Draft Greater Manchester Combined Authority (Amendment) Order 2015

Draft Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015

Draft Standardised Packaging of Tobacco Products Regulations 2015

Statement of Changes in Immigration Rules

Includes 9 Information Paragraphs on 10 Instruments

Ordered to be printed 10 March 2015 and published 12 March 2015

Published by the Authority of the House of Lords

London: The Stationery Office Limited

HL Paper 133
Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

Historical Note

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

The Committee has the following terms of reference:

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

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

(3) The exceptions are—
   (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
   (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
   (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

(4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.

(5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

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

Registered interests

Information about interests of Committee Members can be found in Appendix 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

Twenty Ninth 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 Greater Manchester Combined Authority (Amendment) Order 2015

Date laid: 25 February 2015

Parliamentary Procedure: affirmative

Summary: This Order proposes the appointment of an additional member of the Greater Manchester Combined Authority, who will chair the Authority and be known as the Interim Mayor. It follows from the devolution agreement concluded between the Government and Greater Manchester in November 2014. The scale of the powers to be devolved to the Authority is potentially very far-reaching. The Department has progressed the policy implemented in this Order at a pace which may have left insufficient time for local communities to understand the full implications. The House will have an opportunity to consider these issues when the draft Order is debated; it may well wish to press the Government for greater clarity about their intentions for primary legislation in relation to the future of the Authority, and about enabling local communities to express their views on these intentions.

We draw this Order to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

1. The Greater Manchester Combined Authority (“the GMCA”) was established following approval of the draft Greater Manchester Combined Authority Order 2011 (“the 2011 Order”: made as SI 2011/908), which came into force on 1 April 2011. In the Explanatory Memorandum published alongside the 2011 Order, the Department for Communities and Local Government (DCLG) said that the GCMA would be established to exercise economic development and regeneration and transport functions. The House considered the 2011 Order in Grand Committee on 16 March 2011.1 We note that, on that occasion, Lord Taylor of Holbeach, speaking for the Government, said: “The noble Lord, Lord Beecham, asked me about a city mayor. As he will know, there are no powers in the order to elect a mayor. Currently, a mayor can be directly elected only for a single authority and on the basis of a referendum. The noble Lord may have been talking about a primus inter pares. I doubt that that would necessarily be appropriate in this area.”2

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1 HL Deb, 16 Mar 2011, col GC91.
2. On 25 February of this year, DCLG laid the latest draft Order, also with an EM. In amending the 2011 Order, the instrument proposes the appointment of an additional member of the GMCA, who will chair the GMCA and be known as the Interim Mayor. It also provides for the eligibility criteria, appointment process, payment of allowances, term of appointment and procedures concerning resignation and termination for the Interim Mayor; and amends the voting provisions for the GMCA.

3. The latest Order has come forward against the background of the conclusion, on 3 November 2014, of a devolution agreement between the Government and Greater Manchester. The agreement provided for an offer of powers and budgets from Government, on the basis that Greater Manchester would deliver certain reforms, including the adoption of a model of a directly elected mayor covering the whole of the Greater Manchester area. The agreement provides that “as an interim stage, as soon as Parliamentary time allows, steps will be taken to amend the Combined Authority order to create an eleventh leader as Chair, who will be the appointed Mayor until a Mayor is elected.” This is an interim governance arrangement to be replaced when primary legislation is in place.

4. In the EM, the Department says that it sought views from local councils and business representatives between 23 January and 13 February 2015; and that all respondents considered that the proposed appointment of an additional member to chair the GMCA would be likely to enable the Authority to make faster progress in driving reform and growth, and support an evolutionary approach to absorbing the additional powers. **We note that this was only a three-week consultation, and that views were actively sought only from local government and business organisations. While in the EM DCLG says that the consultation document was placed on the Government’s website, and that comments from the public were welcomed, we would comment that the greatly curtailed timescale for consultation was hardly conducive to such input.**

5. It is clear that, since the 2011 Order came into force, there has been a significant change in the Government’s views about the powers and budgets which may be offered to the GMCA, and about the appropriate governance arrangements. In the November 2014 devolution agreement, there is reference for example to giving the GMCA the “opportunity to be a joint commissioner with Department for Work and Pensions (DWP) for the next phase of the Work Programme”, and also for the “GMCA and Greater Manchester Clinical Commissioning Groups [to] be invited to develop a business plan for the integration of health and social care across Greater Manchester, based on control of existing health and social care budgets”.

6. While the Interim Mayor will be appointed, not elected, DCLG recognises in the EM to the latest Order that “the appointment of an eleventh member to chair the [GMCA’s] board would enhance the leadership capacity of the [GMCA]”. In other words, the Interim Mayor will enjoy the “primus inter pares” status which Lord Taylor of Holbeach saw as not necessarily appropriate in the Grand Committee debate on the 2011 Order.

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7. The Department has acknowledged that the creation by this Order of an Interim Mayor for the GMCA is only an interim measure, which is intended to be superseded by primary legislation. **We would comment that the scale of the powers to be devolved to the authority to be chaired by the Interim Mayor is potentially very far-reaching, and that the Department has progressed the policy implemented in this Order at a pace which may have left insufficient time for local communities to understand the full implications of the changes being made. The House will have an opportunity to consider these issues when the draft Order is debated; it may well wish to press the Government for greater clarity about their intentions for primary legislation in relation to the future of the Greater Manchester Combined Authority, and about enabling local communities to express their views on these intentions.**

B. **Draft Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015**

*Date laid: 25 February 2015*

*Parliamentary Procedure: affirmative*

**Summary:** This Order prohibits local authorities in England from charging their residents either to enter into, or exit from, household waste recycling centres, or to deposit household waste or recycling at such centres. The Department for Communities and Local Government consulted over four weeks, from 22 January to 18 February 2015: one in five of the respondents criticised the period allowed to respond. We find it markedly self-serving that the Department has nonetheless declared itself satisfied with the timing.

Concern has been expressed by Hampshire County Council that, if the Order is implemented, local authorities will have no viable alternative option but to consider site closures, resulting in increased fly-tipping and backyard burning. In our view, such concerns deserve more careful consideration than appears to have been given by the Department.

We draw this Order to the special attention of the House on the grounds that there appear to be inadequacies in the consultation process which relates to the instrument; and that it may imperfectly achieve its policy objective.

8. The Department for Communities and Local Government (DCLG) has laid this draft Order with an Explanatory Memorandum (EM). The Order proposes to prohibit certain local authorities in England from charging their residents either to enter into, or exit from, household waste recycling centres (more commonly known as civic amenity sites, tips or dumps), or to deposit household waste or recycling at such centres.

9. In the EM, DCLG says that the Order reinforces the principle that household waste recycling centres should be free to use, as the Government are aware that some local authorities have introduced, or plan to introduce, a charge to anybody accessing certain household waste recycling centres to deposit household waste and/or recycling. DCLG understands that those local authorities argue that such centres are additional to the centres which they are required to provide under the Environmental Protection Act 1990 (“the 1990 Act”), and that they are provided as a discretionary service using
powers outside the 1990 Act. By classifying such household waste recycling centres as discretionary, those local authorities are understood to be charging, or proposing to introduce charges, through powers in the Localism Act 2011.

10. DCLG states that it does not wish existing household waste recycling centres to close as a result of the Order, so those local authorities currently charging their residents to use household waste recycling centres will have until 1 April 2020 to make alternative arrangements for such sites.

11. The Department consulted over four weeks, from 22 January to 18 February 2015, on “Preventing ‘backdoor’ charging at household waste recycling centres”. In the EM, DCLG says that, whilst a four-week consultation could have meant only a limited response, it made significant attempts to ensure that those who could be affected by the proposals had sight of the discussion paper, including through national media channels. 61 representations were received, and DCLG takes this to suggest that the consultation reached a wide audience, particularly given that a number were submitted by partnerships or umbrella groups on behalf of many more individual members.

12. DCLG says that responses on the proposed prohibition of charging were divided almost equally: 29 respondents supported the proposed approach, 30 opposed it, and two did not offer a view. Points made against the approach included that it was “anti-localist”; that local authorities were under increasing budget pressures; and that, without charges, centres risked being closed. Points made in support included agreement that charging residents to deposit household waste at such centres would lead to an increase in fly-tipping and substantial public costs in investigating and clearing fly-tipped waste; and that charging would harm recycling levels as residents would choose to put recyclable items in their residual waste. The Department says that it is not persuaded by the arguments of those respondents opposing the approach. It remains of the view that such charges would not only inconvenience local residents and make recycling harder for them, but would actively harm the environment, by encouraging fly-tipping and backyard burning. It adds that, having given due consideration to the responses received to the consultation, the Secretary of State for Communities and Local Government is introducing this secondary legislation.

13. We obtained further information from the Department about the background to the decision to lay this Order, which we are publishing as Appendix 1. In response to a question about which local authorities have introduced, or plan to introduce, the type of charge prohibited by the Order, DCLG has said that the Somerset Waste Partnership has introduced a £2 entry charge at two of its sites; Norfolk County Council has plans to introduce such charges at nine of its household waste recycling centres from April 2016; and the Dorset Waste Partnership is currently consulting on introducing such charging for entry at one or more of its household waste recycling centres. The limited extent to which such charges are in force was underlined by the Department’s answer to a question which we put about what assessment had been made of the impact on local authority finances of the prohibition. DCLG told us that its New Burdens Team, which assesses the impact on local authority finances of new legislation, considered that the prohibition would have little or no impact on local authority finances since only one local authority had introduced such a charge.
14. As we stated in our report on the Government’s review of consultation principles, we are clear that six weeks should be regarded as the minimum feasible consultation period, save in very exceptional cases. We do not see the consultation related to this Order as an exceptional case; indeed, given the significant intervention proposed in local authorities’ powers, we would consider it appropriate to have allowed longer than six weeks. DCLG has told us that the Government are satisfied that four weeks were sufficient for the consultation. However, in response to our question, the Department has now said that: “of the 61 responses received, 13 respondents raised the issue of the time available to make representations. County councils and representative bodies in particular felt four weeks was too short and restricted their ability to provide detailed input from their partners and/or members on such an important issue.” We find it markedly self-serving that, when one in five of respondents to a consultation criticise the period allowed to respond, the Department declares itself satisfied with the timing.

15. In the report of our inquiry into Government consultation practice, we highlighted the need for Departments to allow a period between the end of consultation and the laying of a statutory instrument to consider the responses received. In his evidence to us, the Rt Hon Oliver Letwin, MP, Minister for Government Policy, agreed that this should normally be the case. As regards this Order, consultation process ended on 18 February, and the instrument was laid on 25 February. We asked DCLG whether the due consideration of the responses mentioned in the EM was carried out in the intervening period, and were given the following answer:

“The Government is satisfied that due consideration was carried out. Ministers wanted quick progress. Responses were noted, looked at in detail when received, and considered as and when they arrived with two responses arriving after the closing date also being considered. We made sure that the necessary resources were available to complete robust consideration and analysis of responses during the consultation period and as soon as the consultation closed. The consultation document, which contains an overview of the responses received, was considered before the Secretary of State made his decision to make the Order. The length of the period before publication of consultation responses does not of itself indicate the resources devoted to/time spent on it.”

16. The answer provides an interesting insight into the Department’s method of analysing consultation responses, but we note in particular that “Ministers wanted quick progress”. Pressure to move ahead rapidly seems a likely explanation for allowing such a short period for the consultation process itself. In our consultation practice report, we referred to the pressure on Departments to expedite the work of Government. However, we stressed the fact that the Government’s business is not only to drive through its chosen programme, but also to respect the interests of civil society; and we said that Government must ensure that consultation is handled in a way which balances the interests of all concerned, and is perceived as doing so. We do

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6 Ibid.
not consider that the Department for Communities and Local Government handled the consultation process related to this Order in a sufficiently balanced manner.

17. In its 2015 consultation, DCLG invited views on how household waste recycling centres at risk of closure could stay open if local authorities were prohibited from charging their residents to dispose of household waste and recycling. In the EM to the Order, the Department lists what it describes as helpful ideas offered by respondents; these are also set out in the Government response to the consultation process published on 4 March. See: https://www.gov.uk/government/consultations/preventing-backdoor-charging-at-household-waste-recycling-centres

18. We have received representations about the instrument from Hampshire County Council (HCC), which we are reproducing at Appendix 2. We note that HCC states that the suggested options for keeping these centres open are not considered viable by many in the sector, and that HCC believes that further time should be given to consider the future service options, in consultation with the local residents, in order to determine how to retain the level and quality of household waste recycling centre services. We further note HCC’s concern that, if the Order is implemented, local authorities will have no viable alternative option but to consider site closures, resulting in increased fly-tipping and backyard burning. In our view, such concerns deserve more careful consideration than appears to have been given by the Department; and that implementing the prohibition proposed in the Order runs the risk of causing, rather than preventing, harm to the environment, and thus may imperfectly achieve the policy objective of environmental protection.

C. **Draft Standardised Packaging of Tobacco Products Regulations 2015**

*Date laid: 23 February 2015*

*Parliamentary Procedure: affirmative*

**Summary:** The instrument proposes that cigarettes and tobacco products should only be sold in packaging of a stated dimension and uniform appearance as a means of discouraging smoking, particularly as a means to discourage children from starting to smoke. It also prevents packages being sold containing less than 20 cigarettes or 30 grams of hand rolling tobacco. The European Tobacco Products Directive ("the Directive"), which this instrument implements in part, forbids any statement on the packaging that claims any beneficial health or environmental effects, or suggests that this product is less harmful than others. It also prevents any feature that offers any economic benefit (for example money-off vouchers or two-for-one offers). Article 13 of the Directive states that the elements and features that are prohibited may include text, symbols, names, trademarks and figurative or other signs. The tobacco industry is concerned that the Department is going beyond the requirements of the Directive and acting in restraint of trade, but the Department refutes this on the grounds that the instrument includes domestic policy that was consulted on before the European legislation was promulgated.
These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

19. This instrument has been laid by the Department of Health (DH) under provisions of the Children and Families Act 2014. It also implements provisions in the European Tobacco Products Directive 2014/40/EU (“the Directive”) under section 2(2) of the European Communities Act 1972, which must be transposed by 20 May 2016 and in full effect after 20 May 2017. The instrument is accompanied by an Explanatory Memorandum (EM), a Transposition Note and an Impact Assessment (IA).

Background

20. The instrument proposes that cigarettes and tobacco products should only be sold in packaging of a stated dimension and uniform appearance as a means of discouraging smoking, particularly as a means to discourage children from starting to smoke. It also prevents packages being sold containing less than 20 cigarettes or 30 grams of hand rolling tobacco. The Directive forbids any statement on the packaging that claims any beneficial health or environmental effects, or suggests that this product is less harmful than others. It also prevents any feature that offers any economic benefit (for example money-off vouchers or two-for-one offers). Article 13 of the Directive states that the elements and features that are prohibited may include texts, symbols, names, trademarks and figurative or other signs.

21. The Directive states that cigarette packages must be cuboid, have a hinged lid and be not less than 16mm in height (see regulation 8). Regulation 7 includes additional domestic provisions which limit packaging to a uniform brown colour and regulation 3 limits the text written on the pack to Helvetica font of a specific size.

22. The legislation is to come into effect on 20 May 2016 to coincide with the implementation of the Directive and a further 12 months is allowed for existing stocks to be used up.

DH evidence for this policy

23. In support of this policy, DH cite the findings of the Chantler Report published in April 2014 (further detail is given in pages 24–26 of the IA). The review invited interested parties to submit research-based material, and took evidence during two meetings. Sir Cyril Chantler also visited Australia to study its experience of implementing standardised packaging. Sir Cyril was “satisfied that the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time on the uptake and prevalence of smoking and thus have a positive impact on public health”. The Report identified a large number of studies which have tested the possible effect of standardised packaging and which have shown that:

- Standardised packaging is less appealing than branded packaging;
- Graphic and text health warnings are more credible and memorable on standardised packaging than when juxtaposed with attractive branding;
- Whereas colours and descriptors on branded packaging confuse smokers into falsely perceiving some products as lighter and therefore “healthier”,
products in standardised packages are more likely to be perceived as harmful.

24. Various industry groups have expressed the view that standardised packaging will be easier to counterfeit and will encourage illicit trade in tobacco products. The Chantler Review was not convinced by this argument and found that “there is no evidence that standardised packaging is easier to counterfeit, and indeed in Australia, hardly any counterfeit standardised packages have been found to date”.

The emerging findings of applying the policy in Australia

25. In Australia cigarettes have been sold in plain packaging since 1 December 2012 (further detail is given in pages 26–28 of the IA). The latest official statistics on smoking rates in Australia were published in 2014 and show that over the 2010 to 2013 period:

- daily smoking declined significantly from 15.1% to 12.8% (people aged 14+);
- the proportion of 18–24 year olds who have never smoked increased significantly;
- younger people who do smoke are delaying the take-up of smoking; and
- smokers reduced the number of cigarettes smoked per week.

More recent statistics were published by the Cancer Council Victoria on 2 March 2015.8

26. The Department states that the scientific journal *Addiction* recently published a collection of peer-reviewed research papers and commentaries, which included evidence that, following Australia’s 2012 policy of plain packaging and larger pictorial health warnings on cigarette and tobacco packs, smoking in outdoor areas of cafés, restaurants, and bars declined, and fewer people left their packs clearly visible on tables.9

The industry’s objections to the legislation

27. The tobacco industry set out its legal objections to the measure in its responses to the public consultation in 2014. The industry claims that the policy could constitute a “barrier to trade” under EU law, a deprivation of intellectual property rights and a contravention of various international and UK laws which provide for the protection of intellectual property. These include the World Trade Organisation (WTO) Agreement on Trade-related Aspects of Intellectual Property (TRIPS), Article 17 of the Charter of Fundamental Rights of the European Union, the WTO’s Agreement on Technical Barriers to Trade (TBT), the Human Rights Act 1988 and section 22 of the UK Trade Mark Act 1994 and Bilateral Trade Agreements.

The tobacco industry also referenced current legal challenges to Australia’s Tobacco Plain Packaging Act, claiming that it infringes various international

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9 This collection of research has been further discussed and summarised in an article on the BBC website which may be of assistance: [http://www.bbc.co.uk/news/health-31439211](http://www.bbc.co.uk/news/health-31439211)
treaty obligations and suggested that DH should wait until the outcome of the WTO dispute resolution proceedings before proceeding in the UK.

28. We note that Article 13 of the Directive explicitly states that the elements and features that are prohibited may include text, symbols, names, trademarks and figurative or other signs, so if the provision does cut across current intellectual property legislation this may be regarded as intentional. Decisions about whether this is legal are for the courts, but the Department states “that it would not be proceeding with the policy if it did not believe it to be defensible in the courts”.

29. Other objections from the industry include loss of income from reduced sales and that the plain packaging will make it difficult to identify the brand selected at the point of sale. In addition to concerns about the potential for an increase in counterfeiting, objections have been raised because these Regulations would exclude “Codentify”, an industry initiative to print a verification code on each pack which, the industry suggests, would help HM Customs and Excise identify genuine products. It is understood however that this scheme is at a pilot stage and, if endorsed, could be added to permitted printing by a simple amendment to the requirements set out in this instrument.

“Gold-plating” the EU Directive?

30. DH states that the instrument does not “gold-plate” the Directive because the legislation has two parts – it incorporates elements of the Directive but also includes domestic policy within the UK. The Department supports this view by drawing attention to the fact that the Government were considering the domestic measure of standardised packaging prior the development of the revised EU Tobacco Products Directive. In Health Lives, Health People, A Tobacco Control Plan for England, published in March 2011, the Government made a commitment to look at whether plain packaging of tobacco products could be effective in reducing the number of young people who take up smoking and in supporting adult smokers who want to quit. The first public consultation on standardised packaging was run in April 2012 and concluded before the negotiations on the revised EU Tobacco Products Directive began, in December 2012. The Government undertook a further public consultation on standardised packaging of tobacco products in June 2014, which was separate from the public consultation on the Directive, which is due to be published in Spring/Summer 2015.

D. Statement of Changes in Immigration Rules (HC 1025)

Date laid: 26 February 2015

Parliamentary Procedure: negative

Summary: This is a substantial document (215 pages) making a wide range of changes. Some are housekeeping measures and some are consequential on the commencement of provisions in the Immigration Act 2014. But there are also some significant changes being made. In particular, from 24 April 2015, the 15 current visitor routes will be consolidated and cut down to four. Other changes will give Home Office caseworkers the power to call in those with leave to stay in the UK to check that they still meet the conditions of their Visa. Also, following concerns, an outline contract is provided for those employing Overseas Workers.
The Committee notes that, apart from the revised Shortage Occupation List for Tier 2, the Explanatory Memorandum indicates very little external consultation on these proposals, which prompted us to question the basis for the Home Office’s statement that these changes will have limited or no impact on business, charities or voluntary bodies. Further information presented a better picture on the consultation process but we remain disappointed by the Home Office’s reluctance to provide the information in the Explanatory Memorandum that Parliament expects when scrutinising an instrument.

This instrument is drawn 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. This instrument has been laid by the Home Office under provisions of the Immigration Act 1971. It is accompanied by an Explanatory Memorandum (EM) which includes a list of the dates on which specific provisions come into effect ranging from the day after laying to 24 April 2015. The Minister also made a written statement on the day the instrument was laid.10

32. This is a substantial document (215 pages) making a wide range of changes. Some are housekeeping measures (for example, updating the list of shortage jobs or approved TB clinics that can scan applicants) and some are consequential on the commencement of provisions in the Immigration Act 2014. But there are also some significant changes being made. In particular, from 24 April 2015, the 15 current visitor routes will be consolidated and cut down to four:

- visitor (standard),
- visitor for marriage or civil partnership,
- visitor for permitted paid engagement and
- transit visitor.

33. The permitted duration of the visit and the conditions that apply are set out from page 184 onwards. Similar revisions have been undertaken to the student visitor routes to combine them in a route for short-term study (see Part 3 of the Rules and page 10 onwards of the instrument).

34. Another new addition includes a provision to allow caseworkers to require people with limited leave to be in the UK to provide evidence and or attend an interview in order to demonstrate that they continue to meet the requirements of the Immigration Rules. To overcome the difficulties experienced when trying to deport people, a new requirement makes it a condition of a valid application for leave to remain in the UK that the applicant provides an original valid passport or travel document (except for refugees).

35. Following concerns, there is also a new provision that Overseas Domestic Workers have contracts that meet UK employment laws and that they will be paid in accordance with the National Minimum Wage (see the outline contract on page 43 onwards).

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10 HL Written Statements, 26 February 2015, page 6 [HLWS284].
36. We welcome attempts to simplify this extremely complex legislation and make it easier to administer. Members will wish to note that an online consolidation, showing all these changes in context is available at https://www.gov.uk/government/collections/immigration-rules.

Quality of the Explanatory Memorandum

37. While acknowledging that some of these measures relate to national security and are therefore not suitable for public consultation, we note that, apart from the revised Shortage Occupation List for Tier 2, the EM describes very little external consultation on these proposals, which prompted us to question the basis for the Home Office’s statement that these changes will have limited or no impact on business, charities or voluntary bodies.

38. Additional information supplied described a consultation process “sharing high level ideas for redesigning the number of visitor routes with over 100 organisations from a range of sectors”, a range of workshops with “immigration representatives” and sharing the Rules for comment for 8 weeks at the end of 2014. The further information presented a better picture on the consultation, although contributors were selected, but we remain disappointed by the Home Office’s reluctance to provide the information in the Explanatory Memorandum that Parliament expects when scrutinising an instrument.
INSTRUMENTS OF INTEREST

**Draft Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015**

**Draft Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Amount) Regulations 2015**

39. These instruments introduce the same restrictions on the purchase of e-cigarettes by or for children that apply to other tobacco products. The Age of Sale Regulations introduce a minimum age of 18 years for purchasing nicotine inhaling products, also known as electronic cigarettes, and for the liquids used to fill them. A person convicted of selling nicotine inhaling products to someone under the age of 18 will be liable to a fine not exceeding level 4 on the standard scale. The proxy purchasing offence would be committed by someone buying such products on behalf of a child. Local Authority trading standards officers would be responsible for enforcement of the proposed Regulations, assisted by the police as necessary. The Proxy Purchasing Fixed Penalty Amount Regulations set the fine at £90 by means of a fixed penalty notice.

**Civil Procedure (Amendment) Rules 2015 (SI 2015/406)**

40. This instrument amends the Civil Procedure Rules by inserting a new Part 88 containing rules about Temporary Exclusion Order (TEO) proceedings in the High Court, and appeals to the Court of Appeal against such Orders. The Counter-Terrorism and Security Act 2015 received Royal Assent on 12 February 2015 and the power to make TEOs came into force the following day. This instrument is a “made affirmative” and came into force on 27 February 2015. In order to remain in force it must be approved by resolution of each House within 40 days. The Government state that the urgency is due to the need for the police and security services to have immediate access to the power to make TEOs which would not be possible without these Rules having been made. TEOs will be imposed on certain British citizens who are suspected of engagement in terrorism-related activity abroad. They will allow the Government to disrupt temporarily the return to the UK of such individuals and, when the individuals do return, permit the Government to place certain conditions on TEO subjects, such as reporting to a police station or providing details of changes of address. Under these Rules, the courts will have power to quash the TEO, to give directions to the Secretary of State regarding revocation of the TEO or to quash particular obligations imposed on the individual subject to the TEO. The Rules make provision for the use of private hearings, closed material and special advocates in view of the material which may need to be considered.

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11 The 40 days begin on the day the instrument is laid and no account is taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
In our 34th Report of Session 2013–14 (HL Paper 144), we set out our consideration of the draft Public Bodies (Abolition of the Committee on Agricultural Valuation) Order 2014, which proposed to abolish the Advisory Committee on Valuation of Improvements and Tenant–Right Matters (CAV). The CAV was originally established under the Agricultural Holdings Act 1948, to advise Ministers about provisions to be included in regulations on the amount of compensation for improvements etc. to be paid to tenants at the end of an agricultural tenancy in England and Wales. In the Explanatory Document to the Order, the Department for Environment, Food and Rural Affairs (Defra) stated that the CAV had not met for over 20 years, and that, since 2003, advice to Ministers on tenancy matters, including end-of-tenancy compensation, had been provided by the Tenancy Reform Industry Group (TRIG), an informal, non-statutory body with representatives of the main industry organisations and professional bodies.

In our 34th Report, we said that we were content to clear the Order within the 40-day affirmative procedure. We also noted, however, that Defra had decided to press ahead with abolishing the CAV even though the four industry bodies respondents (including TRIG) proposed a delay while the Agriculture (Calculation of Value for Compensation) Regulations 1978 (SI 1978/809) were being amended. Defra told us that it would consult on all proposed amendments to agriculture tenancy legislation in spring 2014, with a view to making the changes in this Parliament. We commented that it was regrettable that the Department could not better co-ordinate the timing of abolition of the CAV and these wider legislative changes.

Defra has now laid this instrument to revoke SI 1978/809, with an Explanatory Memorandum (EM) and impact assessment. In the EM, Defra says that the requirement to compensate outgoing tenants for improvements that they have made will remain unchanged; and that revocation of the older Regulations will mean that agricultural tenants and landlords will be able to settle compensation claims at current market values of the improvements concerned on the date when the tenancy ends. Defra consulted over eight weeks between August and October 2014 (not in spring 2014, as was intended when the CAV Order was laid) on a number of proposals, including revocation of the older Regulations. Of the 19 responses to the latter proposal, 14 were in favour and three disagreed (two did not answer the question). Supporters of revocation included all the key sector organisations representative of landlords and tenants.

These Regulations make provision to allow young Jobseeker’s Allowance and Universal Credit claimants to retain entitlement to these benefits while participating in a traineeship where they have previously been classed as “receiving education” or not available for work. Early experience of the scheme has shown that there are financial disincentives for participants to complete the course if they lose benefit payments while on a traineeship. The Department for Work and Pensions (DWP) estimates this will aid about 5,000 young people, predominantly 18 year olds, to take up the training offered. The Regulations also remove “Traineeships” from the Jobseeker’s
Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013/276, which means that participation in them may no longer be made mandatory or subject to sanction if the claimant fails to participate. This is due in part to the outcome of a recent judicial review\(^\text{12}\) which has prompted DWP to reconsider the balance between providing better advance information on a mandatory scheme and allowing a more flexible format (which the court decided could not in fairness be made mandatory and consequently subject to sanction).

**Jobseeker’s Allowance (Extended Period of Sickness) Amendment Regulations 2015 (SI 2015/339)**

45. This instrument makes provision to enable Jobseeker’s Allowance (JSA) claimants suffering from a short (or third) period of sickness to choose to remain on JSA whilst on what is termed as an “extended period of sickness” for up to 13 weeks in a 12 month period. It also makes provision to enable both the Employment and Support Allowance (ESA) assessment phase (before any additional ESA components become payable) and the Universal Credit (UC) relevant period (before any additional UC elements become payable) to be reduced by the amount of time a claimant spends on extended sickness. The Committee has queried how 13 weeks’ incapacity is compatible with a benefit that requires the claimant to be available for, and seeking, work. The DWP’s responses are published in Appendix 3 which explain how this legislation is intended to operate. This additional information explains that the change has been made at the request of the Social Security Advisory Committee to prevent financial loss for a claimant switching between benefits. The proposal would also seem to relieve the administrative burden on DWP although we note that much is left to the discretion of the work coaches and we question how a consistent approach will be achieved.

**Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 (SI 2015/345)**

46. These Regulations propose ways of assessing Universal Credit more equitably for those who have fluctuating earnings. Under current legislation it is possible, because of their earnings pattern, for two people in the same circumstances to receive significantly different amounts of Universal Credit. These Regulations aim to reduce this unintended consequence and also remove a potentially perverse incentive to manipulate earnings payment patterns to maximise Universal Credit awards. Under these Regulations, when a claimant returns to Universal Credit within six months of a previous award ending, the Department for Work and Pensions may take into account earnings during the intervening period. Additionally, self-employed claimants will be able to carry forward a loss from one month into the next monthly assessment period, for up to 11 assessment periods. This follows consultation with the Social Security Advisory Committee\(^\text{13}\) and a self-employed stakeholder group. The change relates only to claims made under the

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\(^\text{12}\) [https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0064_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0064_Judgment.pdf)

Universal Credit digital service and only to losses and surpluses arising after 6 April 2016.

**Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2015 (SI 2015/355)**

47. The Department for Culture, Media and Sport (DCMS) has laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment. In amending Regulations from 2003, the latest Regulations serve two purposes.

48. First, they permit Mobile Network Operators to send alert messages to those who may be affected by a serious emergency when requested to do so by a designated public body, such as a chief police officer, or the Environment Agency. In the EM, DCMS says that the scenarios where alert messages might be used are likely to fall within the meaning of an emergency in the Civil Contingencies Act 2004, which includes severe flood events, serious chemical accidents or very large fires. The Government held a six-week consultation from mid-December 2014 to the end of January 2015. DCMS says that 27 responses were received, and that there was broad support for its proposal. Many responses commented that any future system should be used only in the event of a serious emergency, and that robust security arrangements would need to be in place around the system. DCMS published a summary of responses in February 2015.

49. Second, the Regulations lower the legal threshold at which the Information Commissioner’s Office (“ICO”) can issue a civil monetary penalty (“CMP”) for a serious breach of those provisions in the 2003 Regulations concerning unsolicited calls, texts, fax messages and electronic mail. DCMS says that the ICO has the power to issue a CMP of up to £500,000 for such breaches. Hitherto, in order to issue a CMP, the ICO had to be satisfied that there was a serious breach of the 2003 Regulations; that it was likely to cause substantial damage or substantial distress; and that the contravention was deliberate or the person knew that there was a risk of such a contravention and failed to take reasonable steps to prevent it. The latest Regulations remove the condition that the contravention must have been “of a kind likely to cause substantial damage or substantial distress”. The Department says that, since January 2012, the ICO has been able to issue nine CMPs totalling £815,000; and that it is estimated that, if a lower threshold had been in place for the period 1 April to 31 November 2012, approximately 50 additional organisations could have been considered for enforcement action.

50. DCMS consulted on this from 25 October to 6 December 2014. 298 responses were received. The Department says that the majority of respondents who expressed a preference supported lowering the legal threshold, as now proposed. It published a summary of consultation responses in February 2015.

14 The Privacy and Electronic Communications Regulations 2003 (“the 2003 Regulations”).

15 See: https://www.gov.uk/government/consultations/changing-existing-regulations-for-an-emergency-alert-system

16 See: https://www.gov.uk/government/consultations/nuisance-calls-consultation
Registration of Consultant Lobbyists Regulations 2015 (SI 2015/379)

51. The Register, set up by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, is intended to address the specific problem that it is not always clear whose interests are being represented by consultant lobbyists. This instrument establishes the practical procedures for registration, for example the information required and the charges involved, which will cover the cost of an independent Registrar, Alison White, maintaining and updating the register. Registration will be statutory to ensure that consultant lobbyists are required to register and that any failure to do so can result in the imposition of sanctions. Recent press articles have indicated that MPs and Peers may be required to declare meetings with Ministers and permanent secretaries if they are being paid to do so and are VAT registered. The requirement for registration comes into effect on 1 April 2015 and the Registrar’s discussions with the stakeholders have indicated that the potential number of registrants could be between 50 and 75. Further detail is provided on the Registrar’s website.

Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2015 (SI 2015/387)

52. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). In amending Regulations from 2011, the instrument updates a number of safeguarding requirements for members of staff, governors, supply staff and the chair of the governing body, to reflect the current legislative position. This includes updating the requirements for enhanced criminal record checks and making it a requirement that no member of staff, supply staff or member of the governing body (including the chair) carry out any teaching activity at the school in contravention of a prohibition order or interim prohibition order. Lord Nash, Parliamentary Under-Secretary of State for Schools in DfE, has written to the Committee to explain that, in bringing these Regulations into force in the middle of a school year and without a term’s notice, his Department is doing so at the request of the non-maintained special schools sector. In the EM, DfE refers to a query raised by the Committee when the 2011 Regulations were laid. Experience since that time has underlined the importance of safeguarding requirements. We welcome the steps that the Department is taking to ensure that those requirements are up-to-date and effectively applied across the education sector, recognising the risk that those in positions of authority may misuse their roles to the detriment of children.

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

- Children and Young People (Scotland) Act 2014 (Consequential and Saving Provisions) Order 2015
- Community Radio (Amendment) Order 2015
- Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015
- Contracts for Difference (Allocation) (Amendment) Regulations 2015
- General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015
- Health Care and Associated Professions (Knowledge of English) Order 2015
- Mortgage Credit Directive Order 2015
- Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015
- Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Amount) Regulations 2015
- Terrorism Act 2000 (Code of Practice for Examining Officers and Review Officers) Order 2015

Draft instruments subject to affirmative approval

SI 2015/406  Civil Procedure (Amendment) Rules 2015

Instruments subject to annulment

SI 2015/200  Scottish Administration (Offices) Order 2015
SI 2015/214  Parliamentary Commissioner Order 2015
SI 2015/216  Copyright and Performances (Application to Other Countries) (Amendment) Order 2015
SI 2015/236  Air Navigation (Overseas Territories) (Environmental Standards) (Amendment) Order 2015
SI 2015/315  Merchant Shipping (Fees) Regulations 2015
SI 2015/322  Charities Act 2011 (Group Accounts) Regulations 2015
SI 2015/323  Human Medicines (Amendment) Regulations 2015
SI 2015/325  Civil and Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015
SI 2015/326  Criminal Legal Aid (General) (Amendment) Regulations 2015
SI 2015/327  Agriculture (Calculation of Value for Compensation) (Revocations) (England) Regulations 2015
SI 2015/329  Election Judges Rota Rules 2015
SI 2015/336  Social Security (Traineeships and Qualifying Young Persons) Amendment Regulations 2015
SI 2015/337  Criminal Justice (Sentencing) (Licence Conditions) Order 2015
SI 2015/338  Child Support (Miscellaneous and Consequential Amendments) Regulations 2015
SI 2015/339  Jobseeker’s Allowance (Extended Period of Sickness) Amendment Regulations 2015
SI 2015/341  Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2015
SI 2015/342  Social Security (Maternity Allowance) (Earnings) (Amendment) Regulations 2015
SI 2015/343  Social Security (Fees Payable by Qualifying Lenders) (Amendment) Regulations 2015
SI 2015/345  Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015
SI 2015/347  Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2015
SI 2015/348  Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2015
SI 2015/349  Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015
SI 2015/350  Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015
SI 2015/351  Export Control (Amendment) Order 2015
SI 2015/353  Non-Domestic Rating (Designated Area) Regulations 2015
| SI 2015/354 | Non-Domestic Rating (Northern Line Extension) Regulations 2015 |
| SI 2015/356 | Weights and Measures (Revocations) Regulations 2015 |
| SI 2015/358 | Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) (Pilot) Regulations 2015 |
| SI 2015/359 | Special Educational Needs and Disability (Amendment) Regulations 2015 |
| SI 2015/365 | Water Industry (Charges) (Vulnerable Groups) (Consolidation) Regulations 2015 |
| SI 2015/366 | Rehabilitation Courses (Relevant Drink Offences) (Amendment) Regulations 2015 |
| SI 2015/367 | Diffuse Mesothelioma Payment Scheme (Amendment) Regulations 2015 |
| SI 2015/368 | Excise Goods (Aircraft and Ship’s Stores) Regulations 2015 |
| SI 2015/379 | Registration of Consultant Lobbyists Regulations 2015 |
| SI 2015/383 | Immigration (Appeals) (Consequential Amendments and Saving Provision) Order 2015 |
| SI 2015/391 | Insolvency Practitioners (Amendment) Regulations 2015 |
| SI 2015/399 | Pressure Equipment (Amendment) Regulations 2015 |
| SI 2015/404 | Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 |
APPENDIX 1: DRAFT LOCAL AUTHORITIES (PROHIBITION OF CHARGING RESIDENTS TO DEPOSIT HOUSEHOLD WASTE) ORDER 2015

Additional information from the Department for Communities and Local Government

Q1: In the Explanatory Memorandum you state: “The purpose of this legislation is therefore to reinforce the principle that household waste recycling centres should be free to use, as the Government is aware that some local authorities have introduced, or plan to introduce, a charge to anybody accessing certain household waste recycling centres to deposit household waste and/or recycling.” Which local authorities have introduced, or plan to introduce, such a charge?

A1: As far as we are aware the following local authorities have introduced or plan to introduce a charge:

- Dorset Waste Partnership (the partnership team managing waste and recycling services for all Dorset district councils and Dorset County Council) is currently consulting on introducing such charging for entry at one or more of its household waste recycling centres. See: https://www.dorsetforyou.com/hrc

- Norfolk County Council has plans to introduce such charges at nine of its household waste recycling centres from April 2016.

- Somerset Waste Partnership (the partnership team managing waste and recycling services for Mendip, Sedgemoor, South Somerset and West Somerset District Councils, Taunton Deane Borough Council and Somerset County Council) has introduced such a £2 entry charge at two of its sites (in Crewkerne; and Dulverton).

There may be other local authorities with statutory waste disposal responsibilities that are planning to introduce such a charge but have not been brought to the Government’s attention. To judge from the consultation responses, a good many more county councils are keen to retain the option of such charging.

In its 2011 Waste Review, the Government made a formal commitment to ensuring that households have access to household waste recycling sites where they can deposit their waste and recycling free at the point of use. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69401/pb13540-waste-policy-review110614.pdf

As outlined at para 7.1 of the Explanatory Memorandum, long-standing existing primary legislation passed by Parliament requires councils to provide free civic amenity sites to householders for the disposal of household waste, this Order intends to re-affirm the original intent of Parliament (that householders should not be charged for these services).

The Government is also of the view that charging local residents for the disposal of household waste will not only inconvenience local residents and make recycling harder for them, but will actively harm the environment, by encouraging fly-tipping and backyard burning.
Q2: In the EM, you state: “The Local Government (Prohibition of Charges at Household Waste Recycling Centres) (England) Order 2015 … will be laid shortly after this Order.” When will this second Order be laid?

A2: This Order is expected to be laid next week.

Q3: In the EM, you say: “The Secretary of State consulted over a four week period (22 January to 18 February 2015) on ‘Preventing ‘backdoor’ charging at household waste recycling centres’… The discussion paper and summary of responses with the Government response is being published on gov.uk.” In order to provide longer for the consultation process – 6 weeks rather than 4 – why did DCLG not launch it at the start of January? Has anyone criticised the timing of the consultation?

A3: The Government is satisfied that 4 weeks was sufficient for the consultation. As stated at paragraph 8.2 of the Explanatory Memorandum, the Secretary of State received 61 representations, which suggest that the consultation reached a wide audience, particularly given a number were submitted by partnerships or umbrella groups on behalf of many more individual members. It believes all those bodies that needed to see it, saw it, and had a reasonable length of time in which to respond. Of the 61 responses received, 13 respondents raised the issue of the time available to make representations. County councils and representative bodies in particular felt four weeks was too short and restricted their ability to provide detailed input from their partners and/or members on such an important issue.

Q4: Has the Government response been published? If so, what is the precise web-link?

A4: The Government Response is published at: https://www.gov.uk/government/consultations/preventing-backdoor-charging-at-household-waste-recycling-centres
[publication date: 4 March 2015]

Q5: In the EM, you state: “The Secretary of State for Communities and Local Government, having given due consideration to the responses received to the consultation and for the reasons outlined above is therefore introducing this secondary legislation.” The consultation process ended on 18 February; the Order was laid on 25 February. Was this due consideration carried out in the intervening period (six days including the weekend)?

A5: The Government is satisfied that due consideration was carried out. Ministers wanted quick progress. Responses were noted, looked at in detail when received, and considered as and when they arrived with two responses arriving after the closing date also being considered. We made sure that the necessary resources were available to complete robust consideration and analysis of responses during the consultation period and as soon as the consultation closed. The consultation document, which contains an overview of the responses received, was considered before the Secretary of State made his decision to make the Order. The length of the period before publication of consultation responses does not of itself indicate the resources devoted to/time spent on it.

Q6: In the EM, you say: “An impact assessment has not been produced for any of these instruments as no impact on the private or voluntary sector is anticipated.” What
assessment of the impact on local authority finances of the prohibition has been made by DCLG? If none, why not?

A6: We engaged the DCLG New Burdens Team throughout the policy formulation. One of its primary roles is to assess the impact on local authority finances of new legislation. It was their opinion that this prohibition will have little or no impact on local authority finances given only one local authority has introduced such a charge. All other local authorities with statutory waste disposal responsibilities are managing to run household waste recycling centres without charging residents to access and/or use them to dispose of household waste and recycling.

4 March 2015
APPENDIX 2: DRAFT LOCAL AUTHORITIES (PROHIBITION OF CHARGING RESIDENTS TO DEPOSIT HOUSEHOLD WASTE) ORDER 2015

Hampshire County Council – Representations to the Secondary Legislation Scrutiny Committee

Background
The Department for Communities and Local Government initiated a four week consultation exercise, which ran between 22nd January and 18th February 2015, entitled “Preventing ‘backdoor’ charging at household waste recycling centres” to consider a change in the law to prevent local authorities from being able to charge for residents gaining access to use Household Waste Recycling Centres (HWRCs) for the purpose of depositing household waste. This will be given effect by two Statutory Instruments; one to amend the Local Government Act 2003 and the other, which is the subject of these representations, to amend the ‘parent Act’ i.e. the Localism Act 2011.

Significant Change of Circumstances
Since the enactment of the Localism Act in 2011, the economic circumstances of the United Kingdom have changed considerably. As a result of this the Government has undertaken a series of spending reviews which have led to very significant reductions in funding for local government. In response to this Hampshire County Council has, since 2008, achieved savings of £242 million and is striving to achieve a further reduction of £98 million by 2017/18 whilst retaining council tax at the same level it has been for the last six years.

This level of savings has so far been achieved without the need to make significant reductions to front-line services. However, faced with the need to find a further £98 million savings over the next two years and, given the expectation of further budget reductions by 2019, it is inevitable that there will need to be some changes to the level and or quality of front-line services unless all alternative funding mechanisms can be considered for implementation.

The landscape within which waste services operate has also changed since 2011, with rising volumes of waste as the economy recovers, leading to increased costs to local authorities for transport, storage, treatment and disposal of waste. In addition, the markets for recycled goods have fallen which, in turn, have reduced income streams from recycling and these show no sign of recovery in the short to medium term. Within the last fortnight Aylesford Newsprint, a major processor of waste paper, entered administration, leaving a glut of waste paper on the market. This means the value of that material will drop dramatically and may even become £0 or cost in the worst case scenario.

Hampshire County Council therefore requests that the Committee should consider whether special attention of the House should be drawn to the Instrument on the grounds that it is not appropriate now as circumstances in local government finances have changed significantly since the Localism Act 2011 was enacted.
Unlikely to meet its policy objectives

In its consultation paper the Government sought alternative options to charging to put forward as a way of avoiding HWRC site closures but was unable to put forward any case studies as alternative delivery models. A week after laying the SI, the Government published its response to the consultation which included a list of ideas as alternative options, that may avoid the need to close sites. Having given careful consideration to all of those options, Hampshire County Council does not believe they would be adequate to prevent site closures for the reasons summarised below.

Hampshire County Council, like many other local authorities, has already taken steps to reduce opening hours and to enforce trade waste controls as a way of reducing costs. Although there is scope to go further with these approaches this is unlikely to meet the Government’s policy objectives and will still result in a much reduced services for residents. Pursuing these approaches is likely to lead to precisely the outcomes which the Government aims to avoid i.e. increased fly-tipping and more back yard burning as access to HWRCs is further reduced.

Charging businesses to access HWRCs is another option which many local authorities have already implemented or are planning to implement, including Hampshire County Council. However, given the relatively open commercial market for waste, particularly in Hampshire, this option will not deliver the level of income needed to off-set the growing costs of the service. Furthermore, the more successful a trade waste service is, the more it is used, which has a negative impact on ‘customer experience’ for local residents as their access to HWRCs will be hampered by the volume of commercial customers.

Hampshire County Council believes that whilst the voluntary and community sector has an important part to play in the reuse and recycling of materials, it does not consider the running of HWRC sites by the sector to be a viable option, given the economic realities. The reduced value of recyclable materials and the cost of disposing waste materials that are not reusable or recyclable make the business model unsustainable without considerable additional funding or having to significantly restrict the service. For example, not accepting residual waste, green waste, wood, soil and rubble and any hazardous wastes because of the cost of treatment and disposal. Hampshire County Council has regular requests for free tipping of waste from the voluntary and community sector organisations as they cannot afford to deal with this material without significant financial support.

Hampshire County Council believes further time should be given to consider the future service options, in consultation with the local residents, in order to best
determine how to retain the level and quality of HWRC services and best meet the wider objectives of the Government.

Therefore Hampshire County Council requests that the Committee considers whether special attention of the House should be drawn to the Instrument, on the grounds that by enacting the proposed legislation, the policy objectives will not be met as local authorities will have no viable alternative option but to consider site closures, resulting in increased fly-tipping and backyard burning.

5 March 2015
APPENDIX 3: JOBSEEKER’S ALLOWANCE (EXTENDED PERIOD OF SICKNESS) AMENDMENT REGULATIONS 2015 (SI 2015/339)

Responses from the Department for Work and Pensions

“Q1: we need a more clear and concise explanation of what the exact policy objective here is and how it correlates with the overarching policy that someone should be available for work.

Currently if a Jobseeker’s Allowance (JSA) claimant provides evidence of a health condition that is expected to last for more than two weeks, they would be directed to claim Employment and Support Allowance (ESA). Further, if a claimant has a third period of sickness (however short) during that 12 month period, their JSA award is terminated and they generally then have to claim ESA if they have no other source of income.

Being required to switch benefits for a short period is unnecessarily disruptive to the payment of benefit including other benefits linked to the claim such as housing benefit. Furthermore, managing the movement of claimants between benefits can be an administrative burden for the Department. In addition there is limited employment support available during the ESA assessment phase (although claimants can volunteer for help) before the work capability assessment (WCA) and this may delay a return to work.

This change is intended to allow more flexibility for claimants who might suffer a short term health condition by giving them the choice to stay on JSA or move to ESA. Those who decide to stay on JSA will continue to benefit from the help and support of their Jobcentre Plus work coach with tailored conditionality to support a return to work as soon as they are well enough. They can be treated as actively seeking, and available for work or they can be required to take reasonable steps to look for work where the work coach considers that would be appropriate. The Department wants to continue to engage with claimants with a health condition in the same way that employers stay in touch with their staff when they fall ill. We want to help create a cultural change by breaking down perceptions that people with health conditions are not able to take steps to prepare to return to work.

Q2: Why was a shorter period not chosen such as 6 or 8 weeks?

The extended period of sickness can be any period up to a maximum of 13 weeks. The 13 week maximum period was chosen to mirror the length of the ESA assessment phase. The higher rates of ESA are normally only payable from the 14th week of the claim. In reality, we would hope that claimants who suffer a short term health condition that limits their ability to meet the full conditionality for JSA to be in regular contact with their Jobcentre Plus work coach to ensure that they are recovering as expected and that JSA remains the right benefit for them. If they are failing to recover as expected, then we would expect them to claim ESA (where they are eligible to do so). JSA claimants must provide medical evidence should they wish to stay on JSA with reduced conditionality on an extended period of sickness.

Q3: How would this work cumulatively – if the person returns to JSA for a while after just under 13 weeks of medical issues and then has another bout, would they be switched to ESA or would another waiver period commence?
The extended period of sickness will be one continuous period for up to 13 weeks in a 12 month period. It cannot be split into multiple periods. The 12 month period will start from the first day on which the claimant is unable to work on account of the health condition or disablement. This avoids, in most circumstances, a situation where someone has, for example, a period of 13 weeks of sickness at the end of a 12 month period, and then another 13 weeks at the start of the next.

Claimants who are otherwise unable to meet JSA conditionality conditions due to a period of sickness lasting 2 weeks or less can still be treated as meeting those conditions under existing legislation. It would be possible for a claimant to have 2 short spells of sickness and, separately thereafter, an extended period of sickness for up to 13 weeks. A claimant who certifies initially that he or she will be sick for 2 weeks and who subsequently finds that he or she is sick for longer, will be able, under these Regulations, to extend that beyond 2 weeks and still be regarded as meeting JSA conditionality conditions. However, that initial 2 week period of sickness will count towards the 13 week maximum period of sickness.

Q4: The desire to smooth the transition to ESA is noted but why can the problem not be addressed by better guidance/training of work coaches?

The change is intended to support those claimants with evidence of a short term health condition that they expect to recover from fairly quickly. ESA will remain a more appropriate benefit for claimants with a long-term health condition which will limit their ability to meet the full conditionality requirements of JSA over the longer term.

At the request of the Social Security Advisory Committee, the Department amended the regulations to provide in law for the reduction in the ESA assessment phase where a claimant remains on JSA under these new provisions but then subsequently moves to ESA. The Department had originally intended to rely on work coaches giving advice about which benefit to claim but was persuaded by the Committee to change the law to minimise the financial risk to claimants.

Q5: Will similar provisions be put into UC?

The change broadly aligns to the Universal Credit (UC) process. Under UC claimants who present evidence that they are unfit for work are placed in the Intensive Worksearch regime while awaiting their Work Capability Assessment (WCA). Claimants can self-certify for the first 7 days of a sickness period but from then on they need to provide medical evidence.

They will have no worksearch or work availability requirements imposed for up to 14 days of sickness. This is the case for the first 2 episodes of sickness in a rolling 12-month period. From day 15 of (or day 1 if there have already been 2 episodes of sickness) the work coach decides the work related requirements expected of the claimant. This is the case until the claimant takes part in the WCA process which determines the claimant’s capability in relation to work.

During this time claimants can be required to attend interviews with their work coach and to participate in work related activities. But while they present medical evidence indicating they are unfit for work, any work related requirements will be tailored. The work coach will not impose work related requirements on claimants who we cannot reasonably expect to look for or prepare for work and no-one will be required to take part in an activity that they are not capable of performing.”

3 March 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 10 March 2015 Members declared the following interests:

**Draft Standardised Packaging of Tobacco Products Regulations 2015**

- Lord Borwick
  
  *Trustee, British Lung Foundation (registered charity)*

**Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015**

- Lord Borwick
  
  *Trustee, British Lung Foundation (registered charity)*

**Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Amount) Regulations 2015**

- Lord Borwick
  
  *Trustee, British Lung Foundation (registered charity)*

**Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2015 (SI 2015/341)**

- Lord Borwick
  
  *The Member’s wife is a member of the Greater London Authority and is one of the Statutory Deputy Mayors of London; she is also an elected Councillor for the Royal Borough of Kensington and Chelsea*

**Attendance:**

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