HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

25th Report of Session 2014–15

Draft Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015

Draft Human Transplantation (Wales) Act 2013 (Consequential Provision) Order 2015

Draft Immigration (Biometric Registration) (Amendment) Regulations 2015

Draft Immigration (Leave to Enter and Remain) (Amendment) Order 2015

Draft Non-Domestic Rating (Shale Oil and Gas and Miscellaneous Amendments) Regulations 2015

Draft Renewable Transport Fuel Obligations (Amendment) Order 2015

Draft Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015

Includes 7 Information Paragraphs on 9 Instruments

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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 5.

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 hlseclegscrutiny@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at http://www.legislation.gov.uk/, together with a plain English explanatory memorandum.

Twenty Fifth Report

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.

A. Draft Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015

Date laid: 22 January 2015

Parliamentary Procedure: affirmative

Summary: The Regulations create new criminal offences of wholesale energy market manipulation and insider dealing in wholesale energy market products, supplementing the existing civil enforcement regime. The availability of criminal sanctions to address serious breaches of wholesale energy market rules is intended to deter wholesale energy market abuse.

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.

1. The Department for Energy and Climate Change (DECC) has laid these Regulations, with an Explanatory Memorandum (EM) and impact assessment (IA). The Regulations create new criminal offences of wholesale energy market manipulation and insider dealing in wholesale energy market products, behaviour which is prohibited under the EU REMIT regulation.[1] DECC says that these new offences supplement the existing civil enforcement regime for breaches of REMIT; and that the availability of criminal sanctions to address serious breaches of wholesale energy market rules is intended to ensure a suitably dissuasive and proportionate regime to deter and address wholesale energy market abuse.

2. DECC says that the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 (SI 2013/1389: "the 2013 Regulations") put in place an investigatory, enforcement and penalty regime for breaches of REMIT for Great Britain[2] We drew the 2013 Regulations to the special attention of the House in our 5th Report of Session 2013–14 (HL Paper 28). We noted that, on 6 June 2013, the Energy Secretary of State made a Written Statement about the laying of the 2013 Regulations, saying that they gave Ofgem powers to take action against market manipulation in wholesale electricity and gas markets; and also that Ofgem and the Financial Conduct Authority (FCA) were looking at allegations about manipulation of the gas markets raised in November 2012. We noted a statement by Ofgem that it saw the Regulations as a significant

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1 EU Regulation on wholesale energy market integrity and transparency (Regulation (EU) No 1227/2011).

2 The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) (Northern Ireland) Regulations 2013 (SI 2013/208) did so for Northern Ireland.

first step in creating an effective regulatory regime, but that it wished to discuss with Government the case for strengthened powers, including criminal sanctions, in a way that took proper account of developments in the regulation of market abuse across the EU.

3. As regards the allegations of gas market manipulation, in November 2013 the FCA and Ofgem stated that, after carrying out a review of those allegations, they had concluded that they could find no evidence in this instance of market manipulation.[3]

4. In the EM to the latest Regulations, DECC says that the UK wholesale energy markets are of great economic significance. Trading on the GB wholesale energy markets has been estimated to be worth between £297 billion and £333.5 billion each year; the value of the European gas market being traded through the UK is an estimated £282 billion in 2013; and the GB liquid gas market is used as a reference price for gas delivered elsewhere in Europe. The Department says that the importance of the wholesale energy market for financial services, industry and UK and European consumers makes the integrity of the market a matter of national and international importance.

5. In the IA, DECC offers information to assess the potential impact of the enforcement regime on domestic consumers. The Department says that increased market transparency and reduced frequency of market abuse could result in lower wholesale energy prices which could then be passed through to lower retail energy prices for consumers (paragraph 56). It adds that, according to Ofgem data, wholesale energy market costs account for over 46% of a typical UK consumer's energy bill; and that, as a purely illustrative example in terms of quantifying the benefit of lower prices more generally, if the effect of criminal sanctions brought about a 1% reduction in wholesale energy prices which then reduced bills by 1%, that could save UK households over £160 million per year (paragraph 58). We note as well that, in July 2014, the Competition and Markets Authority published a statement of issues relating to its current Energy Market Investigation which included the manipulability of prices in thinly traded or opaque markets among the factors which might have significant effects on customers.[4]

6. The Department consulted on the proposals for criminal offences from 6 August to 30 September 2014: it published a summary of responses in January 2015.[5] 14 responses were received, from energy companies, trade associations, sector services organisations, legal organisations, a small supplier, and a private individual. DECC has explained that a clear majority supported the proposals, though 12 of the respondents did not see any additional benefits or increased confidence in the fairness of the markets. The Department says that none of the respondents provided specific examples of energy market manipulation or insider trading.

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3 See: https://www.ofgem.gov.uk/press-releases/ofgem-statement-allegations-gas-market-manipulation

4 See: https://assets.digital.cabinet-office.gov.uk/media/53cfc72640f0b60b9f000003/Energy_Issues_Statement.pdf

5 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397367/government_response_to_consultation.pdf

B. Draft Human Transplantation (Wales) Act 2013 (Consequential Provision) Order 2015

Date laid: 21 January 2015

Parliamentary Procedure: affirmative

Summary: Following the adoption of a "soft opt-out" system for organ and tissue donation in Wales under the Human Transplantation (Wales) Act 2013, this Order is intended to maintain the effective cross-border flow of organs and tissues, through an amendment to earlier legislation, in order to dis-apply the need for "appropriate consent" in respect of organs and tissues donated in Wales and their use in England and Northern Ireland.

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.

7. The Welsh Office (WO) has laid this draft Order with an Explanatory Memorandum (EM), stating that the Order makes provisions that are needed as a result of the coming into force of the Human Transplantation (Wales) Act 2013 ("the 2013 Act").

8. The WO says that the purpose of the 2013 Act is to change the way in which consent, for the purposes of transplantation, is to be given to organ and tissue donation in Wales. The 2013 Act provides that, in the absence of express provision in relation to consent, consent will be deemed to have been given in most cases ("deemed consent"): after death, a person's consent will be deemed to have been given unless they had expressed a wish for or against donation. There are several exceptions to deemed consent, including children, those who are not ordinarily resident in Wales and those who lack capacity to understand the notion of deemed consent: in such cases, express consent will apply. In addition, if a family member or friend of long standing can provide information to show that the deceased person objected to donation, then deemed consent will not apply. This involvement of family and friends in the discussion of organ donation is why the system is termed a "soft opt-out" system.

9. Statutory provisions on consent for the use of bodies and relevant materials in England, and Northern Ireland are set out in the Human Tissue Act 2004 ("the 2004 Act"): these continue to provide a system of "express consent". The WO says that the Order will maintain the effective cross-border flow of organs and tissues through an amendment to section 1 of the 2004 Act, which has the effect of dis-applying the need for "appropriate consent" in respect of organs and tissues donated in Wales and their use in England and Northern Ireland. The amendment recognises that either express or deemed consent will have been given in Wales, thus making the storage and use of the materials lawful in England and Northern Ireland.

10. In the EM, the WO says that, in drafting the Order, it has consulted key UK Government Departments, but that there has been no public consultation because the Order is in consequence of the National Assembly for Wales's decision to legislate on the matter of consent to donation for the purposes of transplantation. However, as the EM sets out, a number of public consultations have already taken place in relation to the primary legislation enacted in 2013.

C. Draft Immigration (Biometric Registration) (Amendment) Regulations 2015
Draft Immigration (Leave to Enter and Remain) (Amendment) Order 2015

Date laid: 19 January 2015

Parliamentary Procedure: affirmative

Summary: These instruments, according to the accompanying Explanatory Memorandum, "continue the incremental roll-out of policy on biometric immigration documents" by requiring foreign nationals from outside the EEA or Switzerland, who are subject to immigration control and apply from overseas for certain entry clearance to enter the UK, to apply for a biometric immigration document. The document has to be collected in the UK, for which short-term entry clearance will be given. We draw these instruments to the attention of the House because of the potential significance of the sanctions for failure to collect the document within the specified time.

We draw these instruments 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.

11. The Home Office laid this Order and these Regulations with a joint Explanatory Memorandum (EM).[6] The purpose of these instruments is, according to the EM (paragraph 2.1), to "continue the incremental roll-out of policy on biometric immigration documents" by requiring foreign nationals from outside the EEA or Switzerland, who are subject to immigration control and apply from overseas for entry clearance which will have effect as leave to enter the UK for more than six months, to apply for a biometric document.

12. Successful applicants will have to obtain their biometric immigration documents in the UK. They will be provided with a short-term entry clearance vignette for use to travel to the UK in order to be able to collect them. According to the EM (paragraph 7.6), the sanctions for failure to collect the document are as follows:

> "If an applicant does not collect their biometric immigration document within the period specified in the written decision, they will face a warning and then possible sanction under the Code of Practice about sanctions for non-compliance with the biometric registration regulations. Sanctions range from an initial small fine up to an immigration sanction, which could include curtailment or cancellation of leave. Clearly, there is significant benefit to the applicant in collecting their biometric immigration document as quickly as possible so that they can evidence their rights, particularly their right to work. In addition, the applicant will need their biometric immigration document on their return to the UK from any trip abroad, once the short term entry clearance vignette has expired."

13. We draw these instruments to the attention of the House because of the potential significance of the sanctions.

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[6] Covering also the Immigration (Biometric Registration) (Amendment) (No. 2) Regulations 2015.

D. Draft Non-Domestic Rating (Shale Oil and Gas and Miscellaneous Amendments) Regulations 2015

Date laid: 23 January 2015

Parliamentary Procedure: affirmative

Summary: These Regulations provide that, when calculating how much rates income in a local authority area is to be shared between local and central government, the rating income from shale oil and gas projects (where the technology commonly called "fracking" is used) will be disregarded. This will allow all the income from such projects to be retained by local government. It appears from responses to a consultation conducted in 2014 by the Department for Communities and Local Government that its views, conducive to allowing "fracking" to proceed, are shared by local authorities and rejected by the public more generally. In the case of an earlier instrument (the Local Government (Transparency Requirements) (England) Regulations 2014), the Department discounted local authorities' views on the ground of self-interest; it has not done so here. It is regrettable that the Department appears inconsistent in the way in which it interprets responses to its consultation exercises.

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.

14. The Department for Communities and Local Government (DCLG) has laid these Regulations, with an Explanatory Memorandum (EM). In the EM, DCLG says that the Government support the development of shale oil and gas sites (where the technology of hydraulic fracturing, commonly called "fracking", is used); and that, in January 2014, the Prime Minister announced that local authorities would be able to retain 100% of business rates from them. To deliver this commitment, these Regulations provide that, when calculating how much rates income in a local authority area is to be shared between local and central government, the rating income from shale oil and gas projects will be disregarded. This will allow all the income from such projects to be retained by local government.

15. DCLG carried out what it called a "technical" consultation on these Regulations over six weeks from 24 October 2014 to 5 December 2014. The consultation document stated that it sought views on the proposed arrangements to implement 100% local retention of business rates for shale oil and gas sites. In particular, DCLG was seeking views on the detail of the designation of such sites and the allocation of the rates revenue between different local bodies.

16. On 23 January 2015, DCLG published a summary of consultation responses [7] This states that 25 responses were received. 24 responses expressed a view on the underlying principle of allowing local retention of this rates revenue. 13 supported the proposal that local authorities should be able to retain 100% of business rates on shale oil and gas sites: of these 13, 10 were local authorities, one the Local Government Association, one the oil and gas trade association, and one a business respondent. Conversely, 11

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[7] https://www.gov.uk/government/consultations/business-rates-retention-and-shale-oil-and-gas-technical-consultation

responses objected to the overall proposal: of these, 10 were members of the public, and one the group opposed to hydraulic fracking. They felt that allowing planning authorities to retain business rates on shale oil and gas sites was inconsistent with impartial planning decision-making. They raised a number of other concerns about shale oil and gas developments, including increased traffic flow of heavy vehicles on the roads around sites, increased toxic gas emissions and concerns that shale gas development would deter tourists from visiting locations and reduce local house prices.

17. In the summary, DCLG states that the principle that local authorities should retain the new rates income on developments they may have had a role in considering has already been firmly established under the existing rates retention scheme: however, 100% retention, as proposed for shale oil and gas developments, is an exceptional measure which the Government do not believe should be extended to other types of oil or gas extraction. **It seems clear, therefore, that these proposals are unusual: we question whether they may place unprecedented strain on local authorities' ability to take a balanced view of such developments.**

18. DCLG also says that, after considering responses, the Government still wish to proceed with the proposal, given that there are established controls in the planning system to ensure that planning decisions will be taken with propriety, and also that concerns about the safety of "fracking" procedures are misplaced. It adds that, to ensure that shale development is safe, there are already robust rules in place to secure on-site safety, prevent water contamination, mitigate seismic activity and minimise air emissions. We note that this view is not endorsed by the Environmental Audit Committee of the House of Commons which, in its 8th Report of the current Session (published three days after these Regulations were laid), says that "changes to the regulatory system identified above, though essential, do not address the fundamental need for a more coherent and more joined-up regulatory system, and one that needs to be put in place before further fracking activity is contemplated."[8]

19. It appears from responses to DCLG's 2014 consultation that its views, conducive to allowing "fracking" to proceed, are shared by local authorities and rejected by the public more generally. It is interesting to contrast this consultation outcome, and DCLG's response to it, with an earlier exercise conducted by the same Department in relation to the Local Government (Transparency Requirements) (England) Regulations 2014 (SI 2014/2680), which we brought to the special attention of the House in our 11th Report of the current Session (HL Paper 55).[9] The purpose of those Regulations was to require local authorities in England to publish the information specified in the Local Government Transparency Code 2014. The Department had received 219 responses to its consultation about updating that Code and making it mandatory through regulations; 91 of these opposed the use of regulations; only 15 explicitly supported it. We noted that the Department had stated that many of the 91 opposing respondents "will have been local

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8 Environmental Audit Committee of the House of Commons, 8th Report, Session 2014–15, HC 856, conclusions, paragraph 17. See: http://www.publications.parliament.uk/pa/cm201415/cmselect/cmenvaud/856/856.pdf

9 See: http://www.publications.parliament.uk/pa/ld201415/ldselect/ldsecleg/55/55.pdf

authorities, who would naturally tend to be against regulation"; and that, in explaining its decision to go ahead with making the Code's requirements mandatory, the Department had said that "crucially, what matters is what local people think".

20. It is hard to resist the conclusion that, if DCLG had applied the same considerations to responses to the consultation on the local retention of business rates on shale oil and gas sites, it should have discounted support from local authorities on the ground of self-interest, and given greater weight to the views of the public which were more likely to reflect what local people think. It is regrettable that, on the evidence of the two instruments mentioned above, the Department appears inconsistent in the way in which it interprets responses to its consultation exercises.

E. Draft Renewable Transport Fuel Obligations (Amendment) Order 2015

Date laid: 14 January 2015

Parliamentary Procedure: affirmative

Summary: The Department for Transport laid this Order with an Explanatory Memorandum and a Cost Benefit Analysis (CBA). It amends the Renewable Transport Fuel Obligations Order 2007 ("the 2007 Order"). The Renewable Transport Fuel Obligation (RTFO) is "a mechanism for incentivising the supply of biofuels in the road transport sector". The 2007 Order requires suppliers of fuel for use in road transport to ensure that a proportion of the fuel they supply comes from renewable resources. This is achieved through a certificate trading scheme whereby the RTFO Administrator (the Secretary of State) issues Renewable Transport Fuel Certificates (RTFCs) to suppliers as a reward for supplying renewable fuels. The purpose of this 2015 Order is to increase the rate of reward in terms of RTFCs for certain renewable gaseous fuels as compared with renewable liquid fuels. The change in ratio is justified on the ground that renewable gaseous fuels have a higher energy content relative to renewable liquid fuels. Renewable liquid fuel is derived from either waste (waste-derived biodiesel) or from crops and other non-waste materials (crop-derived biodiesel). The effectiveness of a shift to renewable gaseous fuel, in terms of greenhouse gas savings, will depend critically on which type of biodiesel is displaced, whether waste- or crop-derived, and, if the latter, whether account is taken of indirect land use change. The CBA indicates considerable uncertainty about the likely mix of waste- to crop-derived fuel displacement. Predicting outcomes inevitably involves uncertainty. Our particular concern in this instance is that the range of predicted outcomes is not confined to degrees of carbon savings but includes both possible carbon savings and possible carbon costs.

We draw this Order to the special attention of the House on the ground that it may imperfectly achieve its policy objective.

Background

21. The Department for Transport (DfT) laid this Order with an Explanatory Memorandum (EM) and a Cost Benefit Analysis (CBA) covering the period 2015 to 2020. It amends the Renewable Transport Fuel Obligations Order 2007 ("the 2007 Order"). The Renewable Transport Fuel Obligation (RTFO) is "a mechanism for incentivising the supply of biofuels in the road transport sector, and meeting the transport target in the Renewable Energy

Directive (RED)" (paragraph A.1 of the CBA). The RED requires the UK to source 10% of energy used in transport from renewable sources by 2020.

22. The 2007 Order requires suppliers of fuel for use in road transport and certain other mobile machinery to ensure that a proportion of the fuel they supply comes from renewable resources. This is achieved through a certificate trading scheme whereby the RTFO Administrator (the Secretary of State) issues Renewable Transport Fuel Certificates (RTFCs) to suppliers as a reward for supplying renewable fuels.

Purpose of the Order

23. The purpose of this 2015 Order is to increase the rate of reward for certain renewable gaseous fuels as compared with renewable liquid fuels; in particular, to deem that every kilogramme of biomethane and every kilogramme of biopropane or biobutane supplied is equivalent to 1.9 litres and 1.75 litres worth of liquid fuel respectively (in contrast to the current arrangement whereby a kilogramme and a litre are treated as equivalents). The change in ratio is justified on the ground that renewable gaseous fuels have a higher energy content relative to renewable liquid fuels. According to the CBA, this will "provide more of a level playing field for suppliers of [gaseous] fuels" (paragraph A.6).

Likely effectiveness

24. Under the RTFO, renewable liquid fuel is derived from either waste (waste-derived biodiesel) or from crops and other non-waste materials (crop-derived biodiesel). It is anticipated that changing the RTFC rewards for renewable gaseous fuel is likely to "reduce the demand for liquid biofuels" (paragraph A.8 of the CBA) – that is, gaseous fuels will displace liquid fuels. The effectiveness of this shift to renewable gaseous fuel, in terms of greenhouse gas (GHG) savings, will depend critically on which type of biodiesel is displaced, whether waste- or crop-derived (because the benefits of crop-derived fuel displacement exceed waste-derived fuel displacement). And assessment of the extent of the effectiveness of crop-derived fuel displacement depends critically on whether account is taken of indirect land use change (ILUC), that is, "where biofuel feedstock is grown on existing crop land and additional land is then cleared to grow the crops which have been displaced to grow the biofuel feedstock" (page 3 of the CBA).

25. The significance of these variables is reflected in the conclusion set out in the CBA (paragraph A.10):

> "In the short run, it is expected that the reduced demand for liquid biofuel would have either small negative impacts (if waste-derived biodiesel is displaced by the supply of gaseous fuels) or high positive impacts (if crop-derived biodiesel is displaced and indirect land use change is taken into account)."

26. Given this, the question arises: what is the likelihood of crop-derived as opposed to waste-derived fuel displacement? The CBA states: "We think it is more likely that gaseous biofuels would replace crop-derived biodiesel" (paragraph A.10). But the CBA also includes several warnings about the uncertainty of that prediction. It states that "there is significant uncertainty around which liquid biofuels would be replaced by gaseous fuels" (paragraph A.10) and later it refers to "the considerable uncertainty around which

[renewable liquid fuel] will be the marginal fuel between 2015 and 2020" (paragraph A.16 and see also paragraph A.21).

Modelling assumptions

27. Given this "considerable uncertainty", the CBA describes three scenarios for the period 2015 to 2020: low, central and high. These are differentiated according to the assumptions made about (a) Heavy Goods Vehicles (HGV) uptake of gaseous fuel (both size of fleet and amount of renewable gaseous fuel used as a proportion of fuel used) and (b) the mix of biodiesel displacement. The reason for the first element is that, as the CBA explains, the extent to which the anticipated impact of the revised rewards materialise "depends on the extent to which gaseous renewable fuels will be used in road transport" (paragraph A.12) and, in particular, HGVs. HGVs are responsible for over 20% of domestic transport emissions and contributed 21% of surface transport GHG emissions (see further information from the DfT set out in Appendix 1 to this report).

28. The central scenario assumes an increase in the size of the HGV fleet able to use gaseous fuel from the current 500 to 7,400 by 2020, that 12.5% of fuel used is renewable gaseous fuel and a 50/50 displacement split between the two types of biofuels. These are modelling assumptions. They do not, as the CBA explains (at paragraph A.21), "represent today's mix of biofuels … where crop biodiesel only accounted for 2% of renewable fuels supplied under the RFTO in years 5 and 6 (to date)". The CBA concludes that on these assumptions, the monetised discounted GHG benefits would be £2.65 million in the period 2015 to 2020. But that assumes a 50/50 displacement split. If the displaced fuel were entirely waste-derived, it is estimated that the impact would be monetised discounted carbon increases of £5.56 million. If it were entirely crop-derived the range would be carbon savings of £18.66 million (including ILUC) to carbon costs of £6.17 million (excluding ILUC).

29. The high scenario assumes an increase in the size of the HGV fleet to 13,950 with 25% of fuel used being renewable gaseous fuel. If displacement were entirely crop-derived renewable liquid fuel and taking into account ILUC, the carbon savings over the period 2015 to 2020 are estimated at £51.93 million. This becomes carbon costs of £15.71 million if ILUC is not taken into account. If displacement were entirely waste-derived liquid fuel, there would be a carbon cost of £15.15 million. According to the CBA, the greater the displacement of waste-derived fuel, "the greater the increase in GHG emissions, which would present a cost to society" (paragraph A.33).

Conclusion

30. The outcome of the changes proposed in the Order is dependent on a number of variables about which there appears to be significant uncertainty. This is understandable since predicting outcomes inevitably involves estimating risk and it is not surprising that it is expressed in terms of a range rather than a single figure. Our particular concern in this case, however, is that the range, even for the central model, is not a range of carbon savings but a range covering both carbon savings and carbon costs. For this reason, we draw this Order to the special attention of the House on the ground that it may imperfectly achieve its policy objective.

F. Draft Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015

Date laid: 20 January 2015

Parliamentary Procedure: affirmative

Summary: This Order devolves power to the Scottish Parliament to legislate to reduce the minimum voting age to 16 at elections to the Scottish Parliament and Scottish local government elections. The Scottish Government has confirmed its wish to ensure 16 and 17 year-olds are able to vote in the May 2016 Scottish election.

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.

31. The Scotland Office (SO) has laid this draft Order with an Explanatory Memorandum (EM). In amending Schedules 4 and 5 to the Scotland Act 1998, the Order devolves power to the Scottish Parliament to legislate to reduce the minimum voting age to 16 at elections to the Scottish Parliament and Scottish local government elections (or both); and also to legislate in respect of the registration of electors in order to give effect to provision reducing the minimum voting age to 16 at those elections.

32. In the EM, the SO refers to the report of the Smith Commission, published on 27 November 2014,[10] detailing Heads of Agreement on further devolution of powers to the Scottish Parliament. The report records that the five parties represented in the Scottish Parliament specifically called on the UK Parliament to devolve the relevant powers in sufficient time to allow the Scottish Parliament to extend the franchise to 16 and 17 year olds for the 2016 Scottish Parliamentary elections, should the Scottish Parliament wish to do so. The SO says that the UK and Scottish Governments agreed that this Order would also devolve the power to reduce the minimum voting age to 16 for local government elections in Scotland at the same time (so that the Scottish Parliament, if it wishes to do so, can make this change too).

33. On 19 January 2015, the Scottish Government confirmed that, if the Order is passed, it will bring forward legislation to the Scottish Parliament which, subject to Parliamentary agreement, will allow registration officers to complete their work to ensure 16 and 17 year-olds are able to vote in the May 2016 Scottish election.[11]

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[10] See: http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

[11] See: http://news.scotland.gov.uk/News/Votes-for-16–17-year-olds-14b7.aspx

INSTRUMENTS OF INTEREST

European Union (Definition of Treaties) (Association Agreement) (Georgia) Order 2015
European Union (Definition of Treaties) (Association Agreement) (Moldova) Order 2015
European Union (Definition of Treaties) (Association Agreement) (Ukraine) Order 2015

34. These Orders have been laid by the Foreign and Commonwealth Office (FCO), along with Explanatory Memoranda (EMs). They relate to the Association Agreement between the EU and the European Atomic Energy Community and their Member States, of the one part, and respectively Georgia, Moldova and Ukraine, of the other part ("the Agreement"). They declare that the Agreement is to be regarded as one of the EU Treaties under the European Communities Act 1972. The effect of this is set out in paragraph 7.1 of the EMs:

> "One of the effects of this is that certain rights and obligations under the Agreement automatically become law in the United Kingdom. In addition, subordinate legislation can be made to give effect to the provisions of the Agreement. The Agreement itself provides a legal framework for deepening political and economic relations between the European Union and the European Atomic Energy Community and their Member States, of the one part, and [Georgia][Moldova][Ukraine], of the other part. It covers matters such as political dialogue and reform, justice, freedom and security, trade, energy, transport, and environmental protection."

35. The countries that are the subject of the three Orders each includes, to a greater or lesser extent, disputed territory. For example, during March 2014, Russia annexed Crimea, and Georgia includes the breakaway territories of South Ossetia and Abkhazia. The Committee questioned whether the benefits arising from the Association Agreement extend to these territories. The FCO has provided the following reply:

> "In principle, the benefits arising from the EU-Association Agreements and Deep and Comprehensive Free Trade Areas apply to the entire territories of Ukraine, Republic of Moldova and Georgia. However, in relation to those regions over which the Governments of Ukraine, Georgia and Republic of Moldova do not exercise effective control, the benefits will, in practice, only be enjoyed once the Governments are able to ensure the full implementation and enforcement of the Agreements in those regions."

Draft Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015

36. This Order has been laid by the Ministry of Justice, with an Explanatory Memorandum (EM). Section 92 of the Courts Act 2003 provides the Lord Chancellor with a power to prescribe fees for court proceedings, and section 180 of the Anti-social Behaviour, Crime and Policing Act 2013 provides the Lord Chancellor with a power to prescribe a fee which exceeds the cost of anything in respect of which the fee is charged ("an enhanced fee"). In exercising this power, the Lord Chancellor has to take into consideration "the financial position of the courts and tribunals" and "the competitiveness of the legal services market".

37. The Order provides for a new fee for starting proceedings to recover money where the sum exceeds £10,000 and alters the basis on which that fee is calculated. The fee for claims between £10,000 and £200,000 will now be 5% of the claim and for claims over £200,000 the fee will be capped at £10,000. (For proceedings by users of the County Court Business Centre or the Money Claims Online a percentage of 4.5% on claims between £10,000 and £100,000 will apply.) The fees for claims of less than £10,000 will be unchanged.

38. The increase is significant. For example, under current fees (set by the Civil Proceedings Fees (Amendment) Order 2014 (SI 2014/874)), claims of between £100,000 and £150,000 will attract a fee of £1,115 in order to start proceedings. This is in contrast to the enhanced fees regime which would set the fee at 5% of the amount claimed, so between £5,000 and £7,500.

39. Part 8 of the EM sets out information about the consultation undertaken in respect of the proposal to charge enhanced fees and, in particular, refers to concerns expressed by the statutory consultees (the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Deputy Head of Civil Justice and the Civil Justice Council) about their potential impact and practical difficulties in their implementation. The Committee has received further explanation about these concerns and the Government's response to them, and this is set out in Appendix 2 to this report.

Draft Community Radio (Amendment) Order 2015

40. The Department for Culture, Media and Sport (DCMS) has laid this draft Order with an Explanatory Memorandum (EM) and impact assessment. In amending an earlier instrument,[12] the Order allows community radio stations to raise a larger proportion of their funding from taking paid-for advertising or sponsorship than is currently allowed.

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12 The Community Radio Order 2004 (SI 2004/1944).

41. In a strategy paper published in July 2013,[13] the Government announced an intention to consult on funding restrictions for community radio. The consultation ran from 13 February to 23 April 2014. There were around 100 responses: 40 from community radio stations, 13 from commercial radio stations, and 36 other responses. DCMS says that responses showed a clear divergence of view: the community radio sector broadly supported changes, whilst the commercial radio sector opposed any further relaxations.[14] The Department says that, after consideration of all responses, it considered that the case for changes to the current restrictions had been made. However, it states that it will continue to ensure that protections remain in place for the smallest, independently run commercial stations; and that, since the evidence-base evaluating the impact of community radio on the communities served is very limited, it will commission research in 2015–16 to address this gap.

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015

42. HM Treasury (HMT), which has laid this Order, states in the accompanying Explanatory Memorandum that recent misconduct has reduced trust in the financial sector, which is an important part of the UK economy. The background is the scandal, revealed in 2012, of repeated attempts at manipulation of LIBOR, the London Interbank Offered Rate, a benchmark used in trillions of pounds worth of financial contracts. The Order proposes to bring seven major financial benchmarks within the regulatory regime now put in place for LIBOR: the Sterling Overnight Index Average (SONIA); the Repurchase Overnight Index Average (RONIA); WM/Reuters (WMR) 4pm London Closing Spot Rate; ISDAFIX 1; London Gold Fixing benchmark 2; LMBA Silver Price; and ICE Brent.

43. HMT consulted on a recommended list of benchmarks[15] between 23 September and on 23 October 2014. There were over 20 written responses, including from trade bodies, benchmark administrators, banks and other relevant industry representatives. In December 2014, HMT published a summary of consultation[16] which confirmed that, overall, respondents agreed that the seven recommended benchmarks should be brought into the UK regulatory regime: that is the effect of this Order. HMT explains that the Financial Conduct Authority (FCA) is consulting on these changes to bring additional benchmarks into the regulatory and supervisory regime:[17] the FCA's consultation closes on 30 January 2015.

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13 "*Connectivity, Content and Consumers: Britain's digital platform for growth*".

14 The Government have published a response to the consultation: https://www.gov.uk/government/organisations/department-for-culture-media-sport

15 The list was recommended by the Fair and Effective Markets Review, a group established by HMT in June 2014.

16 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389479/FEMR_recommendations_on_financial_benchmarks_response_final.pdf

17 See: http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14–32

Draft Motor Vehicles (Wearing of Seat Belts) (Amendment) (No. 2) Regulations 2015

44. The Department for Transport has laid these Regulations under the Road Traffic Act 1988, with an Explanatory Memorandum (EM). The purpose of the instrument is to amend the Motor Vehicles (Wearing of Seat Belts) Regulations 1993 to allow the use of enhanced child restraint systems which conform to UNECE Regulation 129, a safer standard that than under current UK law which requires that child restraint systems conform to UNECE Regulation 44. Under the new provision, child restraints which conform to either Regulation 129 or Regulation 44 will be permissible for use.

45. The new standard was set by an EC Directive (2014/37/EU) which came into force on 19 March 2014, 10 months ago. We asked the Department the reason for the delay. We were told:

> "The Directive was published on 27 February 2014 and came into force on 19 March, and required Member States to have implemented this by 20 September 2014. The UK feared at the time that this timescale was not long enough to complete implementation. We were able to carry out consultation prior to the 19 March, but it was not possible to start drafting the proposed legislation until we knew the final text of the Directive. Unfortunately due to Parliamentary processes (and the need to ensure the appropriate clearances and impact assessment) it has not been possible to implement sooner."

46. The Minister, Mr Robert Goodwill MP, was asked to explain more fully what was meant by "Parliamentary processes". In a letter dated 29 January (and published in Appendix 3 to this report), Mr Goodwill explained that the phrase was "intended to mean the activity as a whole beginning with the pre-Parliamentary phase from the publication of the Directive to its final implementation". It was not, he said, intended to refer to "any specific action of Parliament itself".

Draft Code of Practice for the Disciplinary and Grievance Procedures

47. The Department for Business, Innovation and Skills (BIS) has laid this draft Code of Practice with an Explanatory Memorandum (EM). BIS says that ACAS proposes to issue the Code, which has been revised following an Employment Appeal Tribunal (EAT) judgement[18] which called into question the guidance in the Code relating to the right to be accompanied. Specifically, the EAT ruled that the ACAS Code went beyond what the law required by advising that not only the request, but also the choice of companion, had to be reasonable. BIS adds that, following consultation, the ACAS Council agreed a new form of wording on the right to be accompanied to reflect the law more accurately, whilst providing good practice guidance.

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[18] In the case of *Toal & another v GB Oils Limited* (2013 IRLR 696).

48. ACAS consulted between 5 December 2013 and 7 January 2014. It is interesting to note that, in the consultation document,[19] ACAS acknowledges that it allowed a shorter period for consultation than normal with Codes of Practice, but states that the short timescale was justified "given the importance of amending the Code to reflect the EAT decision as soon as possible". In the event, more than a year has elapsed since that consultation ended. We asked BIS to explain the delay. The Department has told us the following:

> "When ACAS submitted the draft Code to the Secretary of State to be laid before Parliament, it raised a number of questions within Government about the Code of Practice and about the law on discipline and grievance. These questions went much further than the EAT ruling. They related to the fundamental principles within the Code. There were many interested parties across Government. Unfortunately it took this time to reach a consensus and gain collective agreement to lay the draft Code. The Secretary of State has now asked ACAS to conduct a public consultation on the entire Code to test whether it is still appropriate for the dynamics of the current workplace environment."

49. It is unfortunate that ACAS set a very short timetable for its consultation at the end of 2013 with the justification that the Code needed to be amended very quickly, and that its commitment to early action was thwarted by protracted discussion across Government. Consultation respondents may well be sceptical about the way in which the exercise has been handled.

Electrically Assisted Pedal Cycles (Amendment) Regulations 2015 (SI 2015/24)

50. This instrument was laid by the Department of Transport under the Road Traffic Regulation Act 1984 and the Road Traffic Act 1988, along with an Explanatory Memorandum (EM) and an Impact Assessment. Its purpose is to change the provisions that define the class of electrically assisted pedal cycles (EAPCs) treated as not being a motor vehicle when used on roads in Great Britain. The effect of the classification is that compliant EAPCs are not required to be registered, are not subject to vehicle licensing nor required to be insured as a motor vehicle, and riders are not required to hold a valid driving licence.

51. The Regulations will make the following changes to the requirements for classification as a compliant EAPC: the maximum motor power is to be increased from 200 watts to 250 watts; the electrical assistance cut-off speed is to be increased from 15 to 15.5 mph; all weight limits are removed; and vehicles with more than three wheels will be permitted. The reason for the proposed change is to align with EU legislation and with the specification in the latest British/European standard for EAPCs. The proposal is part of the Government's Red Tape Challenge.

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[19] See: http://www.acas.org.uk/media/pdf/q/p/Acas-consultation-on-discipline-and-grievance-revision.pdf

52. Part 8 of an EM is intended to set out the outcome of any relevant consultation exercise. In this instance, the information provided was very general and so the Committee requested fuller explanation of the consultation results. The answers we received, in particular that describing the concerns raised, indicate a range of views, some in favour of certain changes and some against. (The Department's reply is set out in full in Appendix 4 to this report.) The Government's response to the consultation (published this month, January 2015) stated that 45 responses to the consultation had been received of which 26 (53%) expressed unqualified support and 19 (47%) expressed either qualified support or made comments on points of detail: "none was wholly against".[20]

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20 Department for Transport, *Electrically Assisted Pedal Cycles (EAPC) Deregulation: Results of November 2014 public consultation*, January 2015.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

Draft instruments subject to affirmative approval

Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2015

Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015

Community Radio (Amendment) Order 2015

Crime and Courts Act 2013 (Consequential Amendments) (No.2) Order 2015

Electricity Capacity (Amendment) Regulations 2015

Electricity Market Reform (General) (Amendment) Regulations 2015

Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015

Employment Allowance (Care and Support Workers) Regulations 2015

European Union (Definition of Treaties) (Association Agreement) (Georgia) Order 2015

European Union (Definition of Treaties) (Association Agreement) (Moldova) Order 2015

European Union (Definition of Treaties) (Association Agreement) (Ukraine) Order 2015

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015

Guaranteed Minimum Pensions Increase Order 2015

Industrial Training Levy (Construction Industry Training Board) Order 2015

Industrial Training Levy (Engineering Construction Industry Training Board) Order 2015

Motor Vehicles (Wearing of Seat Belts) (Amendment) (No. 2) Regulations 2015

Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) (England and Wales) Order 2015

Single Use Carrier Bags Charges (England) Order 2015

Social Security (Contributions) (Limits and Thresholds) (Amendment) Regulations 2015

Social Security (Contributions) (Re-rating and National Insurance Funds Payments) Order 2015

Social Security Benefits Up-rating Order 2015

Draft instruments subject to annulment

Code of Audit Practice

Code of Practice for the Disciplinary and Grievance Procedures

Modifications to Documents Maintained under Licences (EMR No. 1 of 2015)

Modifications to the Standard Conditions of Electricity Supply Licences 2015

Modifications to the Special Conditions of National Grid Electricity Transmission PLC's Transmission Licence (EMR No. 2 of 2015)

Instruments subject to annulment

8997	Agreement on amending the Agreement between the United Kingdom Bulgaria concerning the Protection of Classified Information
SI 2015/21	Classification, Labelling and Packaging of Chemicals (Amendments to Secondary Legislation) Regulations 2015
SI 2015/24	Electrically Assisted Pedal Cycles (Amendment) Regulations 2015
SI 2015/25	Ministry of Defence Police (Conduct etc.) Regulations 2015
SI 2015/27	Transport Levying Bodies (Amendment) Regulations 2015
SI 2015/35	Feed-in Tariffs (Amendment) Order 2015
SI 2015/36	Hydrocarbon Oil (Marking and Designated Markers) (Amendment) Regulations 2015
SI 2015/43	City of Birmingham (Scheme of Elections) Order 2015
SI 2014/46	Social Security (Information-sharing in relation to Welfare Services etc.) (Amendment) Regulations 2015

APPENDIX 1: DRAFT RENEWABLE TRANSPORT FUEL OBLIGATIONS (AMENDMENT) ORDER 2015

Additional information from the Department for Transport

Q1. Paragraph 7.4 of the Explanatory Memorandum (EM) refers to the Order removing the RTFO Administrator's powers to obtain information on the ground that they "are no longer required". Paragraph A.4 of the Cost Benefit Analysis (CBA) describes the new provision as rationalising the Administrator's powers. Please could you explain more fully why these are no longer needed?

The purpose of the amendment made by article 6 of the draft Order is to update and streamline the powers of the Renewable Transport Fuels Obligations ("RTFO") Administrator (the Secretary of State) to require information under article 13.

The effect of amendments made to the Renewable Transport Fuel Obligations Order 2007 ("RTFO Order") by the Renewable Transport Fuel Obligations (Amendment) Order 2011 (SI No. 2937), is that only biofuels meeting certain mandatory sustainability criteria as prescribed in Directive 2009/28/EC ("the Renewable Energy Directive") are rewarded with Renewable Transport Fuel Certificates (RTFCs).

The Government has taken the view that the RTFO Administrator's powers to require information should not be exercised beyond requiring information from suppliers to ensure compliance with the Renewable Energy Directive or to ensure the effective enforcement of the scheme and its integrity. It is considered that the broad power in article 13(1) which enables the Administrator to require a supplier to provide information needed to carry out the Administrator's functions, in tandem with other powers in the Order, are sufficient for these purposes.

In addition, if the Administrator needed information of the types listed in article 13(4) to ensure that obligations arising under Directive 2009/28/EC are satisfied, that information may be required under other powers in the RTFO Order (as amended by SI No. 2011/2937). These include, for example, the duty on the Administrator to require information under article 12(1) from obligated suppliers and non-obligated suppliers who apply for RTFCs.

Q2. Paragraph of the CBA describes how the greenhouse gas (GHG) savings from the amendments made by the Order depend significantly on whether the gaseous fuels displace waste-derived biodiesel or crop-derived biodiesel and, if the latter, whether indirect land use change (ILUC) is taken into account. The paragraph also says that there is "significant uncertainty" about which type of biodiesel will be displaced. As a result, the CBA offers three scenarios: central, low and high. The central scenario estimates a range (depending on assumptions about biodiesel displacement and the inclusion or otherwise of ILUC) of carbon savings from -£6.17 million to +£18.66 million for the period 2015–2020. The high scenario estimates -£16 million to +£52 million. It appears from these figures that there is a real risk that the intention of the instrument will not achieve its policy object of decarbonising the HGV sector and, further, that it could lead to worse results than the current policy. Given this, could you explain more fully why, despite these risks and the "significant uncertainty", these amendments to the 2007 Order are being pursued?

The policy aim of the change proposed for renewable gaseous fuels is to provide a level playing field in how these fuels are rewarded under the RTFO. So we are proposing to increase the reward for certain renewable gaseous fuels to reflect their higher energy content relative to the equivalent volume of liquid biofuels.

As the RTFO is a market based mechanism, which biofuel is supplied to meet the obligation depends on a number of factors including the relative price of biofuel feedstocks. There is therefore some uncertainty around which liquid biofuels would be replaced by gaseous fuels and the CBA has considered a range of possible outcomes. The central scenario in the CBA estimates savings worth £2.65 million in net present value.

Paragraph A11 of the CBA explains that we think it is more likely that gaseous biofuels would replace crop-derived biodiesel and not waste-derived biodiesel. Crop derived biodiesel has a high indirect land use change impact [i] and were it displaced by additional RTFCs being awarded to gaseous fuels this would give higher carbon reduction benefits and savings.

The CBA also states that we expect significant non-quantified benefits from biomethane's contribution to the long-term decarbonisation of the Heavy Goods Vehicle (HGV) sector. HGVs are responsible for over 20% of domestic transport emissions and contributed 21%of surface transport greenhouse gas emissions. The vast majority of HGVs cannot use batteries as an energy source, as current battery technology cannot produce the required energy density. Biomethane is therefore the only commercially available fuel that has the potential to offer significant carbon savings for Heavy Goods Vehicles.

Q3. Paragraph A.12 of the CBA refers to the demand constraints on gaseous fuels in that relatively few vehicles can use this fuel. The central scenario assumes a rise from 500 HGVs (now) to 7,400 (2020) and the high scenario from 500 to 13,950. On what grounds are these estimates based and with what comparative likelihood?

The central scenario which assumes a rise from 500 HGVs (now) to 7,400 (2020) is considered the most likely to happen between now and 2020. As described in response to question 2 the CBA considers a range of possible outcomes, in this context the high scenario represents an optimistic potential increase in dual fuel HGVs in the UK market.

The central scenario estimate is consistent with that in the "Annex to the Low Emission HGV Task Force recommendations on the use of natural gas and biomethane in HGVs" which were published in March 2014. It assumes that a constant share (5%) of newly registered HGVs are dual fuel. The estimates used have been tested through a DfT analyst's survey of industry stakeholders and the public consultation on the amendments themselves. The future uptake of gas-powered vehicles is dependent on market conditions and also has some uncertainty. The central scenario represents a feasible trajectory, assuming there are no significant changes to the market environment. The high uptake scenario is feasible but may in our assessment require a significant increase in Government support.

28 January 2015

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[i] Indirect land use change occurs where biofuel feedstock is grown on existing crop land and additional land is then cleared to grow the crops which have been displaced to grow the biofuel feedstock. These means that for some biofuel feedstocks, when indirect emissions are taken into account, emissions can be higher than that of fossil fuels.

APPENDIX 2: DRAFT CIVIL PROCEEDINGS AND FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2015

Additional information from the Ministry of Justice

Question:

Part 8 of the EM sets out the consultation outcome.

- *Over what period exactly did the consultation take place?*
- *How many consultation responses were received?*
- *In summary, what was the outcome of the consultation on Part 2?*
- *What were the concerns of the statutory consultees and, in summary, what was the Government's response?*

(i) The consultation paper was published on 3 December 2013 and closed on 21 January 2014. Short extensions were agreed with those who sought them. The consultation paper covered both the proposals to achieve cost recovery and proposals for charging enhanced fees.

(ii) There were 162 responses to the consultation.

(iii) Following the consultation, the Government decided:

- to proceed with the consultation proposals for standard money claims;
- not to proceed with either of the options we proposed for charging higher fees for commercial money claims;
- not to proceed with the proposal to increase the divorce fee; and
- to seek views on further proposals for raising fee income by raising the fees for possession claims and for general applications in civil proceedings.

(iv) the main concerns of the senior judiciary were:

- the impact on access to justice, and in particular the effect that the increases would have on Small and Medium-sized Enterprises (SME);
- the impact on high value commercial proceedings, and the risk that they would decide to pursue claims in competitor jurisdictions; and
- the assumption in the Impact Assessment that these fee increases would not have an impact on the volumes of cases which was, in their view, sweeping and unduly complacent.

We do not accept these criticisms for the reasons summarised below.

We believe that the fee increases are unlikely to represent a barrier to justice for SMEs because:

- our evidence indicates that court fees are a secondary consideration in the decision to litigate, and that the main concerns are the strength of the case and the likelihood of recovery from the debtor. In addition, court fees are low compared to the legal fees involved in proceedings;
- 90% of money claims are for sums of less than £10,000, which will be unaffected by these fee increases.

- the fee charged will always be proportionate to the sums involved and will be capped at £10,000 for the very highest value claims.
- in successful proceedings, the fee will normally be recovered from the opponent.

These factors also apply to commercial proceedings, but in commercial money claims the sums at stake and the legal costs incurred are significantly higher. Furthermore, research undertaken by the British Institute of International and Comparative Law (BIICL) into the drivers behind decisions to bring high value international litigation and where to do so confirmed that the reasons that London was a popular centre for resolving these types of disputes were: the quality of legal services available; the strength and independence of our judiciary and the particular suitability of English Law. The BIICL report was published with the Government Response to the consultation and is available on our website. We do not therefore believe that the increases in court fees are likely to damage the competitive position of our legal services.

For all of these reasons we believe that the assumption in the Impact Assessment, that the fee increases are unlikely to result in a fall be a change in the volumes to cases, is reasonable. The evidence base to support this is also better than was available at the time of the consultation (which the Judiciary criticised as being too insubstantial), including research undertaken by IPSOS MORI as well as the BIICL research. Full details of this research are set out in the Government Response.

28 January 2015

APPENDIX 3: DRAFT MOTOR VEHICLES (WEARING OF SEAT BELTS) (AMENDMENT) (NO. 2) REGULATIONS 2015

Letter from Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee, to Robert Goodwill MP, Parliamentary Under Secretary of State for Transport

The Lords Secondary Legislation Scrutiny Committee, of which I am Chairman, considered the The Motor Vehicles (Wearing of Seat Belts) (Amendment) (No. 2) Regulations 2015 at a meeting yesterday and has asked me to write to you to request some further explanation. Prior to the meeting, the Clerk to the Committee asked for information about the reasons for the delay in the implementation of the relevant EC Directive (EC Directive 2014/37/EU) and received the following answer:

"The Directive was published on 27 February 2014 and came into force on 19 March, and required Member States to have implemented this by 20 September 2014. The UK feared at the time that this timescale was not long enough to complete implementation. We were able to carry out consultation prior to the 19 March, but it was not possible to start drafting the proposed legislation until we knew the final text of the Directive. Unfortunately due to Parliamentary processes (and the need to ensure the appropriate clearances and impact assessment) it has not been possible to implement sooner."

I would be grateful if you could explain more fully what was meant by the reference to "Parliamentary processes".

28 January 2015

Response from Robert Goodwill MP to Lord Goodlad

The reference to "Parliamentary processes" was intended to mean the activity as a whole beginning with the pre-Parliamentary phase from publication of the Directive to its final implementation. In this case, I was intending to refer to the processes carried out by my Department leading up to the scrutiny of the proposals by Parliament, rather than any specific action of Parliament itself.

These processes include the drafting of the Statutory Instruments (both the affirmative and the negative instruments) and formal internal checks by second and third lawyers, drafting the Impact Assessment and securing internal better regulation clearance, drafting and internal clearance of the Regulatory Triage Assessment, and requesting clearance to proceed from the relevant Cabinet Committees. It is these processes that have meant it was not possible for Great Britain to meet the 12 September 2014 deadline.

29 January 2015

APPENDIX 4: ELECTRICALLY ASSISTED PEDAL CYCLE (AMENDMENT) REGULATIONS 2015 (SI 2015/24)

Additional information from the Department for Transport

Q1. Part 8 of the Explanatory Memorandum (EM) refers to the consultation on the regulations. It does not however provide any details about the consultation, a matter to which the committee is particularly alert. Please could you tell me

- *when the consultation in 2014 took place*
- *the questions asked*
- *the number of responses*
- *what groups responded*
- *quantitative analysis of the responses.*

- **When the consultation in 2014 took place:**

  The consultation took place between 3 November and 8 December 2014. However there was also a three month consultation in 2010 consulting on limited changes and a wider consultation in 2011 held as part of the Red Tape Challenge.

- **The questions asked**

  I have attached the 2014 consultation document (Annex A)[21] which gives the questions and rationale in detail. The key points on which we sought opinions were:

  - Raising the power limit for bicycles to from 200W to 250W (aligning with tandems and tricycles)
  - Updating the definition of "maximum continuous rated power" to current standards and provide for mutual recognition of other equivalent standards
  - Removing all weight limits (deregulate and align with EU standards)
  - Amending from 15mph to 15.5mph the maximum speed at which power assistance is cut off, to align more accurately with EU standards.
  - Removing the definition of bicycle and tricycle recognise all cycles with at least two wheels.

  Views were also sought for the forthcoming complementary amendments to the Pedal Cycle (Construction and Use) Regulations some of which affect EAPCs:

  - Updating definitions to align with the international standards used by manufacturers. Remove references to outdated standards and recognise current ones.

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[21] The Consultation Document is not printed in this report. It can be found at the following webpage: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/369752/consultation-document.pdf

- Cycle marking – amending the information plate required on the cycle to align with the information plate required by the EU standard but continue to accept existing cycles.
- Fitted brakes – updating the reference to obsolete British standards and inserting an updated reference. Removing cycles that operate up to 15.5mph using the throttle only without the need to pedal (commonly known as 'twist and go' cycles) as they are now subject to type approval under EU law.
- Brake efficiency and testing – no change to requirements.

- **No of responses**

  There were 45 responses. I have attached the consultation response document (Annex B)[22] but in summary respondents were:

  - Member of Public 13
  - Small Medium Enterprise 13
  - Large Company 4
  - Representative Organisation 6
  - Interest Group 2
  - Local Government 4
  - Central Government 2
  - Other 1
  - Police 0

- **Quantative analysis –**

  Rather than summarise this here please see the consultation response document (Annex B)[23] specifically section 3 where all the responses are discussed in detail.

Q2. Paragraph 8.2 of the EM states that the concerns expressed about the regulations were in the minority and "if implemented" would defeat the primary purpose of aligning GB and European standards. What concerns were raised and how were they addressed?

The concerns raised were:

- **Power alignment:** Pedicabs (passenger carrying cycles) should not be allowed to have motor power (1 response)
- **Removal of weight limit:** Three respondents were opposed removing the weight limit, one particularly so for tricycles and quadricycles. All others were in support. There was also an observation that removing the weight limit allowed for sturdier designed cycles and allowed greater material choice for manufacture.

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[23] The Consultation Response is not printed in this report.

- **Removal of the limit for a maximum of three wheels:** One respondent was particularly opposed to permitting four wheels as it may lead to the proliferation of heavier goods and passenger carrying cycles. Other respondents were in favour as this relaxation provides opportunities for cleaner forms of transport and delivery options.
- **Increase in power assistance cut off speed:** some requested a higher cut off speed. Cycles with a higher cut off speed are already defined in EU law as a low powered moped, they require type approval and would be classed in domestic law as motor vehicles requiring registration, tax, insurance and rider licencing.
- **Braking requirements:** One respondent commented on the detailed brake assessment contained in the standard and suggested that a simpler test should be defined for cycle users. Our view is that recognised standards should be used so that any manufacturer (and user) will understand the level of braking required. One respondent was concerned that the brakes on tricycles and quadricycles would not be sufficient and that these cycles would also not be as manoeuvrable. We have ensured that the appropriate braking standards are to be applied to tricycles and quadricycles. These cycles are currently used in Europe with no adverse road safety effects of which we are aware. We intended to permit UK users to have the same freedom to use these vehicle as their European counterparts.
- **Marking plate:** One respondent requested additional data on the marking plate. We think that this is an additional unnecessary burden.
- **Continuing to allow 'twist and go' cycles:** This would entail aligning with EU standards and amend the power cut off speed to 4 mph. In our view we see the potential for elderly and less able cyclists to continue to enjoy this benefit and although these cycles will need to be type approved, they will still be classed as cycles in our domestic legislation and therefore not require registration, tax, insurance and rider licence.
- **Other concerns:** There were other concerns raised that were deemed outside the scope of these regulations: Lighting and reflectors, electrically assisted trailers, licensing of cargo cycle riders, a regulatory regime for pedicabs and safety specifications for cargo cycles. To note, the majority of the concerns are regarding the use of pedicabs and goods cycles, particularly in London. There are other means of regulating these cycles which are more appropriate. Other local authorities were very welcoming of the proposed changes as it would allow them greater choice in transport and delivery modes.

Q3. Was any evidence gathered about implications of the change enabled by the regulations for the safety of other road users and pedestrians?

Evidence gathered on adverse effects to safety

Following the responses to the Red Tape Challenge (RTC), TRL were commissioned to bring the RTC responses together with the 2010 consultation responses and define options for amending legislation, based on all of the previous knowledge. These options were the discussed with key stakeholders including road safety groups such as RoSPA [Royal Society for the Prevention of Accidents]. The responses from these groups sought to

ensure that any potential adverse effects due to any amendment were captured

Q4. Given that those using the relevant electrically assisted pedal cycles are not required to be insured, what would be the consequence of any accident involving such cycles?

Consequence of accidents

The accidents would be treated no differently to accidents involving pedal only cycles. The Police have powers to prosecute cycle riders (including those on EAPCs) if they have broken any laws attributed to inappropriate cycling e.g. 'wanton or furious driving' (Section 35, Offences Against the Person Act 1861).

28 January 2015

APPENDIX 5: 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 3 February 2015 Members declared the following interests:

Electrically Assisted Pedal Cycles (Amendment) Regulations 2015 (SI 2015/24)

Lord Borwick

The Member's wife is a member of the Greater London Authority, one of the Statutory Deputy Mayors of London and an elected Councillor for the Royal Borough of Kensington and Chelsea

Draft Code of Audit Practice

Lord Bichard

Chair, National Audit Office

Attendance:

The meeting was attended by Lord Bichard, Lord Borwick, Lord Bowness, Lord Goodlad, Baroness Hamwee, Lord Plant of Highfield and Lord Woolmer of Leeds.