

# HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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17th Report of Session 2012-13

**Council Tax Reduction Schemes (Prescribed  
Requirements) (England) Regulations  
2012**

**Council Tax Reduction Schemes (Default  
Scheme) (England) Regulations 2012**

Plus 2 Information Paragraphs on 3 Instruments

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

The Committee has the following terms of reference:

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

*Members*

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

*Registered interests*

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

*Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://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](mailto: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.

# Seventeenth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**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. Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (SI 2012/2885)**

**Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (SI 2012/2886)**

*Date laid: 22 November*  
*Parliamentary Procedure: negative*

*Summary: From April 2013, all billing authorities<sup>1</sup> in England are required to have their own localised council tax support schemes. The Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 make provision for a default scheme that will apply to those authorities that have not made their own scheme by 31 January 2013. Otherwise all schemes made by authorities must include the matters prescribed in the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012.*

**We draw these instruments to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. In the Spending Review 2010, the Government announced that support for council tax would be localised from 2013-14, and that expenditure would be reduced by 10% from the same date. Existing council tax benefit provisions under social security legislation are to be repealed from 1 April 2013. These instruments, laid by the Department for Communities and Local Government (DCLG), make provision for the new localised council tax support schemes which come into effect on the same date, to replace council tax benefit.
2. In the Explanatory Memorandum (EM) to the instruments, DCLG states that all billing authorities in England are required to have their own scheme. The Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (“the Default Scheme Regulations”) make provision for a default scheme that will apply to those authorities that have not made their own scheme by 31 January 2013. Otherwise all schemes made by authorities must include the matters prescribed in the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (“the Prescribed Requirements Regulations”), as well as matters required to be included in local schemes by paragraph 2 of Schedule 1A to the Local Government Finance Act 1992.

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<sup>1</sup> Different parts of the country may have either a single-tier local authority, or several overlapping tiers of local government serving the same area. One local authority in each area is designated as the billing authority, with responsibility for collecting council tax on behalf of all the local authorities operating in that area.

3. In the EM, DCLG says that the Prescribed Requirements Regulations preserve existing provision for pensioners, so that council tax reductions in all authorities will be calculated in the same way as under existing secondary legislation.<sup>2</sup> DCLG adds that this reflects the Government's stated policy intention, as set out in its consultation response of December 2011,<sup>3</sup> that vulnerable pensioners should not be disadvantaged as a result of this reform, in terms of the calculation of their council tax awards.
4. As regards the Default Scheme Regulations, DCLG states that, on the assumption that billing authorities will not have time to re-design their IT or other systems, the default scheme assumes no change in substance to the current system. However, the scheme does provide for the treatment of people on new benefits being introduced under the Welfare Reform Act 2012, such as universal credit, because from April 2013 these benefits will start to replace legacy benefits referenced in the existing system as indicators of particular needs.
5. DCLG states that it carried out consultation on the localisation of council tax reform policy from 2 August 2011 to 14 October 2011, and received 400 responses. The Department says that there was broad support (61%) for the proposal that retention of support for pensioners should be delivered through a national "rules-based" approach, with eligibility and rates defined in Regulations broadly similar to those existing under council tax.
6. Both instruments were laid before Parliament on 22 November 2012. While the Default Scheme Regulations are being brought into force on 18 December 2012, the Prescribed Requirements Regulations came into force on 27 November 2012. In section 3 of the EM, DCLG sets out the background to this breach of the 21-day rule,<sup>4</sup> and comments that the Department "regretfully concluded" that it should breach the rule. It adds that, whilst it accepts that both Parliament and those with an interest in the Regulations should be given sufficient time in which to consider their effect, it does not believe that "there is any disadvantage caused to billing authorities or other interested parties by the Regulations coming into force shortly after they are laid".
7. In explaining its decision to breach the 21-day rule, the Department stresses the risks to local authorities of delay in the Regulations becoming effective. We note that, as an annex to the consultation response which it published in December 2011,<sup>5</sup> DCLG included a timetable for localising council tax support. This foresaw that localised support schemes would be in operation in spring 2013; however, it also envisaged that the secondary legislation would be passed in "early autumn" of 2012. We would comment that the end of November cannot be regarded as early autumn; that, if the Government have been unable to maintain their own timetable for the preparations for introducing localised support schemes, they might

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<sup>2</sup> The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/216)

<sup>3</sup> "Localising support for council tax in England: Government's response to the outcome of consultation", Chapter 2. See: <https://www.gov.uk/government/consultations/localising-support-for-council-tax>

<sup>4</sup> Statutory Instrument Practice, the Government's manual on secondary legislation, states that an instrument subject to negative procedure should generally be laid, and copies provided to the scrutiny committees of both Houses, at least 21 days before it is due to come into force, in order to enable the committees to consider the instrument before it comes into force.

<sup>5</sup> Ibid, Annex A

reasonably have considered delaying that introduction; and that shortening the period available for Parliamentary scrutiny from 21 days to five does indeed disadvantage that process.

8. We are aware of general concern over the principle of localisation underlying these instruments. We note, for example, that on 22 November 2012 the Work and Pensions Committee of the House of Commons published a report on “Universal Credit implementation: meeting the needs of vulnerable claimants”<sup>6</sup> which raised questions over the implementation timetable. In relation to the subject-matter of these instruments, the Work and Pensions Committee stated its belief “that the Government’s decision to localise council tax support under a proliferation of local schemes, rather than including it within Universal Credit, will work against its objective of simplification of the benefits system. It will introduce local variation, add additional complexity to earnings incentives and has the potential seriously to undermine the objectives of Universal Credit in terms of enabling claimants to see clearly the financial benefits of taking up a job or working more hours.”<sup>7</sup> We would comment that these instruments demonstrate the complexity of the new arrangements, which can be expected to prove challenging as much for those required to implement them as for claimants who will need to understand the new system.
9. The House has accepted the principle of localised council tax support, in approving the Welfare Reform Act 2012. **In drawing these instruments to its attention, however, we hope that the House will take an interest in the way in which this principle is being implemented through these instruments, and particularly in the Government’s decision to curtail the period available for Parliamentary scrutiny of the Prescribed Requirements Regulations.**

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<sup>6</sup> Third Report of Session 2012-13, HC 576.

<sup>7</sup> Ibid, para. 206.

## INSTRUMENTS OF INTEREST

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### *Financial Restrictions (Iran) Order 2012 (SI 2012/2904)*

### *Iran (European Union Financial Sanctions) (Amendment No. 2) Regulations 2012 (SI 2012/2909)*

10. Both these instruments have been laid to address concerns over the nuclear programme pursued by Iran.
11. The Order (SI 2012/2904), laid by HM Treasury (HMT) under the Counter-Terrorism Act 2008,<sup>8</sup> contains a direction to UK credit and financial institutions to cease all transactions and business relationships with Iranian banks and their subsidiaries, and the Central Bank of Iran. These restrictions are imposed because of the role of Iranian banks in activity in Iran that facilitates the development or production of nuclear weapons. The Order came into effect on 21 November 2012 (the day after it was made and laid), but requires approval by resolution of each House within 28 days of being made. It replaces the Financial Restrictions (Iran) Order 2011 (SI 2011/2775), which came into force on 21 November 2011 and which ceased to have effect one year after it was made. In the Explanatory Memorandum, HMT states that, given the continuing risk to UK national interests, the Government considered it appropriate to give a new direction.
12. The Regulations (SI 2012/2909) amend the Iran (European Union Financial Sanctions) Regulations 2012 (SI 2012/925) which provided for penalties for breach of the asset-freezing measures contained in Council Regulation (EU) No. 267/2012 of 23 March 2012 (“the March EU Regulation”): those measures were imposed in response to ongoing concerns over Iran’s nuclear programme. Council Regulation (EU) No. 1067/2012 of 14 November 2012 (“the November EU Regulation”) amended the March EU Regulation, and provided for derogations from the asset-freezing measures in respect of transactions relating to certain production-sharing agreements, and certain contracts for the supply of Iranian crude oil and petroleum products. SI 2012/2909 amends SI 2012/925 to reflect those derogations. These Regulations were brought into force on 22 November 2012, the day after they were laid. HMT has explained that this was necessary to ensure that, once the November EU Regulation had come into force (on 16 November 2012), SI 2012/925 was promptly amended to reflect the derogations provided from the earlier asset-freezing measures.

### *Statement of Changes in Immigration Rules (HC 760)*

13. The Home Office has laid a Statement of Changes in Immigration Rules (HC 760) which makes a wide range of minor changes. The majority of changes in HC 760 respond to points raised by business and others, and either clarify the Rules, correct deficiencies in previous versions or provide additional flexibilities. A number of changes are responding to points raised by stakeholders (for example, the ability for senior Intra-Company Transfers to stay in the UK for up to nine years, the clearer and more flexible approach to permitted absences in the work-related settlement categories, and the

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<sup>8</sup> Specifically, under paragraph 16(4) of Schedule 7 to the 2008 Act.

ability to grant leave to Foreign and Commonwealth ex-HM Forces personnel who fail to meet the settlement requirements as a result of minor criminality). Minor changes are made to almost all the Tiers of the Points Based System, to the provisions relating to children, to provisions about criminality and deportation and to the evidential requirements.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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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.

### **Instrument subject to affirmative approval**

SI 2012/2904 Financial Restrictions (Iran) Order 2012

### **Draft Negative instruments subject to annulment**

Boston (Electoral Changes) Order 2013

Northamptonshire (Electoral Changes) Order 2013

Purbeck (Electoral Changes) Order 2013

Tonbridge and Malling (Electoral Changes) Order 2013

### **Instruments subject to annulment**

HC 760 Statement of Changes in Immigration Rules

SI 2012/2876 UK Borders Act 2007 (Border and Immigration Inspectorate) (Joint Working etc.) Order 2012

SI 2012/2879 Bedfordshire Fire Services (Combination Scheme) (Variation) Order 2012

SI 2012/2882 General Optical Council (Continuing Education and Training Rules) (Amendment) Order of Council 2012

SI 2012/2890 Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2012

SI 2012/2897 Agriculture, Animals, Environment and Food etc. (Miscellaneous Amendments) Order 2012

SI 2012/2909 Iran (European Union Financial Sanctions) (Amendment No.2) Regulations 2012

SI 2012/2911 Electricity (Exemption from the Requirement for a Generation Licence) (Covanta Ince Park Limited) (England and Wales) Order 2012

## APPENDIX 1: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://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 4 December 2012 Members declared no interests.

### *Attendance:*

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