act 1998 is low". Compared to existing competition law, the TCLC has the advantage of being specifically tailored to the characteristics of the electricity sector (i.e., where market power can be intermittent or transient in nature but nonetheless very costly to consumers in certain periods). We therefore believe that the TCLC is more likely to achieve the intended objectives (of savings to consumers), at lower resource cost (in terms of investigations). Para 29 of the Government's final Impact Assessment provides further detail on the limitations of Ofgem's existing competition powers in this context.

It is not certain whether undue exploitation is one of the contributing factors to the high level of constraint costs incurred in 2011/12. However, as the Impact Assessment notes (para 22), it is clear that actions in constrained parts of the transmission system continue to remain generally more expensive than actions elsewhere in GB. This reinforces the case for the TCLC.

DECC

25 July 2012

APPENDIX 6: SCHOOL PREMISES (ENGLAND) REGULATIONS 2012 (SI 2012/1943)

Information from the Department for Education

Q1: A summary of consultation responses appears on DfE's website. On p. 18, it states that the proposal was as follows: "(1) Suitable outdoor space must be provided in order to enable—a. physical education to be provided to pupils in accordance with the school curriculum; and b. pupils to play outside safely." In the Regulations as laid, the relevant provision is as follows: "10.—(1) Suitable outdoor space must be provided in order to enable—(a) physical education to be provided to pupils in accordance with the school curriculum; and (b) pupils to play outside."

Was the only change from the consultation proposal to drop the word "safely" from (b)? If so, why did DfE drop the word "safely"?

A1: Yes, on the outside space regulation.

Q2: What proportion of respondents suggested that the word "safely" be removed, and was this suggestion made by representatives of all the different categories of respondents set out on p. 2 of the summary?

A2: Removal of the word "safely" was not directly proposed in the consultation responses. One parent responded that the regulations should allow children to take risks. However in workshops and stakeholder events held during the consultation period this issue was discussed in detail. People were in favour of removing it because we had a regulation around pupil health, safety and welfare that this duplicated, and there were concerns that focusing on safety in this regulation would encourage schools to be over-protective of pupils during breaks. We considered that the regulation on health, safety and welfare was sufficient to ensure the safety of pupils while on the school premises, and that we did not therefore need to duplicate "safely" in the regulation on outdoor space.

Q3: In the Explanatory Memorandum, dealing with consultation, it is stated that "175 responses were received from local authorities, dioceses, schools and governors, parents and technical professionals (e.g. architects and engineers). There was broad support for simplifying the existing regulations, though many responses that agreed to the proposed regulations or removal of regulations were qualified by 'yes – but only if information about expectations is included in guidance'." There is no reference in the EM to comments on the outdoor space proposals. However, in the summary of responses, the following information is given:

There were 147 responses to this question

Options	Responses	
Yes:	52	35%
No:	77	52%
Not Sure:	18	12%

Why did the EM not flag up that a majority of respondents opposed the consultation proposals on this aspect?

A3: As set out in the Committee's guidance, the EM sets out the consultation period, the number of responses received, and the main groups of respondees. The EM presented an overview of the whole consultation and the key points raised overall. It did not single out the responses to any particular question out of the 20 that were asked, instead focusing on the issues that were present throughout all responses: defining what was meant by "suitable" provision, and that removing regulations was in many cases only supported if expectations were set out in guidance.

Q4: In addition, the summary provides the following information:

"13% of respondents asked for 'suitability' to be better defined. 13% thought that outdoor provision should be more measureable, with specific space requirements set out for schools, though a couple of respondents felt that it would be unrealistic to 'demand' specific outdoor areas for schools. 11% of respondents, mostly local authorities and dioceses, commented that it would make negotiations under s106 (housing development) agreements more difficult, in that developers would deliver to the minimum standard possible and without specific spaces set out in regulation a valuable lever would be lost. Some respondents suggested that the regulation should take into account outdoor learning as well as play and sport; it was suggested that word 'physical' be removed from the regulation to encourage this, and that the word 'safely' be removed as it would encourage over-protective attitudes towards risk assessment."

As regards the concern that developers would deliver to the minimum standard possible and without specific spaces set out in regulation a valuable lever would be lost, does this mean that, before these Regulations, the provisions on outdoor space did indeed lay down "specific spaces"?

A4: Not for the overall amount of outdoor space. The School Premises Regulations 1999 set out in Schedule 2 the minimum area of team game playing fields required at maintained schools for pupils over 8 years old (ie, the ground that must be suitable for and laid out for the purpose of playing team games.) This was not applicable to Academies and Free Schools, and children under 8 at maintained schools did not count in the calculations. There were no regulations governing the minimum standards for other types of outdoor space, such as informal areas, social area and habitat area. Schools that did not meet the team game requirement when it was introduced in 1999 were considered to satisfy the regulation, provided that their playing fields do not get any smaller, and that there was not a step increase in the number of pupils.

Q5: Finally, are the Regulations on outdoor space being re-considered in the light of the current discussion of the post-Olympics legacy?

A5: No. Two issues have been raised recently in relations to premises and Olympic legacy: concerns that changes to the regulations will make it easier to dispose of school playing fields, and concerns that the regulations could in some way limit the sporting opportunities available in schools. We do not consider that the removal of

Schedule 2 will make it any easier to dispose of playing fields; consent will still need to be sought from the Secretary of State for disposals of land used by the maintained schools these regulations affect. The regulations now require schools to provide outdoor space to meet the needs of their physical education curriculum, which should ensure that a range of sporting opportunities are provided. There is therefore no need to reconsider the regulations.

Department for Education

17 September 2012

APPENDIX 7: TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) (AMENDMENT NO.2) ORDER 2012 (SI 2012/2274), PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (AMENDMENT) (ENGLAND) REGULATIONS 2012 (SI 2012/2275)

Information from the Department for Communities and Local Government

Q: The effect of the instruments is to allow applications for replacement planning permissions for unimplemented extant permissions granted before October 2010. Can you say how many such unimplemented extant permissions there are, what types of development they cover, and what the economic value of the developments concerned may be?

A: The current provision was introduced in October 2009 as a temporary measure in response to the economic downturn, and its scope was widened to incorporate partially implemented outline planning permissions in October 2010. In each case it applies in circumstances where the original permission was granted before October 2009. Planning permission is normally granted subject to a three-year time-limit for implementation, though a longer period is allowed for in some cases. The ability to extend an existing permission will therefore cease to be available to most applicants from October 2012, unless a longer time-period for implementation was agreed at the initial grant of permission.

We do not hold information on: (a) the exact number of unimplemented extant permissions granted before October 2010; (b) the specific types of development that they cover; or (c) the economic value of these developments. What we do know is that between September 2009 and September 2010 decisions were made on 433,800 planning applications. The type and breakdown of applications include:

- 12,800 'major' (including 'large scale major') applications;
- 121,600 'minor';
- 198,600 householder applications.

This is broadly the cohort of applications to which this measure applies, although it strictly applies to any unimplemented, extant permissions (or partially implemented outline permissions) granted prior to 1 October 2010.

It is reasonable to expect that applicants will ordinarily, and wherever possible, build out schemes that have planning permission in the time allotted to them by the local authority, as most applicants are reliant on maximising profit and so have little incentive to delay output. However in times of economic uncertainty this is not always possible. The economic downturn led to difficulties for some applicants in proceeding with schemes that had permission.

We have estimated take-up of this proposal (from the 433,800 possible potentials) as follows:

- between 5 and 20% of the potentially eligible major applications (including large scale major applications); and
- between 2.5 and 7.5% of the potentially eligible minor and householder applications.

Based on these assumptions, the number of applicants that could benefit from this proposal are likely to be approximately 26,000.

The benefits to applicants of the expedited extensions procedure[24] derive from a reduction in administrative costs associated with submitting such applications compared to the costs of submitting a full application. In addition there is also a saving arising due to a reduced fee payable. The combined saving, over the one year life of the policy, is estimated to be £7.3m - £26.2m.

Business applicants submitting large-scale major, major and minor projects are considered to be the key beneficiary of this policy, although it will also benefit individuals seeking to renew a householder permission.

The administrative savings are calculated by reference to the expense that applicants would ordinarily incur in preparing the information necessary to submit a planning application. In cases where applicants are extending an existing planning permission, this is significantly reduced from a scenario where an applicant is submitting a full new planning application. The fee savings reflect the fact that applicants seeking to apply for a replacement planning permission pay a lower fee than they would for a full new application.

DCLG

25 September 2012

[24] In this context, "extensions" refers to extended time-periods (not structural enlargements).

APPENDIX 8: 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 9 October 2012 Members declared the following interests:

Education (School Government) (Terms of Reference) (England) (Amendment) Regulations 2012 (SI 2012/1845)

School Premises (England) Regulations 2012 (SI 2012/1943)

Schools Forums (England) Regulations 2012 (SI 2012/2261)

Baroness Eaton, as Foundation Trust Governor, Bingley Grammar School, West Yorkshire, and Governor, Lady Lane Park Preparatory School, Bingley, West Yorkshire.

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

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

Local Government Pension Scheme (Miscellaneous) Regulations 2012 (SI 2012/1989)

Baroness Eaton and Baroness Hamwee, in receipt of local government pensions.

Attendance:

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