HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

27th Report of Session 2014–15

Draft Energy Efficiency (Domestic Private Rented Property) Order 2015

Draft Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Draft Immigration (Health Charge) Order 2015

Gaming Machine (Circumstances of Use) (Amendment) Regulations 2015

Includes 6 Information Paragraphs on 7 Instruments

Ordered to be printed 24 February 2015 and published 26 February 2015

Published by the Authority of the House of Lords

London: The Stationery Office Limited
£price

HL Paper 120

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

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

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

Information and Contacts
If you have a query about the Committee's work, or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020–7219 8821; fax 020–7219 2571; email 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 Seventh 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 Energy Efficiency (Domestic Private Rented Property) Order 2015
Draft Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Date laid: 4 February 2015

Parliamentary Procedure: affirmative

Summary: The Regulations enable the tenant of a domestic private rented property to request the landlord's consent to the tenant making energy efficiency improvements to the property; and they place a duty on the landlord not to refuse unreasonably consent to the improvements being made. They also prescribe a minimum level of energy efficiency for domestic and non-domestic private rented properties, and provide that a landlord may not grant a new tenancy or renew an existing tenancy of a private rented property after 1 April 2018, continue to let a domestic private rented property after 1 April 2020, or continue to let a non-domestic private rented property after 1 April 2023, where its energy performance falls below the minimum level of energy efficiency.

We consider it bad practice to hold the formal consultation process over the August holiday period, given that there may well have been individuals and organisations who wished to respond to the consultation and who had not been involved in the sector working groups. We also question whether the Department could have made efforts to lay these Regulations sooner than within two months of the dissolution of the present Parliament.

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.

1. The Department for Energy and Climate Change (DECC) has laid these two instruments with a shared Explanatory Memorandum (EM) and impact assessment. The draft Energy Efficiency (Private Rented Property) (England and Wales) Regulations (the "PR Regulations") enable the tenant of a domestic private rented property to request the landlord's consent to the tenant making energy efficiency improvements to the property; and they place a duty on the landlord not to refuse unreasonably consent to the improvements being made (with some exemptions). They also prescribe a minimum level of energy efficiency for domestic and non-domestic private rented properties, and provide that (again, with some exemptions) a landlord may not grant a new tenancy or renew an existing tenancy of a private rented property after 1 April 2018, continue to let a domestic private rented property after 1 April 2020, or continue to let a non-domestic private rented property after 1 April 2023, where its energy performance falls below the

minimum level of energy efficiency. The Energy Efficiency (Domestic Private Rented Property) Order 2015 prescribes additional tenancy types, so that properties let on those tenancies types are domestic private rented properties for the purposes of the PR Regulations.

2. In the EM, DECC says that various approaches have been tried to improve the energy efficiency of domestic properties, including in the private rented sector: these have included voluntary approaches such as the Green Deal and the Energy Company Obligation, information services, and tax breaks for landlords such as the Landlords Energy Savings Allowance. However, the private rented sector has been relatively unresponsive to these approaches. DECC states that the PR Regulations are intended to help overcome market barriers in the private rented sector, such as the split incentive problem, whereby the party who invests in the energy efficiency improvements (the landlord) is not the party that reaps the benefits in reduced energy bills (the tenant). In the Department's view, regulation is necessary to improve the energy efficiency of domestic and non-domestic privately rented properties.

3. In a press release on its website,[1] DECC says that these proposals should mean that up to one million tenants renting from a private landlord can look forward to warmer homes that cost less to heat. Given that, from April 2018, landlords will be required by law to get their leakiest properties to an energy efficiency rating of at least Band "E", the Department refers to estimates that on average the difference in a heating bill from the least energy-efficient properties and those with an energy rating Band "E" is £880.

4. In the EM, DECC says that it established two sector stakeholder working groups in February 2013, which ran until autumn 2013, to inform the development of the consultation proposals. It carried out public consultation on the provisions for six weeks, from 22 July to 2 September 2014. It received 107 responses in relation to the proposals for the domestic private rented sector, and 49 for the non-domestic sector; a summary of consultation was published in February 2015.[2] In section 8 of the EM, DECC sets out the changes made to the proposals in the light of consultation.

5. We obtained further information from the Department, in relation to the public consultation process. We are publishing that information at Appendix 1. Given that DECC's consultation ran from 22 July to 2 September 2014, largely a holiday period, we asked whether the Department considered taking mitigating action, and whether any consultation respondents criticised the timing of the consultation process. DECC has told us that officials ensured that stakeholders had sufficient capacity to provide feedback; and that a very small minority of respondents referred to the timing of the consultation, or sought extensions to the deadline, and they were told that only views provided within the set consultation period would be guaranteed to be considered. **We recognise that the Department had worked with interested parties over some months; however, we**

---

1 See: https://www.gov.uk/government/news/renters-and-landlords-to-enjoy-warmer-properties-and-cheaper-bills

2 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401381/Dom_PRS_Energy_Efficiency_Regulations_-_Gov_Response_FINAL__04_02_15_.pdf

consider it bad practice to hold the formal consultation process over the August holiday period, given that there may well have been individuals and organisations who wished to respond to the consultation and who had not been involved in the sector working groups.

6. We asked about the Department's response to the fact that 79% of respondents thought that there was a risk of eviction as a consequence of the tenant's right to request improvements under the regulations. DECC has told us that tenants would only be able to make a request where they are seeking to implement energy efficiency improvements and willing to fund these improvements; and that, in this situation, there would be little incentive to evict a tenant, as they would be seeking a landlord's permission to improve the landlord's property and pay for it. **We accept that the Department has considered the concern about eviction that emerged from consultation, but we question whether its comments will have reassured the 79% of respondents who voiced the concern.** In the February 2015 consultation summary, the Department states that it will work with the sector to develop guidance to help landlords, tenants, local authorities and wider sector bodies to understand and prepare for the Regulations before they begin to apply from April 2016. **Given the potential complexity of the way in which this policy will be implemented, we see a compelling need for clear and comprehensible guidance to be available at an early date.**

7. We also asked why the Department waited for over three years before bringing the relevant provisions of the Energy Act 2011 into force, and hence before making these Regulations. DECC has said that it was necessary to launch the Green Deal scheme, in January 2013, before beginning the work to develop the PR Regulations, with the creation of stakeholder working groups in February 2013; and that the process of engagement was important to ensure that the policy took into account sector views, informing our consultation proposals. While we understand the sequence described here, we note that the working groups met monthly until September 2013, and that the consultation process was launched only in July 2014. **We question whether the Department could have made efforts to lay these Regulations sooner than within two months of the dissolution of the present Parliament.**

B. Draft Immigration (Health Charge) Order 2015

Date laid: 2 February 2015

Parliamentary Procedure: affirmative

Summary: This Order will require non-EEA nationals applying for entry clearance, or leave to remain in the UK for a limited period, to pay an immigration health charge. The Order also sets out the detail of how the charge will operate and sets the amount of the charge at an annual rate of £200 per migrant (a lower annual rate of £150 will apply to students and their dependants). The Explanatory Memorandum (EM) estimates that the current cost to the NHS of treating temporary non-EEA migrants is £950 million per year. The best estimate given in the Impact Assessment of the average yearly income to be generated by this fee is £189 million. While this proposal is a significant change in the current position under which the NHS treats affected migrants at no cost, the Home Office has not satisfactorily explained why a higher fee, closer to the average cost of treatment provided (£800), was not selected. The House may wish to seek further information on the rationale for setting the annual fee at £200 per year. We also recommend that the review after six months and the report to Parliament after 12 months, mentioned in the EM, should each address this specific point.

This Order is drawn to the special attention of the House on the ground that it raises matters of policy likely to be of interest to the House.

8. This instrument has been laid by the Home Office under provisions of the Immigration Act 2014 with an Explanatory Memorandum (EM) and an Impact Assessment (IA).

Background

9. This Order will require non-EEA nationals applying for entry clearance, or leave to remain in the UK for a limited period, to pay an immigration health charge. Affected migrants will be required to pay the charge as part of the application process and a separate charge is payable for each application made, including for each dependant. The Order also sets out the detail of how the charge will operate and sets the amount of the charge at an annual rate of £200 per migrant (a lower annual rate of £150 will apply to students and their dependants). The fee will be payable in respect of the full period grantable under the route for which they are applying, so a person applying for a visa for 30 months (2.5 years) would pay £200 x 2.5 = £500 and a further £500 would be payable in respect of each dependant.

Why set at this level?

10. Although there was specific consultation on this proposal prior to the passage through Parliament of the Bill which became the Immigration Act 2014, the EM does not explain why £200 is considered the appropriate amount to charge. The debates focussed on the principle of charging and appropriate exemptions rather than the level at which it should be set.[3]

---

[3] See HL Debs, 10 Mar 2014, cols 1551 and 12 Mar 2014, cols 1803.

11. The EM does state that the charge is set well below the average per capita cost of treating temporary migrants (£800 per year) and that it is lower than the cost of basic private medical insurance (quoted as £3,000 per year in the IA at page 7). Normal practice, following Treasury guidance, requires a Department to recover the full cost of any service provided, but the IA only considers the effects of maintaining the *status quo* and the effects of the £200 charge – other options are not illustrated.

12. In additional material provided by the Home Office to the Committee, it is explained that:

> "the charge is designed to ensure temporary migrants make a financial contribution to the NHS commensurate with their limited immigration status, rather than to recover the full cost of treatment as the NHS seeks to do for short term visitors. Those temporary migrants who will pay the charge (such as students, workers and family members) currently enjoy free access to the NHS. Not every migrant will make use of the NHS during their time in the UK and consequently the charge operates on the principle of pooling the risks and costs of migrants requiring NHS treatment (akin to the way in which health insurance operates). This approach will provide the UK taxpayer with a greater level of protection against funding healthcare for migrants, whilst the proportionate level of the charge in comparison with the cost of mandatory private health insurance requirements operated by other countries competing in the international market for skilled workers and fee paying students will help ensure the UK remains attractive as a place for the brightest and best migrants to come."

Perverse incentive?

13. While it is clear that this system is intended to regulate access to NHS services and provide a degree of financial compensation to the NHS, the risk of the charge providing a perverse incentive for migrants to exploit the NHS to the full is raised in the IA (page 20) but not completely refuted. We therefore asked the Home Office to clarify the point. They said:

> "Migrants that pay the charge will be able to use the NHS in the same way as a permanent resident. This means their NHS care will generally be free of charge, although they may still be charged for those services that permanent residents are also charged for, such as dental services.
>
> The migrants who will pay the charge, such as students, workers and family members, are currently entitled to free NHS care. The introduction of the charge is therefore unlikely to encourage migrants to abuse the NHS as it represents a tightening of the existing rules. Those that pay the charge will also still need to meet all the other criteria provided by the Immigration Rules in order to qualify to enter or remain in the UK. Applications for UK visas are subject to proper and thorough checks. The immigration rules do not permit someone to come to the UK for the purpose of accessing public benefits and services, including the NHS.
>
> We intend however to review the operation on the immigration health charge 6 months after it has been implemented."

Conclusion

14. The EM estimates that the current cost to the NHS of treating temporary non-EEA migrants is £950 million per year. The best estimate given in the IA of the average yearly income to be generated by this fee is £189 million. While this proposal is a significant change from the current position under which the NHS treats affected migrants at no cost, the Home Office has not explained satisfactorily why a higher fee, closer to the full cost recovery level (£800), was not selected. **The House may wish to seek further information on the rationale for setting the annual fee at £200 per year. We also recommend that the review after six months and the report to Parliament after 12 months, mentioned in the EM, should each address this specific point.**

C. Gaming Machine (Circumstances of Use) (Amendment) Regulations 2015 (SI 2015/121)

Date laid: 4 February 2015

Parliamentary Procedure: negative

Summary: In relation to sub-Category B2 gaming machine content – machines sometimes referred to as fixed odds betting terminals, or FOBTs – the Regulations introduce a requirement which prevents individuals paying in excess of £50 for a single charge for use in respect of such a gaming machine content (in premises other than a casino) unless certain conditions are satisfied. These are that those accessing higher stakes on such machines should have to load cash via staff interaction, or use account-based play. The Government announced in April 2014 that this requirement would be introduced. The Regulations will come into force only in April 2015, a full 12 months after the Government announced the need for the new requirement, and six months later than was foreshadowed in that announcement. We question whether the Government could have brought forward the Regulations more expeditiously.

We draw this instrument 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.

15. The Department for Culture, Media and Sport (DCMS) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment (IA). In amending an earlier instrument,[4] the Regulations introduce a requirement in relation to sub-Category B2 gaming machine content – machines sometimes referred to as fixed odds betting terminals, or FOBTs – offered in premises other than a casino. This new requirement prevents individuals paying in excess of £50 for a single charge for use in respect of such a gaming machine content unless certain conditions are satisfied, namely that those accessing higher stakes on such machines should have to load cash via staff interaction, or use account-based play.

---

[4] The Gaming Machine (Circumstances of Use) Regulations (SI 2007/2319).

16. In the EM, DCMS says that, in January 2013, the Government consulted on proposals to amend the maximum stake and prize limits for certain categories of gaming machine. In respect of sub-Category B2 gaming machines, the Government sought evidence on the extent of the impact that a reduction in B2 stakes or prizes might have both socially and economically. In the consultation response of October 2013, the Government decided not to amend stake or prize limits for B2 machines but concluded that the future of the machine was unresolved pending further work to explore what measures might be adopted to strengthen protections for users. Also in October 2013, DCMS laid the draft Categories of Gaming Machine (Amendment) Regulations 2014 which reflected the intentions set out in the consultation response. In publishing information about those Regulations,[5] we commented that we understood the concerns about problem gambling which the Department had mentioned in the accompanying EM, and we looked to the Government to keep the issue under close review.

17. DCMS links the latest Regulations to a Government announcement, in April 2014, of an intention to introduce the new requirements in relation to use sub-Category B2 gaming machines. The Department says that the intended effect is that customers will benefit from improved interaction and more conscious decision-making; and that account-based play provides more opportunities for the provision of information, which also helps customers to make better informed decisions.

18. In the EM, DCMS states that a recent publication[6] showed an estimated 7.2% problem gambling prevalence rate among people who used gaming machines in bookmakers, which was higher than some other forms of machine gambling and many other products available in gambling premises. In the IA, it also says that the Gambling Commission had advised the Government that it was quite possible for individuals to lose several thousand pounds in an hour within the normal range of behaviour of the B2 machine; and that the Gambling Commission estimates that there are 33,209 category B2 gaming machines located in betting shops in Great Britain.[7] The Department concludes that Government intervention is necessary to create the appropriate regulatory environment in which these machines are provided.

19. As regards the 2014 announcement mentioned above, we note that, in April 2014, the Department issued a document called "Gambling Protections and Controls"[8] which foreshadowed the new requirement, introduced by these Regulations, and which stated that the changes were expected to take effect from October 2014.

---

5 In our 15th Report, Session 2013–14, HL Paper 70.

6 "Gambling behaviour in England and Scotland – Findings from the Health Surveys for England 2012 and the Scottish Health Survey 2012".

7 In its Industry Statistics 2008–2013 (published in November 2013).

8 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307458/Gambling_Protections_and_Controls_.pdf

20. There is considerable interest in this House in the Government's approach to tackling problems caused by fixed odds betting terminals, as demonstrated, for example, by the exchanges with the Minister which followed Lord Strasburger's oral question on 9 February 2015[9] and the question for short debate tabled by Lord Clement-Jones taken on 24 February 2015.[10] **The House will be interested to see that the Government have now laid these Regulations. They will come into force only in April 2015, a full 12 months after the Government announced the need for the new requirement, and six months later than was foreshadowed in that announcement.** We obtained further information from the Department about this timing, and about a submission by the London Borough of Newham under the Sustainable Communities Act 2007, calling for the maximum stake on fixed odds betting terminals to be reduced to £2.[11] We are publishing that information as Appendix 2.

21. We understand that legislation can require some time to bring forward. We would point out, however, that the pace of progress with these Regulations is in sharp contrast to that achieved with the Deduction from Wages (Limitations) Regulations 2014 (SI 2014/3322), which we drew to the attention of the House in January of this year.[12] In that case, we were told by the Department for Business, Innovation and Skills that the need to make legislative changes quickly, to limit potential costs to business, was shown by a tribunal judgment handed down on 4 November 2014: those Regulations were laid on 18 December 2014 and brought into force on 8 January 2015. **We question whether the Government could have brought forward the latest Gaming Machine (Circumstances of Use) (Amendment) Regulations more expeditiously, given the concern about problem gambling which they address.**

---

9 HL Deb, 9 Feb 2015, col 1021.

10 HL Deb, 24 Feb 2015, col 1628.

11 See: http://www.newham.gov.uk/Pages/News/Newham-Council-leads-93-councils-in-call-to-curb-casino-style-gambling-on-the-high-street.aspx

12 In our 23rd Report, Session 2014–15, HL Paper 99.

INSTRUMENTS OF INTEREST

Draft Drug Driving (Specified Limits) (England and Wales) (Amendment) Regulations 2015

22. Section 4 of the Road Traffic Act 1988 ("the 1988 Act") makes it a criminal offence to drive when under the influence of drink or drugs and section 5A of the 1988 Act (inserted by the Crime and Courts Act 2013) makes it an offence to drive or be in charge of a motor vehicle with a concentration of a drug in the body above a prescribed limit. A previous affirmative instrument, made as SI 2014/2868, specified limits for 16 drugs for the purposes of section 5A.[13] At that time the appropriate limit for amphetamines was still under discussion. These Regulations propose to set the limit in blood for amphetamines as 250µ g/L as a level representing a balance between the drug's therapeutic use, for example in the treatment of Attention Deficit Hyperactivity Disorder, and the interests of road safety.

Draft Immigration and Nationality (Fees) Order 2015

23. Following changes made by the Immigration Act 2014 (the "2014 Act") the structure of immigration fees is to be set out in a different way for Parliamentary scrutiny. Previously, an affirmative Fees Order set the list of things the Home Office could charge for through Regulations. Then, using the powers set out in that Order, the Home Office laid two annual fees instruments: one listing the fees set at or below full cost recovery (the Immigration and Nationality (Cost Recovery) Regulations) and one affirmative listing the fees set above cost recovery (the Immigration and Nationality (Fees) Regulations). That split, requiring two separate debates was often criticised as ineffective. The new 2015 Fees Order is the first made under the 2014 Act, which requires maximum fee amounts to be set out in the enabling Order and will only need one annual debate that will consider powers to charge and maximum fee levels at the same time. The Order will be followed by a single negative instrument in early March which will set out the detail of all individual fees.[14] It is intended that the Regulations and fees will to come into effect from the common commencement date, 6 April 2015. The Home Office states that the additional flexibility afforded by the new framework will make it easier to introduce fee reductions to encourage growth in specific areas as required by the 2014 Act. There are however no immediate plans to do so.

---

13 The Draft Drug Driving (Specified Limits) (England and Wales) Regulations 2014 mentioned in our 6th Report of this session.

14 A table showing indicative visa charges for 2015 to 2016 for all the main products has been published on the Home Office website and can be accessed via the following link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401236/indicative-visa-charges-for-2015-to-2016.pdf

Draft Occupational Pension Schemes (Charges and Governance) Regulations 2015

24. To support the implementation of Automatic Enrolment to workplace pensions, which now involves almost 10 million workers, these Regulations implement certain changes recommended by a study by the Office of Fair Trading in 2013.[15] These include capping charges in the default arrangements within these schemes at 0.75% annually of funds under management, or an equivalent combination charge, from April 2015 and imposing a ban on Active Member Discounts from April 2016.[16] The Regulations also set out minimum governance standards for relevant occupational pension schemes which require that trustees and managers of these schemes ensure that default arrangements are designed in members' interests and kept under regular review, that core financial transactions are processed promptly and accurately and that trustees and managers assess the value of charges and transaction costs borne by scheme members. These Regulations also give enforcement powers to the Pensions Regulator and amend the annual scheme return that is sent to the Regulator to include confirmation of compliance with the charges and quality measures.

Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015/57)

25. The Department for Communities and Local Government (DCLG) has laid these Regulations which establish a national scheme advisory board to advise the Secretary of State on the desirability of changes to the Local Government Pension Scheme ("the Scheme"). The Regulations also provide for administering authorities to establish local pension boards to assist them with the effective and efficient management of the Scheme, and for two separate sets of cost control mechanisms for the Scheme.

26. In the accompanying Explanatory Memorandum DCLG says that the Regulations were subject to three separate statutory consultations. The first, which dealt exclusively with the provisions on establishing the new scheme advisory board and local pension boards, ran from 23 June to 15 August 2014, with 93 responses. The second repeated the provisions consulted on in June 2014, with amendments reflecting the responses, as well as new provisions on cost management: it ran from 10 October to 21 November 2014, with 52 responses. The final consultation dealt with the proposed employer cost cap of 14.6% and associated methodology and assumptions. This consultation ran from 19 December 2014 to 2 January 2015.

27. Given that the third consultation process coincided closely with the holiday period at Christmas and New Year, we obtained further information from DCLG about the timing of the process which we are publishing at Appendix 3.

---

[15] http://webarchive.nationalarchives.gov.uk/20140402142426/http:/www.oft.gov.uk/OFTwork/markets-work/pensions/

[16] These are charge structures where the charge imposed on a member is increased when they stop contributing to the scheme, for instance because they have left that employment.

Public Contracts Regulations 2015 (SI 2015/102)

28. In Europe, public authorities spend around 18% of Gross Domestic Product on supplies, works and services. A major review of procurement procedures in 2011 has led to three new Directives:

- Directive 2014/24/EU on public procurement, replacing the 2004 Directive for Public Sector Contracts;
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, replacing the 2004 Directive for Utilities Contracts;
- Directive 2014/23/EU on the award of concession contracts.

29. These Regulations are the first of three instruments needed to transpose the new, simplified requirements and implement the modernised rules for procurement contracts by public authorities in particular for contracts above 750,000 Euros. They also re-enact the relevant provisions of the Remedies Directives (Directive 89/665/EEC as amended) previously implemented in the UK by the Public Contracts Regulations 2009, and they provide for new flexibility to limit competition for certain services contracts and to encourage certain organisations such as fledgling social enterprises to bid for government contracts. In addition, the Directives encourage electronic procurement techniques, improve safeguards against corruption and aim to enhance participation by small firms by, for example, encouraging buyers to break contracts into lots to facilitate small firms' participation.

30. The Directives do not require transposition until April 2016 but these Regulations come into effect from 26 February 2015 because the simplification measures proposed are seen as advantageous to all concerned. However, regulation 120 defers the application of these requirements to procurement by NHS England or Clinical Commissioning Groups of NHS healthcare services until 18 April 2016 to allow service commissioners the necessary time to adapt.

Elections (Policy Development Grants Scheme) (Amendment) Order 2015 (SI 2015/128)
Elections (Policy Development Grants Scheme) (Amendment) (No 2) Order 2015 (SI 2015/302)

31. Policy development grants were created under the Political Parties, Elections and Referendums Act 2000 to help parties in developing the policies they wish to include in manifestos for elections. The total grant is £2 million per year and is distributed using a formula based on parties' representation and performance at European, national and devolved legislature elections. As a consequence of the referendum on the independence of Scotland on 18 September 2014 and the introduction of individual electoral registration, the results of the annual canvass in Scotland, which would normally be published by 1 December, have been delayed until 2 March 2015. In addition, one of the criteria to be eligible for the grant is that a party must have at least two sitting Members of the House of Commons: following the Rochester by-election the UK Independence Party now meets that requirement. These Regulations make a variation to the Scheme to accommodate those changes.

32. These instruments provide another example of poor checking by Departments: the Cabinet Office laid the original order SI 2015/128 on 5 February 2015 but had to revoke and replace it on 18 February 2015 with SI 2015/302 because of drafting errors in the original instrument.

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

Broadcasting Act 1996 (Renewal of Local Radio Multiplex Licences) Regulations 2015

Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015

Community Infrastructure Levy (Amendment) Regulations 2015

Drug Driving (Specified Limits) (England and Wales) (Amendment) Regulations 2015

Emissions Performance Standard Regulations 2015

Immigration and Nationality (Fees) Order 2015

Local Audit and Accountability Act 2014 (Special Trustees) Amendment Regulations 2015

Occupational Pension Schemes (Charges and Governance) Regulations 2015

Restraint Orders (Legal Aid Exception and Relevant Legal Aid Payments) Regulations 2015

Statistics and Registration Service Act 2007 (Disclosure of Revenue Information) Regulations 2015

Draft instruments subject to annulment

Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015

Instruments subject to annulment

Cm 9008	Human Rights–Protocol of 2014 to the Forced Labour Convention, 1930
Cm 9010	Missing Persons–Agreement on the Status and Functions of the International Commission on Missing Persons
SI 2015/57	Local Government Pension Scheme (Amendment) (Governance) Regulations 2015
SI 2015/59	Use of Invalid Carriages on Highways (Amendment) (England and Scotland) Regulations 2015
SI 2015/66	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2015
SI 2015/67	Social Security (Miscellaneous Amendments) Regulations 2015

SI 2015/68	Merchant Shipping (Miscellaneous Safety) (Revocations) Regulations 2015
SI 2015/84	Occupational Pension Schemes (Levies) (Amendment) Regulations 2015
SI 2015/87	Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2015
SI 2015/92	General Medical Council (Maximum Period of Provisional Registration) Regulations Order of Council 2015
SI 2015/93	Health and Care Professions Council (Registration and Fees) (Amendment) Rules Order of Council 2015
SI 2015/97	Export Control (Various Amendments) Order 2015
SI 2015/98	Noise Emission in the Environment by Equipment for use Outdoors (Amendment) Regulations 2015
SI 2015/100	Electricity (Exemption from the Requirement for a Generation Licence) (Ferrybridge MFE) (England and Wales) Order 2015
SI 2015/102	Public Contracts Regulations 2015
SI 2015/103	Local Elections (Principal Areas) (England and Wales) (Amendment) Rules 2015
SI 2015/104	Local Elections (Parishes and Communities) (England and Wales) (Amendment) Rules 2015
SI 2015/106	Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2015
SI 2015/109	Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2015
SI 2015/117	Registration of Births, Deaths and Marriages and Registration of Civil Partnerships (Fees) (Amendment) Order 2015
SI 2015/122	Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015
SI 2015/123	Referral of Proposed Marriages and Civil Partnerships Regulations 2015
SI 2015/126	Antarctic (Recognised Assistance Dog) Regulations 2015
SI 2015/128	Elections (Policy Development Grants Scheme) (Amendment) Order 2015
SI 2015/132	Yarmouth (Isle of Wight) Harbour Commissioners (Removal of Pilotage Functions) Order 2015
SI 2015/302	Elections (Policy Development Grants Scheme) (Amendment) (No. 2) Order 2015
SR 2015/29	Police (Northern Ireland) Act 2000 (Designated Places of Detention: Lay Visitors) Order 2015

APPENDIX 1: DRAFT ENERGY EFFICIENCY (DOMESTIC PRIVATE RENTED PROPERTY) ORDER 2015 AND DRAFT ENERGY EFFICIENCY (PRIVATE RENTED PROPERTY) (ENGLAND AND WALES) REGULATIONS 2015

Additional Information from the Department for Energy and Climate Change

Q1: In the Explanatory Memorandum, you state: "8.2 The Department carried out a public consultation on the provisions in this instrument for six weeks, between 22nd July and 2nd September 2014, seeking views across England and Wales. Cabinet Office guidance states that the amount of time required for consultation depends on the nature and impact of the proposals, and might typically vary between two and 12 weeks. A six week public consultation on the provisions in this instrument was considered appropriate given the extensive engagement undertaken by the Department with key sector representative bodies, through the sector working groups, and direct engagement with interested parties."

At least four of the six weeks allowed for this consultation process fell in August, a holiday period. The Cabinet Office consultation principles include the following: "Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action." The principles are footnoted to say: "Holiday period assumptions: Easter = 5 Working Days (1 Week); Summer (August) = 22 Working Days (4.2 Weeks); Christmas = 6 Working Days (1.1 Week)."

In the case of DECC's consultation in relation to these Regulations, did you consider taking appropriate mitigating action because of the holiday period? If not, why not? Did any consultation respondents criticise the timing of the consultation process?

A1: The Department undertook extensive consultation with interested parties prior to, and during, the formal public consultation period. The Department set up two sector working groups in February 2013 which comprised a broad range of interested parties, including tenant, landlord, property professionals and environmental groups. The groups met monthly until September 2013, and the minutes of these groups were placed in the public domain through gov.uk webpages, and information about this early engagement work was provided to those who expressed an interest, and shared through stakeholder networks. The final recommendation reports, also published on the gov.uk website contained extensive information about issues and options for the policy design. During this time, the Department also ran a range of meetings with interested parties to consider specific issues.

Cabinet Office guidance is clear that there is no set formula for the length of public consultation, but does provide a range of factors to consider in setting the length of public consultation. Given the extensive pre-consultation engagement and development of strong stakeholder networks, the Department considered that six weeks was sufficient. Whilst the timing did encompass a holiday period, officials ensured that stakeholders had sufficient capacity to provide feedback. In order to raise awareness of the regulations, the Department undertook blog and social media posts, and supported stakeholders to provide feedback, including the provision of information for stakeholders to engage their networks. Furthermore,

officials attended stakeholder events, hosted workshops and undertook webinars for those not able to attend sessions in person.

A very small minority of respondents made reference to the timing of the consultation, or sought extensions to the deadline. For those that suggested that they required more time, officials offered to consider feedback received shortly after the deadline, subject to their being sufficient capacity to do so, but were clear that only views provided within the set consultation period would be guaranteed to be considered.

Q2: In the Department's response to the consultation process, you state: "Question 9: What evidence is there that a tenant could be at risk of eviction as a consequence of making a request for consent for energy efficiency measures? If it exists, how could risk of eviction be mitigated? Summary of responses: Of the 48 respondents who answered this question, 79% (38 respondents) thought that there is a risk of eviction as a consequence of the tenant's right to request improvements under the regulations…Government response: The Government wishes to ensure that tenants are not unfairly penalised in any way, such as through retaliatory eviction, by making legitimate requests. However, the Government considers that there is little in the nature of the tenant's request process that is disadvantageous to the landlord, as the tenant is making the request to improve the landlord's property, ensuring any improvements are funded at no upfront cost to the landlord."

Did DECC make no changes to the Regulations in the light of concern voiced about the risk of eviction? Does DECC disagree with the 79% of respondents who thought that there was a risk of eviction as a consequence of the tenant's right to request improvements under the regulations?

A2: On 5 February 2015 the Government announced it is taking steps to protect tenants from retaliatory eviction through amendment of the Deregulation Bill. It is envisaged that under these plans, a landlord would not be permitted to evict a tenant in England in certain circumstances, including where they have raised a legitimate complaint about the condition of the property and a Local Authority has issued a notice confirming that the repair needs to be carried out to avoid a risk to health and safety (Improvement Notice or Notice of Emergency Remedial Action). Such provisions will help to ensure that tenants are not unfairly forced from their homes when raising a legitimate complaint about the condition of a property.

Concerns about retaliatory eviction in the private rented sector underpinned many respondents' view that the new tenant's right to request consent to energy efficiency improvements would leave tenants vulnerable. However, under Part 2 of these draft regulations, tenants would only be able to make a request where they are a) seeking to implement energy efficiency improvements, and b) willing to fund these improvements. In this situation, there would be little incentive to evict a tenant, as they would be seeking a landlord's permission to improve the landlord's property and pay for it. Furthermore, if the property is of poor energy efficiency, evicting a tenant would only mean delaying undertaking an upgrade at a later date once the provisions in Part 3 of these regulations apply. Therefore a tenant exercising their right to request consent is fundamentally different to where a tenant is making a complaint, or asking a landlord to incur an expense to rectify an issue, and steps are being taken separately through the Deregulatory Reform Bill to manage these.

Making a request is always voluntary for tenants, and the Department intends to work with relevant bodies to ensure that tenants are provided with guidance on how to make a request.

Q3: In the Explanatory Memorandum you also say: "The PR Regulations and the PR Order are the first instruments to be made using the powers conferred by Chapter 2 of the Energy Act 2011 ("the Act"). At the time of laying the PR Regulations and the PR Order, Chapter 2 of the Act will not have come into force but the Secretary of State will make a Commencement Order bringing into force the relevant provisions of that Chapter before making either instrument."

Why has DECC waited for over 3 years before bringing Chapter 2 of the Energy Act 2011 into force, and making these Regulations under the powers in that Chapter? An article in "The Guardian" on 5 February 2015 says that the Secretary of State at DECC "said he wished the regulations had been brought in earlier – the proposal dates back to 2010 – but battles within the coalition had delayed it. 'Not everyone in this government wants more regulation. But in energy efficiency, regulations play a crucial role.'" Is this an accurate quotation; and, if so, is this the reason why the Regulations have been laid so late in this Parliament?

A3: The Energy Act 2011 requires that the tenants' energy efficiency improvement regulations are in place by 1 April 2016, and minimum energy efficiency standard regulations by 1 April 2018. The regulations do not need to be laid this Parliamentary term in order for these requirements to be met. Nevertheless, it is the Department's view that in consulting and laying the regulations well before these deadlines, the sector will benefit from early warning on the detailed requirements, allowing them time to prepare well before the provisions apply. This is why the Department began developing its proposals for the regulations soon after the Green Deal scheme was launched in January 2013, with the creation of stakeholder working groups in February 2013. It was necessary to launch the Green Deal scheme before beginning the work to develop the PRS regulations, as the Green Deal is an important part of the PRS regulatory proposals. The process of engagement was also important to ensure that the policy took into account sector views, informing our consultation proposals.

As with any proposals of this nature, it was necessary to obtain Cabinet Committee agreement to the PR Regulations. As part of this process it was necessary to work across Government to ensure that a range of perspectives were taken into account. As can be the case with complex and cross-cutting policy issues, this process took longer than the standard 10-day write around in order to ensure that the policy positions of all Departments with an interest were properly considered and reflected in the final Regulations.

11 February 2015

APPENDIX 2: GAMING MACHINE (CIRCUMSTANCES OF USE) (AMENDMENT) REGULATIONS (SI 2015/121)

Additional information from the Department for Culture, Media and Sport

Q1: In the Explanatory Memorandum, you state: "In April 2014, the Government announced its intention to introduce a new requirement that those accessing higher stakes on B2 machines (over £50) to load cash via staff interaction or use account-based play." Why has DCMS chosen to implement this new requirement only from April 2015, a full year after making this announcement?

A1: Upon announcing these measures in April 2014, Government said that it expected changes to take effect from October 2014. There are three points to make on this: we progressed the regulations as fast as could be achieved to refine and agree the change, and progress it through the EU and Parliamentary processes; the process to implement legislation, including a standstill period under the EU Technical standards process, is complex and often subject to unanticipated delays; there were additional complexities related to the time it would take for gaming machine suppliers to implement the necessary technical changes required on the machines.

Q2: It has been reported that there is a submission from some 93 local councils, asking the Government to be able to cut the FOBT stake to £2, because of concerns about anti-social behaviour, crime and problem gambling in their areas. What is the state of play of this submission?

A2: On 28 November Newham Council submitted a proposal to the Department for Communities and Local Government (DCLG) under the Sustainable Communities Act 2007 to reduce the maximum bet per spin on Fixed-Odds Betting Terminals (FOBTs) in betting shops from £100 to £2. DCLG accepted the proposal for consideration on 2 December and have 6 months to respond, but must do so in this Parliament. As the lead department, DCMS will provide policy advice to DCLG to inform the response. We are currently formulating our advice and will input to DCLG in due course.

11 February 2015

APPENDIX 3: LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) (GOVERNANCE) REGULATIONS 2015 (SI 2015/57)

Additional Information from the Department for Communities and Local Government

Q: The Committee takes a close interest in the handling of consultation by Government Departments and has made its view known that consultation periods should not be shorter than six weeks, save in exceptional circumstances. Why did the Department allow so short a period for the third consultation? Why does no allowance seem to have been given for timing this consultation over a holiday period? Did any consultation respondents criticise the timing of the consultation?

A: Before responding to the three specific matters raised by the Committee, it might be helpful to say something about the context within which this additional consultation was undertaken over the holiday period.

On 1st April 2014, the new reformed Local Government Pension Scheme came into operation. However, three key elements - the governance provisions required under the Public Service Pensions Act and Treasury directions; the employer cost cap process; and the internal cost control arrangement to be managed by the new Scheme Advisory Board - had yet to be introduced.

At the time of the first consultation on draft regulations in June 2014, the Scheme valuation process required under Treasury Directions had yet to be concluded and discussions with the Scheme's Shadow Advisory Board, comprising representatives of all the main interested parties, on the internal cost control arrangements were still in progress. The main interested parties on the Shadow Advisory Board include representatives of the there main local government trade unions (UNISON, GMB and UNITE); employers in the local government, non-local government and education sectors and a pension fund practitioner. Representatives from DCLG, CIPFA, the Pensions Regulator, the Association of Consulting Actuaries and the Government Actuary's Department attend as observers.

By the time of the second consultation in October 2014, agreement had been reached with the Shadow Advisory Board on the procedure for both the employer cost cap and internal cost arrangement arrangements, However, in the case of the former, the employer cost cap figure under draft Regulation 115(1) had yet to be finalised by the Government Actuary's Department. As explained at paragraph 2.14 of the October 2014 consultation document, the proposed employer cost cap was to be issued as part of the draft report published by the Government Actuary's Department in accordance with The Public Service Pensions (Valuations and Employer Cost cap) Directions 2014.

The 2014 Direction required the Government Actuary's Department in its capacity as the scheme actuary, to undertake a valuation of the scheme in accordance with the methodology and assumptions set out in the 2014 Direction and to prepare a valuation report including the scheme's proposed employer cost cap figure.

In preparation of the valuation report, the Government Actuary's Department published two draft papers: "Advice on Assumptions" and the "Report on methodology". These were circulated for consultation to the Cost Management and Contributions sub-committee of the Shadow Advisory Board in April 2014 and November 2014 respectively.

At a meeting on 7th November 2014, the Cost Management and Contributions sub-committee of the Shadow Advisory Board discussed the two papers referred to above and invited members to submit comments to the Government Actuary's Department by 21st November. None of the sub-committee members had any comments to make in response to either paper or the draft valuation report, including the proposed employer cost cap figure of 14.6%. Our approach to the third consultation is perhaps endorsed by the fact that those representatives of the interested parties who had already been so closely involved in the process by which the employer cost cap had been reached, and who had been given advance notice of the outcome of the calculation had nothing further to say during the additional public consultation time allowed on 19th December.

It is important to note therefore that the third consultation between 19th December 2014 and 2nd January 2015 was a very limited exercise to invite comment on the proposed employer cost cap figure of 14.6% which had not been established at the time the second iteration of the draft regulations were issued for consultation on 10th October 2014. It is our view that, in light of the earlier consultation on the underlying methodology and assumptions, that there was no requirement for further consultation on the final proposed cost cap figure of 14.6% which emerged from the previously agreed methodology and assumptions. However, as has been remarked on by the Committee in respect of earlier consultations on the new Local Government Pension Scheme, the department has gone to great lengths to ensure that scheme interested parties are fully involved in the development of the new Scheme, both in respect of its regulatory framework but also related policy decisions. Despite the unfortunate timing, the decision was nevertheless taken to give the bodies which had been involved in the earlier consultations a final opportunity to comment on the proposed employer cost cap figure.

Why the Department allowed so short a period for the third consultation

Publication of the proposed employer cost cap was just one element of a major set of new regulations on scheme governance requiring the Department to establish a new Scheme Advisory Board by 1st April 2015 and to include in scheme regulations a requirement for the 89 pension fund authorities in England and Wales to establish local pension boards by the same date. To ensure that the new local pension boards are established by the statutory deadline of 1st April 2015, the pension fund authorities responsible for establishing these local boards were encouraged throughout the consultation process to start their preparation on the basis of the draft regulations issued in June and October 2014. But to give authorities the statutory authority they would need to finalise their arrangements, it was clear that the regulations had to be introduced at the earliest possible opportunity.

The regulations in question could not be made until the draft Valuation Report had been finalised by the Government Actuary's Department in November 2014 and issued to scheme interested parties for comment. The draft report was issued to scheme interested parties for comment on 19th December 2014.

The decision to allow a three week period for scheme interested parties to comment on the proposed employer cost cap was therefore based on both the need to introduce the amending regulations, of which the employer cost cap was just one small element, in sufficient time to give the Department and pension fund authorities the time to establish the new bodies in time for 1st April 2015 and also

taking into consideration the earlier consultations on the underlying methodology and assumptions on which the proposed employer cost cap figure has been calculated.

Why no allowance has been given for timing this consultation over a holiday period

Scheme interested parties had been advised in the October consultation that they would be invited at some time in the future to comment on the employer cost cap figure emerging from the Government Actuary's Department draft report.

The effect of extending the period for comments on the employer cost cap figure over the holiday break beyond the three weeks given would have been to delay the introduction of the amending regulations until late February 2015, with serious repercussions on the timetable for establishing the new Scheme Advisory Board and 89 local pension boards by 1st April 2015.

In the circumstances, the Department considered that these represented exceptional circumstances which justified the three week period given over the holiday period for comments to be submitted on the proposed employer cost cap figure.

It was unfortunate that the period of time for comment fell around the holiday period but at the time, it was felt appropriate to allow the bodies which had been involved throughout the process of arriving at the proposed employer cost cap figure a final opportunity to ensure that nothing had been missed.

Whether any consultation respondents criticised the timing of the consultation.

Four responses were received from The London Pensions Fund Authority, the West Midlands Pension Fund Authority, Mercers Actuaries and the Association of Colleges. None of these criticised the timing of the consultation.

19 February 2015

APPENDIX 4: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 24 February 2015 Members declared the following interests:

Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015/57)

Baroness Hamwee
Joint President, London Councils

Attendance:

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