
Includes 5 Information Paragraphs on 5 Instruments

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

Historical Note

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

The Committee has the following terms of reference:

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

2. The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
   a. that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
   b. that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
   c. that it may inappropriately implement European Union legislation;
   d. that it may imperfectly achieve its policy objectives;
   e. that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation;
   f. that there appear to be inadequacies in the consultation process which relates to the instrument.

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
Baroness Andrews  Lord Eames  Baroness Stern
Lord Bichard  Rt Hon. Lord Goodlad (Chairman)  Lord Plant of Highfield
Lord Borwick  Baroness Hamwee  Lord Woolmer of Leeds
Lord Bowness  Baroness Humphreys

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

Publications
The Committee’s Reports are published on the internet at www.parliament.uk/seclegpublications

Information and Contacts
If you have a query about the Committee’s work, or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020–7219 8821; fax 020–7219 2571; email hlseclegs scrutiny@parliament.uk.

Statutory instruments
INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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


Date laid: 12 January 2015

Parliamentary Procedure: affirmative

Summary: This Order will bring certain development relating to geological disposal facilities (GDFs) for radioactive waste, and the deep borehole investigations necessary to determine the suitability of potential sites, within the nationally significant infrastructure project (NSIP) regime in the Planning Act 2008 (“the 2008 Act”). Where development falls within the NSIP regime, developers are required to apply for development consent from the Secretary of State under the 2008 Act. The Department for Energy and Climate Change carried out a consultation about this in autumn 2013. In the Explanatory Memorandum (EM) to the Order, the Department says that a minority of respondents disagreed with the proposed approach. In fact, no more than 49% of respondents either agreed or partly agreed with the approach, and this is also a minority. The EM would have given a more accurate picture of the results of consultation if it had made this clear.

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.

1. The Department for Energy and Climate Change (DECC) has laid this draft Order with an Explanatory Memorandum (EM). The Order will bring certain development relating to geological disposal facilities (GDFs) for radioactive waste, and the deep borehole investigations necessary to determine the suitability of potential sites, within the nationally significant infrastructure project (NSIP) regime in the Planning Act 2008 (“the 2008 Act”). Where development falls within the NSIP regime, developers are required to apply for development consent from the Secretary of State under the 2008 Act.

2. There is a considerable pre-history to the policy intention implemented by the Order. In the EM, DECC states that in 2001 the UK Government and devolved administrations initiated the Managing Radioactive Waste Safely (MRWS) programme, with the aim of finding a practical long-term solution for the UK’s higher activity radioactive waste. In 2006, the independent Committee on Radioactive Waste Management (CoRWM) recommended that geological disposal, coupled with safe and secure interim storage, was the best available option for managing the UK’s existing higher activity radioactive waste. The Government accepted CoRWM’s recommendations.
3. DECC says that public involvement in the GDF programme since CoRWM’s report has included the national “Managing Radioactive Waste Safely” (MRWS) siting process (set out in a White Paper of 2008) which ran from 2008 to 2013. The process was based on the willingness of local communities to participate in the process, but by February 2013 there were no longer any communities actively involved in this siting process. It was followed by a 2013 consultation, entitled “Review of the Siting Process for a Geological Disposal Facility”, which ran for 12 weeks from September to December 2013. These proposals included the preliminary view that GDFs, and associated intrusive borehole investigations for the purposes of site characterisation, should be brought within the definition of NSIPs in the 2008 Act.

4. In the EM, DECC says that there were 719 responses, and that a minority disagreed with the proposed approach. Key concerns were that county councils might be excluded from having a participative role in the process, and that there could be a conflict of interest if the Secretary of State responsible for delivering a GDF was also responsible for making the final decision on whether to grant development consent. DECC states, however, that the national infrastructure planning process includes clear provisions for the involvement of local authorities and a decision-making process that respects the differing roles played by the Secretary of State as both policy maker and “quasi-judicial decision-maker”. A Government summary of consultation responses was published in July 2014.¹

5. We sought further information from DECC, and are publishing the Department’s responses at Appendix 1. Given the statement in the EM that by February 2013 no communities were actively involved in the process of considering sites for a GDF, we asked what reason the Government had to expect that there would at some stage be public support to allow such a facility to be developed. We note DECC’s statement that, since the facility would be a multi-billion pound development, and any community hosting a GDF would receive significant economic benefits, high-quality employment and infrastructure improvements, the Government believe that this would be an attractive investment opportunity of interest to a number of communities.

6. We also asked for more information about the responses to the consultation held at the end of 2013. The Department has said that there were 237 responses on this issue. 70 (30%) were categorised as having “agreed” (if their responses supported the proposal without qualification); 46 responses (19%) were deemed to have “partly agreed” (if their responses supported the proposal, but with some caveat or qualification); and 82 responses (35%) were deemed to have “disagreed” (if their response clearly opposed it). DECC says that, of the remaining respondents, 2 (<1%) were deemed to be neutral (as Welsh stakeholders, their responses recognised that the proposal was concerned with land-use planning for a GDF in England only) and 37 (16%) were deemed to be unclear (as they did not address the question or focused on questions that were outside the scope of the consultation).

7. DECC has explained the basis on which, in the light of these figures, the consultation summary therefore reported that “about half of the respondents to this question agreed or partly agreed with the proposed approach to land use planning for a GDF in England” and that “a minority disagreed with the proposals”: the latter statement was included in the EM. **We would point out that, even by combining the percentage of respondents who “agreed” with that of respondents who “partly agreed”, no more than 49% of respondents agreed or partly agreed, and that this is also a minority of respondents.** The EM would have given a more accurate picture of the results of consultation if it had made clear this relatively modest level of support for the proposal, as well as referring to minority disagreement.
INSTRUMENTS OF INTEREST

Draft Anti-social Behaviour (Authorised Persons) Order 2015

8. The Home Office has laid this Order under the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”), with an Explanatory Memorandum (EM). The 2014 Act allows a community protection notice (CPN) to be issued to an individual (over 16 years old) or body where their conduct is having a detrimental effect on the quality of life of those in the locality and the conduct is unreasonable (section 43). Failure to comply with a CPN, without reasonable excuse, is a criminal offence subject to a fixed penalty notice or prosecution (where a person found guilty on summary conviction may receive a fine of up to level 4 or up to £20,000 if a business or organisation). Given that the power is backed by a criminal offence, the Delegated Powers and Regulatory Reform Committee described it as “a very significant one”.2

9. A CPN (or, in the event of non-compliance with a CPN, a fixed penalty notice) can be issued by a constable, a relevant local authority or a person designated by the relevant local authority; and only a person specified in an order made by the Secretary of State may be designated by the relevant local authority in this way (section 53). The purpose of this Order is to enable local authorities to give housing providers the power to issue a CPN. “Housing providers” are defined by the 2014 Act (section 20(1)) as a housing trust, a housing action trust, a non-profit private provider of social housing, a landlord under a secure tenancy and, in Wales, a Welsh body registered as a social landlord.

10. We noted that reference was made to housing providers being designated to issue CPNs in guidance on the 2014 Act published in July 2014 (see paragraph 7.3 of the EM). We noted also the comments of Lord Taylor of Holbeach, on behalf of the Government, during the passage of the Bill that became the 2014 Act, that housing providers were being considered for designation under the 2014 Act.3

Draft Emissions Performance Standard Regulations 2015

11. The Department for Energy and Climate Change (DECC) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment (IA). In the EM laid at the same time as the instrument, DECC states that the Regulations establish an Emissions Performance Standard (EPS) that places a limit on the carbon dioxide emissions produced by new fossil-fuel generation plants. It adds that the EPS acts as a regulatory backstop to the National Planning policy, which requires new coal-fired power station to be equipped with Carbon Capture and Storage (CCS), and so ensures that not only are new coal plant built with CCS but operated in accordance with emissions requirements.

12. We noted that, in the EM, DECC also states that the EPS applies to all new fossil fuel electricity generation plants that are above 50MWe and receive development consent after 18 February 2014, which it specifies as the date at which the EPS came into force. In response to our query, DECC has confirmed that the EPS was in fact introduced in the Energy Act 2013 (though without a monitoring and enforcement regime). The Department is revising the EM to make this clear.

13. We also noted that, in the IA (paragraph 29), DECC states that “the EPS primary legislation is not expected to have any impact on investment decisions or plant running hours, both for coal and gas plants. For coal, this is because no new investment in unabated coal plants is expected due to market conditions for coal-fired generation. For gas, the level of annual emissions will be lower than the limit set by the EPS.” In response to our query about the actual impact of the EPS, DECC has confirmed its view that the Standard sends a strong signal to the market that new coal plants without CCS are not acceptable. We are publishing the full response from DECC as Appendix 2.

_Draft Freedom of Information (Designation as Public Authorities)_

Order 2015

14. The Ministry of Justice (MoJ) has laid this Order under the Freedom of Information Act 2000 (“the FOI Act”), with an Explanatory Memorandum (EM). The FOI Act applies to public authorities (as defined in section 3 of the FOI Act) and also to a person designated by the Secretary of State (by Order) as a public authority on the basis that that person appears to him to exercise functions of a public nature. The purpose of this Order is to designate Network Rail Limited, Network Rail Holdco Limited and Network Rail Infrastructure as public authorities. The decision to extend the FOI Act was announced in the Network Rail Framework Agreement (September 2014), drawn up by the Department for Transport with Network Rail, following the reclassification of Network Rail to the public sector by the Office for National Statistics.

15. The EM (at paragraph 7.4) notes that there have been a number of calls to extend the FOI Act to Network Rail, reflecting the “significant public interest in information about safety on the network, and about how taxpayers’ money is spent”. It also notes (at paragraph 8.2) that Network Rail has responded to its designation under the Act “positively” and has identified a number of functions which it believes may be of a public nature.

16. The Secretary of State has previously used this power to extend the reach of the FOI Act to include the Association of Chief Police Officers, the Financial Ombudsman Service and the Universities and Colleges Admissions Service in relation to the functions of a public nature which they perform.
Draft Road Safety Act 2006 (Consequential Amendments) Order 2015

17. This Order is laid under the Road Safety Act 2006 ("the 2006 Act"), along with an Explanatory Memorandum (EM) and an Impact Assessment. The Order amends primary and secondary legislation in consequence of the commencement of section 10 of, and Schedule 3, to the 2006 Act. Those provisions provide for the abolition of the driving licence counterpart in Great Britain. (Separate provision applies to Northern Ireland where the counterpart is not being abolished.) The information contained in the counterpart will be placed on an individual’s electronic driving record.

18. According to the EM (at paragraph 7.1), the existence of the counterpart has been a recurring item identified within the transport theme of the Government’s Red Tape Challenge and, as a result, in December 2011, the Government committed to abolishing it. The policy is based on a consultation dating back to 2004 which found 82% of respondents in favour of abolition. At that time, however, according to the Impact Assessment, the required electronic enquiry services, which would allow access to the counterpart information by secure electronic links, were not available.

National Health Service (Mandate Requirements) Regulations 2014 (SI 2014/3487)

19. These Regulations have been laid by the Department of Health (DH) under the National Health Service Act 2006 ("the 2006 Act"), along with an Explanatory Memorandum (EM). Section 13A of the 2006 Act (inserted by section 23 of the Health and Social Care Act 2012) requires the Secretary of State to publish and lay before Parliament a mandate to the National Health Service Commissioning Board (known as NHS England) before the start of each financial year. The mandate has to include “objectives” that the Secretary of State considers NHS England should seek to achieve and any “requirements” the Secretary of State considers necessary to impose. “Requirements” only have effect if regulations so provide. The mandate for 2015–16 is the first to include “requirements” as well as “objectives”.

20. It is the purpose of these Regulations to bring into effect the “requirements” set out in paragraphs 2.11 and 2.12 of the 2015–16 mandate. The effect of these requirements (see paragraph 7.2 of the EM) is intended to support the “objective” for more integrated health and social care. They include: (1) that NHS England must ring-fence £3.46 billion within its allocation to Clinical Commissioning Groups to establish the Better Care Fund (BCF), to be used for the purposes of integrated care; (2) that NHS England must consult ministers from DH and the Department for Communities and Local Government (DCLG) before approving local plans in relation to the BCF and (3) must also consult DH and DCLG before exercising powers in relation to the failure to meet specified conditions attached to the BCF.
The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

**Draft instruments subject to affirmative approval**

- Anti-social Behaviour (Authorised Persons) Order 2015
- Childcare Payments (Eligibility) Regulations 2015
- Community Right to Challenge (Business Improvement Districts) Regulations 2015
- Companies Act 2006 (Amendment of Part 17) Regulations 2015
- Companies Act 2006 (Amendment of Part 18) Regulations 2015
- Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015
- Emissions Performance Standard Regulations 2015
- Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015
- Freedom of Information (Designation as Public Authorities) Order 2015
- Guardian’s Allowance Up-rating Order 2015
- Guardian’s Allowance Up-rating (Northern Ireland) Order 2015
- Insolvency Act 1986 (Amendment) Order 2015
- Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2015
- Non-Domestic Rating (Levy and Safety Net) (Amendment) Regulations 2015
- Pneumoconiosis etc. (Workers’ Compensation) (Payment of Claims) (Amendment) Regulations 2015
- Police and Crime Commissioner Elections Order 2015
- Protected Disclosures (Extension of Meaning of Worker) Order 2015
- Representation of the People (Combination of Polls) (England and Wales) (Amendment) Regulations 2015
- Road Safety Act 2006 (Consequential Amendments) Order 2015
Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2015
Tax Credits Up-rating Regulations 2015
Warm House Discount (Miscellaneous Amendments) Regulations 2015

**Draft instruments subject to annulment**

Code of Practice no.14 on Governance and administration of public service pension schemes

**Instruments subject to annulment**

**SI 2014/3487** National Health Service (Mandate Requirements) Regulations 2014

**SI 2015/6** Housing Benefit and Housing Benefit (Persons who have attained the qualifying age for state pension credit) (Income from earnings) (Amendment) Regulations 2015

**SI 2015/8** M6 Motorway (Junctions 10a to 13) (Variable Speed Limits) Regulations 2015

**SI 2015/13** Criminal Procedure (Amendment) Rules 2015

**SI 2015/15** Motor Vehicles (Driving Licences) (Amendment) Regulations 2015

**SI 2015/16** Enterprise and Regulatory Reform Act 2013 (Amendment) (Gas and Electricity Appeals) Regulations 2015

**SI 2015/18** Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015

**SI 2015/19** Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) Regulations 2015

**SI 2015/20** Neighbourhood Planning (General) (Amendment) Regulations 2015

**SI 2015/26** Insolvency Proceedings (Monetary Limits) (Amendment) Order 2015
APPENDIX 1: DRAFT INFRASTRUCTURE PLANNING (RADIOACTIVE WASTE GEOLOGICAL DISPOSAL FACILITIES) ORDER 2015

Additional information from the Department for Energy and Climate Change

Q1: If the Government accept that public support is a pre-requisite to hosting a GDF, but there are no communities actively involved in this siting process described, what reason do the Government have to expect that there will at some stage be public support to allow a GDF to be developed?

A1: There is no current siting process for communities to be actively involved in. A new siting process will not begin to engage with prospective communities until the programme of initial actions for Government, set out in the 2014 Implementing Geological Disposal White Paper, has been completed. The new process is being developed based on a comprehensive review of the lessons learned from the operation of that previous process, and those operating internationally.

The Government believes that an approach to siting a GDF that is based on working with communities willing to participate in the siting process is the most likely to be successful in the long run. This view is based on the Committee on Radioactive Waste Management’s consideration of successful programmes overseas, as well as the previous failure of more prescriptive and closed processes both in the UK and overseas. Those programmes based on constructive engagement with local communities continue to progress in a mutually acceptable way (e.g. Sweden). Processes perceived to involve imposition on an unwilling community have failed in the face of sustained political opposition (e.g. the initial GDF development at Yucca Mountain in the USA).

The GDF will be a multi-billion pound development. Any community hosting a GDF would receive significant economic benefits, high quality employment and infrastructure improvements, all of which would be maintained over a very long period. The Government will also be providing additional investment to the community that hosts a GDF, to help to maximise the significant economic benefits that are inherent in hosting a nationally significant infrastructure project. The Government believes that, in total, this is an attractive investment opportunity that will be of interest to a number of communities.

Experience shows that communities who engage constructively, gain answers to their questions, and find out more about the project early on are better informed about the real nature of the development and more interested in participating. The fact that two local authorities (Copeland and Allerdale Borough Councils), which had been most actively engaged in the previous siting process, voted in favour of continuing to engage with it shows that communities can recognise the substantial benefits in hosting a GDF. Although the previous siting process did not ultimately secure a volunteer community (there were no longer any communities involved in the previous siting process following an agreement that Copeland and Allerdale could not proceed without Cumbria County Council support), the UK Government has considered what lessons could be learned from its operation, consulting on aspects of the siting process that could be revised or improved, in order to help communities to engage in it with more confidence. These improvements include provision of clear, upfront information for communities to support informed discussion (including on relevant national geological characteristics and greater clarity around the land-use planning process that will
apply to a GDF development). There are also guarantees of defined levels of community benefit payments, with commitment that a clear demonstration of local support will be required before development of a GDF can proceed. Further work is now in train to develop the detail of local community representation in a revised siting process that can commence after the initial actions in the 2014 Implementing Geological Disposal White Paper have been delivered – a process that will be fair, transparent, and appealing to communities nationwide.

The Government continues to reserve the right to explore other approaches to siting a GDF in the event that, at some point in the future, its chosen approach does not look likely to work. Whatever the eventual means of identifying a suitable site for a GDF, an appropriate means of consenting development will need to be in place and, following public consultation on this matter, the Government has decided that Geological Disposal Facilities should be considered through the nationally significant infrastructure planning regime as set out in the Planning Act 2008.

Q2: In actual numbers:

- how many respondents agreed [with Question 5 of the Review of the Siting Process for a Geological Disposal Facility consultation];
- how many partly agreed, and what does this mean;
- how many disagreed?

A2: The 2013 Review of the Siting Process for a Geological Disposal Facility consultation set out the case for changes to a number of aspects of the previous siting process. This included the proposal that development of a GDF (in England – and the intrusive boreholes investigations necessary to characterise a potentially suitable site) should be sought through the nationally significant infrastructure planning regime as set out in the Planning Act 2008, supported by a generic National Policy Statement. In relation to this proposal, the consultation asked ‘Do you agree with this proposed approach to planning for a geological disposal facility? If not, what alternative approach would you propose and why?’

There were 237 responses to this question (out of a total of 719 individual respondents to the consultation – 301 of which were part of a letter writing campaign). Responses to this question, all of which have been made available to read online, were often narrative in nature, and were categorised by the main themes raised (which formed the basis of the commentary in the Government’s response to the consultation). A detailed breakdown of the 237 responses to the question on land-use planning is provided below:

70 responses (30%) were categorised as having ‘agreed’ with the proposed approach to land-use planning if their responses supported the proposal without qualification;

46 responses (19%) were deemed to have ‘partly agreed’ with the proposed approach if their responses supported the proposal, but with some caveat or qualification. For example, some respondents who supported the proposal did so while voicing a desire for a site specific (rather than a generic) National Policy Statement, for early consultation on a National Policy Statement, for an Appraisal of Sustainability that covered alternatives to geological disposal and / or the view that intrusive investigations should be dealt with using the local planning system.

82 responses (35%) were deemed to have ‘disagreed’ with the proposed approach if their response clearly opposed it.
Of the remaining respondents, 2 responses (<1%) were deemed to be neutral (as Welsh stakeholders, their responses recognised that the proposal was concerned with land-use planning for a GDF in England only) and 37 responses (16%) were deemed to be unclear (as they did not address the question or focused on questions that were outside the scope of the consultation).

As with responses to the other questions in the consultation, a detailed numerical breakdown of responses wasn’t provided in the 2014 Government Response to Consultation, the strength of the arguments being more influential than the bare numbers. Instead, the following descriptors were used to provide a high level summary of responses in this document (and were defined within that document):

‘majority’ indicated the clear view of more than 50% of respondents in response to that question, and ‘minority’ indicated less than 50%. ‘About half’ indicated an overall response within a few percentage points of 50% (either way).

The consultation response therefore reported that “About half of the respondents to this question agreed or partly agreed with the proposed approach to land use planning for a GDF in England” (49% of responses, made up of 30% agreeing and 19% partly agreeing), and that “A minority disagreed with the proposals” (35% of responses).

19 January 2015
APPENDIX 2: DRAFT EMISSIONS PERFORMANCE STANDARD REGULATIONS 2015

Additional information from the Department for Energy and Climate Change

Q1: Has the EPS in fact been established from 18 February 2014 by primary legislation? If so, is the statement quoted from 2.1 of the EM incorrect?

A1: The EPS provisions in the Energy Act 2013 came into force, though without a monitoring and enforcement regime, on 18 February 2014. There is a duty, in section 60(1) of the Energy Act 2013, to put in place a monitoring and enforcement regime. Regulations can, under section 57(6), also make provision for the interpretation and further application of the emissions limit duty in section 57. The Department, therefore, apologises for the statement in 2.1 as it is inaccurate. The statement should read as follows, and we will relay the Explanatory Memorandum with the corrected paragraph:

“The Emissions Performance Standard Regulations 2015 establish a monitoring and enforcement regime for the Emissions Performance Standard (EPS), which was introduced in the Energy Act 2013. The EPS acts as a regulatory backstop to the National Planning policy, which requires any new coal fired power station to be equipped with Carbon Capture and Storage, so ensures that not only are new coal plant built with CCS but operated in accordance with emissions requirements. The regulations also apply the Emissions Limit Duty provided for by the Act to existing coal-fired generation plants which extend their operational life by replacing or adding a main boiler, and also modify the Emissions Limit in certain circumstances.”

Q2: In practice, will the EPS have no effect on the generating industry? If so, what purpose is served by these Regulations?

A2: The draft Regulations are required by section 60(1) of the Energy Act 2013, so far as they relate to a monitoring and enforcement regime (Part 3 of the Regulations). The Regulations also clarify the application of the EPS provisions in the Energy Act 2013, and make further provision for application, as permitted under section 57(6).

In relation to the statements highlighted (paragraph 2.1 of the Explanatory Memorandum and paragraph 29 of the Impact Assessment), we consider that these are consistent. Modelling used in the Impact Assessment suggests that under current assumptions (including a strengthening carbon price and the CCS planning requirement imposed on any new coal plant) there will be no investment in new coal plant (except that which is fitted with Carbon Capture and Storage on its entire capacity), even if there was no EPS regime. However, we consider that EPS: (i) sends a strong signal to the market that new coal plants without CCS are not acceptable; (ii) provides regulatory certainty that emissions from new coal plant (including upgrades) will be limited regardless of any other factors (including CCS performance or a change in the prevailing market conditions). Parliament considered these matters when considering the EPS provisions in the Energy Act 2013.

20 January 2015
APPENDIX 3: INTERESTS AND ATTENDANCE

Committee Members’ registered interests may be examined in the online Register of Lords’ Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 27 January 2015 Members declared no interests.

Attendance:

The meeting was attended by Lord Bichard, Lord Borwick, Lord Bowness, Lord Eames, Lord Goodlad, Baroness Hamwee, Baroness Humphreys, Baroness Stern and Lord Woolmer of Leeds.