Secondary Legislation Scrutiny Committee

27th Report of Session 2013-14

Public Bodies Order

Draft Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014

Children’s Homes and Looked after Children (Miscellaneous Amendments) (England) Regulations 2013

Correspondence:

Draft Child Support Fees Regulations 2014
Draft Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014

Includes Information Paragraphs on 7 Instruments

Ordered to be printed 21 January 2014 and published 23 January 2014

Published by the Authority of the House of Lords

London: The Stationery Office Limited

Price

HL Paper 117
Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

Historical Note
In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012-3 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee has the following terms of reference:

1. The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
   a. every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
   b. every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,
   with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).

2. The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
   a. that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
   b. that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
   c. that it may inappropriately implement European Union legislation;
   d. that it may imperfectly achieve its policy objectives.

3. The exceptions are—
   a. remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
   b. draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
   c. Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

4. The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.

5. The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members
Lord Bichard    Baroness Hamwee   Lord Plant of Highfield
Lord Blackwell    Lord Methuen    Rt Hon. Lord Scott of Foscote
Lord Eames    Rt Hon. Baroness Morris of Yardley    Lord Woolmer of Leeds
Rt Hon. Lord Goodlad (Chairman)    Lord Norton of Louth

Registered interests
Information about interests of Committee Members can be found in Appendix 3.

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’s work, 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
Twenty Seventh Report

PUBLIC BODIES ORDER

A. Draft Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014

Introduction

1. The draft Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (“the Order”) was laid on 16 December 2013 under section 2 of the Public Bodies Act 2011 (“the 2011 Act”). The Order was laid by the Ministry of Justice (MOJ) with an Explanatory Document (ED) and an Impact Assessment has been provided.

Overview of the proposal

2. The draft Order proposes the formal merger of the Crown Prosecution Service (CPS) and the Revenue and Customs Prosecutions Office (RCPO). The merger has, however, been operating administratively since 1 January 2010 when the same person was appointed as Director of both offices. The current instrument proposes to abolish the office of the Director of Revenue and Customs Prosecutions and formally transfer its functions to the CPS. The Order would also make the necessary transitional and consequential changes.

3. The functions and scope of the CPS are set out in Part 1 of the Prosecution of Offences Act 1985. The RCPO was established by the Commissioners for Revenue and Customs Act 2005 (“the 2005 Act”) to provide a separate prosecution function for HM Revenue and Customs investigations in England and Wales. It was later extended to include Serious Organised Crime Agency investigations. However the UK Border Agency took over all investigations of non-fiscal smuggling offences in December 2009. Since 2010 there has been an administrative merger of the two offices but under two distinct legal regimes. The proposal would give effect to the legal merger, for example by transferring the property, rights and liabilities of the RCPO to the CPS including transfer of case files and other electronic records. Article 5(3) of the Order provides for the continuity of legal proceedings being carried out by the RCPO at the time of transfer. In addition the Order would extend the existing offence of unlawful disclosure, which applies to RCPO staff under section 40(3) of the 2005 Act, to all CPS staff.

MOJ’s argument for abolition

4. The merger was announced in April 2009, and the administrative merger began under the previous Government on 1 January 2010 when the then Director of Public Prosecutions was also appointed as the Director of Revenue and Customs Prosecutions. The change was prompted by a need for a strengthened prosecution service that could respond more effectively to the increase in criminals operating across both functional and national boundaries. It was also considered that the merger would make efficiency
savings and provide increased value for money. The 2011 Act provides a legislative vehicle that can formalise the merger.

*Role of the Secondary Legislation Scrutiny Committee*

5. The Committee’s role, as set out in its Terms of Reference, is to “report on draft orders and documents laid before Parliament under section 11(1) of the 2011 Act in accordance with the procedures set out in sections 11(5) and (6)”. A key aspect of this role is the Committee’s power to trigger the enhanced affirmative procedure which would require the Government to have regard to any recommendations made by the Committee during a 60-day period from the date of laying. The Committee may also take oral or written evidence, to aid its consideration of the orders.

*Statutory Consultation*

6. The Government have carried out consultation in accordance with section 10 of the 2011 Act. The proposal was one of many included in a generic consultation on changes to be made under the 2011 Act published by MOJ in July 2011. This was followed up by a more detailed consultation document published on 28 February 2012 which focused on whether legal changes were necessary to underpin the administrative merger. The eight responses received were generally supportive, but there was concern that the specialist expertise of the RCPO should not be lost. The Government response confirmed that cases investigated by HMRC are handled by a specialist casework division within the CPS which also has a national remit to prosecute the most complex and serious fraud and corruption cases investigated by the police.1

*Other Tests in the Public Bodies Act 2011: assessment of the proposals*

7. A Minister may only make an order under sections 1 to 5 of the 2011 Act if he or she considers that the order serves the purpose of improving the exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy, and (d) securing appropriate accountability to Ministers (section 8 of the 2011 Act). This Order is proposed under section 2 which gives the power to merge bodies.

*Efficiency*

8. The administrative arrangement has delivered a more efficient and flexible prosecution service. RCPO prosecutors have also been designated Crown Prosecutors and are therefore able to undertake the full range of CPS prosecutions, providing greater capacity and a more flexible workforce. However the confidentiality requirements which currently apply to RCPO staff under section 40(3) of the 2005 Act have meant that complete integration has not been possible: the Order extends that requirement to all staff, enabling complete integration of staff resource and, therefore, greater efficiency.

---

Effectiveness

9. The increased flexibility derived from putting the merger on a statutory footing will allow further economies of scale and better use of existing resources. In particular, MOJ states that more effective working practices will enable staff to respond better to the changing demands of criminal justice enforcement including the prosecution of cases generated by the creation of the National Crime Agency.

Economy

10. Formalising the merger is not expected to add any additional programme savings to those anticipated from the administrative merger – see table on page 4 of the ED. The table shows that the merger has already generated annual savings: over £6 million in 2012-13, which is expected to rise to almost £10 million annually by 2014-15. However, MOJ states that simplifications and economies of scale enabled by the formal merger will support this and facilitate better use of existing resources.

Accountability

11. The changes will not result in any loss of accountability: the Director of Public Prosecutions will remain accountable to the Attorney General and, through the Attorney General, to Parliament. The formalisation of the merger will make it clearer where responsibility lies and thus enhance public accountability.

Safeguards

12. The Minister considers that the conditions in section 8(2) of the 2011 Act are satisfied in respect of the abolition of the RCPO as its designated functions are being transferred to the CPS with appropriate measures to ensure continuity of ongoing cases. The merger does not remove any necessary protections nor does it affect the exercise of any legal rights or freedoms either directly or indirectly. It specifically ensures that the protection of HMRC information will be continued and extended to apply to all staff.

Conclusion

13. The Government present a convincing argument that the overall effect of the transfer of the responsibilities of the RCPO to the CPS will result in streamlining the process by including it in a larger group where economies of scale can be identified from using prosecutors and administrators for a wider range of duties. Although the economies realised by this Order are comparatively small, the improvements to efficiency are more substantial, with the potential for the more flexible structure possible under the new arrangements. We conclude that the Government have demonstrated that the draft Order serves the purpose of improving the exercise of public functions and complies with the test set out in the 2011 Act. We are content to clear it for the 40-day affirmative procedure.
The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.

B. Children’s Homes and Looked after Children (Miscellaneous Amendments) (England) Regulations 2013 (SI 2013/3239)

Date laid: 23 December 2013
Parliamentary Procedure: negative

Summary: These Regulations are intended to improve the safeguarding of children accommodated in children’s homes and the quality of care that homes provide, and also to increase the range of publicly available information about a home. They introduce new safeguards aimed at preventing children from going missing from placements, and supporting children who go missing, or are at risk of going missing.

We draw this instrument to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

14. These Regulations have been laid by the Department for Education (DfE) with an Explanatory Memorandum (EM). In the EM, DfE states that, in amending earlier instruments, including the Children’s Homes Regulations 2001, these Regulations will improve the safeguarding of children accommodated in children’s homes, the quality of care that homes provide and the monitoring and reporting on that care; and also increase the range of information about a home that the public can obtain. The Department adds that, through amendments to other instruments, the Regulations introduce new safeguards aimed at preventing children from going missing from placements, and supporting children who go missing, or are at risk of going missing.

15. DfE states that these changes take forward the recommendations in the April 2013 report of the Expert Group on Children’s Homes Quality, which included conclusions from the Out of Area Placement Task and Finish Group. These groups were established in July 2012 following the Rochdale child sexual exploitation trial and reports from the Office of the Children’s Commissioner on child sexual exploitation in gangs and the All Party Parliamentary Group Inquiry on children who go missing from care.

16. The reports found that children in children’s homes, especially if placed a long way from the authority responsible for their care, were highly vulnerable to going missing and could be targeted for exploitation. They could be unknown to the local children’s safeguarding services in the area where their

---


5 See: http://www.childrenscommissioner.gov.uk/info/csegg1

home was located, and could, at the same time, be deprived of sufficient support from the distant authority responsible for their care. DfE says that the changes in these Regulations are needed to improve collaboration between children’s homes and services in their local communities to improve the safeguards for looked after children in homes.

17. The Department carried out consultation over 12 weeks to mid-September 2013. Over 250 professionals attended consultation events, and 254 written responses were received.\(^7\) DfE says that the wide range of organisations responding were broadly in favour of amending the earlier instruments in order to introduce more effective safeguarding arrangements. In response to concerns about how some of the proposals would work in practice, DfE is delaying the start of changes to arrangements for the registration of homes while it carries out further work with interested parties to develop a consistent approach to assessing the suitability of homes’ locations, to ensure that, as far as possible children live in safe areas.

18. The Department notes that this is only the latest of a number of instruments that have amended the Children’s Homes Regulations 2001. It says that the Government have introduced an amendment to the Children and Families Bill, currently before Parliament, which would give the Secretary of State the power to create further regulations to specify high objectives and standards for regulated establishments or services;\(^8\) and that this regulation-making power would provide the opportunity for reviewing all existing regulations that apply to children’s homes and, potentially, for consolidating them.

---


\(^8\) Clause 83 of the Bill as amended in Grand Committee.
CORRESPONDENCE

Draft Child Support Fees Regulations 2014
Draft Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014

19. In its 23rd Report of this Session, the Committee drew these instruments to the special attention of the House, noting the new scheme offered potential administrative benefits and savings to the taxpayer. However, the Committee also had some concerns about the potential impact of the new legislation on the scheme’s overarching policy objective of providing financial support for children of separated parents.

20. In consequence the Chairman wrote on 17 December 2013 to Steve Webb MP, the Department for Work and Pensions Minister, for clarification on three points:

- what evidence there is to support the view that charging enhances the collaboration between parents;
- clarification about the timetable of the Help and Support for Separated Families Initiative; and
- asking how the deterrent effect of charging, which by DWP’s own estimate will result in 100,000 cases dropping out of the payment scheme during the transfer period with no replacement arrangement, serves the overarching aim of providing financial support for children of separated parents.

21. Following its consideration of the DWP’s response of 2 January 2014, the Committee wrote again to seek further clarification about what support will be available nationally for all separated parents from the start of the transfer period. Mr Webb responded on 20 January providing a detailed explanation of the various types of advice and support, for which we are most grateful.

22. We publish all the correspondence at Appendix 1: the House will find the correspondence of interest in the way it sets out more explicitly DWP’s policy intentions for the new scheme.

9 HL Paper 106.
OTHER INSTRUMENTS OF INTEREST

Draft Consumer Credit Act 1974 (Green Deal) (Amendment) Order 2014

23. The Department for Energy and Climate Change (DECC) has laid this draft Order with an Explanatory Memorandum (EM). As the EM makes clear at paragraph 4.3, this is the latest in a suite of statutory instruments which have been made in the last eighteen months providing for implementation of the “Green Deal” under the Energy Act 2011. DECC says that the Green Deal introduces a framework for the delivery of energy efficiency measures that includes the option of entering into a new type of credit arrangement, which enables owners and occupiers to make energy efficiency improvements to their property and pay for them over time through instalments added to their electricity bill. This Order amends the Consumer Credit Act 1974 (“the 1974 Act”) for the purposes of the Green Deal, in order to clarify: the circumstances in which a Green Deal plan (“GD plan”) is treated as a consumer credit agreement; the persons who are to be treated as the “debtor” for a GD plan in relation to specified provisions in the 1974 Act; and the persons who are to be treated as the “creditor” for a GD plan.

24. DECC consulted on the proposed clarification over four weeks in May and June 2013. In the EM, DECC states that this was in response to queries from interested parties, who sought clarification of whether an improver landlord and tenant bill-payer would both need to be classed as debtors under a single GD plan in certain instances. 19 consultation responses were received, generally supporting the principle of an amendment. DECC published its own consultation response in August 2013. It confirmed the intention to amend the definition of “debtor”, making it clear that, in the case of a prospective credit agreement, the amendment would clarify that the “debtor” would be the person who was the bill-payer at the point at which the credit agreement was entered into.

25. However, DECC explains that, since August, it has received further representations about the amendment, raising concerns that bear in particular in whether Green Deal plans ought to be regulated or not, particularly in the domestic rented sector. In response, DECC has refined its approach, as expressed in this draft Order.

26. We would comment that an ambitious and wide-ranging scheme such as the Green Deal is bound to require time to settle in and gain understanding from interested parties. However, the proliferation of statutory instruments is not conducive to such an understanding. It must be appropriate that the Department maintains its efforts to provide guidance on the Green Deal and to simplify the legislative framework for it.

Draft Special Education Needs (Direct Payments) (Pilot Scheme) (Extension and Amendment) Order 2014

27. This draft Order has been laid by the Department for Education (DfE) with an Explanatory Memorandum (EM). DfE states that the purpose of the Order is to extend and amend the provisions of the pilot scheme for making direct payments, as set out in the Special Educational Needs (Direct Payments) (Pilot Scheme) 2012 (SI 2012/206: “the 2012 Order”). The amended pilot scheme will have effect on 29 January 2014. This Order extends the pilot scheme until and including 30 September 2015. In the EM, DfE states that the Order will permit the on-going testing and use of direct payments and also allow for transition for families taking part in the pilot scheme to the new system set out in Part 3 the Children and Families Bill, which is expected to be commenced from September 2014. We asked the Department to provide more information about this transition, and we are publishing that information at Appendix 2.

Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2013 (SI 2013/3193)

28. These Regulations have been laid by the Department for Education (DfE) with an Explanatory Memorandum (EM). DfE explains that, since September 2008, local authorities have had a statutory duty to secure early years provision (“the early years duty”) free of charge for all three- and four-year-olds in their area. This is known as funded early education. In 2010 the Government announced an intention to extend the entitlement to funded early education to the 20% most disadvantaged two-year-olds; since September 2013 around 130,000 two-year-olds who meet the same criteria used for determining eligibility for free school meals or who are looked-after by the local authority have been entitled to a free place. DfE states that the main change made by these Regulations is to extend the eligibility criteria for children aged two, in line with the Government’s announcement in 2011 that the entitlement would be extended to around 40% of the most disadvantaged two-year-olds from September 2014. The eligibility criteria for this extended entitlement are set out in paragraph 4.4 of the EM.

29. The Department consulted on the eligibility criteria over 14 weeks to mid-October 2012. There were 173 responses, from a range of private and voluntary early years providers, local authorities and national organisations. DfE published the Government response to the consultation in September 2013.11 90.5% of respondents agreed with the proposed earnings and benefits criteria; 77% agreed with the proposal that the entitlement should be extended to two-year-olds with statements of special educational needs, or an Education, Health and Care plan or in receipt of Disability Living Allowance; 81% agreed that children who have been looked after before they reach the age of two should be eligible for a funded early education place.

30. DfE states that, hitherto, local authorities have been required to meet the early years duty through providers who meet the learning and development requirements of the Early Years Foundation Stage (EYFS). Following a

---

11See: www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1845&external=no&menu=3
review, the Government amended the EYFS exemptions regulations in 2012, to allow high quality independent schools to apply for an exemption from the learning and development requirements for pupils aged three and over. This is in addition to the existing arrangements under which exemptions are available for early years provision which is governed by established principles which cannot be reconciled with the learning and development requirements of the EYFS. Under a further change made by these Regulations, the description of prescribed early years provision is amended so that it no longer excludes providers with exemptions: DfE says that this will maximise parental choice.

*Family Procedure (Amendment No.3) Rules 2013 (SI 2013/3204)*

31. In their response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure. Provision for the establishment of a family court for England and Wales was enacted by the Crime and Courts Act 2013. These amendments to the Family Procedure Rules reflect the fact that, save for certain matters reserved exclusively to the High Court, the family court will have jurisdiction to deal with all family proceedings and all High Court judges shall be judges of the family court. Additionally, proceedings for the variation and enforcement of certain family orders, currently handled by the magistrates’ courts will be issued in the family court. The amendments to the 2010 Rules also prescribe procedures for transfers between the family court and the High Court, though such transfers should be required less frequently, and proceedings for financial remedy.

*Taking Control of Goods (Fees) Regulations 2013(SI 2014/1)*

32. Our 13th Report of this session drew attention to the first set of regulations needed to set up the new system of bailiffs. This second instrument sets out a schedule of standardised fees for enforcement services and how these will be recovered from the debtor. The Ministry of Justice states that the intention is to set fixed fees that will be consistent, based on the reasonable cost of certain enforcement activities, and easy for the debtor to check but also represent a reasonable return for the enforcement agent (thus discouraging an enforcement agent from hasty action to seize goods to recoup his costs). A third set of regulations, to be laid shortly, will set out the certification process for enforcement agents. The new system is due to come into force in April 2014.

*Civil Legal Aid (Remuneration) (Amendment) Regulations 2014(SI 2014/7)*

33. The implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on 1 April 2013 removed most welfare benefits work from the scope of legal aid. However, Legal Help remains available for advice work concerning welfare benefits-related appeals on a point of law in the

---

12 The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012 (SI 2012/2463).

Upper Tribunal, Court of Appeal or Supreme Court. The Legal Aid Agency (LAA) was only successful in tendering the new Welfare Benefits contracts in two of the four specified procurement areas (Midlands & East and London & South East). The LAA was unable to let contracts in the other two areas (North and South West & Wales) on this basis and an interim solution was extended in these areas until 1 February 2014. These Regulations provide for a fixed case fee of £208 (exclusive of VAT) for each Welfare Benefits Legal Help case properly reported to support the Expressions of Interest exercise that the LAA is running with a view to awarding contracts in each of the remaining two areas.

**Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (SI 2014/16)**

34. The Department for Business, Innovation and Skills (BIS) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. In the EM, BIS explains that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”: SI 2006/246) implement Council Directive 2001/23/EC (“the 2001 Directive”)\(^\text{14}\) on the approximation of Member States’ laws relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. BIS says that SI 2014/16 changes the implementation of the 2001 Directive in Great Britain, including by making use of options under that Directive that were not used in TUPE. BIS also states that provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) implement in Great Britain Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, and that SI 2014/16 relates to the implementation of that Directive for situations involving the transfer of employees to the employer (who is proposing dismissals) from another undertaking.

35. BIS sets out the changes in detail in section 7 of the EM. In brief, they include:

- an amendment setting out that the activities after a change of service must be fundamentally the same as those carried out before it for the service provision change (SPC) definition to apply (which brings such a change within the definition of a relevant transfer in TUPE);

- other amendments to TUPE to reduce the risk that they are interpreted more restrictively than the 2001 Directive requires, while maintaining protection for employees;

- changes to give employers additional flexibilities on varying contracts;

- an amendment to the effect that, after a transfer, a new employer is not bound by provisions of collective agreements which are agreed after the date of the transfer if the new employer does not participate in the collective bargaining for the new provision;

- amendments intended to provide transferees with earlier knowledge of the main transferring liabilities;

---

• amendments to the 1992 Act, to set out the circumstances in which a transferee employer may elect to consult on proposed collective redundancies affecting transferring staff before a transfer of an undertaking to that employer.

36. BIS consulted on the proposed changes over 12 weeks to April 2013. 178 responses were received, from a range of interested parties. BIS published the Government’s response in September 2013. The Department says that, as regards the proposals which are implemented through SI 2014/16, the percentage of respondents in favour varied from around six in ten to over three-quarters. Conversely, respondents were heavily opposed to two other policy proposals. 67% were opposed to the proposal to repeal the part of the test for a transfer which covers service provision changes (SPC). 75% were opposed to the proposed repeal of the requirement on the transferor to provide particular information about employee liabilities to the transferee. The Government decided against pursuing those proposals.

---


16 BIS explains that an SPC occurs when there is a change in the provider of a service to a client, either through contracting out, re-tendering a contract or bringing activities back in-house. Some but not all SPCs were covered by the Directive’s test so the additional test in TUPE was introduced to provide greater certainty.
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

**Draft instruments subject to affirmative approval**

Consumer Credit Act 1974 (Green Deal) (Amendment) Order 2014

Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2014

Localism Act 2011 (Consequential Amendments) Order 2014

Neighbourhood Planning (Referendums) (Amendment) Regulations 2014

Special Educational Needs (Direct Payments) (Pilot Scheme) (Extension and Amendment) Order 2014

**Instruments subject to negative procedure**


SI 2013/3169 Air Navigation (Amendment) Order 2013

SI 2013/3171 Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) and Tractor etc (EC Type-Approval) (Amendment) Regulations 2013

SI 2013/3178 Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2013


SI 2013/3189 Police Federation (Amendment) Regulations 2013

SI 2013/3193 Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2013

SI 2013/3204 Family Procedure (Amendment No.3) Rules 2013

SI 2013/3210 Excise Goods (Holding, Movement and Duty Point) (Amendment) Regulations 2013

SI 2013/3212 Education (Pupil Information and School Performance Information) (Miscellaneous Amendments) (England) Regulations 2013

SI 2013/3220 Energy Efficiency (Eligible Buildings) Regulations 2013

SI 2013/3231 Agriculture (Cross compliance) (No. 2) (Amendment) Regulations 2013

SI 2013/3243  Infant Formula and Follow-on Formula (England) (Amendment) Regulations 2013
SI 2014/1   Taking Control of Goods (Fees) Regulations 2014
SI 2014/7   Civil Legal Aid (Remuneration) (Amendment) Regulations 2014
SI 2014/16  Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014
APPENDIX 1: DRAFT CHILD SUPPORT FEES REGULATIONS 2014 AND DRAFT CHILD SUPPORT (ENDING LIABILITY IN EXISTING CASES AND TRANSITION TO NEW CALCULATION RULES) REGULATIONS 2014: CORRESPONDENCE

Letter from Lord Goodlad, Chairman of Secondary Legislation Scrutiny Committee, to Steve Webb MP, Minister for Pensions

The Committee considered these two draft instruments at its meeting today and will be publishing a report about them on Thursday. We noted the administrative benefits of the replacement of the two previous schemes and the potential savings to the taxpayer. However, the Committee had some concerns about the effect of the legislation on the overarching policy objective of providing financial support for children, which has led them to conclude that the draft legislation may imperfectly achieve its policy objectives.

It may be of help to the House in the forthcoming debate if you could explain in more detail how you expect certain aspects of the new system to work.

Charging will enhance collaboration

Paragraph 8.10 of the Explanatory Memorandum to the Fees Regulations says “The Government believes that levying a collection charge against the person with care is an essential tool in attempting to engender cooperation between the parties by ensuring that both have a financial motivation to co-operate.” We can understand how enforcement charges might stimulate compliance from some potential defaulters but would be grateful if you could explain the Government’s premise that parental collaboration can be enhanced by charging both parties for collection of the maintenance money. What evidence do you have to support the view that the financial arrangement will be more stable if both parties are charged collection fees?

Dislocation of support systems

You state that the charging system and phased transfer to the 2012 collection scheme will commence in Spring 2014. However we understand that the Help and Support for Separated Families Initiative, which the Government are setting up, is still running pilot projects and will not be in a position to assist clients more widely until 2015 or later, leaving a significant time gap where parents will be liable to charges for using the Child Maintenance Service, but unable to access the support intended to help them avoid charges by working collaboratively with their former partner.

We note that DWP do not intend the fees as a default position, that the policy is to encourage parents to consider family-based arrangements or Direct Pay in preference to the government collection scheme. However if the transfers are commenced before the support system is fully in place, those involved in the first half of the transition process may be unfairly disadvantaged.

Can you please clarify the position of the Help and Support for Separated Families Initiative and explain why the introduction of these changes is not premature if undertaken before that assistance is available.

The deterrent effect of transfer and of charging

The Impact Assessment provided with the draft legislation is commendably clear about the effects of these changes on those within the current system. It shows that
50% of Non-resident Parents will find themselves at least £5 per week worse off as a result of the recalculation performed in the transfer process (see Table 5 on page 26 of the Impact Assessment). Collection fees will be added on top of that. In consequence DWP estimate that around 100,000 cases will simply drop out of the scheme during the transfer period (IA page 25) leaving the parents with care who have arrangements under the current schemes with no financial arrangement at all as a result.

We also note that completely new applications to the Child Maintenance Service following the introduction of fees are predicted to drop to 88% of previous levels (IA para 175). It is not clear how many of the cases “deferred” will result in no maintenance being paid rather than a private arrangement being set up.

Taken as a whole, we not that there will be efficiency gains in some cases that will offset the losses in others, however the overarching policy objective is to provide financial support for the of children separated parents. **Can you therefore please explain how the loss of a significant number of current arrangements during the transfer process serves the aim of providing financial support for the children who are supposed to be the beneficiaries of the scheme.**

17 December 2013

Letter from Steve Webb MP to Lord Goodlad

I am pleased that we agree that replacing the two existing statutory child maintenance schemes will bring benefits to both parents and the taxpayer. I have also noted your concern around the effect of the regulations on the overarching policy objective of providing financial support to children and have provided a response to each of your specific questions below.

**Evidence that charging both parents will support the Government’s objective of increased parental collaboration**

These Regulations are at the end of a long journey of reform set in motion by Sir David Henshaw’s 2006 report on the future of the Child Maintenance system, which recommended that charging should be used to incentivise both parents to make their own arrangements where possible.

Henshaw’s argument was that people are more likely to consider whether or not a service is necessary for them if a charge is applied for it.

The Government accepted Henshaw’s reasoning and took primary powers in the Child Maintenance and Other Payments Act (2008) to enable it to charge for use of the statutory scheme, but it was not until 2011 that the Government brought forward more detailed plans on exactly how this might work.

Because introducing a charging regime in the child maintenance context is a new departure, there is limited statistical evidence to show this element of the policy will lead to the outcomes we seek. However, evidence shows that more than half of parents with care using the Child Support Agency could reach their own family-based arrangements with the right support (see Relationship separation and child support study, DWP Research Report No 503, 2008). Charging is, in my view, an important incentive for parents to give real consideration to whether they can make a family-based arrangement and to seek the support that is available. But given the novelty of this approach we have given an undertaking to review matters at 30 months to ensure we are achieving the right outcomes.
Whether it is premature to introduce fees, and begin closing cases on the older child maintenance schemes, given the current level of support available through the Help and Support for Separated Families initiative

It is important to recognise that the voluntary and community sector already provide a great deal of excellent support for separated families. The Help and Support for Separated Families (HSSF) initiative works with these organisations to help couples and families to work together across the range of issues they face when separating.

The ‘Sorting out Separation’ web app, hosted on websites that parents already use, was launched in November 2012 and is designed to help parents identify solutions to their individual needs and priorities. The app provides a diagnostic tool and more than 300 unique signposts to over 50 organisations.

We are also in the process of rolling out training for those organisations providing a telephony service as part of their work with separating and separated families which should be completed by early March 2014. The aim is to enable participating organisations to deliver a coordinated and consistent ‘collaboration’ element to their existing call handling approach.

In addition to this, we are rolling out the HSSF Mark to organisations that can demonstrate they support collaboration between parents. We expect that around 35 organisations will have received the Mark by the end of January 2014.

The above elements of HSSF, together with the Child Maintenance Options service, will be in place to support parents throughout the introduction of charging and the process of CSA case closure.

We are also undertaking activities to ensure that statutory scheme clients and other separated parents understand the upcoming changes and are informed of what action they need to take. We will write to all statutory scheme clients to prepare them for the proposed charges and to support them to make alternative arrangements that will allow them to avoid charges as much as possible. We also plan to run a media campaign from early 2014 to make CSA clients aware of the changes and we are working with a range of partners and external stakeholder organisations to ensure key messages are delivered through channels that separated parents value and trust.

In addition, we have a programme of work to provide the voluntary and community sector with training and materials to enable them to understand our reforms and so provide effective support to separated parents. This programme of work has been running since before the launch of the Child Maintenance Service and will continue as case closure has been implemented. It has already seen numerous voluntary and community sector training sessions and the sharing of information resources. We have also met many times with voluntary and community sector organisations (including Gingerbread and Families Need Fathers) to ensure that they are fully aware of our plans and have opportunities to have input into what we are doing.

Taken together, we are confident that these steps will provide parents with all the support they need before we begin to close cases on the older child maintenance schemes.

The Help and Support for Separated Families Innovation Fund is an additional means of supporting parents over and above this. These pilot projects are not ‘pathfinders’ for a new service, but are about testing and evaluating new,
innovative interventions designed to help separated parents resolve conflict and work together more effectively in the interests of their children.

The effect of closing the legacy schemes

Let me be absolutely clear; we believe that the reforms we are making will result in a larger proportion of children whose parents live apart getting maintenance. While it is the case that a significant number of parents will drop out of the statutory scheme and will not progress to making subsequent arrangements, we also believe that many more parents will be able to make their own arrangements and the statutory service, freed of the need to administer money transfer between compliant parents, will be able to concentrate on that minority of parents who do not live up to their responsibilities voluntarily. And we have put in place a 30 month review to ensure that Parliament has an opportunity to scrutinise our policy and ensure it is achieving these ends.

It is true that, on average, liabilities will increase for 2003 non-resident parents joining the 2012 scheme but, as the Impact Assessment makes clear, this is largely due to 2003 calculations being out of date. This is because (unlike the 2012 scheme) the 2003 scheme had no capability to automatically update assessments overtime. Therefore, the increase in liability will often simply reflect an increase in earnings since the current assessment was calculated and it is entirely right that non-resident parent liabilities should reflect their current financial situation rather than forever reflect the financial situation they had when their case was first opened.

Non-resident parent collection fees are paid in addition to maintenance but can easily be avoided if the non-resident parent pays their maintenance directly to the person with care in full and on time. We have taken measures, with appropriate safeguards for the flow of maintenance to children, to ensure that all non-resident parents have the opportunity to make direct payments.

Finally, the reduction in take-up of the statutory scheme following our reforms is part of the Government’s overarching policy of encouraging parents to collaborate outside of the statutory scheme. We will closely monitor the volume and nature of those alternative arrangements through available data sources. This will feature in the review of charging that we are required to lay before Parliament 30 months after the charging provisions come into force.

2 January 2014

Letter from Lord Goodlad to Steve Webb MP

Thank you for your letter of 2 January 2014 which the Committee considered at its meeting on 14 January.

They found the more detailed explanation of the policy underlying the changes to the Child Support system very informative. However the Committee would like further clarification about the coverage and timetable of the help and support available for separated families, particularly those affected by the transition.

We note from your letter that there is a web app which refers those separating to over 50 organisations but that does presume a degree of education and access to the internet that may not always apply. Can you please clarify what sort of
assistance is available to those separating parents who do not have access to the internet?

You say that the Child Maintenance Options Service will write to all clients affected by the transition to tell them what action they need to take, but will all clients have access to a person with whom they can discuss the particulars of their case?

You also mention a number of organisations are receiving training and the HSSF Mark if they support collaboration between separated parents. We appreciate that this may be helpful in aiding separated parents in agreeing a strategy that avoids the costs of the statutory regime. However much of this support seems to rely on voluntary and quite localised organisations – could you please clarify what level of support will be provided throughout England and Wales? Could you also confirm whether this help will all be available, nationally in Spring 2014 when the changes commence?

As stated in our previous letter our underlying concern is that those involved in the first half of the transition process may be unfairly disadvantaged if they do not have access to the same levels of support as those transferred later in the tranche.

15 January 2014

Letter from Steve Webb MP to Lord Goodlad

I am pleased that you found the more detailed explanation of the reforms to the Child Maintenance System informative. I hope I can now address your concerns about whether adequate support will be available in spring 2014 for those who will be affected by the reforms.

Although ‘Sorting out Separation’ is an internet based web app that is designed to help parents identify their needs and priorities, there are other channels available for those who do not have access to, or are unable to use, the internet. For example, separated parents can contact Child Maintenance Options by phone where information about a range of support can be provided. In addition, for clients who are particularly vulnerable, for example those with learning difficulties, there is also the facility for face-to-face interactions whereby DWP visiting services will contact the individual and arrange a suitable time and place to visit them. We have also provided a range of stakeholders, with whom we have regular contact, with information to ensure that they are able to provide support on child maintenance and the reform program to separated parents. Further to this we are working with four national organisations, including Relate, to ensure that their telephone services give consistent messages that can help parents collaborate.

Although some of the providers of support are local organisations, most of them are national and have established telephony networks, websites and local services. These services are currently available and accessible to customers and have the necessary information on the changes to the Child Maintenance Services to inform people of their options. Of the 35 organisations we expect to have the HSSF Mark by the end of January 2014, the majority are national organisations who already have telephone and or face-to-face services already in place.

Finally, letters to clients regarding ending liability and closing cases will be issued by the Child Support Agency (CSA). Clients will be directed to Child Maintenance Options to discuss making a new child maintenance arrangement, and informed that the CSA will continue to manage their case until it is closed. Clients will continue to be able to contact a CSA caseworker to discuss their case,
as they do now, until their case closes. If they subsequently apply to the 2012 scheme, then of course they will be able to speak to a Child Maintenance Service caseworker.

We are confident that the resources discussed above will provide parents with all the support they need, and parents’ access to them will not depend on when they go through the process.

The only services which will not be available to all parents are the pilot projects being tested under the Innovation Fund. These are experimental in nature – some will prove successful and while others may not. We will review the evidence in due course and then consider where to invest in the future, although this will be for the next administration to take funding decisions on. This is therefore very different to a situation, say, in which we had committed to new services but these were at an early stage of rollout. Clearly in those circumstances, parents affected by case closure might expect different support depending on the timing of when they were due to go through the process.

20 January 2014
APPENDIX 2: DRAFT SPECIAL EDUCATIONAL NEEDS (DIRECT PAYMENTS) (PILOT SCHEME) (EXTENSION AND AMENDMENT) ORDER 2014

Further information from the Department for Education

The purpose of the Order is to extend and amend the Special Educational Needs (Direct Payments)(Pilot Scheme) Order 2012. It will permit the on-going testing and use of direct payments for special educational needs in the authorities named in the 2012 Order and ensure there is no gap in provision for families taking part in the pilot as they move onto the provisions set out in part 3 of the Children and Families Bill.

The pilot scheme was established, as part of a commitment made in the Green Paper, Support and aspiration: A new approach to special educational needs and disability to give families with the new Education, Health and Care (EHC) plan the option of a personal budget from 2014 (when the EHC plan is introduced, replacing Statements of SEN and Learning Difficulties Assessments).

In September 2011, the Department announced the appointment of 20 pathfinders, covering 31 local authorities and their health partners, to test the main proposals in the Green Paper including those relating to EHC plans and personal budgets. The pilot scheme gave the pathfinders the power to include direct payments for special educational provision in that testing. The pathfinder programme will run until implementation of the reforms to the special educational needs system, as set out in Part 3 the Children and Families Bill, commences in September 2014 (see below).

This Order extends the pilot scheme to ensure coherence between the end of the pilot and that of the pathfinder programme which was extended to September 2014. Extension of the pilot scheme will allow any direct payments established under the current pilot to continue until provisions in Part 3 of the Children and Families Bill are commenced and a further period up to the end of September 2015 to move families with statements of SEN, receiving direct payments under the pilot, onto the new system of EHC plans and personal budgets as set out in the Bill. The power, in primary legislation, to establish pilot schemes will be subject to a sunset clause in November 2015.

Clause 49 of the Children and Families Bill provides a power to prescribe, in relation to personal budgets including direct payments, for the Secretary of State. The Department has consulted on draft Personal Budget Regulations to be made under clause 49 and we are now considering the responses. The consultation draft of the personal budget regulations is available on the gov.uk website.

The pilot scheme is largely the same as that which is likely to be proposed in the Personal Budget Regulations in relation to direct payments for SEN. However, the scope of the regulations to be made under clause 49 will be wider and seek to encourage development of personal budgets that cover the educational, health and social care elements of an EHC plan.

There are some technical differences between the Pilot Scheme and the Personal Budget Regulations. Under the Pilot Scheme a direct payment is paid to either the parent of a child under 16 who has a Statement or the person if they are 16 or over.

17 As introduced at Report stage for the House of Lords
and have a Statement or Learning Difficulties Assessment. Payments to be made under the Personal Budgets Regulations will be to the parent of someone under compulsory school age or the person if they are compulsory school age or over. Another difference is that a direct payment could be made in relation to transport provision under the pilot scheme regardless of whether this was written into the Statement. Under the proposed Personal Budget Regulations this will only be the case where the transport provision is written into the plan.

17 January 2014
APPENDIX 3: 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 21 January 2014 Members declared the following interests:

*Education (Pupil Information and School Performance Information) (Miscellaneous Amendments) (England) Regulations 2013 (SI 2013/3212)*

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

*Attendance:*

The meeting was attended by Lord Bichard, Lord Blackwell, Lord Goodlad, Baroness Hamwee, Lord Methuen, Baroness Morris of Yardley, Lord Norton of Louth, Lord Plant of Highfield and Lord Woolmer of Leeds.