Secondary Legislation Scrutiny Committee
39th Report of Session 2013–14

School Staffing (England) (Amendment) Regulations 2014

Includes 5 Information Paragraphs on 5 instruments

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

Registered interests
Information about interests of Committee Members can be found in Appendix 4.

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
Thirty Ninth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

A. School Staffing (England) (Amendment) Regulations 2014 (SI 2014/798)

Date laid: 26 March
Parliamentary Procedure: negative

Summary: These Regulations remove the requirement for the Secretary of State’s approval of persons who provide safer recruitment training for maintained schools. 69% of respondents to a consultation about this proposal were opposed to it. The Department for Education did not publish an analysis of consultation responses at the time that the Regulations were laid before Parliament; the material which it has provided to Parliament is an inadequate basis for an informed view of the proposed change. The Department must improve its presentation of secondary legislation and accompanying information to avoid the impression that it pays insufficient regard to the importance of Parliamentary scrutiny.

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


1. In the Explanatory Memorandum (EM) to these Regulations, the Department for Education (DfE) explains that, following the murders of Holly Wells and Jessica Chapman in Soham in 2002, Lord Bichard recommended that “no interview panel for staff working in schools should be convened without at least one panel member being properly trained”. DfE states that this was achieved through the School Staffing (England) Regulations 2009 (SI 2009/2680). It adds that the then Government took this recommendation a step further with a requirement that the training must be provided by a person approved by the Secretary of State, and put in place two ways in which this training could be achieved: an online training course run by DfE, and an agreement with the Lucy Faithfull Foundation that the latter would deliver face-to-face trainers that would meet the Secretary of State’s requirements.

2 Namely, through regulations 3 and 9 of SI 2009/2680.
3 The Lucy Faithfull Foundation’s website says that it is “the only UK-wide child protection charity dedicated solely to reducing the risk of children being sexually abused. We work with entire families that have been affected by sexual abuse including: adult male and female sexual abusers; young people with inappropriate sexual behaviours; victims of abuse and other family members.”

2. In amending SI 2009/2680, the latest Regulations provide that the Secretary of State’s approval is no longer required for the persons who provide safer recruitment training for maintained schools. In the EM, DfE states that the Government want schools to have flexibility to choose training which best meets their needs; that up-to-date information on specific safeguarding issues is best provided by expert organisations actively engaged in child safety; and that the Secretary of State’s approval limits the training which schools are able to access thereby potentially impeding their ability to keep children safe.

3. DfE says that the change will mean that, from September 2014, schools will need to organise their own training via the local authority and/or expert providers, because the DfE’s online training will cease to operate. It adds that the Department’s work with providers will mean that the NSPCC will offer replacement online training at a minimal cost (expected to be around £25 per person); the Lucy Faithfull Foundation will continue to train face-to-face trainers; Local Safeguarding Children’s Boards (LSCBs) will continue to offer training; and other expert organisations such as children’s charities may also provide training.

Consultation

4. In section 8, the EM contains a good deal of information about the consultation which the Department carried out between 28 March and 20 June 2013 on updated statutory safeguarding guidance for schools, including the proposal given effect by the latest Regulations. However, DfE did not publish an analysis of consultation responses at the time that the Regulations were laid before Parliament. This is poor practice: we have made our view clear before that Government Departments must ensure that such analyses are available when Parliament is asked to consider statutory instruments.

5. In the EM, DfE says that more than 300 responses were received, from LSCBs, local authority representatives, school representatives, children’s charities and individual headteachers and school staff. 69% of those who responded to the question about removing the Secretary of State’s approval of the training, were opposed to the proposal; 22% supported it; 9% were not sure. The Department says that arguments made by those who opposed the proposal were that retaining the approval requirement would help maintain consistency, avoid complacency, maintain high quality training and heighten awareness of safeguarding issues when recruiting.

6. DfE says that officials undertook 14 meetings with those most strongly opposed, to explore their views in greater detail; and that it was clear from these meetings that many had misunderstood the proposal to mean that the requirement for safer recruitment training would be removed altogether. We would suggest that the extent of this misunderstanding among respondents indicates that the Department’s own consultation document was poorly drafted. The Department says that officials explained that this would not be the case, and that those who attended the meetings “were reassured that alternative arrangements would not represent a weakening of policy on safeguarding.” DfE records the suggestion made at these meetings that minimum standards could be set out by the Department.
Additional information obtained from the Department for Education

7. We are concerned that the EM which DfE submitted failed to provide Parliament with important details about the processes followed in preparing and laying the Regulations. In particular, the EM lacked information about the following issues:

- whether there was evidence for the statement that the Secretary of State’s approval potentially impeded schools’ ability to keep children safe;
- why the Department did not publish an analysis of consultation responses when the Regulations were laid;
- how many of those opposed to the proposal in fact thought that the requirement for safer recruitment training was to be removed altogether, rather than being concerned about a loss of consistency;
- how many of those previously opposed had changed their minds as a result of the meetings mentioned in the EM; and
- whether DfE intends to specify minimum standards for safer recruitment training.

We obtained additional information from DfE on these issues, and are publishing it at Appendix 1.

Conclusions

8. As noted above, the Department sees these Regulations as serving the objective of giving schools flexibility to choose training which best meets their needs. Such training is itself intended to strengthen the ability of schools to keep children safe. It seems clear that removing the requirement for the Secretary of State’s approval will indeed provide such flexibility; and the possibilities for training described at paragraph 3 of this report appear to meet the needs of protecting the safety of children.

9. However, it is a cause for concern that 69% of consultation respondents, who may be assumed to have knowledge in this area, were opposed to this change, and such concern is only partially allayed by the incomplete information provided in the EM about subsequent discussions between DfE officials and opposed respondents. The additional information which DfE has provided to us does very little to allay this concern, indicating that the Department now believes that there is broad agreement with the change, but is not able to substantiate this belief with quantitative results from a formal consultation process.

10. The material which the Department for Education has provided to Parliament in support of these Regulations is an inadequate basis for an informed view of the proposed change. We look to that Department to improve its presentation of secondary legislation and the accompanying information, if it wishes to dispel the impression that it pays insufficient regard to the importance of Parliamentary scrutiny.
OTHER INSTRUMENTS OF INTEREST

**Draft Representation of the People (England and Wales) (Amendment) Regulations 2014**

11. These Regulations form part of the arrangements for the introduction of Individual Electoral Registration in England and Wales. Some of the amendments disapply the follow-up requirements in certain cases, for example the requirement for an Electoral Registration Officer (ERO) to visit a potential registrant where the individual lives abroad. The chief change however is to enable EROs in two-tier local government areas to inspect data kept by the other tier council. This was piloted in four lower-tier authorities which received specified data from their county council, including education records, which proved useful in increasing registration levels among young people about to attain voting age. The change gives two-tier authorities access to data already available to their counterparts in unitary authorities. An overall Privacy Impact Assessment for individual electoral registration, has been published\(^4\) and the Information Commissioner’s Office does not consider that these Regulations raise any new or significant data protection or privacy issues.\(^5\)

**Mobile Homes (Site Licensing) (England) Regulations 2014** (SI 2014/442)

12. The Mobile Homes Act 2013 gives local authorities discretion to issue site licences, and sets out how they may exercise that discretion when deciding whether to consent to the transfer of a site licence for a mobile homes site. These Regulations, laid by the Department for Communities and Local Government (DCLG), set out the matters to which local authorities must have regard when exercising their discretion. They also allow local authorities to require certain information either to accompany an application for the transfer of a site licence or to be provided later.

13. We sought clarification from DCLG about what would happen if the holder of a site licence were to die, and how that situation would be governed by the provisions of the relevant legislation. We received a letter, dated 3 April 2014, from Mr Kris Hopkins MP, Parliamentary Under-Secretary of State in that Department which is set out at Appendix 2 to this report.

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\(^5\) The otherwise similar draft Representation of the People (Scotland) (Amendment) Regulations 2014, do not include a similar provision because the different local government structure in Scotland renders such a provision unnecessary.
14. The Department for Communities and Local Government (DCLG) has laid these Regulations, with an Explanatory Memorandum, to revoke 11 sets of Regulations which were identified in the Government’s Red Tape Challenge as redundant.

15. For all but one set of Regulations, the instruments revoked have been superseded or rendered obsolete by other subsequent legislation. The exception is SI 2009/1302, the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009, which prescribe persons whom the Secretary of State must consult before designating a statement as a National Policy Statement (NPS) for the purposes of the Planning Act 2008. DCLG comments that the requirements of SI 2009/1302 can be achieved through non-regulatory means; that, once the Regulations are revoked, the Department will make it clear to all Government Departments preparing NPSs that they should continue to consult the bodies previously set out in Regulations; and that the general duty to consult in the Planning Act 2008 will remain in place.

16. We have taken a close interest in the Government’s handling of consultation policy. We obtained more information from DCLG about its intentions for consultation on NPSs after revocation of SI 2009/1302, and are publishing that information at Appendix 3.

17. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed Legal Aid for most private family proceedings although Legal Aid for a mediation meeting remains available (subject to means and merits tests) to encourage alternatives to court for resolving disputes. Regulation 5 of the original Civil Legal Aid (Financial Resources and Payment for Services) Regulations (SI 2013/480) sets out a number of circumstances in which Legal Aid will be provided without reference to an individual’s financial resources: this instrument adds Mediation Information and Assessment meetings (MIAM) to that list. From April, the Children and Families Act 2014 places a legal obligation on an applicant to attend a MIAM before being able to issue court proceedings in certain private family law matters dealing with children or financial disputes. The respondent is also expected to attend a MIAM, although there are no levers at the pre-proceedings stage to compel the respondent to attend. To encourage uptake of MIAM, the Legal Aid Agency’s current practice is to pay the costs for all participants in cases where only one party qualifies for Legal Aid: this instrument puts that practice into legislation. Financially ineligible parties would be expected to pay their share of any subsequent mediation sessions. These amendments also ensure that Legal Aid for family mediation in 1980 Hague Convention cases will also be provided without a requirement to determine the applicant’s financial eligibility.

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6 In certain care cases more than two parties may be involved, for example step- or grandparents, the costs of all parties to the case will be met for the mediation meeting if any one party qualifies for Legal Aid.
Civil Legal Aid (Procedure) (Amendment) Regulations 2014 (SI 2014/814)

18. Although the Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed most private family law cases from the scope of Legal Aid, an exception was made where there was actual, or a risk of, domestic violence or child abuse. The types of evidence to be used to support such claims are set out in regulations 33 and 34 of the original Civil Legal Aid (Procedure) Regulations (SI 2012/3098). Concerns were expressed during the debate on the original Regulations that the evidence provisions were too restrictive and the Government gave a commitment to conduct an early review of how the legislation was operating. As a result, these Regulations expand the types of evidence permitted. In particular they:

- broaden the range of health professionals who can provide evidence about domestic violence to include psychologists;
- add the use of evidence where the other party has been bound over in relation to a domestic violence offence or where a Domestic Violence Protection Notice or Order has been issued against the other party (the latter was implemented nationally by the Home Office from 8 March 2014); and
- widen the acceptable evidence of a stay at a domestic violence refuge.

Although the Ministry of Justice has discussed these proposals with interest groups, this is not adequately explained in the Explanatory Memorandum: it is understood that representative groups are content that these proposals are a step in the right direction, but monitoring and discussions are expected to continue.

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7 HC Deb, 27 March 2013, col 1116.
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

- Merchant Shipping (Convention Relating to the Carriage of Passengers and their Luggage by Sea) Order 2014
- Representation of the People (England and Wales) (Amendment) Regulations 2014
- Representation of the People (Scotland) (Amendment) Regulations 2014

Instruments subject to negative procedure

- SI 2014/442 Mobile Homes (Site Licensing) (England) Regulations 2014
- SI 2014/692 Town and Country Planning (Revocations) Regulations 2014
- SI 2014/790 M275 and M27 Motorway (Speed Limit and Bus Lane) Regulations 2014
- SI 2014/812 Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2014
- SI 2014/814 Civil Legal Aid (Procedure) (Amendment) Regulations 2014
- SI 2014/832 Family Court Warrants (Specification of Orders) Order 2014
- SI 2014/853 Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) (No. 2) Order 2014
APPENDIX 1: SCHOOL STAFFING (ENGLAND) (AMENDMENT) REGULATIONS 2014 (SI 2014/798)

Additional information from the Department for Education

Q1: Is there any evidence available to the Department to underpin the statement in the Explanatory Memorandum that the Secretary of State’s approval potentially impedes schools’ ability to keep children safe? Has the Department received any representations from third parties to that effect?

A1: The Department received evidence through direct engagement with bodies representing schools, colleges, local authorities and charities in the months following the formal consultation that safer recruitment training needs to be more meaningful to schools and colleges and more flexible in order to meet local needs. Representations indicated that the Secretary of State approved training is too rigid and that a greater impact would be possible – in keeping children safe – if the training could be more closely tailored to their needs.

Q2: The EM says that the Government consulted on updated statutory safeguarding guidance for schools and on a proposal to remove the requirement for “safer recruitment training” to be provided by a person approved by the Secretary of State, between 28 March until 20 June 2013. It also says that more than 300 responses were received from LSCBs, local authority representatives, school representatives, children’s charities and individual headteachers and school staff engaged with it. Has the Department published an analysis of consultation responses? If not, when will that be published, and why has it not been published at the same time as the laying of the SI?

A2: It was considered helpful to publish the consultation response on the same day as issuing the updated statutory guidance – on Thursday 3 April.8

Q3: The EM states: “Of those who responded to the question about Secretary of State approval of the training, 69 per cent were opposed to its removal, 22 per cent were in favour and 9 percent were not sure… 8.2 Of those who opposed the removal of the Secretary of State’s approval and who favoured its retention arguments were that retaining the regulation would help maintain consistency, avoid complacency, maintain high quality training and heighten awareness of safeguarding issues when recruiting.” The EM then states: “8.4 It was clear from these meetings [of officials with opponents of the proposed change] that many had misunderstood the proposal to remove Secretary of State approval to be a proposal to remove the requirement for safer recruitment training altogether.”

The statement at 8.2 appears to be at odds with the statement at 8.4. How many of those opposed thought that the requirement for safer recruitment training was to be removed altogether, and how many, while understanding that this would not be the case, were concerned that, without Secretary of State approval, consistency would be lost? How many of those previously opposed to the proposed change have now indicated that they are content with it? Has there been a significant change in the ratio of 69% opposed and 22% supportive?

Q3: It is not possible to calculate how many of those opposed thought that the requirement for safer recruitment training was to be removed altogether; but it became clear during the process of direct engagement that followed the formal

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consultation process, that the Government proposal had been misunderstood. The parties directly engaged represented a cross-section of those with an interest: representatives of schools/colleges, local authorities, charities, regulators and employment specialists. They were: Association of Colleges (AOC); Association of School and College Leaders (ASCL); Independent Schools Council (ISC); Independent Schools Inspectorate (ISI); a Local Authority Designated Officer (LADO); Lucy Faithfull Foundation; National Children’s Bureau (NCB); National Governors Association (NGA); NSPCC; Ofsted; Recruitment and Employment Confederation (REC); a representative of an LSCB.

Of 324 consultation respondents, six cited concerns about consistency of the training, if the Secretary of State’s approval was to be removed.

It is not possible to say how many of those previously opposed are now content, however, during the direct engagement process with a wide range of parties (including headteachers), following the formal consultation process, it was evident that there was broad support for the proposals.

It is not possible to calculate if there has been a change in the ratio of 69% opposed to 22% supportive given that we have not conducted a further formal consultation process, however it is believed – following direct engagement with key stakeholders – that there is broad agreement with the changes being made.

**Q4: The EM says that opponents met by DfE officials suggested that minimum standards could be set out by DfE. Will DfE do this? Will the guidance mentioned at 9.1 of the EM, specify minimum standards?**

**A4:** The Department does not intend to set out minimum standards at this stage. The statutory guidance Keeping Children Safe in Education covers four subject areas:

- Part one: safeguarding information for all staff
- Part two: the management of safeguarding
- Part three: safer recruitment
- Part four: allegations of abuse made against teachers and other staff

We expect safer recruitment training to cover, as a minimum, the substance of those subject areas.

2 April 2014
APPENDIX 2: MOBILE HOMES (SITE LICENSING) (ENGLAND)
REGULATIONS 2014 (SI 2014/442)

Letter from Lord Goodlad, Chair of the Secondary Legislation Scrutiny Committee, to Kris Hopkins MP, Parliamentary Under-Secretary of State, Department for Communities and Local Government

The Secondary Legislation Scrutiny Committee considered these Regulations at its meeting this week. We agreed to bring to your attention a point of concern to the Committee.

As is set out in the Explanatory Memorandum, the Mobile Homes Act 2013 ("the 2013 Act") amended the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") to provide local authorities with discretion as to whether they issue a site licence, and to set out the details of how local authorities may exercise their discretion when deciding whether to consent to the transfer of a site licence, for a mobile homes site. The purpose of the Regulations is to specify the matters which local authorities must have regard to when exercising this discretion.

The Committee has been concerned to clarify what would happen under these provisions if a licence-holder were to die. We have been told by your Department that the 2013 Act has not changed the position under the 1960 Act, namely that, where a person is entitled to an estate or interest in the caravan site by operation of law, the licence automatically transfers to that person (and if an application is made to the local authority it must endorse that person’s name in the licence). Your Department has further told us that, in practice, where a person died intestate, the licence would be vested in the person entitled to inherit the land; and that, where the land was left under a will, the personal representative would automatically become the licence-holder when he became the occupier of the land, and remain the licence-holder for as long as he was the occupier (so for as long as it took for him to administer the estate and transfer the land to whomever inherited it).

The point of concern to the Committee arises out of certain of the provisions in the 1960 Act which, as your Department explained, have not been changed by the 2013 Act but on which the latter Act, and these Regulations, shine a spotlight. The 1960 Act provides that:

“No occupier of land shall ...cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence” (section 1 (1)).

The 1960 Act goes on to say:

“The expression “occupier” means, in relation to any land, the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land” (section 1 (3)).

Your Department has told us that these provisions are to be understood to mean that licences for mobile home sites can be issued only to occupiers of land who, in turn, must be the owners. We have also been told that licence-holders cannot pass their licence to a third party which has only a management interest in a site. It was not, however, clear to the Committee that this understanding is fully supported by the provisions of the 1960 Act and, in particular, by the caveat referring to the rights of any other person in section 1 (3) of that Act.
It would assist the Committee if you could reply to confirm that, for the purposes of both the 1960 and the 2013 Acts, occupiers of land must always be owners of that land, and that, as a result, licences for mobile home sites may be issued only to owners of land; and if you could set out the way in which the relevant statutory provisions make that position clear.

26 March 2014

Letter from Kris Hopkins MP to Lord Goodlad

I am writing to confirm that under the Caravan Sites and Control of Development Act 1960 a site licence may only be held by the owner of the site—called in the Act “the occupier”. By virtue of section 1 (1) of the Act it is an offence to occupy land as a caravan site without a site licence being in force.

The occupier is defined in section 1 (3) as the person who is entitled to possession of the site “or would be so entitled but for the rights of any other person under any licence granted in respect of the land”. The words “but for the rights of any other person under any licence granted in respect of the land” in section 1 (3) refer to the rights of anyone who occupies the land under a licence to occupy which has been granted by the land owner, such as a licence to occupy the site by stationing a caravan on it. In that case, the site owner’s entitlement to possession is subject to the caravan dweller’s right (licence) to station the unit on the land. Section 1(3) ensures that in working out who is entitled to possession of the land, and therefore who is the ‘occupier’ and the person required to hold the site licence, anyone who occupies the land under a ‘licence’ is ignored.

Thus, where the site is held freehold— and there is no leasehold interest— the freeholder would be the licence holder, but if there is leasehold interest, the leaseholder (i.e. tenant) would hold the licence. This rule is subject to the proviso in subsection (3) that if the site is 400 square yards (334.5 sq. m) or less it is the freeholder, rather than any tenant (leaseholder), who is to be treated as the occupier and thus required to hold the site licence.

I can, therefore, also confirm that a person with a management interest only (rather than any estate in the land) is not entitled to hold a site licence.

The provisions in section 1 of the Act, referred to in your letter, have not been changed by the Mobile Homes Act 2013 or regulations made under that Act. The position set out above is the understanding of the law in relation to ownership of the land and site licences which has now been in place for over fifty years.

The word “licence” appears in section 1 (3) of the Act with two separate meanings i.e. permission to operate a caravan site and permission to station a caravan on that land appear in the same section. However, the provisions in that sub-section , which have been in place since 1960, have not to our knowledge caused any difficulty in terms of their practical application by local authorities”.

3 April 2014
APPENDIX 3: TOWN AND COUNTRY PLANNING (REVOCATIONS) REGULATIONS 2014 (SI 2014/692)

Additional Information from the Department for Communities and Local Government

Q1: The Regulations revoke the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009 (SI 2009/1302). Section 7 of the Explanatory Memorandum indicates that decisions on the instruments to be revoked came out of the Red Tape Challenge exercise in 2013. Was revocation of SI 2009/1302 proposed by the Government at the start of the RTC exercise, or was this a suggestion made by a third party? In either case, how many respondents, and who, supported revocation of SI 2009/1302? Did any respondents oppose the revocation?

A1. The revocation was proposed by the Government at the start of the Red Tape Challenge process. Only two responses to the Red Tape Challenge consultation made any comments on these regulations – English Heritage and Natural England considered that they should be retained.

Q2: In the Explanatory Memorandum to SI 2009/1302, DCLG said: “4.5 During the passage of the Planning Bill, a number of specific undertakings to consult were made…7.1 In preparing this list of prescribed bodies, the Government has reflected on the views expressed during the consultation on the Planning White Paper and during the passage of the Planning Bill through Parliament…8.1 The primary purpose of prescribing statutory consultees in this way is to ensure that those organisations which have statutory roles which could be affected by the policies contained in a draft NPS must be consulted. As a result, CLG have only named a limited number of organisations in the list of statutory consultees in the Instrument.”

What view do the present Government take of the “undertakings to consult” given by the previous Government? Have this Government made any earlier statement to Parliament about the decision implemented by SI 2014/692 to provide that such consultations may in future be “achieved through non-regulatory means”?

A2. Revocation of SI 2009/1302 is not intended to undermine the previous administration’s undertaking to consult. Consultation will continue to be undertaken with those bodies identified in the SI. However, the Government does not agree with the previous administration’s position that there is a need to specify these bodies in legislation when the same outcomes can be obtained through a non-regulatory approach. No specific statement has been made to Parliament previously about achieving such consultations through non-regulatory means.

Q3: In the EM to SI 2014/692, DCLG states that “the general duty to consult set out in the Planning Act 2008 will remain in place”. Is this a reference to section 7 of the Planning Act 2008? Can you spell out more fully how that duty is relevant in the case of National Policy Statement Consultation?

A3. Yes. Section 7(2) of the 2008 Act states that “the Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the proposal” – the proposal being a National Policy Statement that the Secretary of State proposes to designate or an amendment to such a statement. In practice to date, this general requirement has been met though Departments undertaking a full public consultation.

Q4: This Committee has taken a close interest in the way in which Departments have handled consultation processes in the light of the Government’s Consultation Principles of July 2012. In the EM to SI 2014/692, DCLG states that “once the regulations are revoked the Department for Communities and Local Government will make it clear to all Government Departments preparing National Policy Statements that they should continue to consult the bodies that were previously set out in regulations.” How will DCLG “make [this] clear to all Government Departments”? What will be the interaction between this communication from DCLG to other Departments, other Departments’ general approach to consultation in the light of the July 2012 Consultation Principles, and the duty to consult in the Planning Act 2008? Does the shift from prescription of bodies to consult to a non-regulatory approach run the risk of inconsistency and uncertainty in what different Departments do in future?

A4. DCLG officials have already had informal discussions with their counterparts in Departments producing National Policy Statements to inform them of the revocation and our expectation that consultation with the bodies that were identified in SI 2009/1302 will continue after revocation. This is being followed up in writing.

We do not think the approach being taken will lead to inconsistency or uncertainty in the future. DCLG officials have worked closely with officials in other Departments during the preparation of all National Policy Statements to date, and will continue to do so in the future. This will help ensure that proper consultation continues to be undertaken, and on a consistent basis, by all Departments. DCLG follows the prevailing Cabinet Office guidance on consultation, and all our consultations are publicised through GOV.UK and the Planning Portal (and any individual or organisation can sign up to receive new alerts based on their interests).

1 April 2014
APPENDIX 4: 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 8 April 2014 Members declared the following interests:


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

**Attendance:**

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