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

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-Fifth Report

PUBLIC BODIES ORDER

A. Draft Public Bodies (Abolition of Victims’ Advisory Panel) Order 2013

Introduction

1. The draft Public Bodies (Abolition of Victims’ Advisory Panel) Order 2013 (“the Order”) was laid by the Ministry of Justice (MOJ), with an Explanatory Document (ED), on 25 April 2013 under section 1 of the Public Bodies Act 2011 (“the 2011 Act”).

Overview of the proposal

2. The purpose of the Order is to abolish the Victims’ Advisory Panel (“the Panel”). The Panel was established in 2003 to enable victims of crime to have a say in the reform of the criminal justice system and in the provision of support for the victims of crime. Between 2006 and 2009, the Panel consisted of around ten volunteer members all of whom had experienced crime first hand, or belonged to a family where a family member had been killed, or had provided support to victims. The Panel has been inactive since May 2010 when the Commissioner for Victims and Witnesses (“the Commissioner”) took up her post.

MOJ’s argument for abolition

3. The MOJ justifies the abolition of the Panel on the grounds that its function is now undertaken by the Commissioner and that, furthermore, the Commissioner has broader statutory functions and a wider and more flexible consultation base than the Panel and so presents a better means of ensuring that a diverse range of victims’ views is independently presented to the Government.

Role of the Secondary Legislation Scrutiny Committee

4. 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)”. The Committee may either clear the instrument (in which case it may be debated after 40 days) or 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 consider taking oral or written evidence in order to aid its consideration of an order.

Statutory Consultation

5. The 2011 Act places great emphasis on the need for consultation. However, in this instance, because the Panel has been inactive since 2010, there are no members to consult. As a result, section 10(4) of the 2011 Act relieves the
MOJ of the general requirement to consult the body to which the proposal relates.

6. A three-month public consultation was held, starting on 12 July 2011. Nineteen responses were received. About half of those who responded agreed that the functions of the Panel could be carried out by the Commissioner; those who did not explicitly agree tended to comment on wider issues about the place of victims in the criminal justice system generally (for example, whether those involved in road traffic accidents should be included in the definition). Organisations such as the Law Society and the Magistrates’ Association endorsed the view that, given the width of the remit of the Commissioner, the Panel was no longer necessary.

Other tests in the Public Bodies Act 2011:

7. A Minister may only make an order under sections 1 to 5 of the 2011 Act if the Minister 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).

Efficiency

8. The MOJ states that the Order satisfies the requirement of improving efficiency because, given the duplication of function between the Panel and the Commissioner, abolition of the Panel removes the need to provide administrative support for two, overlapping organisations. Furthermore, given that the Commissioner has a broader remit and a more flexible approach than the Panel, the Commissioner may canvass a far wider range of views. The Commissioner is also able to consult former members of the Panel, should she wish to do, without the need for a formal statutory board. (ED paragraph 7.7(i))

Effectiveness

9. The MOJ states that because the Commissioner has access to a wider range of people she will be a more effective means of obtaining the views of victims and influencing the development of justice policy than a Panel of ten volunteers. In the first year of operation the Commissioner met 900 victims and justice professionals, convened working groups, travelled throughout the country and received 300 items of correspondence. The Commissioner also published seven topic reports, an annual report and produced briefing to Ministers.

10. In contrast, the Panel met on average three times a year and produced one report, laid before Parliament on 25 March 2010, which covered the activities and recommendations made to Ministers and officials during the three year tenure of the panel from 2006 to 2009.

1 Responses are published on https://consult.justice.gov.uk/digitalcommunications/public_bodies_bill/results/victims-advisory-panel-consultationresponses.Pdf

11. It should be noted, however, that the difference in activity levels (and the consequent cost, see below) reflects the different statutory bases of the two organisations: whereas the Panel was required only to respond to requests from the Minister for advice (section 55 of the Domestic Violence, Crime and Victims Act 2004), the Commissioner’s function, set out in section 49(1) of the same Act, is a more active one:

The Commissioner must—

(a) promote the interests of victims and witnesses;

(b) take such steps as he considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses;

(c) keep under review the operation of the code of practice issued under section 32.

12. The Commissioner has a wide remit to review such issues as she deems appropriate and to promote actively the interests of victims and witnesses. The Commissioner is also a more constant resource, working 11 days a month with ample administrative support. Given this greater sphere of activity, it seems to us reasonable to assume that the Commissioner is likely to perform a more prominent and effective role as a point of contact for victims. (ED paragraph 7.7(ii))

Economy

13. The Panel was composed of volunteers who were unpaid save for travel and subsistence expenses. The Government spent the following amounts supporting the Panel:

- £19,116 in 2007-08
- £46,940 in 2008-09
- £6,692 in 2009-10 (up to the end of October 2009).

14. In addition, if the Panel were not to be abolished, the costs of a public recruitment exercise to provide a new membership would be incurred.

15. The Commissioner is contracted to work 11 days a month. She is paid £350 a day. Her office consists of a full-time Office Manager, Diary Secretary and a seconded Police Officer, and a part-time (25%) Press Officer. The budget for the Commissioner in 2013-14 was £264,126, composed of:

- overall staffing costs for the Commissioner’s office (including Commissioner’s remuneration) : £227,626;
- programme costs (including travel and subsistence, stakeholder events and production of the annual report) : £36,500.

16. We have already noted above that the difference in the Commissioner’s office costs and activity levels compared with those of the Panel stems from their different statutory bases. The MOJ argues that the 2011 Act test of economy is met by the (notional) saving arising from eliminating the duplication of function which the Panel represents. (ED paragraph 7.7(iii))

Accountability

17. The MoJ considers that abolition of the Panel will not result in any loss of accountability to Ministers. The Commissioner performs an equivalent
function to that of the Panel in offering evidence-based advice to Ministers, and both organisations are required to account for their expenditure by means of a published annual report. Furthermore, the MOJ suggests that the Commissioner will have an enhanced responsibility in also being accountable to the victims and their families. (ED paragraph 7.7(iv))

Safeguards

18. Section 8(2) of the 2011 Act states that a Minister may make an order only if the Minister considers that (a) the order does not remove any necessary protection, and (b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The ED states that the Minister believes that these tests are met because victims will continue to be able to express their views through the channels operated and promoted by the Commissioner. (paragraph 7.8 of the ED)

19. Previous EDs to Public Bodies Orders have referred to the Public Bodies Review by the Cabinet Office in 2010 which applied the general principle that public bodies should exist at arm’s length from Ministers where the body is required to perform “a technical function, requires impartiality and is needed to establish facts independently”. In the case of this Order, the ED (at paragraph 4.5) states that none of these considerations apply to the Panel. This is surprising. It seems to us that the function of the Panel would require a degree of political impartiality. However, the need for impartiality applies equally to the Commissioner’s function and her independence is clearly set out in paragraph 7.7 of the ED.

Conclusion

20. While the Committee has found no reason to dispute the effect of the draft Order, we note that the process followed has pre-judged the outcome by winding down the Panel before the 2011 Act came into effect. Furthermore, whilst we found the documentation accompanying the Order made a convincing case, we also note that it lacked some of the information (about comparative costs of the Panel and the Commissioner, and their respective remits) which would have assisted the Committee in assessing the claims made in the ED. Extracts of that additional information are included in this report.

21. Following its consideration of the Order, the Committee concludes that the Government have demonstrated that the draft Order serves the purpose of improving the exercise of public functions and is in compliance with the test set out in the 2011 Act. We are, therefore, content to clear it within the 40-day affirmative procedure.
The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.


*Date laid: 12 April*

**Parliamentary Procedure: negative**

*Summary:* This Statutory Instrument revokes the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 (SI No. 2005/206) which set out the circumstances in which a local council could use a Temporary Stop Notice in respect of caravans used as main residences. Revoking SI 2005/206 will only remove national prescription, and will leave it to local planning authorities to consider, on a case by case basis, whether taking enforcement action is necessary and proportionate in the circumstances. Approximately 40% of respondents to the consultation exercise felt that the impact of the changes would be unacceptable, in particular, that the new Regulations would affect Gypsies and Travellers disproportionately.

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

22. This instrument is laid by the Department for Communities and Local Government (DCLG) under section 171F of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), along with an Explanatory Memorandum (EM).

23. These Regulations revoke the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 (SI No. 2005/206) which set out the circumstances in which a local council cannot use a Temporary Stop Notice in respect of caravans used as main residences. Revoking SI 2005/206 will only remove national prescription, and will leave it to local planning authorities to consider, on a case by case basis, whether taking enforcement action is necessary and proportionate in the circumstances where there is a suspected breach of planning control.

24. The national prescription was introduced by SI 2005/206 following debates on the passage of the 2004 Act in which concern was expressed about the impact of Temporary Stop Notices on the rights of Travellers. There was also correspondence between the then Minister, the Rt Hon. Lord Rooker, and the Joint Committee on Human Rights about the provisions in the Bill which became section 52 of the 2004 Act, which was published in the 8th and 10th Reports of 2003-04 of the Joint Committee.

25. We drew SI 2005/206 to the attention of the House on the grounds of interest in our 11th Report of session 2005-06.³

26. The current Government are of the view that a blanket national requirement is out-of-step with a planning system that seeks to ensure that decisions are taken at the local level in the best interests of the communities they serve.

³ **11th Report** of the (then) Merits of Statutory Instruments Committee Session 2004-05 (HL Paper 67).
More generally, the DCLG states that unauthorised development undermines confidence in the planning system and the protection of the environment and public amenity is a legitimate aim. The Department also believes that the same restriction on the use of Temporary Stop Notices for caravans as for dwelling houses is inappropriate because unauthorised development in relation to caravans used as main residences can often cause a more immediate and significant impact on the local area.

Consultation

27. Public consultation was undertaken between 21 December 2012 and 13 February 2013 and 67 responses were received. In addition, the Government held three hearings attended by representatives of Gypsy and Traveller communities, lawyers and planning consultants. A majority of respondents (70%) to the consultation, of which most were local authorities, agreed that the revocation of SI 2005/206 would improve councils’ ability to tackle unauthorised development in relation to caravans, in particular by allowing them to act more swiftly. Approximately 40% of respondents felt that the impact of the changes would be unacceptable, in particular, that the change of regulations would affect Gypsies and Travellers disproportionately.

C. Mid Staffordshire NHS Foundation Trust (Appointment of Trust Special Administrators) Order 2013 (SI 2013/838)

Date laid: 15 April
Parliamentary Procedure: negative

Summary: Multiple clinical reviews have taken place at the Mid Staffordshire NHS Foundation Trust (MSFT) since 2009 when a Healthcare Commission report revealed a higher than expected number of deaths at Stafford Hospital. Although significant improvements have been made to clinical and operational standards, concerns remain and these improvements have been made at an unsustainable financial cost. Monitor has concluded that the problems cannot be satisfactorily resolved within the existing administrative structure and this Order appoints three Trust Special Administrators who will report on how improvements are to be effected. They have 45 days to produce a report for consultation: the Department states that it expects this consultation will start during the week commencing 24 June 2013.

This Order is drawn to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House.

28. This Order has been laid under section 65D(6) of the National Health Service Act 2006 with an Explanatory Memorandum (EM) to which is attached a Report to Parliament from Monitor making the case for the appointment of Trust Special Administrators. This is the first time such an appointment has been made. The Order came into effect the day after laying.

29. Multiple clinical reviews have taken place at the Mid Staffordshire NHS Foundation Trust (MSFT) since concerns about the clinical standard of care were raised in a 2009 Healthcare Commission report that revealed a higher than expected number of deaths at Stafford Hospital. The Monitor report states that, in response to the Commission report, the clinicians and management at MSFT have taken considerable steps to make improvements through recruitment and closer cooperation with other NHS Trusts to
deliver services across the region. Although significant improvements have been made to clinical and operational standards, concerns remain and these improvements have been made at an unsustainable financial cost.

30. In its report, Monitor concluded that the problems cannot be satisfactorily resolved within the existing administrative structure. Monitor has therefore decided to appoint three Trust Special Administrators who will report on how improvements are to be effected. They have 45 days to produce a report for consultation. The Trust Special Administrators are expected to publish their draft report on 19 June 2013. A formal, 30-working day, consultation on its draft proposals will then be undertaken. The Department states that this consultation should engage all relevant stakeholders including commissioners, the public and patients. It is expected that the consultation will start during the week commencing 24 June 2013.
OTHER INSTRUMENTS OF INTEREST

Draft Added Tribunals (Employment Tribunals and the Employment Appeal Tribunal) Order 2013

Draft Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013

31. Currently, no fees are payable by users of an Employment Tribunal or Employment Appeal Tribunal. Costs are met by the taxpayer and paid from the Ministry of Justice budget. In 2010-11, these costs amounted to approximately £87 million. In line with the broader Government policy that requires users to contribute to the cost of services where they can afford to do so, these Orders introduce a new fee regime. Fee levels will be initially set at around 33% of the full cost of Employment Tribunals and 55% of the cost of the Employment Appeal Tribunal and will be subject to review and further increase in the longer term. The Draft Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 divides cases into two categories for the purposes of fees depending on the amount of tribunal resources needed to determine them; and into two stages, “issue” and “hearing”. A claim for unpaid wages, for example, which generally requires little case management would fall into the “Type A” category and attract the lower fee of £160 for issue, and then, if required, a further £230 in advance of a hearing (potential total fee of £390). However, if the claimant and respondent can settle the issue privately, the hearing fee will not be required. In comparison, claims involving allegations of discrimination, for example, tend to raise more complicated legal and factual issues and require longer hearings. These are allocated to the “Type B” category, requiring an issue fee of £250 and hearing fee of £950 (potential total fee of £1200 to the claimant). The Employment Appeal Tribunal does not differentiate between different claim types as they all require a similar amount of resource to administer regardless of the nature of the appeal. All such appeals therefore attract a fee of £400 upon instituting the appeal, and a further £1200 in advance of a hearing. The Committee notes the Ministry of Justice’s intention to monitor the outcome of these changes and would be concerned if people with legitimate claims were shown to be deterred by the level of fees.

Draft Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013

32. Under the Licensing Act 2003 (“the 2003 Act”), a system of regulation is in place for the provision of regulated entertainment (Schedule 1 of the 2003 Act), as well as the sale and supply of alcohol, and the provision of late night refreshment. From 10 September to 3 December 2011, the Department for Culture, Media and Sport (DCMS) conducted a consultation exercise to explore the scope for removing licensing requirements for most activities covered by Schedule 1 of the 2003 Act. DCMS has laid this draft Order in the light of that exercise.

33. The Order amends the 2003 Act by modifying some of the descriptions of regulated entertainment, so that a licence will no longer be required for entertainment that poses an acceptably low threat to the achievement of the
licensing objectives. Those objectives are: preventing crime and disorder; securing public safety; preventing public nuisance; and protecting children from harm.

34. A licence will no longer be required in respect of the performance of a play or dance, or an indoor sporting event, if specified conditions are satisfied:

- no licence is required for a performance of a play or dance if that performance takes place between 8am and 11pm on any day before an audience that does not exceed 500 people;
- and no licence is required for an indoor sporting event if the event takes place between 8am and 11pm on any day before an audience that does not exceed 1,000 people.

35. However, the controls set out in the 2003 Act will be retained for activities considered to be a greater threat to the licensing objectives (e.g. boxing or wrestling entertainment). If a dance performance is considered sexual in nature, it thus remains licensable (even if the performance takes place before an audience of 500 or fewer, between 8am and 11pm).  

36. In the Explanatory Memorandum to the draft Order, DCMS has provided useful information about the 2011 consultation, explaining that it contained a central proposal for the removal of licensing requirements for performances of plays, dance and live music, the playing of recorded music, indoor sporting events and film exhibition for audiences under 5,000 people. DCMS received nearly 1,400 responses, from practitioners and performers, local authorities, responsible authorities, community organisations and other interested parties.

37. DCMS states that, while there was general support for some level of deregulation, respondents expressed concerns, mainly for reasons of public order and public safety, about full deregulation in all locations for performances with audiences up to 4,999 and with no set end-time. The Department makes it clear, however, that there was support for the deregulation of plays, dance and indoor sport with audiences of under 500 (1,000 for indoor sport), and with an end-time before 11pm; and that these views have been reflected in the proposals set out in the draft Order. DCMS adds that responses from local government, responsible authorities and residents groups were overwhelmingly in favour of ensuring that cage-fighting and mixed martial arts should be clearly regulated within Schedule 1 of the 2003 Act, if indoor sport were deregulated; and that this preference is also reflected in the draft Order.

38. We take a close interest in the approach taken by Government Departments to consulting interested parties before finalising policy embodied in statutory instruments. In the case of this draft Order, DCMS appears both to have offered stakeholders an effective opportunity to express their views at an appropriate stage of policy formulation, and also to have taken full account of these views in deciding the final shape of the proposals. We commend such an approach.

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4 The legislative test is whether the dance performance is “relevant entertainment” within the meaning of paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

Draft National Health Service (Direct Payments) (Repeal of Pilot Schemes Limitation) Order 2013

39. The Government piloted personal health budgets between 2009 and 2012 in selected Primary Care Trusts to determine who would benefit and how best to implement them. These pilot schemes have been independently evaluated by the Personal Social Services Research Unit (PSSRU), University of Kent. In the light of the positive evidence from the evaluation, the Government now wish to enable direct payments for healthcare to be made available across England. This Order paves the way for that by repealing the part of the legislation that limits direct payments to pilot schemes only. Following a review of the pilot schemes, further (negative) regulations will set out the revised rules for the national scheme before the summer recess. Those regulations will also be informed by the outcome of a public consultation exercise on the proposed policy changes which ran between 1 March and 26 April 2013. A Government response to the consultation will be published in due course, as will guidance on the regulations. The Committee notes these proposed developments with interest but regrets that full information was not available in the original Explanatory Memorandum (EM). The Department has, at our request, now laid a revised EM that provides fuller information on the conclusions of the evaluation and the Department’s plans for health budgets.

Draft Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013

40. Electric lines above ground require consent from the Secretary of State before construction. Until March 2010, when the Planning Act 2008 (“the 2008 Act”) came into force, all electric lines above ground were consented under section 37 of the Electricity Act 1989 (“the 1989 Act”). Since the 2008 Act came into force, electric lines above ground with a nominal voltage of 132 kilovolts (kV) or more are consented under section 114 of that Act, while electric lines above ground with nominal voltages of less than 132kV continue to be consented under the 1989 Act.

41. In the Explanatory Memorandum accompanying this draft Order, the Department for Energy and Climate Change (DECC) states that the statutory process for applications for development consent of nationally significant infrastructure projects (“NSIPs”) under the 2008 Act is intended to provide a transparent, streamlined process for examination of major infrastructure projects. DECC says, however, that the process is disproportionate for minor works that are not nationally significant.

42. The Government consider that projects affecting lengths of electric lines of less than 2 kilometres should not normally be considered to be NSIPs. DECC has therefore laid this instrument in order to amend the definition of NSIPs in the 2008 Act for electric lines above ground: the definition will now cover only lines of 132kilovolt (kV) or greater nominal voltage and more than 2 kilometres in length. This will mean that the installation of an electric line of 132kV or greater nominal voltage that is under 2km in length will require consent under the 1989 Act.

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6 This can be found at http://www.dh.gov.uk/health/2013/03/direct-payments-consultation/ along with the impact assessment for the policy as a whole.
We sought further information from the Department about aspects of these proposals, and are publishing that information as Appendix 1.

**Careers Guidance in Schools Regulations 2013 (SI 2013/709)**

In the Explanatory Memorandum to these Regulations, the Department for Education (DfE) states that a provision inserted into the Education Act 1997 by the Education and Skills Act 2011\(^7\) placed a requirement on schools to secure access to independent and impartial careers guidance for pupils in years 9 to 11 (when the majority of pupils reach 14 to 16 years of age), on the full range of 16 to 18 education or training options, including apprenticeships. The duty came into force overall on 1 September 2012. These Regulations extend the age range of the duty down to year 8 and up to years 12 and 13, which means that the duty will apply to pupils in the year in which the majority of them reach 13 years of age, up to 18 years old. DfE states that this will allow more young people to gain access to information and advice at key transition points.

We sought further information from the Department about several aspects of the Regulations, including about how the extension of careers guidance which, as a duty, will apply only to maintained schools will also be given effect in academies and free schools, and about the financial implications of extending the duty. We are publishing the Department’s answers as Appendix 2.

**Mobile Roaming (European Communities) (Amendment) Regulations 2013 (SI 2013/822)**

In the Explanatory Memorandum accompanying these Regulations, the Department for Culture, Media and Sport (DCMS) summarises the history of EU regulation of costs associated with mobile roaming (that is, the use of a mobile phone out of its network region). A first Regulation made in 2007\(^8\) introduced price caps and transparency requirements on wholesale and retail roaming rates for voice calls. It was amended by a 2009 Regulation\(^9\) which extended price caps and transparency measures to include wholesale and retail SMS (text) rates and wholesale data rates. A third Regulation came into force on 1 July 2012,\(^10\) and contained a range of measures building on the provisions already in place. DCMS states that the intention behind the latest EU Regulation is to maintain price caps on a downward “glide path”, combined with two proposals for facilitating competition in the market and delivering mobile roaming charges at the same level as, or as near as possible to, domestic charges.

This instrument serves to amend the Mobile Roaming (European Communities) Regulations 2007 (SI 2007/1933), which implemented the first EU Regulation. DCMS states that the amendments ensure that Ofcom is able effectively to implement and administer the EU Regulation in the UK; and also that the roaming regulatory regime is consistent with the rest of the

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\(^7\) Section 42A of the Education Act 1997, inserted by section 29 of the Education and Skills Act 2011.

\(^8\) Regulation (EC) 717/2007.


\(^10\) Regulation (EU) 531/2012.
electronic communications regulatory regime, including the Communications Act 2003.

48. There has been a lapse of time between the coming into force of the EU Regulation, in July 2012, and the making of these Regulations. DCMS states that, in order to make the enforcement of the new requirements in the UK effective, the Regulations make provision in respect of breaches which took place on or after 1 July 2012 but before the coming into force of these Regulations. However, the Department does not believe that these transitional provisions have retrospective effect, since the provisions permit Ofcom to investigate breaches of the EU between 1 July 2012 and the coming into force of these Regulations, but not to impose the higher level of civil penalties in respect of behaviour which occurred before the coming into force of the Regulations.

49. We asked DCMS to explain more fully the reasons for the delay in bringing these Regulations forward, and enclose additional information as Appendix 3. We recognise that the timetable for the negotiation and implementation of EU legislation can be hard to anticipate. However, it is to be regretted that these domestic Regulations are being brought into force almost a year after the EU Regulation took effect: this House, and indeed interested parties affected by European legislation, may reasonably expect the Government to make strenuous efforts to align the timing of implementation of closely connected EU and domestic legislation.
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

- Added Tribunals (Employment Tribunals and Employment Appeal Tribunal) Order 2013
- Elections (Fresh Signatures for Absent Voters) Regulations 2013
- Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013
- Extradition Act 2003 (Amendment to Designations) Order 2013
- Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013
- National Health Service (Direct Payments) (Repeal of Pilot Schemes Limitation) Order 2013
- Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013
- Police and Criminal Evidence Act 1984 (Application to Immigration officers and designated customs officials in England and Wales) Order 2013

Instruments subject to annulment

- CM 8599 Statement of Changes in Immigration Rules
- SI 2013/706 Care Planning, Placement and Case Review (England) (Miscellaneous Amendments) Regulations 2013
- SI 2013/709 Careers Guidance in Schools Regulations 2013
- SI 2013/756 Education (Pupil Registration) (England) (Amendment) Regulations 2013
- SI 2013/758 School Information (England) (Amendment) Regulations 2013
- SI 2013/766 Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2013
- SI 2013/789 Civil Procedure (Amendment No.3) Rules 2013
- SI 2013/793 Immigration (Notices) (Amendment) Regulations 2013
- SI 2013/795 Zimbabwe (Financial Sanctions) (Suspension) Regulations 2013
SI 2013/804 Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Amendment) Regulations 2013

SI 2013/822 Mobile Roaming (European Communities) (Amendment) Regulations 2013

SI 2013/829 Promotion of the Use of Energy from Renewable Sources (Amendment) Regulations 2013

SI 2013/862 Protection of Freedoms Act 2012 (Consequential Amendments) Order 2013

SI 2013/877 Syria (European Union Financial Sanctions) (Amendment) Regulations 2013

SI 2013/903 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential Amendments) Regulations 2013

SI 2013/908 Late Payment of Commercial Debts (No.2) Regulations 2013

SI 2013/933 Regional Strategy for the West Midlands (Revocation) Order 2013

SI 2013/934 Regional Strategy for the North West (Revocation) Order 2013

SI 2013/935 Regional Strategy for the South West (Revocation) Order 2013

SI 2013/950 Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013

SI 2013/968 Electricity (Extension and Transitional Period for Property Schemes) Order 2013
APPENDIX 1: DRAFT PLANNING ACT 2008 (NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS) (ELECTRIC LINES) ORDER 2013: FURTHER INFORMATION

Further Information from DECC

Q1: Why was the nominal voltage of 132 kilovolts chosen as the distinguishing point?

A1: The Electricity Act 1989 Schedule 8, the Electricity (Applications for Consent) Regulations 1990 (1990/455) and the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 (2007/841) make specific provisions for lines of 132kV or greater. This distinction was used as the threshold for electric lines in the Planning Act 2008.

The nominal voltage of 132kV is the voltage in the UK at which electricity lines were historically transmission lines (part of the national grid), not local or regional distribution lines. It has been the distinguishing point for regulation of low voltage (commonly 11kV, 33kV or 66kV) and high voltage lines (generally 132kV, 275kV and 400kV) since the 1930s. These provisions reflect the significant role of lines at 132kV and above in the electricity supply industry, and their potential impacts.

In England and Wales the majority of 132kV lines are now either short connections to the national grid for generating station or form part of regional distribution networks.

Q2: What is the evidence in relation to environmental and health impacts from power lines?

A2: Evidence on all potential significant impacts of a proposed overhead line (OHL) would be presented in an application for a specific project. The Overarching Energy National Policy Statement (EN-1) and the Electricity Networks National Policy Statement (EN-5) set out the main impacts associated with OHLs at 132kV and above and indicate actions that developers should take to mitigate impacts to an acceptable level.

All electric lines produce electric and magnetic fields (EMF) that can have both direct and indirect effects on human health. The direct effects occur in terms of impacts on the central nervous system resulting in its normal functioning being affected. Indirect effects occur through electric charges building up on the surface of the body producing a micro-shock on contact with a grounded object, or vice versa, which, depending on the field strength and other exposure factors, can range from barely perceptible to being an annoyance or even painful. To prevent these known effects, the International Commission on Non-Ionizing Radiation Protection (ICNIRP) developed health protection guidelines in 1998 for both public and occupational exposure. The levels of EMFs produced by power lines in normal operation are usually considerably lower than the ICNIRP 1998 reference levels. The balance of scientific evidence over several decades of research has not proven a causal link between EMFs and cancer or any other disease.

If there are concerns on the potential significant impact of a proposed project, the Secretary of State may require further information, direct that an Environmental Impact Assessment be carried out or even direct that a Public Inquiry be held on the application. There must also be a Public Inquiry on an application if a relevant Local Authority makes an objection to the application that is not withdrawn.

Q3: The impact assessment refers to differing requirements for local consultation under the different procedures (1989 Act and 2008 Act). Could you spell these out more clearly:
under the 1989 Act, is an applicant not required to ensure local publicity for proposals relating to power lines?

A3: Yes, the application procedure under s.37 requires applicants to notify local authorities, inform interested parties and publish a notice of an application. Under The Electricity (Applications for Consent) Regulations 1990 (1990/455) regulation 5, notice of an application in respect of the installing or keeping installed of an electric line of a nominal voltage of not less than 132 kilovolts is required to be published for two successive weeks in one or more local newspapers, with details including a map of the land over which the line is proposed to pass or passes. The Secretary of State may also direct that additional information is provided. The Secretary of State will consider all responses from interested parties before making his decision on each application.

The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 also require applicants to publish notices of any Public Inquiry on an application for development consent for an OHL.

By contrast, Part 5 Chapter 1 of the Planning Act 2008 sets out detailed pre-application procedures that may take 2 or 3 years to complete. It includes agreement of a consultation plan with relevant local authorities, consultation according to the plan with Statutory Consultees and interested parties, followed by a report to the Secretary of State showing how the consultation has been taken into account in the application, which must accompany the application.

2 May 2013
APPENDIX 2: CAREERS GUIDANCE IN SCHOOLS REGULATIONS 2013 (SI 2013/709): FURTHER INFORMATION

Further information from the Department for Education

Q1: In the Explanatory Memorandum, you say: “The Regulations disapply, in respect of pupils over compulsory school age, the requirement in section 42A(4)(b) for careers guidance to include information on 16 to 18 education or training options, including apprenticeships. This extension will come into force from September 2013.”

Why is this requirement being disapplied?

A1: We do not want to require schools to provide information on options that are not age appropriate for their pupils, for example giving information on options for 16 and 17 year olds to pupils who have already reached the age of 18. Disapplying the requirement to provide information on the full range of 16 to 18 education or training options, including Apprenticeships for all pupils over compulsory schools age (sixth form students) is the simplest way to achieve this. Schools are still able to include information on 16-18 options to sixth form students, as part of their careers guidance offer, if they feel this is appropriate.

Q2: The EM refers at paragraph 7.2 to the position of academies and free schools that opened from September 2012, as well as that of academies that opened prior to September 2012; and at paragraph 7.6 to the position of institutions within the further education sector. Is DfE confident that students at academies that opened prior to September 2012, and at institutions within the further education, will have access to this extended careers guidance from September 2013, in line with provision for students at maintained schools?

A2: The new provision in section 42A of the Education Act 1997 and the extension set out in these Regulations apply to maintained schools only. In parallel with these Regulations, the Government is placing an equivalent requirement on colleges through their funding agreements, which are renewed every year. This will apply from September 2013. The Government also agreed that the model funding agreements setting out the requirements on academies would be amended to incorporate the duty. The below sets out the position in relation to academies which opened before and after September 2012:

- Academies opening after September 2012: as of September 2012 all funding agreements entered into between an Academy Trust and the Secretary of State in respect of new academies include a provision for careers guidance in line with the statutory position for maintained schools. As the law changes through these regulations, the careers provision will automatically extend to year 8-13 pupils attending academies which are subject to the new funding agreement.

- Pre–September 2012 academies where funding agreements were already in place: academy funding agreements, unlike those for colleges, are not subject to renewal each year. Existing contractual arrangements with Academy Trusts can only be amended by mutual agreement. Therefore, the Department, in line with the EM, has begun to write to academies encouraging those that do not have the duty to update their funding agreements through a Deed of Variation, including the incorporation of the careers guidance duty. It is not something that can be imposed unilaterally by a specific date. We are hopeful that academies will see the importance of this exercise and will cooperate with the Department.
Q3: The EM says that schools should meet any costs incurred from their overall budgets, and that there is no impact on the public sector. What additional costs will be incurred by schools required to provide this additional advice, and what was said about this by consultation respondents in 2012? How can there be no impact on the public sector?

A3: There are not necessarily any additional costs to a school from applying the duty. This is because the duty offers schools maximum flexibility in how to meet the requirement. There are a range of nil cost options for securing independent careers guidance, for example employer visits, mentoring, website and telephone helpline access which are centrally provided through the National Careers Service. The statutory guidance, revised in March 2013 to reflect the extension, makes this clear to schools. We have also published a practical guide to help schools interpret the duty and learn from good practice.

In line with this, there was no specific funding provided to schools to meet the duty. Schools meet any additional costs of work they decide to undertake from their overall budgets. Some respondents to the consultation raised concerns about funding, however this is not specific to the extension and was highlighted prior to the introduction of the original duty.

Q4: The EM says that revised guidance will be published in March 2013. Has guidance been published?

A4: Yes, the statutory guidance has been updated to reflect the extension to year 8-13 pupils. The updated document was published in March.  

3 May 2013

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APPENDIX 3: MOBILE ROAMING (EUROPEAN COMMUNITIES) (AMENDMENT) REGULATIONS 2013 (SI 2013/822)

Information from DCMS

Q: Was it originally the Government’s intention that these Regulations should come into force at the same date as the EU Mobile Roaming Regulation; and if so, why was this intention not achieved?

A: The Government’s original intention was that these implementing Regulations should have applied from 1st July 2012 when the EU Roaming Regulation became effective.

The revised EU Roaming Regulation was adopted at the EU Competitiveness Council on 31st May 2012 to replace the previous regulation which expired on 30th June 2012. It was still subject to some negotiation prior to that (with possible interim arrangements and an extension to the existing Regulation considered).

As part of its approach to implementation of the final Regulation DCMS consulted the regulator, Ofcom, on the powers it would need to enforce the revised Regulation fully and effectively. Unfortunately discussions on these powers, and how regulation of roaming could be aligned with wider regulation of telecommunications in the UK to ensure consistency and to avoid gold-plating, took us beyond 1st July last year. As part of our consideration of necessary powers we also consulted across Europe on how other Member States were approaching implementation, specifically on information-gathering powers and the regulator’s power to make directions in relation to reference offers.

When we had settled on the approach outlined in section 4.3 of the Explanatory Memorandum we consulted domestic stakeholders again to avoid the possibility of legal challenge.

We have also needed to clear our adopted solution through the Regulatory Policy Committee and the Reducing Regulation Committee and to produce a supporting impact assessment. All of these necessary steps contributed to delay in circumstances where the conclusion of the negotiations on the underlying EU Regulation left us with very little time before the new Regulation had to come into force.

3 May 2013
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 14 May 2013 Members declared the following interests:

**Careers Guidance in Schools Regulations (SI 2013/709)**

Lord Norton of Louth as 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 and Lord Scott of Foscote.