Draft Public Bodies (Modification of Functions of OFCOM) Order 2013

School Teachers’ Pay and Conditions Order 2013

Working Time (Amendment) (England) Regulations 2013

Personal Independence Payment (Transitional Provisions) (Amendment) Regulations 2013

Includes 12 Information Paragraphs on 17 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    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 7.

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

Twelfth Report

PUBLIC BODIES ORDER

A. Draft Public Bodies (Modification of the Functions of OFCOM) Order 2013

Introduction

1. The draft Public Bodies (Modification of Functions of OFCOM) Order 2013 has been laid by the Department for Culture, Media and Sport (DCMS) under sections 5(1) and 6 of the Public Bodies Act 2011 (“the 2011 Act”). The draft Order has been laid with an Explanatory Document (ED) and impact assessment (IA).

Overview of the proposals

2. The draft Order amends a number of duties and functions which are currently carried out by the Office of Communications (Ofcom), the UK’s independent regulator and competition authority for telecoms and wireless telegraphy. Ofcom also has responsibility for regulation of television broadcast services. Established in 2002, it was invested with its powers, duties and functions by the Communications Act 2003.

3. The amendments contained in the draft PBO are detailed in the IA, as follows:

   (a) allowing Ofcom to design changes to its internal governance;
   (b) removing the requirement that Ofcom promote development opportunities for training and equality of opportunity;
   (c) amending the duty to assess the Channel 3 networking arrangements;
   (d) amending the duty on Ofcom to review public service broadcasting every five years, so that such reviews will take place only when required by the Secretary of State;
   (e) removing the requirement that public service broadcasters (PSBs) provide annual statements of programme policy; and
   (f) amending the duty to review a change of control of a Channel 3 or Channel 5 licensee.

4. As explained in paragraph 8.10 of the ED, in the light of consultation responses, DCMS does not intend at present to proceed with the other change itemised in the IA, namely, to provide Ofcom with powers to charge fees for satellite filings with the International Telecommunications Union.

5. DCMS states that Ofcom reviewed its internal governance, duties and functions in February 2011, in order to reduce expenditure. The review resulted in efficiencies which reduced Ofcom’s budget by 28.2% in real terms against its 2010-11 funding cap. The review also found that, given changes in

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1 Ofcom incorporated and replaced a number of earlier regulators including Oftel, the Radio Authority, the Radiocommunications Agency, the Broadcasting Standards Commission and the Independent Television Commission.
the communications sector, certain legal duties were too rigid and that greater flexibility for Ofcom could be achieved, to create a more fit-for-purpose and streamlined organisation. In addition, it was no longer thought appropriate that Ofcom continued to perform certain duties according to a pre-set timetable, regardless of the likely costs and benefits. In the light of this review, DCMS carried out a consultation exercise, as described below.

Consultation

6. Consultation\(^2\) on DCMS’ proposals ran for nine weeks from 23 April to 25 June 2013. The Department states that 29 responses were received, and that the majority agreed that the measures outlined were sensible, should help lift regulatory burdens on industry, and enable Ofcom to deploy its resources more efficiently.

7. In relation to the amendments set out above, the ED states:

- on (a), the majority of respondents were in favour of the change to allow greater governance flexibility, with some concern voiced that if changes to the advisory committees were made, they should be on the basis that they retained their consumer-focused outlook;

- on (b), all respondents on the issue of removing Ofcom’s duty to promote development opportunities for training and equality of opportunity agreed with its removal;

- on (c) and (e), the majority of respondents were supportive, including of the removal of Ofcom’s duties to review Channel 3 networking arrangements and of the requirement on broadcasters to provide annual statements of programme policy;

- on (f), a small number of respondents were keen to retain the automatic review if a Channel 3 or 5 licence changed ownership, and saw this as an important reminder to those concerned of the importance of public service broadcasting. Concerns were also raised that removing this duty may have an impact on media plurality, especially in parts of the UK where the Channel 3 licence is currently not owned by ITV plc;

- finally on (d), the majority of respondents agreed that a more flexible approach to when public service broadcasting (PSB) reviews took place was preferable to the current fixed time-scale. However some had strong reservations, and saw this as an example of the PSB commitment to the parts of the UK outside of England and among the UK’s crown dependency states. Some respondents were concerned about the level of power the Government of the day would now have to determine the timings and scope of future reviews. A number of respondents were concerned that there was no commitment as to when the next PSB review would take place.

Role of the Committee

8. 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

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 in order to aid its consideration of the orders.

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

9. A Minister may only make an order under sections 1 to 5 of the 2011 Act if he 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). Section 8(2) of the 2011 Act specifies two conditions: that an Order does not remove any necessary protection, and does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.

10. The ED deals with the statutory tests in paragraphs 7.5 and 7.6 of the ED.

**Efficiency**

11. DCMS states that the proposed changes to Ofcom’s internal governance will allow it greater flexibility to create structures through which a wide variety of stakeholder views can be efficiently expressed. Recognising that Ofcom is a UK-wide body, the Department states that the Secretary of State will also have the power of approval where Ofcom proposes to abolish or substantially restrict the functions of the bodies listed in the PBO, and can use that power to ensure that Ofcom continues to be structured in a way that ensures the views of different groups are represented. DCMS says that, to remove unnecessary duplication, the PBO removes the duty on Ofcom to promote training and equality of opportunity for employees, since it is unusual for a regulator to have such a duty, especially when there are other bodies which are placed to fulfil this role, such as Skillset.

**Effectiveness**

12. DCMS explains that, in the UK, the term “public service broadcasting” (PSB) refers to broadcasting which will benefit the public, rather than a purely commercial operation. It has generally come to mean broadcasting that aims to do four things: increase our understanding of the world; stimulate knowledge and learning; reflect the cultural identity of the UK; and ensure diversity and alternative viewpoints. All the BBC’s TV and radio stations have a public service remit, as do Channels 3, 4, 5 and the Welsh language channel, S4C.

13. Ofcom is currently required to undertake a review of the PSB landscape at least once every five years. DCMS says that a common consensus (borne out by the consultation) is that these reviews are costly and resource-intensive for both Ofcom and broadcasters; and that they do not directly link into the timing of other reviews of broadcasting content, such as the BBC

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3 Creative Skillset “is the industry body which supports skills and training for people and businesses to ensure the UK creative industries maintain their world class position”: see: [http://www.creativeskillset.org/](http://www.creativeskillset.org/)

4 The review requires that these broadcasters fulfil certain requirements as part of their licence to broadcast, such as the provision of news and current affairs programming and the amount of original and independent productions.
Charter Review. The PBO removes the rigidity of when these reviews have to happen. As regards the removal of the duty on Ofcom to review the Channel 3 networking arrangements, DCMS states that experience has shown that an annual review cycle places a considerable burden on the licence-holders and Ofcom and has relatively little value. It stresses, however, that Ofcom will still have the power to perform such a review as it sees fit. Reviews of a change of control of a Channel 3 or Channel 5 licensee will now take place at the discretion of the Secretary of State.

14. DCMS stresses the continuing importance of Ofcom’s role in relation to its PSB duties after these changes. The Department states that the requirements which Ofcom sets out for PSBs will continue to include the quotas on news, current affairs, original productions, independent productions, production outside London and regional news. Ofcom will also continue to monitor delivery against Channel 4’s new digital remit, examining its Statement of Media Content Policy.

Economy

15. DCMS says that, whilst expenditure reduction is not the key driver for these changes, the savings, though relatively modest, are still considered worthwhile. Removing the duty to carry out a full PSB review every five years will allow Ofcom to make cost savings of at least £135,000 to £180,000 per annum; there could be further savings if the review focused on fewer areas. Amending the duty to assess Channel 3 networking arrangements should also save Ofcom up to £60,000 per annum (as well as giving savings of around £30,000 per annum to the Channel 3 broadcasters).

Accountability

16. DCMS says that removing the duty on Ofcom to review PSB every five years will give the Secretary of State the power to request a review and determine its scope, achieving greater flexibility and bringing this closer to democratically accountable ministers. It adds that both the Secretary of State and Ofcom will be working to protect the consumer interest in broadcasting content.

Protections, rights and freedoms

17. As regards the conditions in section 8(2) of the Act, that an Order does not remove any necessary protection, and does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise, the ED states only that the Minister considers that the conditions are satisfied, “in that the primary aim of the instrument is to provide Ofcom with the tools with which to carry out its regulatory duties more effectively for the benefit of consumers. At the same time in setting overall regulatory frameworks, the Government remains committed to the six principles of economic regulation: accountability, focus, predictability, coherence, adaptability, efficiency.”

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5 This is the set of arrangements between the holders of the 15 regional Channel 3 licences which come together to provide a competitive public service network.

6 This is a separate requirement in the Communications Act 2003 as amended by the Digital Economy Act 2010.
18. We felt that it would be helpful to see a fuller statement of the reasons for which the Minister considered that the conditions in section 8(2) of the 2011 Act were satisfied. At our request, Mr Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, wrote on 22 July 2013, and his letter is published as Appendix 1 to this report. After a first consideration of the draft Order, we sought further information from the Minister, and our letter of 30 July and Mr Vaizey’s reply of 9 September are also published in Appendix 1.

Conclusion

19. We note from the ED that the majority of consultation respondents supported the proposed changes itemised above as (a) (governance flexibility); (b) (duty to provide certain development opportunities); and (c) and (e) (removal of duties to review Channel 3 networking arrangements, and of requirement on broadcasters to provide annual statements of programme policy). We see no reason to conclude that these elements of the draft PBO do not serve the purpose of improving the exercise of public functions as set out in the 2011 Act, in line with the considerations contained in it.

20. The position is not so clear as regards items (d) and (f). As the ED makes clear in relation to (d), while in principle respondents generally saw the merits of flexibility over the timing of PSB reviews, a number entered reservations about how this approach would work in practice. For example, the Welsh Government commented that, given the rapid evolution of communications technology, it did not accept that “the assumed model of one PSB review every ten years, at the discretion of the Secretary of State, is in any way sufficient to ensure that changing PSB requirements are properly defined and understood...”. The Scottish Government considered that a review should take place at least once every ten years, with scope for an earlier review if technological developments made that desirable, a point also made by the British Screen Advisory Council. Both the International Broadcasting Trust (IBT) and the Voice of the Listener and Viewer strongly opposed the change proposed in the PBO, not least on the ground that it “removes an essential regulatory role from Ofcom, putting it into the hands of politicians” (IBT). While seven of the responses firmly supported the proposed change, these came either from broadcasters or their representative bodies. DCMS also acknowledges that, as regards item (f) - automatic review if Channel 3 or 5 licence changed ownership - a small number of respondents were keen to retain present arrangements.

21. We note that, in his letters, the Minister says that the changes proposed in the PBO will help Ofcom’s efficiency and effectiveness in furthering the interests of citizens, and in furthering the interests of consumers. At the same time, the Minister stresses that broadcasters’ rights to broadcast will continue to be subject to the conditions in their licenses, and that obligations on public service broadcasters will remain. Given that the Government intend nonetheless that Ofcom should in future conduct public service broadcasting reviews, albeit less frequently, the conditions and obligations on broadcasters are not seen as sufficient in themselves to remove the need for reviews.

22. We consider that the proposals in the PBO to amend Ofcom’s duty to review PSB every five years, and to end the requirement for automatic review if Channel 3 or 5 licences change ownership, can be seen to improve efficiency
and economy in the exercise of Ofcom’s public functions. But we understand the concern expressed by non-broadcasting consultation respondents that giving the Secretary of State responsibility for the initiation of such reviews puts these processes more clearly in a political context. While the Government stress that the proposals will introduce greater flexibility into the operation of Ofcom, those opposed may perceive them as reducing the transparency and certainty of current arrangements, factors which may also be regarded as important to the effectiveness of Ofcom’s exercise of public functions.

23. **Taking the proposals in the draft Order as a whole, and in the light of the concern set out in the previous paragraph, we do not consider that the Government have adequately demonstrated that the draft Order serves the purpose of improving the exercise of public functions as set out in the 2011 Act. We therefore recommend that the draft Order should be subject to the 60-day enhanced affirmative procedure set out in section 11(6) of the Public Bodies Act 2011.**
INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

B. School Teachers’ Pay and Conditions Order 2013 (SI 2013/1932)

*Date laid: 8 August*

*Parliamentary Procedure: negative*

**Summary:** The Order gives effect to recommendations in relation to the pay and conditions of school teachers which were made by the School Teachers’ Review Body (STRB) and accepted by the Government. The main changes include ending annual incremental pay progression after the September 2013 pay award, and requiring that pay should be linked to performance from September 2013 onwards. There is also provision for an across-the-board increase of 1% from September 2013 in teachers’ salaries. The Government allowed only four weeks, spanning Christmas 2012, for responses to its main consultation on the changes flowing from the STRB’s 21st report. We regard this as very poor practice.

We draw this Order 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.

24. The Department for Education (DfE) has laid this Order which provides that the remuneration and conditions of employment of school teachers is to be determined by reference to the relevant provisions in the “School Teachers’ Pay and Conditions Document 2013 and Guidance on School Teachers’ Pay and Conditions” (“the Document”).

25. In the Explanatory Memorandum (EM) to the Order, DfE states that the main changes are:

- the ending of annual incremental pay progression after the September 2013 pay award and the new requirement that pay should be linked to performance from September 2013 onwards;
- the replacement of the current threshold test for progression to the upper pay range with simpler criteria and the removal of the obligation when recruiting to match a teacher’s existing salary;
- the abolition of the Advanced Skills Teacher and Excellent Teacher posts and the creation of a new Leading Practitioner role.

There is also provision for an across-the-board increase of 1% from September 2013 in teachers’ salaries and other remuneration.

26. The Document follows from the 21st and 22nd reports by the School Teachers’ Review Body (STRB). In the EM, DfE states that, in February 2012, the Secretary of State asked the STRB to consider how arrangements for teachers’ pay might be reformed to deliver a more effective link between pay and performance, and what other reforms should be made in order to raise the status of the profession and best support the recruitment and retention of high quality teachers in schools. The Government submitted evidence to the STRB on 16 May 2012. Under the Education Act 2002, the STRB has to consult various representative bodies before reporting on a
matter referred to them, in addition to the Secretary of State. All such bodies (including all of the national representatives of teachers and teacher employers) also had the opportunity to submit evidence. The STRB’s 21st report, setting out a number of recommendations, was published in December 2012. Following formal consultation, the Government accepted all of the STRB’s key recommendations.

27. DfE also explains that, in January 2013, the Secretary of State asked the STRB for recommendations in relation to the September 2013 pay award for teachers, in line with the Government’s policy that public sector pay awards should average 1% in each of the two years following the pay freeze, which for teachers began in September 2011. On 27 June, following submission of evidence from the Secretary of State and representative bodies, the Government laid before Parliament the STRB’s 22nd report, recommending an across the board increase of 1% from September 2013 in teachers’ salaries. Following statutory consultation, the Secretary of State accepted the recommendation in full.

28. DfE states that consultees who contributed to the STRB process were invited to comment on the STRB’s 21st report and the proposed Government response over a four-week period ending on 4 January 2013. The Department comments that “the consultees [were] accustomed to the short timetable”. Nine individual responses were received. The previous Document was revised to take account of comments, but there were no substantive changes to policy.

29. DfE also states that on 27 June consultees were invited to comment on the Secretary of State’s response to the STRB’s 22nd report and a further draft of the revised previous Document and associated Order by 26 July 2013. The Document takes into account the comments received. There were no substantive changes to policy.

30. We asked the Department for additional information about the consultation processes which it followed in relation to these changes to teachers’ pay and conditions, and we are publishing that information at Appendix 2. In particular, we pressed the Department to explain its decision to allow only four weeks, spanning Christmas 2012, for responses to its main consultation on the changes flowing from the STRB’s 21st report, and also to say more about points made by consultation respondents.

31. We note that DfE states that it is its established practice to limit the period for consultation on STRB reports to four weeks, and that interested parties had other opportunities to comment. It acknowledges that overlapping consultation periods with a holiday period is not ideal “but in this case was unavoidable”. We regard this as very poor practice. In the report of our inquiry into the Government’s July 2012 consultation principles, we urged the Government to recognise that six weeks should be regarded as the minimum feasible consultation period, save in circumstances which would be generally recognised as exceptional (and not defined as such by Government.

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7 The responses came from the Association of School and College Leaders (ASCL); Association of Teachers and Lecturers (ATL); Local Government Employers (LGE); National Association of Head Teachers (NAHT); National Association of Schoolmasters Union of Women Teachers (NASUWT); National Union of Teachers (NUT); Voice, the union for education professionals; National Association of Teachers of Wales (UCAC); and the Welsh Government.

8 Paragraph 42, 22nd Report of Session 2012-13 (HL Paper 100), para 42.
alone); and also to ensure that consultation periods did not clash with holidays or peak periods of activity for the target group. The main consultation exercise over the four-week period to 4 January 2013 was the key opportunity for interested parties to make their views known on the specific proposals for change.

32. We note DfE’s statement that “most of the teaching unions commented about the 4-week timetable and that part of it overlapped with the Christmas holiday”. In fact, we understand that these comments, from the ATL, the NASUWT, the NUT, the UCAC, Voice and the LGE, explicitly criticised the period allowed for consultation.\(^9\) The Department makes clear its view “that comments about the four-week period were unjustifiable given that this was the standard period for previous STRB consultations”. We disagree; poor practice is not ameliorated by the fact that it has been followed over many years.

33. There can be no doubt that the changes provided for in this Order are of marked significance for the teaching profession in England. Decisions on such important changes are of course for the Government to take. However, if the Government choose to consult interested parties before reaching such decisions, they should in our view ensure that the arrangements for consultation allow respondents adequate time to formulate and submit their responses. Failure to do so can only devalue the consultation process.

C. Working Time (Amendment) (England) Regulations 2013 (SI 2013/2228)

*Date laid: 6 September*

*Parliamentary Procedure: negative*

Summary: The Regulations align the position for workers employed in agriculture in England with the position for workers in most other sectors under the Working Time Regulations 1998 (“the 1998 Regulations”). On 30 July of this year, the House approved the draft Working Time (Amendment) Regulations 2013, which served to align the position for workers employed in agriculture in England and Wales with the position under the 1998 Regulations. The National Assembly for Wales (NAW) passed the Agricultural Sector (Wales) Bill in July, and the Supreme Court is considering the question of whether the Bill is within the NAW’s legislative competence. The Government have therefore decided to withdraw the Working Time (Amendment) Regulations 2013 previously approved by this House. It is regrettable that the time of the House has been wasted as a consequence; we urge the Government to look more carefully before leaping into secondary legislation.

We draw these Regulations 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.

34. On 20 June of this year, the Department for Environment, Food and Rural Affairs (Defra) laid the draft Working Time (Amendment) Regulations 2013. The purpose of those Regulations was to align the position for workers employed in agriculture in England and Wales with the position for workers...
in most other sectors under the Working Time Regulations 1998 (SI 1998/1833 (“the 1998 Regulations”).

35. We published information about the draft Regulations in our 7th Report of this Session. In particular, we commented, in relation to the Government’s decision to allow only a four-week period for its consultation on the proposed abolition of the Agricultural Wages Board (AWB) and agricultural minimum wage regime, that allowing so short a period for consultation was not consistent with good policy-making.

36. The draft Regulations were considered in Grand Committee on 22 July. The motion to report that the Regulations had been considered was agreed, but in the debate the Minister was pressed to explain the Government’s decision to take the Regulations forward less than a week after the National Assembly for Wales (NAW) had passed the Agricultural Sector (Wales) Bill, to restore a separate agricultural minimum wage regime in Wales. The House agreed a motion to approve the draft Regulations on 30 July.

37. In the Explanatory Memorandum (EM) to these Regulations (SI 2013/2228), Defra states that their purpose is to align the position for workers employed in agriculture in England with the position for workers in most other sectors under the 1998 Regulations. In explaining the need for these Regulations, Defra refers to the fact that, on 17 July, the NAW passed the Agricultural Sector (Wales) Bill (“the Bill”), and now states that the Attorney General has referred to the Supreme Court the question of whether the Bill is within the NAW’s legislative competence.

38. Defra says that, pending the Court’s judgment, the Government have decided to continue the agricultural minimum wages regime in Wales in order to provide certainty for agricultural workers and employers in Wales; and also to withdraw the draft amendments to the 1998 Regulations laid before Parliament on 20 June in respect of workers in England and Wales and lay new amendments in respect of workers in England only.

39. In considering the Department’s handling of these changes, we are reminded of the maxim “more haste, less speed”. The Government allowed what was in our view too short a period for the overall consultation process in autumn 2012, and they took the earlier draft Regulations through this House before they had finally determined what action needed to be taken as a result of the National Assembly for Wales’ passage of the Agricultural Sector (Wales) Bill. It is regrettable that the time of the House has been wasted as a consequence; we urge the Government to look more carefully before leaping into secondary legislation.

10 HL Paper 36.

11 HL Deb, 22 July 2013, cols GC387-396.

12 In accordance with the procedure under section 112(1) of the Government of Wales Act 2006.

13 The Draft Working Time (Amendment) Regulations 2013 were withdrawn on 8 October 2013.
D. Personal Independence Payment (Transitional Provisions) (Amendment) Regulations 2013 (SI 2013/2231)

Date laid: 12 September
Parliamentary Procedure: negative

Summary: During the debate, on 13 February 2013, on the regulations to introduce the Personal Independence Payment (PIP), concern was expressed about certain aspects of the assessment criteria to be used; in particular, about the introduction of a descriptor to the “moving around” activity that allocated qualifying points according to whether a person could walk more than 20 metres but less than 50. The Government decided to consult further on this descriptor before extending the PIP regime to the next tranche of people. That consultation ended on 5 August 2013. It elicited around 1,100 written responses. In consequence, this instrument defers the planned start date for the next tranche of PIP implementation from 7 October to 28 October to allow further consideration of these responses. The House will wish to note this delay and the potential for further developments.

We draw 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.

40. This instrument has been laid by the Department for Work and Pensions (DWP) under the Welfare Reform Act 2012 with an Explanatory Memorandum (EM). It amends the Personal Independence Payment (Transitional Provisions) Regulations 2013 (SI 2013/387 – see in particular regulation 3) to defer the second tranche of PIP implementation for three weeks.

41. When the original Personal Independence Payment (PIP) regulations were laid, this Committee’s 23rd Report of Session 2012-13 included a detailed report on their provisions. Submissions from groups representing the disabled expressed concern about certain definitions in the assessment, in particular the interpretation of a person’s ability to perform a task “reliably” (rather than using the preferred description of “safely, reliably, repeatedly and in a timely manner”). This was debated in the House on 13 February 2013 and later changed by the Social Security (Personal Independence Payment) (Amendment) Regulations 2013 (SI 2013/455) on which we commented in our 33rd Report of last session.

42. During that debate, concern was also expressed about one of the two mobility criteria to be used in the assessment, in particular the introduction of a descriptor to the “moving around” activity that allocated points according to whether the person could walk more than 20 metres but less than 50. The Government decided to consult further on this descriptor before extending the PIP regime to the next tranche of people, which broadly incorporates current Disability Living Allowance (DLA) recipients experiencing a change of circumstances (termed “natural reassessment”). The consultation asked for views on the current distances of 20 and 50 metres, what the impact of the current criteria would be and suggestions on

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15 HL Deb, 13 February 2013, col 719.
whether changes were needed to them or on ways physical mobility might be assessed differently.

43. The six week consultation on Moving Around\textsuperscript{17} ended on 5 August 2013. It elicited around 1,100 written responses. In consequence, this instrument defers the planned start date for the next tranche from 7 October to 28 October to allow further consideration of these responses. Paragraph 7.2 of the EM states that:

“This Following a decision on the outcome of the consultation, the Government may decide changes to the assessment are necessary. If this is the case, new amending Regulations may be laid to further delay the start of natural reassessment until after any necessary changes have been made.”

DWP also states that it intends to publish a Government response to the consultation in the autumn. (EM paragraph 8.3)

44. The House will wish to note this delay and the potential for further developments.

\textsuperscript{17} Available from: https://www.gov.uk/government/consultations/consultation-on-the-pip-assessment-moving-aroundactivity
**INSTRUMENTS OF INTEREST**

*Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 (SI 2013/1783)*

45. This instrument is mainly intended to allow road charging schemes (such as the Dartford Crossing) to change their payment system from barrier operation to a “free flow” system akin to the London Congestion Charge. However, the context is not clear from the original Explanatory Memorandum. We asked the Department for Transport for further explanation of how this system will operate, which we are publishing as Appendix 3.

*Human Medicines (Amendment) Regulations 2013 (SI 2013/1855)*

46. This instrument amends the Human Medicines Regulations 2012 in order to implement new provisions introduced by the Falsified Medicines Directive (2011/63/EU) which aims to increase the opportunities for identifying and reporting counterfeit medicines before they reach patients, and to provide a more robust framework of regulation to deter counterfeiters. Many of the provisions build on existing obligations on manufacturers and wholesale dealers of medicines, but this legislation extends regulation to operators such as brokers in the sale and supply of medicinal products. The provisions are expected to deal with the increasing number of counterfeit medicines detected in the European Union in both illegal and legal supply chains. Medicines are falsified either in their identity, their history (documentation) or their source. Such products either contain sub-standard or falsified ingredients, ingredients in the wrong dosage or sometimes no active ingredient at all thus posing an important threat to public health. The specific costs to the UK from counterfeit medicines are set out in the Impact Assessment but the effects are not purely financial.


47. The Crime and Courts Act 2013 provides for the establishment of a National Crime Agency (NCA) which is to replace the existing Serious Organised Crime Agency. Other functions relating to organised crime, border policing, economic crime, child exploitation and cyber crime will also be transferred to it. The Agency is expected to be fully operational by the end of 2013. Section 10 of the Act provides for NCA officers to be designated as having one or more of the following: the powers of an immigration officer, of a customs officer or a police officer. Section 13 imposes strike restrictions on those NCA officers so designated. These Regulations set out a procedure for the Secretary of State to determine the rates of pay and allowances of NCA officers below Deputy Director grade, but only after consideration of a report from the NCA Remuneration Review Body. The Regulations also provide for the establishment and operation of the NCA Remuneration Review Body which will consist of a chair appointed by the Prime Minister and at least five members appointed by the Home Secretary.

48. The Department for Business, Innovation and Skills (BIS) has laid these Regulations, to revoke Regulations from 2007\textsuperscript{18} requiring Further Education (FE) staff to be appropriately qualified within five years of taking up teaching.

49. In the Explanatory Memorandum (EM), BIS states that the 2007 Regulations took forward the previous Government’s policy for professionalising the FE workforce. In January 2012, the Government appointed Lord Lingfield to chair an independent review of FE workforce professionalism. The review’s interim report in March 2012 included a recommendation to revoke the 2007 Regulations, as from September 2012. The Government accepted this recommendation in principle, considering that it accurately reflected the maturity of the sector.

50. BIS explains that the Association of Colleges (AoC) agreed that the 2007 Regulations should be revoked, but requested that this should not happen in September 2012, to allow time for an alternative approach to be put in place. The AoC has acknowledged that the reforms now in place in schools and the creation of the FE Guild mean their concerns have been mitigated. BIS says that the FE Guild is expected to be fully operational from 1 August 2013,\textsuperscript{19} and that this will ensure that the reform process can be completed with confidence.

51. The EM provides information about consultation undertaken between April and June 2012 on the proposed revocation. BIS states that 1,063 responses were received, 670 of which were from individuals. It says that 74\% of respondents were not in favour of revocation, and 79\% of respondents agreed that minimum expectations for training and qualifications should be a condition of public funding; but that “a more complex picture emerged” once responses from the major representative organisations in the sector were considered separately from those of individuals. We asked for further explanation of this statement, and of the timing of laying the Regulations; we are publishing BIS’ response as Appendix 4.

52. In July 2013, the Government published the draft Deregulation Bill,\textsuperscript{20} to allow pre-legislative scrutiny before the Bill is formally introduced into Parliament. Paragraph 1 of Schedule 13 of the draft Bill provides that those sections of the Education Act 2002\textsuperscript{21} which give powers to the Secretary of State to make regulations imposing qualification requirements on FE staff in England will cease to apply. We asked BIS to explain the interaction of those proposed provisions with these Regulations; that explanation is in the Appendix.

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\textsuperscript{18} The Further Education Teachers’ Qualifications (England) Regulations 2007 (SI 2007/2264).

\textsuperscript{19} The FE Guild has been re-named the Education and Training Foundation and was launched in August 2013.

See: \textcolor{blue}{http://www.et-foundation.co.uk/}

\textsuperscript{20} See: \textcolor{blue}{https://www.gov.uk/government/publications/draft-deregulation-bill}

\textsuperscript{21} Namely, sections 136(a), 136(b), 137 and 138 of the Education Act 2002.

53. In March of this year, 22 we published information about the Child Poverty Act 2012 (Extension of Publication Deadline) Order 2013 (SI 2013/411), which was laid by the Department for Education (DfE). The Social Mobility and Child Poverty Commission (“the Commission”) was required by the Child Poverty Act 2010 to publish its first report before 8 May 2013; the effect of SI 2013/411 was to extend the publication deadline for the report until any time before 26 September 2013. DfE explained that the Commission had requested the extension to the deadline to ensure that it could use the latest statistics, namely the Households Below Average Income (HBAI) statistics, which were expected to become available only after May 2013.

54. DfE has now laid this Order, which serves to extend further the publication deadline for the Commission’s 2013 report, from 26 September 2013 to 22 October 2013. It also extends the publication deadline for the Commission’s 2014 annual report from 8 May 2014 to 22 October 2014.

55. In the accompanying Explanatory Memorandum, DfE states that, since SI 2013/411 came into force, the Commission has become concerned that its non-political and independent status could be compromised if the report were laid during the political party conference season at the end of September. In requesting a further extension, the Commission told DfE that it was not logistically possible to publish its report ahead of the conference season because of the weight of evidence-gathering needed for a truly comprehensive report.

56. We put a number of questions to DfE about this further extension, and we are publishing their answers at Appendix 5. It is unfortunate that the Department has felt it necessary to use secondary legislation to provide a second extension so soon after the first. **We hope that the practice of deferring publication because of conference season does not become widespread.**

**Control of Noise (Code of Practice on Noise from Ice-Cream Van Chimes Etc.) (England) Order 2013 (SI 2013/2036)**

57. The Department for Environment, Food and Rural Affairs (Defra) has laid this Order, approving a new version of the Code of Practice on Noise from Ice-Cream Van Chimes. The amendments to the Code extend the permitted length and frequency of chiming: vendors can chime for up to 12 seconds instead of four seconds, and every two minutes rather than every three minutes.

58. In the Explanatory Memorandum to the Order, Defra states that it carried out public consultation (covering England only) over 12 weeks from March to May 2012, and received 57 responses from organisations and individuals. Keeping the Code unchanged was supported by 54% of respondents, including the Noise Abatement Society, six local authority environmental health departments, and 18 members of the public. Making the Code less restrictive was supported by 33% of respondents, including the Ice Cream Alliance and six other industry organisations, the Chartered Institute of  

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22 32nd Report, Session 2012-13, HL Paper 146.
Environmental Health, four local authority environmental health departments and two noise consultancy organisations. 13% of responses expressed no preference.

59. After considering the responses, the Government decided to make the Code less restrictive on mobile vendors, but not to extend the hours between which it is legal to chime. Defra states that this strikes an appropriate balance, providing more flexibility for vendors while retaining a framework for good practice and minimising the risk of disturbance.


Planning (Listed Buildings and Conservation Areas) (Amendment No. 2) (England) Regulations 2013 (SI 2013/2115)


60. The Department for Communities and Local Government (DCLG) has laid these four instruments, which are all intended to speed up the process for determining appeals relating to applications for planning permission and applications for listed building and conservation area consent. Their provisions include requiring appellants to submit their full case upfront, introducing statements of common ground in hearings, expanding the scope of the truncated written representations procedure and further aligning the procedure for advertisement and listed buildings appeals with planning appeals.

61. In the Explanatory Memorandum (EM), DCLG states that in 2012-13 the Planning Inspectorate determined 14,250 planning appeals. Although more than 80% of these appeals were determined within 26 weeks, some took longer. A review of the appeals procedures was announced in the autumn statement of 2011, and consultation was held over six weeks between November and December 2012.

62. 158 responses were received: 55 from local planning authorities; 34 from parish/town councils: 18 from planners/consultants; 15 from professional trade associations; 14 from developers; and three from landowners. The Department says that the proposals to streamline planning appeals were welcomed by the majority of respondents, although some had reservations over aspects of practical implementation. Nonetheless, the EM indicates levels of support of 75% or more of respondents for the proposals which these instruments put into effect.
In our 5th Report of the current Session,\textsuperscript{23} we drew to the attention of the House the draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013,\textsuperscript{24} and “Improving Planning Performance – Draft Designation Criteria document”, laid by the Department for Communities and Local Government (DCLG). Under the Growth and Infrastructure Act 2013 (“the 2013 Act”), a planning application (in relation to major development) may be made directly to the Secretary of State where the local planning authority (LPA) has been designated by him. In our Report, we explained that the draft designation criteria document provided that, in deciding whether to make a designation, the Secretary of State would assess the speed, and the quality, of an authority’s decisions on planning applications by reference to specified measures and thresholds. We also explained that the draft Regulations made a range of provisions, including arrangements for the fee for such direct applications to be paid to the Secretary of State.

We noted DCLG’s statement at the time that in September 2013 it would lay a new development order to set out how the Secretary of State would handle planning applications which were submitted to him instead of to the designated LPA. We expressed regret that the Department had not laid that Order at the same time as the draft Regulations, and that Parliament was therefore being shown only an incomplete picture of the new arrangements.

DCLG has now laid these three instruments:

\begin{itemize}
\item SI 2013/2140 is the Order referred to above. In the Explanatory Memorandum (EM), DCLG states that the provisions in the Order are, as far as possible, the same as equivalent provisions in the Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010/2184: “the 2010 Order”);
\item SI 2013/2141 contains the Rules which will regulate the procedure to be followed for hearings in England to be held before the Secretary of State determines applications submitted to him instead of to the designated LPA;
\item SI 2013/2142 is a set of Regulations which, among other things, define “major development” for these purposes. DCLG states that the definition of major development is similar to that used in the 2010 Order.
\end{itemize}

\textsuperscript{23} HL Paper 28.

\textsuperscript{24} The draft instrument has now been made, as SI 2013/2153: Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013.
66. In the EM, the Department says that, in addition to these three instruments, there are two further instruments which support implementation of section 1 of the 2013 Act: a commencement Order, and an amendment to the existing fees Regulations. DCLG states that there are no plans to issue guidance for these instruments. **Given the novelty of these arrangements and the interaction of several instruments, we consider that the Department would be well advised to provide such guidance: it seems to us unreasonable to expect that potential users of these arrangements will otherwise understand them fully.**

**Information as to Provision of Education (England) (Amendment) (No.2) Regulations 2013 (SI 2013/2149)**

67. In the Explanatory Memorandum to these Regulations, the Department for Education (DfE) states that each year, in relation to secondary schools, local authorities submit data to the Department on the number of applications made for school places, the number of preferences expressed and the number of applicants who received an offer at one of their preferred schools. For each local authority the Department asks for the total number of applications made, preferences expressed and offers made.

68. DfE explains that the changes made by these Regulations mean that, from January 2014, the data will be extended to include primary schools, in line with the new primary national offer day of 16 April. The Department says that the introduction of a primary national offer day will ensure that all parents are notified of a primary school place for their child at the same time (as already happens with secondary schools). Publishing primary school preference data alongside the existing secondary school data will give parents information to enable them to make better informed choices when applying for primary school places.

69. DfE stresses that, while data will be returned as information relating to each pupil, it will continue to publish data at local authority level only, and that no individual details will be published.

**Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013 (SI 2013/2213)**

70. The Employment Rights Act 1996 (“the 1996 Act”) provides employment protection for workers who make certain disclosures of information. It defines the categories of disclosures which qualify for protection and the circumstances in which such disclosures will be protected. It provides that a qualifying disclosure is a protected disclosure where the worker makes the disclosure to a person prescribed by an order made by the Secretary of State. The Public Interest Disclosure (Prescribed Persons) Order 1999 (SI 1999/1549: “the 1999 Order”) which was made under the 1996 Act, includes a list of prescribed persons and descriptions of matters for which they are prescribed.

71. The Department for Business, Innovation and Skills (BIS) has laid this instrument to amend the list of prescribed persons in the 1999 Order. In the Explanatory Memorandum, BIS states that the amendments reflect changes made to policing governance in England and Wales by the Police Reform...
and Social Responsibility Act 2011, as well as changes made by the Civil Aviation Act 2012 in conferring certain aviation security regulatory functions on the CAA.

72. Probably of most interest, however, is the fact that the Order makes the health and social care professional regulatory bodies prescribed persons, so that disclosures to those bodies can be protected. BIS states that this will ensure protection for NHS and social care staff who wish to raise a concern with a professional regulator. In so doing, the Government are implementing a recommendation from the Report of the Mid-Staffordshire NHS Trust Public Inquiry (published on 6 February 2013) to add the health and social care professional regulatory bodies to the list of prescribed persons in the 1999 Order.

**Gangmasters Licensing (Exclusion) Regulations 2013 (SI 2013/2216)**

73. In the Explanatory Memorandum (EM) to these Regulations, the Department for Environment, Food and Rural Affairs (Defra) states that the Gangmasters Licensing (Exclusions) Regulations 2010 (SI 2010/649: “the 2010 Regulations”), and previous Regulations, exclude from gangmaster licensing activities which are considered to represent little risk of worker exploitation. In amending the 2010 Regulations, this instrument clarifies the existing circumstances, and provides for new circumstances, in which a person does not require a gangmasters’ licence. The changes are described in paragraphs 7.6 to 7.20 of the EM.

74. The information provided by Defra in the EM about the consultation process is limited. The Department states that it carried out consultation over an eight-week period in April to June of this year; 100 responses were received; and some two-thirds of these were from forestry stakeholders supporting the exclusion of the sector from licensing. Defra otherwise states only that “overall there was an acknowledgement of the need to lift unnecessary burdens on business by removing low risk sectors from licensing and strong support for excluding forestry”.

75. We obtained a good deal of additional information about this process from Defra, and this is published in Appendix 6. We consider that much of this information should have been published in the EM as laid before Parliament. In reviewing the work of the Committee in the 2012-13 Session, we commented adversely on the fact that we had increasingly found it necessary to obtain supplementary information from Departments and to include this in our reports, in order to enable the House to understand fully the intended effect of instruments. In our view, the EM to these Regulations is a particularly striking example of inadequate provision of information to Parliament, and we are writing to the Secretary of State about this.

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National Health Service (Direct Payments) (Amendment) Regulations 2013 (SI 2013/2354)

76. These Regulations make amendments to the National Health Service (Direct Payments) Regulations 2013 (SI 2013/1617) (“the 2013 Regulations”) which came into force on 1 August 2013. A correction is necessary because two paragraphs of the preceding 2010 Regulations (S.I.2010/1000) had not been replicated in the 2013 Regulations. The paragraphs restrict the circumstances in which a family member or a friend living in the same household may be paid to provide care using part of a patient’s direct payment. Although the Department assures us that there have, so far, been no incidents as a result of this omission, the Committee is concerned that once again the Department of Health had not picked up these errors before the 2013 Regulations were laid.

77. The amending Regulations also rectify an oversight: that is, that the 2013 Regulations currently have review processes only for people whose direct payments have been stopped or who have been asked to re-pay money previously received. They do not include review processes for people who have had their original application for a direct payment refused, who have had their direct payments reduced or who have had a particular service within their care plan refused. The Committee shares the Department’s view that all applicants should have a specific form of redress through the Regulations. We are concerned, however, that these appeal mechanisms are only now being made comprehensive when the legislation has been in place for several years.
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.

**Instruments subject to annulment**

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SI 2013/2100 Bus Service Operators Grant (England) (Amendment) Regulations 2013
SI 2013/2111 Smoke Control Areas (Authorised Fuels) (England) (No. 2) Regulations 2013
SI 2013/2112 Smoke Control Areas (Exempted Fireplaces) (England) (No. 2) Order 2013
SI 2013/2115 Planning (Listed Buildings and Conservations Areas) (Amendment No. 2) (England) Regulations 2013
SI 2013/2125 Firefighters’ Pension Scheme (Amendment) (No. 3) (England) Order 2013
SI 2013/2135 Insolvency (Amendment) Rules 2013
SI 2013/2140 Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013
SI 2013/2141 Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013
SI 2013/2141 Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013
SI 2013/2147 Town and Country Planning (General Permitted Development) (Amendment) (England) (No. 3) Order 2013
SI 2013/2149 Information as to Provision of Education (England) (Amendment) (No.2) Regulations 2013
SI 2013/2157  Care Quality Commission (Membership) (Amendment) Regulations 2013
SI 2013/2174  Gas (Extent of Domestic Supply Licences) (Revocations) Order 2013
SI 2013/2184  Motor Vehicles (Driving Licences) (Amendment) (No.3) Regulations 2013
SI 2013/2190  Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013
SI 2013/2194  National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) (Amendment) Regulations 2013
SI 2013/2196  Contaminants in Food (England) Regulations 2013
SI 2013/2201  Town and Country Planning (Public Path Orders) (Amendment) (England) Regulations 2013
SI 2013/2210  Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013
SI 2013/2212  Packaging (Essential Requirements) (Amendment) Regulations 2013
SI 2013/2213  Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013
SI 2013/2216  Gangmasters Licensing (Exclusion) Regulations 2013
SI 2013/2217  Broadcasting and Communications (Amendment) Regulations 2013
SI 2013/2224  Companies (Revision of Defective Accounts and Reports) (Amendment) (No.2) Regulations 2013
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SI 2013/2272  Port Security (Port of Southampton) Designation Order 2013
SI 2013/2354  National Health Service (Direct Payments) (Amendment) Regulations 2013

Instrument subject to annulment (Northern Ireland)

SR 2013/189  Allocation of Housing and Homelessness (Eligibility) (Amendment) Regulations (Northern Ireland) 2013
APPENDIX 1: DRAFT PUBLIC BODIES (MODIFICATION OF FUNCTIONS OF OFCOM) ORDER 2013

Letter from Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, to Lord Goodlad, Chair of the Secondary Legislation Scrutiny Committee

I write in response to a query that has been raised to me concerning the Explanatory Document to the Public Bodies Order that was recently laid by my department, and which seeks to amend the duties and functions of Ofcom.

The issue raised is that the Explanatory Document does not sufficiently clarify how the proposed order meets sections 8(2)(a) and (b), namely 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.

Paragraph 7.6 of the Explanatory Document sets out that, as the responsible Minister, I consider that ‘...the conditions in section 8(2) of the Act are satisfied, in that the primary aim of the instrument is to provide Ofcom with the tools with which to carry out its regulatory duties more effectively for the benefit of consumers. At the same time in setting overall regulatory frameworks, the Government remains committed to the six principles of economic regulation: accountability, focus, predictability, coherence, adaptability, efficiency’.

The Order proposes five changes to Ofcom’s legislative mandate to support it to respond flexibly to address future changes in the fast-moving telecommunications and broadcasting sectors which it regulates. The changes will help to ensure that the work Ofcom carries out is relevant, timely, and does not unnecessarily duplicate activities carried out by other organisations.

Ofcom’s two principal duties are to further the interests of citizens (in relation to communications matters) and to further the interests of consumers. The purpose of this Order is to support Ofcom to do this efficiently and effectively. The changes range from introducing greater flexibility to adapt its governance structure, to ensuring that reviews are timely and appropriately focused. However, broadcasters’ rights to broadcast continue to be subject to the conditions in their licenses, and obligations on public service broadcasters remain – for example, to ensure that remits and quotas are fulfilled in respect of public service broadcasting duties, such as the quotas on news, current affairs, and the commissioning of independent productions outside of London. This will ensure that consumers’ and citizens’ interests are not impinged or affected and that the public’s high expectations of quality and breadth of public service broadcasting continue to be met.

22 July 2013
Letter from Lord Goodlad to Ed Vaizey MP

The Secondary Legislation Scrutiny Committee gave a first consideration to the draft Order at its meeting today. We agreed to seek further information from you, in order to assist the further consideration which we shall give to the Order when we meet again after the recess.

As you know, the Public Bodies Act 2011 provides that a Minister may only make an Order under sections 1 to 5 of the Act if he considers that the Order serves the purposes of improving the exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy, and (d) securing appropriate accountability to Ministers. In addition, an Order may not remove any necessary protection, and may not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.

The Committee has looked at the information on compliance with the Public Bodies Act 2011 which your Department provided in paragraphs 7.5 and 7.6 of the Explanatory Document (ED), and which you gave in your letter of 22 July. We have further questions about two of the changes proposed in the draft Order, namely:

- removing the duty on Ofcom to review Public Service Broadcasting every five years and giving the Secretary of State the power to request a review and determine its scope; and
- amending the duty to review a change of control of a Channel 3 or Channel 5 licensee, so that such reviews will now take place at the discretion of the Secretary of State.

In the ED, your Department states that these reviews are costly and time-consuming. We take the point that requiring such reviews to take place less frequently will allow those involved to make cost savings. However, we question whether the changes proposed, in particular the proposed transfer of responsibility for triggering reviews from Ofcom to the Secretary of State, will meet the purpose of improving the exercise of the public function concerned, that is, to ensure the furtherance of the interests of citizens in relation to communications matters and of the interests of consumers. We note, for example, that there was concern among consultation respondents about the uncertainty of the commitment to, and timing of, such reviews that would result from the transfer of responsibility.

30 July 2013

Letter from Ed Vaizey MP to Lord Goodlad

I am grateful to the Secondary Legislation Scrutiny Committee for setting time aside to consider the draft to the Public Bodies Order recently laid by my department that seeks to amend some of the duties and functions of Ofcom.

In your letter of 30 July you raised two important issues around removing duties on Ofcom to carry out a Public Service Broadcasting every five years, and to automatically conduct a review when a Channel 3 or Channel 5 licence changes ownership. Specifically, you asked how these two measures “improve the exercise of public functions”, which is the test of measures in the Public Bodies Act.

Ofcom is now in its tenth year of existence. Much has changed over the last decade, and the pace of change in the communications sector shows no sign of abating. Our primary aim in this Order is to ensure that Ofcom has the tools with
which to carry out its duties more effectively. In addition, we aim to ensure that it has sufficient flexibility to react nimbly to this fast-changing environment, and to ensure the needs of the consumer continue to be met in the digital age. As you will know, the Communications Act 2003 sets out that Ofcom’s principal duty is to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

Public Service Broadcasting review

Our intention is to provide more flexibility in the timing of when comprehensive Public Service Broadcasting reviews are conducted, and not to remove these reviews all together. At present, the timing of the broad reviews is rigid, as these happen every 5 years, regardless of what is happening in the broadcasting sector as a whole. The results of these reviews are not always timed in a compatible or constructive way with other policy or regulatory issues, such as Ofcom’s review of the terms and conditions of Channel 3 and 5 licences. The dates for the review and the end-dates of these licences do not currently coincide. The PSB remit is set out for the Channel 3 and 5 licensees in those licences, and if amendments should be made, then it would clearly be useful to understand that in advance of new licences being granted. Additionally, it may be that after a review, the Secretary of State may decide to amend the PSB remit.

Initiating such a review in the future could also depend on other factors; for example, if the PSB landscape has significantly changed or if it is felt that specific policy solutions are needed to preserve the health of the PSB system. For example, if the PSB system was to come under sustained pressure from wider technological and structural changes, so that it was no longer able to effectively deliver its public policy objectives, a PSB review may be necessary to explore ways in which the health of the PSB landscape can be maintained.

Whilst it certainly cannot be predicted exactly how and when the broadcasting landscape will shift in the future, we should look to ensure sufficient flexibility in terms of timing, scale and scope of reviews in future to ensure that the most timely and relevant matters are addressed. Also, Ofcom must be best placed to continue to meet its broader objectives without having to conduct reviews that are not satisfactorily timely, or do not address the key concerns and issues. To maintain such rigidity in the face of a rapidly shifting landscape, in which new priorities can rapidly emerge, would not enable Ofcom to exercise its duties in the most efficient and effective manner.

There is also an existing suite of regulatory processes aimed at securing and reporting on the provision of public service broadcasting that should help ease concerns some groups had during the consultation that without a regular comprehensive PSB review it would not be possible to assess the health of public service broadcasting in the UK. For example, Ofcom will continue to collect and publish data from all PSBs annually on their delivery in key areas, which includes monitoring their delivery against quotas by genre, and for regional productions, independent production, and regional news provision. Indeed, Ofcom’s latest such review was published on 8 August 2013, and is available here: http://stakeholders.ofcom.org.uk/broadcasting/reviews-investigations/public-service-broadcasting/annrep/psb13/

Change of control

In removing the duty on Ofcom to automatically perform a review of Channel 3 or 5 when ownership changes hands, we are looking to establish a more pragmatic
approach in the relationship between the broadcaster and the regulator. For Ofcom to be required to perform reviews at any given time would seem excessive, especially is that PSB has either just been through a review of its licence conditions, or has been a part of a more comprehensive PSB review.

Ofcom’s existing monitoring and analysis of those PSBs on an annual basis will ensure that there is a good understanding of the PSB’s performance. If there are any concerns that the change of ownership might lead to a lessening in the PSB commitment then the Secretary of State may call for a review to be undertaken by Ofcom. As a result of this review, Ofcom can impose additional licence conditions on the Channel 3 and/or Channel 5 licences [to ensure that the PSB remit is properly delivered by the new licensee].

In effect the change proposed through the draft Order will focus resources to those cases where it is actually needed – where changes of control raise real concerns about the fulfilment of the remit, rather than requiring them to be done even in the absence of a significant impact of such a change of control. That concentration of resources is important, particularly at present, where there is a focus on doing more with less. As outlined above, ensuring maximum efficiency and effectiveness for Ofcom will best equip the regulator to meet its statutory objectives.

9 September 2013
APPENDIX 2: SCHOOL TEACHERS PAY AND CONDITIONS ORDER 2013 (SI 2013/1932)

Information from Department for Education

Q1: Did the four weeks for consultation on STRB’s 21st report run from 7 December 2012 to 4 January 2013? How much of this four-week period was accounted for by school holidays? Why do you say that consultees were accustomed to the short timetable? Is it DfE’s practice to curtail consultation and run it over holiday periods?

A1: Section 126 of the Education Act 2002 provides that the Secretary of State may not make an order under section 122 of that Act without consulting such of the bodies named in section 126 as the appear to the Secretary of State to be appropriate. In fact it is the Secretary of State’s usual practice to consult those “statutory” consultees at two stages in the process leading to the making of such an Order – when he publishes his response to recommendations of the STRB and again when the School Teachers’ Pay and Conditions Document (STPCD) has been amended in draft to give effect to those of the STRB’s recommendations which the Secretary of State accepts. Further, the statutory consultees give evidence to the STRB once it has been remitted to consider a matter and before it publishes its recommendations.

Our Secretary of State formally remitted the STRB in February 2012 to consider the issues that would eventually lead to the recommendations in their 21st report. Between February and the report’s publication in December statutory consultees were given the opportunity to submit detailed written evidence to support their position in relation to the remit as well as having the opportunity to meet the STRB and provide oral evidence. The majority of consultees also submitted further supplementary written evidence once they had had a chance to consider all of the written evidence already submitted by the other consultees. Concurrent to this, officials offered a regular series of bilateral and group meetings with all of the consultees, which the majority attended. This process of evidence-submission, formal consultation and regular meetings with the consultees was replicated for the STRB’s 22nd report prior to the final publication of the STPCD in September.

So the formal 4-week consultation processes...were far from the only opportunity for consultees to engage in and influence the process.

In response to your specific points on 21st report consultation, the 4 week consultation ran from 7 December to 4 January. School term dates vary between local authorities but the most common dates for the Christmas holiday were 24 December to 7 January. Therefore, the majority of schools were still open for 3 of the 4 weeks of the consultation period. With regard to the “short timetable” and the Department’s practice regarding consultations, as explained above the consultation process for STRB recommendations is not a full public consultation – it is the Department’s established practice to restrict the consultation to the statutory consultees. The period for previous consultations has been 4 weeks. In this particular case, 4 weeks was the absolute maximum time we could allow for consultation in order to complete the subsequent revisions to the STPCD and give schools a full term’s notice of the changes coming into effect on 1 September via the revised STPCD.

Q2: Did consultees comment on the short timetable?

A2: Most of the teaching unions commented about the 4-week timetable and that part of it overlapped with the Christmas holiday...Our view was that comments
about the 4-week period were unjustifiable given that this was the standard period for previous STRB consultations. We did acknowledge that overlapping, even for a very small time, with a holiday period is not ideal but in this case was unavoidable. The Secretary of State was very clear that these pay reforms should come into effect from September 2013. In order to do that and give schools a term’s notice of the changes the timetable meant we had to consult when we did. In fact, it is worth making clear that in this case the consultation on the 21st report was only one of three consultations linked to the recommendations in the report – a further consultation period from 14 February to 14 March enabled consultees to comment on specific revisions to the STPCD as a result of the 21st report recommendations and a consultation from 27 June to 26 July (primarily on changes to the STPCD following the STRB’s 22nd report) provided a final opportunity to comment on the STPCD before publication in September. We have received no indication or representation from any of the consultees that they were not able to give an adequate response to the consultation in the time available.

Q3: Have you published a detailed analysis of the comments received? If not published, can you say why not?

A3: We have not published a detailed analysis of the comments - though we did follow past precedent in writing to all consultees about the changes and summarising key changes to the STPCD itself. We also offered to discuss any of the changes and have regular discussions relating to specific changes to the STPCD.

[As regards] the 22nd report and consultation, we received no comments on the timetable this time and, as above, we didn’t publish a detailed analysis of comments received.

12 September 2013

Information from Department for Education

(1) Consultation on the STRB’s 21st Report (7th Dec 2012 – 4th Jan 2013)

Summary of consultees’ views

ASCL

ASCL was broadly positive about the report. It supported the retention of an overall framework and cautiously welcomed the stronger link between performance and pay progression and more discretion in the use of allowances. It also supported the retention of the threshold but believed the proposed criteria in the report were inadequate. It recognised the risks associated with capacity issues, particularly for governing bodies, in implementing the new arrangements and emphasised the need for the Department to provide some form of support. It opposed the removal of mandatory pay points, the obligation to match a teacher’s existing salary when they move post and the post-threshold and advanced skills standards. It urged the Secretary of State to consider retaining advanced skills teacher status.

ATL

The ATL response was strongly negative. It expressed disappointment with what it regarded as a partial report, rather than an independent analysis of the evidence
presented, and suggested that this has undermined the credibility of the STRB. It criticised the consultation period. It opposed differentiated performance-based progression and the abolition of mandatory pay points as an unnecessary complication of existing arrangements. ATL failed to see the need for changing the threshold arrangements or creating posts that pay salaries above the upper pay scale and was opposed to the proposal to remove the obligation to match a teacher’s existing salary when they move post. It disliked increasing flexibility in the use of allowances. It did however welcome the retention of a broad national framework, including the four geographical pay bands, and the simplification of the STPCD, but was concerned about the extra burden that will be placed on schools to implement the new arrangements. It supported the idea of the Department producing guidance for schools.

NAHT
The NAHT welcomed the recommendations relating to flexibility, simplification of the STPCD and the introduction of performance related pay progression. However, it had concerns about the pace of change, the number of changes proposed at once, and the nature and timing of their implementation. It believed a planned phased approach was needed with appropriate training for head teachers and governors to implement an effective performance related pay progression system in schools. It welcomed the retention of a broad national framework and supported the replacement of incremental points based on length of service with differentiated pay progression linked to appraisal. It believed the abolition of mandatory pay points was a step too far and stated an intention to advise their members to continue to apply the current system. It did not support the recommendation that there should be no obligation for schools when recruiting to match a teacher’s existing salary. It would have liked to see the removal of the process for moving between the main pay range and the upper pay range (known as “threshold”). The NAHT supported the recommendation that the Department produce guidance and indicated that it was willing to work with the Department when it considered how to give effect to the detailed recommendations on implementation. It expressed disappointment that leadership pay and conditions were not considered and wanted these to be addressed urgently as part of the next remit.

NASUWT
NASUWT was critical of the time allocated for consultation and was concerned that the STRB’s recommendations did not reflect the evidence that was submitted to it. It was strongly opposed to strengthening the link between pay progression and performance and increasing flexibility in the use of allowances. It raised concerns about the impact on equalities and the capacity of schools to implement the changes. It expressed scepticism about the adequacy of a toolkit or guidance to deal with the capacity issues, but asked that, if such guidance were produced, it be consulted on the scope and content. It considered an implementation timescale of September 2013 to be unrealistic and unacceptable.

NEOST
NEOST welcomed the recommendations in the report and the increased flexibility that they would provide to deploy and reward teachers more effectively. They did however express disappointment with the time provided for the consultation. They supported the stronger link between pay and performance, retention of the four
geographical pay bands and of the broad national framework. They agreed that the Department should develop guidance to help schools, given doubts over the capacity of head teachers and governing bodies to develop systematic local approaches and the need to minimise the risk of equal pay claims. They also supported fixed-term allowances, the removal of the obligation to match a teacher’s existing salary when moving posts and a simplified STPCD. They agreed that the process for progression to the upper pay scale should be simplified, but argued that the criteria for doing so needed to be strengthened.

**NUT**

The NUT were also critical of the consultation period. It overwhelmingly rejected the STRB’s recommendations. It also expressed concern at the Government’s statement about the proposed pay remit for 2013, believing this to be a constraint on the STRB’s considerations (by way of background, the NUT believed that the Chancellor’s statements about public sector pay awards being restricted to 1% cut across the STRB’s independence to set pay levels for the teaching profession). It opposed the proposals to remove fixed incremental pay points, alter the present basis of pay progression and introduce progression related to the outcomes of appraisal. It also opposed the proposal to remove the obligation to match a teacher’s existing salary when moving posts and the introduction of greater flexibility in the use of allowances. It was concerned about the equality impact of the recommendations and requests that an assessment be undertaken (in fact, a full written equality analysis has been carried out). It did however support the development of a toolkit for schools.

**UCAC**

UCAC expressed concern about the timing of the consultation process and about the impact on the pay system and the overall education system if all the recommendations were accepted. They were particularly opposed to performance-related pay and differentiated progression on the grounds that these would have a damaging effect on morale in and recruitment to the profession. They also opposed the abolition of mandatory spine points. They would have liked to see more consideration given to increasing the flexibility in the payment of allowances. They agreed that clear guidance would be needed if the recommendations were implemented.

**VOICE**

Voice expressed the view that the timescale for the consultation was unreasonable. It welcomed the proposed retention of a national pay framework and the four geographical pay bands, but considered that the flexibilities proposed would go further than it would have wished, particularly in relation to removing mandatory pay points and introducing differentiated pay progression. It favoured a system of appraisal that would support teacher development and did not object to performance-based progression, but expressed concern that the appraisal system needs to be robust. It was also concerned about the removal of statutory pay points and of the obligation to match a teacher’s existing salary when moving post. It supported the idea of a simpler process for progression to the upper pay scale, but stated that further work was required on the criteria. It also supported accelerated progression and the creation of posts paying salaries above the upper pay scale, but was sceptical about whether these would happen in practice. It welcomed more flexibility in the use of allowances. Its main concern was the
capacity of the system to manage more flexible pay arrangements and the proposed timescale for implementation, and it therefore supported the creation of a toolkit. It favoured a simplification of the STPCD, but did not want to lose the guidance section.

**Welsh Government**

The Welsh Government did not support a link between pay and performance and was opposed to the proposal to remove the obligation to match a teacher’s existing salary when they move post. It favoured the retention of a single national pay structure for England and Wales rather than a system where pay is determined locally by head teachers and governors. It expressed concern that, if the recommendations were implemented, they would require school governors to have much higher levels of expertise.

**Government Response**

Despite a number of comments in consultation responses about the duration and timing of the consultation process none of the statutory consultees claimed that they wouldn’t be able to respond in time and all did in fact respond in full within the deadline. It is usual for the Secretary of State to be minded to accept all of the STRB’s recommendations in full when going to consultation, in light of the detailed process which the STRB follows before making its recommendations (including taking evidence from the Secretary of State and all statutory consultees). Having taken account of consultees’ consultation comments, the Secretary of State did accept all of the recommendations but committed to working with consultees on the practicalities of implementation, taking account of their views wherever practical.
Further information from the Department for Transport

Q1. Could you clarify exactly what sort of road charges are intended here - is it tolls on bridges, tunnels and toll roads or is it broader than that including the Road Tax vignette?

A1. Legally road user charges are different to tolls which generally arise under the New Roads and Street Works Act 1991 or individual private Acts. It is appreciated that to road users they will look similar.

The charges that are the subject of these Regulations are in respect of a charging scheme made pursuant to Part 3 of the Transport Act 2000 ("TA 2000"). Local charging schemes can be made by local authorities (either alone, jointly or with an Integrated Transport Authority) and trunk road charging schemes can be made by the Secretary of State provided the road in question is carried by a bridge or passes through a tunnel at least 600 metres long (as is the case at the Dartford Crossing) or where part of a trunk road is to be included in a local scheme).

Toll charges were levied at the Dartford Crossing until 2003, when the debts associated with the construction of the bridge and tunnels were fully discharged. A road user charge has been collected at the Crossing since 2003, using the powers in the TA2000, in order to manage the high demand for its use.

Free-flow charging at Dartford involves the replacement of fixed barriers with automatic number plate recognition ("ANPR") cameras and the charging authority (with the agreement of the DVLA) can cross reference the vehicle registration marks against the DVLA database of registered keepers. Rather than payment using coins or notes to lift the barrier before or after crossing, instead payment is made remotely. Payment may be made either by account, or through ‘casual’ payment channels which could include website, telephone, SMS, smart phone app, post or at retail outlets. This is similar to the Central London Congestion Charging Scheme’s approach to the methods available to pay the charge.

It is possible to discern where enforcement action against non-compliant users may be required by comparing the vehicle registration marks ("VRMs") identified as having used the Crossing (through ANPR cameras, or a combination of both ANPR and tag and beacon technology) with those for which either a payment is registered as having been made via a ‘casual’ payment channel or which is associated with an account from which the crossing charge can be debited.

Regulation 5(5) of these Regulations specifies £120 as the maximum penalty charge that a charging authority may impose arising from a failure to pay the road user charge within the specified time. Individual charging authorities are free to set their own charges up to that figure – for example at Dartford the charge will be £70 (a 50% discount applies if paid within 14 days so in that case the figure is £35).

These Regulations are capable of applying to any local or trunk road charging scheme in England that wishes to make use of the enforcement provisions they contain. The reason why the Secretary of State has decided to make these Regulations now is so that they are in place to support the introduction of free-
flow charging at the Dartford Crossing, which is the subject of a trunk road charging scheme for which he is the traffic authority.

Q2. How will defaulters be identified?

A2. Where the vehicle is registered under the Vehicle Excise and Registration Act 1994 defaulters may be identified through a combination of roadside equipment (this may include ANPR only, or ANPR and tag or other ‘on-board’ technology), back office technology and the DVLA database. Under free-flow charging at Dartford, the roadside and back office system will detect and identify near to all vehicles using the Crossing. The reconciliation process will determine if a VRM can be matched with an account, a one-off payment or an exempt vehicle. If the system can’t match a VRM with any of these categories it becomes a contravention candidate. DVLA data will be used to support the enforcement process which involves raising a penalty charge and issuing a PCN.

Where the vehicle is not registered (or the registered keeper details are incomplete) an attempt may be made by the charging authority to trace the keeper using a domestic or European debt recovery agency. If the keeper is found then a PCN may be issued.

As an alternative, in situations where the vehicle is unregistered and has incurred three or more unpaid road user charges, then the power to immobilise or remove it may be used. This is designed to enable enforcement against those vehicles that can be seen as “persistent evaders”.

The power to immobilise in regulation 25 is subject to the four pre-conditions in regulation 25(3). Not only must the charging authority have imposed three or more penalty charges for non-payment of the road user charge on the vehicle it must also have been unable to serve a PCN because either the vehicle was not registered under the Vehicle Excise and Registration Act 1994 or the details on the DVLA database are incomplete. Furthermore a “grace period” of 14 days from the time that the last of the three penalty charges being relied was imposed must have expired. The vehicle must also be stationary on a road.

Q3. What recourse does a driver have if the tag/vignette/device has a technical failure and though displayed correctly does not function – will penalty notices alert the driver to the fact that there may be a technical problem with the device or how it is displayed?

A3. It is unlikely that the failure of a tag or other “on-board” device will lead automatically to a PCN, as schemes will typically have an alternative system for detecting vehicles, as well as back office systems to provide resilience and confirm that non-compliance has occurred. In many cases the tag (or other ‘on-board’ device) will not be the primary method for vehicle detection and identification.

DSRC tags will be used at Dartford only as a secondary method for vehicle identification and will not be mandated. If the device fails or is not mounted correctly then if the ANPR identifies that a VRM linked to an active account has used the Crossing the account will be debited (even if the tag and beacon technology didn’t ‘trigger’ payment), thus preventing a PCN from being issued.

If an account holder does receive a PCN when there is an active account attached to the VRM and against which the road user charge can be debited then the account holder would be able to make representations against the issue of the PCN to the charging authority under regulation 8(3)(d) on the basis that the road user charge had been paid. Alternatively representations could be made under regulation 8(1)(b) on the basis that there are compelling reasons why the PCN should be cancelled.
Q4. How quickly will penalty notices be issued – if someone is crossing the Dartford Bridge to and from work they could acquire 3 penalty notices within a day and a half. Would there be any way of the driver being aware that the device was not working (does it or something at the “Bridge” beep or flash when activated?)

A4. The operating requirements at Dartford will result in PCNs being issued approximately 2 days after the end of the period available to a scheme user to make a ‘post-payment’ (currently 23:59 on the day after the day of use of the Crossing). A non-compliant scheme user who made several crossings in that period could be subject to a PCN for each unpaid crossing.

The chances of multiple PCNs being issued to a Dartford account holder due to faulty tag and beacon equipment is low because the ANPR record of VRMs will also be checked against account details. If the ANPR identifies that an account vehicle has used the Crossing then the account will be debited (even if the tag and beacon technology didn’t ‘trigger’ payment), thus preventing a PCN from being issued.

However, should any PCNs be issued due to equipment failure leading to the charging authority not being able to identify that there was an account from which to take payment, account holders will be able to make representations on any and all such PCNs.

Q5. What publicity there will be and/or notices on the approach to the Bridge to inform occasional drivers about the new style of charge?

A5. The Highways Agency recognises that it is essential that road users are informed of the new remote charging arrangements in order to understand how to comply with the road user charging scheme. A detailed public information (PI) campaign is being planned as part of the Dartford project which will be crucial to influence the right behaviours, promote acceptance and compliance, and maintain a credible road user charging regime. The campaign will draw on the Agency’s existing communication channels, as well as using partnership marketing through close working with our stakeholders. The Cabinet Office have also recently approved a ‘paid-for’ element for the Dartford PI campaign which will include regional advertising on the radio, as well as at motorway service areas, petrol station forecourts and through an arrangement with DVLA. The Dartford PI campaign will commence in early 2014, with most activity taking place between April and October, prior to introduction of the new charging arrangement at the Crossing in October 2014.

New signing will be installed at the Crossing which will advise users how to pay. Prior to ‘go-live’ in October 2014, these new signs will show temporary messages advising users when the new charging arrangement is to be introduced.

Q6. How many ways the charge can be paid?

A6. Users will be able to pay the charge by a number of channels, which will include at a minimum on-line and telephone payment, and an option to pay at a number of retail outlets.

Q7. Will there still be a few of the “throw coins in a bucket” style payment facilities for those who don’t pass that way often enough to merit an account?

A7. No, there will be no cash payment option at the Crossing following the introduction of the new charging arrangement. Users who do not wish to create an account will be able to pay for one-off trips through the payment channels referred to above. Under the new A282 Charging Scheme Order (SI 2013/2249) users will have until midnight on the day after the day of use of the Crossing to pay the road
user charge. This will provide opportunity for users who were not aware before they used the Crossing of the requirement to pay to do so at a safe and convenient time during or following their journey.

Users without access to credit or debit cards needed for online and telephone payments, or who wish to pay the charge in cash will be able to do so at one of the retail outlets.

3 October 2013
APPENDIX 4: FURTHER EDUCATION TEACHERS’ QUALIFICATIONS (ENGLAND) (REVOCATION) REGULATIONS 2013 (SI 2013/1976)

Additional Information from BIS

Q1: In the Explanatory Memorandum, you say:

“8.2 The simple numerical totals showed:

• 74% of respondents were not in favour of revocation of S.I. 2007/2264
• 79% of respondents agreed that minimum expectations for training and qualifications should be stipulated as a condition of public funding

However, once the responses from the major representative organisations in the sector were considered separately from those of individuals, a more complex picture emerged.”

What do you mean by “a more complex picture”?

A1: Although the percentage of individual responses who were not in favour of revocation of the regulations looks impressive, this needs to be taken in the context of the whole of the FE teaching workforce. The 74% of respondents not in favour of revocation of the regulations represents about 500 individuals which is less than 1% of a FE teaching workforce of around 180,000.

The more complex picture arises because the organisations that represent the wider sector (i.e., AoC who represent and speak on behalf of more than 95% of all colleges and 157 Group, who represent large institutions) took a different the view. This was that the 2007 legislation had been ineffective and should be revoked. Given the weight of these latter replies against individual views, the decision was taken to revoke the Regulations.

The sector move to a new era freeing providers from central government control has placed greater responsibility for quality of teaching directly on the shoulders of providers themselves. The sector-owned independent Education and Teaching Foundation (ETF) is now in place and at the core of its responsibilities is the development of a well qualified, effective and up-to-date professional workforce, supported by good leadership, management and governance. It will define and promote professionalism in the sector, maintain and develop occupational standards for the workforce, ensure the availability, scope and quality of initial teacher training and provide resources and support to improve teaching, learning and assessment.

Q2: Why did you not lay the Regulations sooner than 8 August, a date in the middle of college holidays and only 3 weeks before coming into force?

A2: Statutory Instrument Practice (section 4.13) requires us to strictly comply with the 21 day rule. Section 4.13.2 goes on to say that “Departments should aim to lay an instrument as far in advance as is practicable” but “it is accepted that some instruments must take effect at shorter notice, subject to that, the rule should be strictly observed whenever possible.” We regret that because further work was necessary with the sector, the process spilled over to the college holidays. However we did believe that interested parties had been given a year’s notice of the Department’s intention to revoke the Regulations, which was set out in the Government response to the Consultation on Revocation of the FE Workforce.
Regulations published in August 2012. In addition, because there was majority support for the steps being taken, and it was felt that no one will be disadvantaged by laying this SI, we did not foresee any problems. Our priority therefore was to comply with the strict 21-day rule, which we believe we achieved by laying on 8 August. In hindsight, we accept that greater effort should have been made to lay the SI earlier than we did.

Q3: Given that the Regulations themselves are now being revoked, why do you judge it necessary to put provisions in the draft Deregulation Bill? And why did you not cross-refer to the Bill in the Explanatory Memorandum to the Regulations?

A3: The revocation of the 2007 Further Education Workforce Regulations (following recommendations from the Lingfield review) has removed various requirements in respect of teaching staff and principals at further education institutions. The final stage of removing these powers is to repeal the primary legislation that enabled these regulations to be laid (repeals to sections 136-138 of the Education Act 2002). This will ensure the 341 further education colleges in England, their Principals and their teaching staff (82,040 according to the LSIS 2011/12 Workforce Survey) are not placed under further legislation. The Education & Training Foundation has recently been created to promote a sector-led raising of teaching standards in the sector.

As we were running a year in advance of the repeal of the legislation we were advised the processes were effectively decoupled. Ministers believed that the existing Regulations were bureaucratic and placed an unreasonable burden on private sector employers. There was an urgent necessity to repeal so as not to jeopardise their ONS status.

The thrust of the Bill is rather different – this fundamentally seeks to change to relationship between the sector and Government by setting the sector free from further regulation. At the time we believed cross-referencing was not therefore appropriate.

11 September 2013


28 That is, the change in the ONS (Office of National Statistics) categorisation of colleges, moving them from the public to the private sector.

Information from Department for Education

Q1: Given that political party conferences have been held at the end of September for decades, why did the Commission request this extension only on 11 July 2013?

A1: The Commission has advised the Department that it was late to realise the full implications of the publication process upon timing. As this report is the first for the Commission, the extent of evidence gathering necessary did not become clear until after the initial Order to extend the deadline (S.I. 2013/411) had been laid in March 2013. The Commission has a statutory requirement to provide a robust analysis of the progress made in improving social mobility and reducing child poverty.

The Commission also realised after the first Order had been made that taking advantage of the time provided by the revised deadline of 26 September would have led to the report being laid while both Houses were in recess and would have been during the period of the party conferences. Laying the report in the first two weeks of September would not have provided full transparency to both Houses and was a challenging deadline.

Both the Department and the Commission wish to be as transparent as possible and provide both Houses time to consider the report, as well as protecting the Commission’s political neutrality. The Commission therefore sought permission from the UK Government to lay its first report in October when both Houses return after the summer recess.

Q2: Does your Department not see a risk that the “non-political and independent status” of the Commission could in fact come under question if its first report is indeed now further delayed so that it appears only after the political party conference season?

A2: The Department believes that the greater transparency provided by this short delay will support the political neutrality of the Commission by giving full opportunity for the report’s contents to be debated simultaneously and equally by everyone. Publishing in October also reduces the risk of media and political misinterpretations of the Commission’s findings occurring ahead of the appropriate parliamentary scrutiny.

Q3: What has been the reaction among the Commission’s key stakeholders to the further delay now proposed?

A3: The Commission has advised the Department that it followed up on its previous consultation with stakeholders and proactively contacted the Steering Group of the End Child Poverty coalition and the All Party Parliamentary Group (APPG) on Social Mobility, to explain the reasons for the further extension and seek feedback. The End Child Poverty coalition involves over 150 organisations at national and local level who seek to eradicate child poverty. The APPG includes parliamentarians from both Houses and all three major political parties.

Overall the proposed extension of the date prompted limited response. Those the Commission heard from were content with the proposal. They accepted that additional time would enable the Commission’s analysis of the evidence gathered to be as robust and detailed as possible. This is particularly important for the Commission’s first report and would enhance parliamentary and public scrutiny.
We have consulted officials in the Devolved Administrations in Scotland and Wales on these new deadlines for the reports to ensure that the extension of the publication deadline will cause them no practical difficulties.

**Q4: Given the Commission’s support for “greater transparency”, why was this Order not laid either before the summer recess, or when the Commons was sitting in September?**

A4: The Department was not advised of the need for an order before 11 July and as the summer recess started on 18 July there was insufficient time to seek Ministerial approval, consult the Devolved Administrations and meet the necessary administrative and legal processes which are required for all statutory instruments, to lay the Order before recess started.

It was necessary for the Order to come into force before the expiration of the previous Order on 25 September. It was therefore decided to lay the Order as soon as practicable to ensure adequate time to exceed the minimum 21 day requirement between laying the Order and it coming into force.

To ensure transparency the Commission has advised the Department that it proactively drew the request for a further extension to the annual report deadline to the attention of its key stakeholders, who are both parliamentarians and external organisations. We also ask the Committee to note that at request of the Commission the Department took this opportunity to extend the date for the 2014 Report to provide greater clarity on the timing of further Parliamentary publications until the Commission’s scheduled Triennial Review in 2015.

**23 September 2013**
APPENDIX 6: GANMASTERS LICENSING (EXCLUSION)
REGULATIONS 2013 (SI 2013/2216)

Information from Department for Environment, Food and Rural Affairs

Q1: Have you published an analysis of consultation responses, and the Government’s reaction?

A1: The Government response to the consultation was published on 27 August. It is available on the Government website:

Q2: What reasons did forestry stakeholders give for the exclusion of the sector from licensing?

A2: The GLA already identified the Forestry Sector as an area where there was a low risk of worker exploitation. The Authority has piloted a “lighter touch” licensing procedure in that sector and their experience of operating this has confirmed their view of the level of risk in this sector. Forestry stakeholders broadly agreed with this view. Much of the supporting evidence presented by stakeholders was anecdotal: it cited efforts within the industry to improve skills, its safety record and the positive results of audits of woodland management and employment undertaken as part of the UK Woodland Assurance Scheme.

Q3: Who were the other third of consultation respondents? What were the main issues raised?

A3: Other responses were received from the shellfish cultivation sector, Trade Unions and trade bodies representing land agents, food manufacturers, recruitment agencies, farmers and retailers. Their responses focused mainly on proposals which directly affected their sectors/members but they were generally in favour of the proposals. A small number of responses opposed the changes and called for the remit of the GLA to be extended to other sectors, however, this was outside the scope of the consultation.

Q4: Were there in fact 66 responses from forestry stakeholders? Did these represent employers and workers? If so, how did the numbers break down? Did all the forestry stakeholders support the proposals? Were there 34 responses from others? Did these represent employers and workers? If so, how many from the different sectors concerned?

A4: For this consultation an online survey was used for the first time in Defra to receive responses (with a dedicated mailbox as an alternative). The survey requested respondents to provide their Name and their Organisation Name, unless responding as a private individual (only half a dozen can be identified as falling into this category). Not all of the respondents answered all of the questions and many responses were single word answers (e.g. “Yes” to the proposal to exclude identified sectors from licensing).

Looking at the Organisation Name and checking against questions answered can reveal the sector in which the respondent has most interest (e.g. Premier Woodlands, “Yes” to proposed exclusions including forestry). In this way it is possible to identify some 64 responses from forestry interests supporting the proposed exclusions. Taking a similar approach we can say there were the following responses supporting exclusions:

- Six from shellfish interests;
• Four responses from land agents/managers and three from labour users (e.g. farmers/growers);
• Three from labour providers (i.e. gangmasters)
• Seven from trade associations or academic bodies (not on the Board)

There are 15 organisations with a right to nominate representative members to sit on the GLA Board – responses were received from six of these organisations. There was also one response from a major retailer and a one from non Board member trade union.

Q5: How many responses supported the proposals? How many opposed them?

A5: As the Government response says, most responses received accepted the argument that activities and sectors judged to be low risk be considered for exclusion from licensing (e.g. this was the case for all those identified as from the forestry sector). Some consultees had misunderstood some of the proposals and so were undecided on their support for excluding particular activities. For example some understood the proposal to be to exclude from licensing the supply of all apprenticeships. The Government response addressed these questions and made clear that the exclusion applies to Apprenticeship Training Associations recognised by the Skills Funding Agency or registered to the National Apprenticeship Service and not to all apprenticeships.

The only notable opposition to the proposals came from all respondents from the Trade Union sector (three in number). This was chiefly on the grounds that the GLA remit should be extended to include other industrial sectors (e.g. the construction sector) rather than reducing its coverage – such extension of the GLA’s remit was not in the scope of this consultation. Similarly, changes to the size and make-up of the Board were seen as unnecessary. Responding to the proposed addition of civil sanctions as an alternative to prosecution it was suggested that monetary penalties could usefully be made available to the GLA (other consultees that offered substantive replies also took this line); however, this option was explicitly excluded from this consultation. Government policy, as set out in the consultation document, is that monetary penalties should not be used against small and medium sized enterprises (SMEs compose the overwhelming majority of gangmaster businesses).

On Board reform substantive replies came chiefly from current Board members. As the Government response sets out most acknowledged the principle of the need to reform the 28 member Board in line with best practice elsewhere but stressed the importance of retaining the current stakeholder engagement relationship, whether through liaison groups or various different Board structures. Board reform proposals will come forward as part of the Triennial Review process for the GLA announced to Parliament on 10 September 2013.

On the introduction of civil sanctions as an alternative to prosecution, despite the consultation document explicitly excluding monetary penalties (as mentioned above) those making substantive responses (chiefly the six organisations represented on the Board that replied) made calls for these to me made available to the GLA. Most therefore did not regard the measure proposed in the consultation, Enforcement Undertakings under the Regulatory and Enforcement Sanctions Act 2008, as particularly valuable by comparison. However, two or three consultees acknowledged it would be worthwhile to explore this power further and Defra will discuss this further with the GLA drawing on the experience of the Environment Agency in using this power.
Q6: In May 2012 the Government announced a number of measures, including a proposal to remove a number of activities from the scope of licensing. Why did the consultation process only happen in April to June 2013? And why has this SI been laid only three months later – when the House of Lords (though not the Commons) is in recess?

A6: It had been our plan initially to launch the consultation at the end of January this year to coincide with the GLA’s own consultation on changes to the licensing regime. However, Ministers were concerned that measures to ease burdens on compliant businesses in the GLA regulated sectors might become conflated with plans to abolish the Agricultural Wages Board (AWB) via the Enterprise and Regulatory Reform Act. Therefore it was decided that the consultation would be launched after the abolition of the AWB was debated in Parliament.

The Gangmasters Licensing (Exclusions) Regulations 2013 is a deregulatory measure which will lift burdens from compliant businesses without increasing the risk of exploitation to workers employed in the GLA sectors and free the Authority to devote resources to tackling criminal gangmasters operating in other areas. As the new regulations will have an impact on business it is important that they come into force on a common commencement date. Waiting until the next common commencement date would mean businesses which have been identified as representing a low risk of exploitation to workers would continue to be obliged to bear the time and cost burden of obtaining a GLA licence for a further 6 months.

18 September 2013
APPENDIX 7: 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 October 2013 Members declared the following interests:

**School Teachers’ Pay and Conditions Order 2013 (SI 2013/1932)**
Lord Norton of Louth, as Governor, King Edward VI Grammar School, Louth.

**School Staffing (England) (Amendment) Regulations 2013 (SI 2013/1940)**
Lord Norton of Louth, as Governor, King Edward VI Grammar School, Louth.

**Attendance:**

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