
Police Federation (Amendment) Regulations 2015

Temporary Exclusion Orders (Notices) Regulations 2015

Correspondence: School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014

Work of the Committee in Session 2014–15

Includes 8 Information Paragraphs on 11 Instruments

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HL Paper 149
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
Thirty Third Report

WORK OF THE COMMITTEE IN SESSION 2014–15

1. As well as containing the Committee’s usual commentary on any statutory instruments likely to be of interest to the House identified at our weekly scrutiny meeting, this report contains a brief overview of the entire range of instruments we have considered in Session 2014–15: see paragraph 38 onwards.

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.


   Date laid: 12 March 2015

   Parliamentary Procedure: negative

   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 consulted over four weeks, from 22 January to 18 February 2015: one in five of the respondents criticised the period allowed to respond. We do not consider that the Department for Communities and Local Government handled the relevant consultation process in a sufficiently balanced manner.

   We draw this Order to the special attention of the House on the ground that there appear to be inadequacies in the consultation process which relates to the instrument.

2. On 25 February 2015, the Department for Communities and Local Government (DCLG) laid the draft Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015 (“the draft 2015 Order”), which proposes to prohibit local authorities from using the general power under the Localism Act 2011 to charge their residents either to enter into, or exit from, household waste recycling centres. In our 29th Report of this Session,¹ we drew that draft Order to the special attention of the House on the ground that there appeared to be inadequacies in the consultation process which related to the instrument. The draft 2015 Order was considered in Grand Committee on 23 March.

3. DCLG has now laid the Local Government (Prohibition of Charges at Household Waste Recycling Centres) (England) Order 2015 (SI 2015/619). In the accompanying Explanatory Memorandum (EM), the Department says that authorities have the power to charge for discretionary services under the

¹ HL Paper 133.
Local Government Act 2003 ("the 2003 Act"). SI 2015/619 disappplies the relevant provisions in the 2003 Act\(^2\) in connection with the provision of household waste recycling centres by relevant authorities for their residents to deposit household waste or recycling, to reinforce the prohibition already proposed under the draft 2015 Order.

4. DCLG gives the same explanation of the policy background and of the consultation process in the EM to SI 2015/619 as it did in the EM to the draft 2015 Order. In bringing that draft Order to the special attention of the House, we said that we did not consider that the Department for Communities and Local Government had handled the relevant consultation process in a sufficiently balanced manner. We remain of that view, which is equally pertinent to the latest instrument.

B. Police Federation (Amendment) Regulations 2015 (SI 2015/630)

*Date laid: 12 March 2015*

*Parliamentary Procedure: negative*

*Summary:* A major review in 2014 by Sir David Normington recommended that there should be greater national oversight and transparency of the Police Federation’s Finances. These Regulations remove the “closed shop” in the Federation, allow police personnel to join the Federation when they wish to (including only after an incident for which they might require legal help or advice), and allow members to choose whether to pay the subscription or not. Objections have been raised that the Federation cannot perform its functions without adequate funds. The Committee is surprised that no estimate of the predicted financial impact of this legislation on the Federation is provided.

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.

5. These Regulations are laid under section 60 of the Police Act 1996 by the Home Office and are accompanied by an Explanatory Memorandum. Letters from Baroness Harris of Richmond and the Police Federation are published on our website.

6. The Police Federation of England and Wales (PFEW) is one of the largest staff associations in the UK, representing the interests of all police constables, sergeants and inspectors (including chief inspectors). A major review in 2014 by Sir David Normington recommended that there should be greater national oversight and transparency of the Federation’s finances.

7. These Regulations
   - remove the “closed shop” in the Federation
   - allow police personnel to join the Federation when they wish to (including only after an incident for which they might require legal help or advice)
   - allow members to choose whether to pay the subscription or not.

\(^2\) Section 93(1) of the 2003 Act.
Optional subscription

8. The concept of not allowing a closed shop to operate is well established but no-one, including the Home Office, is aware of a precedent for the proposal that members can opt into a “union” and use its services without also paying a subscription. The Home Office confirmed that:

“these regulatory changes will allow an officer to join the PFEW at any point they wish, even if that happens to be after an incident for which they would like advice. Regulation 4, paragraph (3)(e) would allow an officer opting to join and pay voluntary subscriptions to have the same entitlement to provision of advice and representation in relation to specified matters as a member who opted to join under subparagraph (3)(a). This entitlement would only commence at the point of opting to pay voluntary subscriptions.

So, for example, if an officer chose not to join the PFEW at the point of joining his/her force, but 9 months later found themselves in need of support for a disciplinary issue, they could join the PFEW at that point. However, they would only be entitled to provision and support (at the same level as a member who had joined earlier) from the day on which they joined and started paying voluntary subscriptions.”

9. In relation to the new requirements the Home Office has stated:

“The current position, until these Regulations come into force, is that membership of the PFEW is compulsory for an officer (of a federated or inspecting rank), but it is already possible for them to withhold the payment of their subscriptions. Officers who currently withhold payment of their subscriptions have a limited entitlement to support from the PFEW (compared to a member paying their subscription fees). It is the view of the Government that these officers should continue to have the option of PFEW membership without the payment of subscriptions, but that this should be made more explicit and members should be notified of this option. These changes bring into effect the Government’s intention that the presumption of automatic membership and payment of subscriptions be reversed, and that the PFEW should earn the right to represent police officers and make a compelling case to persuade them of the merits of being a member and paying subscription fees.”

10. The Home Office also states that, apart from the provisions about specified matters outlined in these Regulations, legislation does not otherwise set out which members are eligible for what benefit. Further detail on the specific benefits that the Federation provides and the eligibility criteria for these benefits would be outlined in the Police Federation’s Fund Rules. The Committee is surprised however that no estimate of the predicted financial impact of this legislation on the Federation is provided.

Objections made

11. Baroness Harris of Richmond has written to the Committee questioning how the Police Federation can be expected to represent its members without adequate funds, particularly in respect of litigation which is very expensive.

12. The Police Federation objects in principle to Government interference in its funding arrangements and states that it should be a matter for the Federation as it is for all other staff associations. The Federation particularly objects to
the requirement that it must provide services to someone who has not previously subscribed at the same level as a long-term subscriber. The letter compares the proposal to “a driver using an uninsured motor vehicle, having an accident and then contacting the insurance company for cover after the event.” Both letters are published in full on the Committee’s website. The House will wish to note this development as a matter of policy interest.

C. Temporary Exclusion Orders (Notices) Regulations 2015 (SI 2015/438)

Date laid: 3 March

Parliamentary Procedure: negative

Summary: These Regulations make provision for the timing and method of giving notice of a Temporary Exclusion Order (TEO) to disrupt the travel plans of an individual (P) who has been abroad participating in terrorism-related activity. The Regulations set out the circumstances in which such a notice is to be deemed to have been given to P, leading the Committee to question the function of “P’s representative” in these Regulations and the willingness of anyone to undertake that role. We also learned that the use of these Orders would not be comprehensive, depending on which country the subject of the notice was intending to travel from. A letter that sets out the Home Office view of how the Regulations will operate is published in Appendix 1 to this Report. If not already aware, the House will wish to note these clarifications on how the TEO system will operate.

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.

13. These Regulations are made by the Home Office under provisions in the Counter-Terrorism and Security Act 2015 (“the Act”) which received Royal Assent on 12 February 2015; the power to make temporary exclusion orders (TEOs) came into force the following day. The instrument is accompanied by an Explanatory Memorandum (EM). A letter from the Home Office Minister explaining how the Regulations are intended to operate is published at Appendix 1 of this Report.

Background

14. Providing that a number of conditions set out in the Act are met, the Secretary of State may issue a TEO that requires an individual (P), who has been abroad participating in terrorism-related activity, not to return to the United Kingdom unless:

   (a) the return is in accordance with a permit to return issued by the Secretary of State before the individual began the return, or

   (b) the return is the result of the individual’s deportation to the United Kingdom.

The Secretary of State may also impose certain conditions on an individual who is subject to a TEO, on their return to the United Kingdom. These Regulations make provision for the timing and method of giving notice of a TEO to the individual, and the circumstances in which notice is to be deemed to have been given.

P’s representative
15. Regulation 3 states that service of the notice on “P’s representative” will count as delivery to P. In considering the instrument the Committee queried who P’s representative might be. As further information from Home Office officials did not sufficiently clarify that point, the Committee sought explanation from the Minister, James Brokenshire MP, whose letter, published in Appendix 1, states that it would be a parent for someone under 18 years of age or a legal representative. We question how many people going abroad to participate in illegal activities would take the precaution of engaging a solicitor first. We also question whether anyone would wish to take on this role for fear of being suspected of promoting terrorism themselves; the Minister’s letter also addresses that point.

Effectiveness depending on route taken

16. Our exchanges with Home Office officials raised practical questions about the point at which the absent P might find out about the TEO. Supplementary information stated that “the precise steps will depend on the country from which the individual is travelling”. That the TEO system might not be comprehensive was an aspect that had not been made clear in the secondary legislation. The Minister’s letter states that the

“issue touches on the broader policy issues and the underlying primary legislation rather than the specifics of the regulations themselves but, as the Government made clear throughout the passage of the Counter-Terrorism and Security Act, the operation of this power will depend on the circumstances of each case.

The Government has engaged with a number of international partners on the implementation of this measure. As explained during the Bill’s passage, we have prioritised engagement with Turkey, France, and a number of other EU countries. This is for the obvious reason that these are the countries which are currently most likely to be transited by people travelling to or from Syria or Iraq. As the Government also made clear, it is mindful of the possibility that those subject to TEOs might be exposed to risks in particular countries as a result of being subject to a TEO. It is therefore perfectly proper that in some instances, in order to avoid these risks materialising, the Government would choose not to liaise with certain countries to enforce a TEO. The need to prioritise work with particular countries, and to treat certain countries differently, was made clear and, I believe, recognised by both Houses, in approving the measure.”

17. If not already aware, the House will wish to note these clarifications on how the TEO system will operate.
CORRESPONDENCE


18. The Department for Education (DfE) laid these Regulations in May 2014. They served several purposes, including providing that, by 1 September 2015, all maintained school governing bodies in England would have to be constituted under the framework established by Regulations in place since 2012, and ensuring that governors had the skills required to contribute to the effective governance and success of schools or federations of schools.

19. We drew the Regulations to the attention of the House, on the ground of policy interest, in our 2nd Report of Session 2014–15. We commented that the Department intended that, in reviewing the adequacy of their constitution and membership, the governing bodies of maintained schools should take the skills that governors required to be effective as a primary consideration. We noted that Ofsted’s recent inspections of academies and maintained schools in Birmingham had underlined the importance of effective governance, and that the Department intended to monitor the operation of the Regulations through its Advisory Group on Governance. Finally, we said that we looked to the Department to treat this monitoring as a priority, and we expected that the House would wish to be informed of the outcome of this monitoring by the end of the Session.

20. On 23 March 2015, Lord Nash, Parliamentary Under-Secretary of State for Schools in DfE, wrote to us with a response to the comments which we included in our 2nd Report. We are publishing the letter as Appendix 2. We welcome the information which Lord Nash has provided, and note that the monitoring of the reconstitution of governing bodies continues. We trust that the Department will report again on this process in the new Parliament.

3 HL Paper 7.
INSTRUMENTS OF INTEREST

*Universal Credit (EEA Jobseekers) Amendment Regulations 2015 (SI 2015/546)*

21. Currently, the Universal Credit Regulations 2013 (SI 2013/376) state that a person must be present in Great Britain and have a right to reside in the Common Travel Area in order to be entitled to Universal Credit. Following the amendment made by these Regulations, a national of the European Economic Area (EEA) entering the UK to look for work, or who is here already and claims benefit as a jobseeker, will not qualify for Universal Credit. (It should be noted that this exclusion does not affect EEA nationals who have been working in the UK for an employer or as a self-employed person, who may retain their worker status during periods of involuntary unemployment.) Although the front of the instrument mentions that the Department’s statutory obligation to consult the Social Security Advisory Committee (SSAC) has been met, there is no reference to it in the Explanatory Memorandum. Although the SSAC decided not to issue a formal report on this occasion, it did express some concerns in correspondence with the Department for Work and Pensions, in particular about the hardship that may fall on the dependents of a refused claimant and the impact on Local Authorities who are required to provide a final safety net for them. The Secretary of State’s response reassures that the actual numbers affected will be monitored and consideration given as to whether any further exemptions might be required. The correspondence can be read here: https://www.gov.uk/government/publications/universal-credit-entitlement-of-eeanationals, but we find it unacceptable that the DWP neglected to make any mention of these comments in the Explanatory Memorandum.

*Solvency 2 Regulations 2015 (SI 2015/575)*

22. HM Treasury (HMT) has laid these Regulations with an Explanatory Memorandum (EM), Transposition Note and Impact Assessment. The Regulations implement, in part, the Solvency 2 Directive. HMT says that the Directive aims to build on previous insurance directives to create risk-sensitive, harmonised requirements for EU insurers, which will ensure strong standards of policyholder protection and will help to promote competition, innovation and consumer choice across the single market. It adds that the UK Government are a strong supporter of the Solvency 2 Directive, which adopts the UK model of risk-based regulation and incorporates lessons learned from the financial crisis by ensuring that insurers must be able to withstand financial market shocks. The Regulations impose duties on the Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority and give insurance undertakings and reinsurance undertakings the

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4 SSAC Members concluded that its recent report on the Housing Benefit (Habitual Residence) Amendment Regulations 2014 (published in November 2014) dealt with similar and related issues and that further public consultation was unlikely to produce any significant amount of additional evidence at this stage.

right to apply to the PRA for specified approvals relating to the Solvency 2 Directive (for example, the right to modify their risk assessment process).

23. In the EM, HMT sets the impact of the Solvency 2 Directive on business at approximately £2.7 billion in one-off implementation costs and £200 million ongoing yearly costs (for the next ten years). However, to place these costs in context, it says that the UK insurance industry is estimated to receive approximately £188 billion in written insurance premium annually; and that there are also expected benefits to the UK insurance sector from the Solvency 2 Directive, estimated at almost £500 million per year (for the next 10 years). Monetised benefits include a reduced cost of capital, improved efficiency of risk and capital management and additional investment income.

**Firefighters’ Pension Scheme (Amendment) (England) Order 2015 (SI 2015/579)**


**Firefighters’ Compensation Scheme and Pension Scheme (England) (Amendment) Order 2015 (SI 2015/590)**

24. The Department for Communities and Local Government (DCLG) has laid these three instruments, each with an Explanatory Memorandum (EM). On 10 March 2015, when the instruments were laid, there was also a Written Ministerial Statement (WMS)\(^6\) by the Department. This referred to the Independent Public Service Pensions Commission, chaired by Lord Hutton, which (among other things) found that the Firefighters’ Pension Scheme 1992 was the most expensive public service pension scheme.

25. The main recommendation from the Commission’s final report was that the current final salary public service pension schemes should be replaced by new schemes, which would continue to be defined benefit schemes with pension entitlement linked to salary, but pension benefits would be based on career average earnings, not final salary. On 28 October 2014, the Firefighters’ Pension Scheme (England) Regulations 2014 (SI 2014/2848)\(^7\) were laid, setting out the main elements of a new career average pension scheme to be introduced from 1 April 2015 (“the 2015 Scheme”).

26. The Firefighters’ Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/589) specify how the benefits of firefighters who are moving from the earlier pension schemes into the 2015 Scheme will be protected. Benefits already accrued by members under the existing schemes will be preserved and continue to be linked to final salary. In addition, no firefighter will have to work beyond their current expected normal pension age until 2022.

27. The Firefighters’ Compensation Scheme and Pension Scheme (England) (Amendment) Order 2015 (SI 2015/590) updates the provisions relating to compensation for injury so that they also apply to members of the 2015 Scheme; gives authorities an additional six months to complete enrolling eligible firefighters into the modified scheme for retained staff who were unable to access a pension scheme between 2000 and 2006; and increases

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\(^6\) HL WS341.

\(^7\) We published information about SI 2014/2848 in our 13th Report of this Session (HL Paper 64).
the pay bands that determine contribution rates under the 2006 scheme by 1% each year to 1 April 2018, in line with the 2015 scheme, so as to avoid a scheme member being drawn into a higher contribution band because of a pay rise designed to reflect inflation. *The Firefighters’ Pension Scheme (Amendment) (England) Order 2015* (SI 2015/579) makes this latter change, but in respect of the 1992 scheme.

28. In the March WMS, the Department stated that these instruments will ensure that the 2015 scheme can come fully into effect on 1 April, as required by the Public Service Pensions Act 2013.

*Police Appeals Tribunals (Amendment) Rules 2015 (SI 2015/625)*

*Police (Conduct) (Amendment) Regulations 2015 (SI 2015/626)*

29. Following the review by Mark Ellison QC into possible corruption and the role of undercover policing in the Stephen Lawrence case, the Home Office proposes to change the Police conduct arrangements so that Police whistleblowers are able to come forward with confidence that they will be protected.

30. The Home Office also states that, to counteract the damage done to public confidence in the Police by recent revelations of both current and historic Police misconduct, it now considers it to be in the public interest for Police disciplinary hearings and appeals to be generally held in public and with a legally qualified chair. Disciplinary hearings deal with acts of misconduct by police officers so serious that, if proven, dismissal may be justified. Misconduct meetings, which deal with lower level misconduct, will remain private. Because national security issues or ongoing investigations could be compromised in certain cases, the Home Office will issue guidance on the circumstances that should be considered before excluding any person from all or part of the hearing. Additionally, to ensure that any officer dismissed from the Police is not reemployed by another force, the College of Policing is to be informed when any officer is dismissed so that Police forces will be able to use that information as part of their vetting of potential recruits.

*Asylum Support (Amendment) Regulations 2015 (SI 2015/645)*

31. The Home Office provides support to destitute asylum seekers and their dependants in the form of accommodation plus a weekly cash allowance to enable them to meet other “essential living needs”. The current level of payment depends on the age of the individual, with the amount for each child (£52.96) and under 18 year old (£39.80) being higher than for adults. The rates have been unchanged since 2011, but in 2013 payment levels were challenged in the High Court. The Home Office conducted a further review in 2014, using a methodology developed to take account of the findings of the court, but did not alter the payments. This year’s review has also been conducted according to the new methodology and has concluded that the current rate of £36.62 per week for a single person without dependants is marginally too low and should be increased to £36.95.

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* Advanced copies of the guidance as annexes can be seen on: https://www.gov.uk/government/publications/circular-0062015-changes-to-home-office-guidance-on-police-misconduct-unsatisfactory-performance-and-attendance-management-procedures A consolidated version will be issued on 1 May when the regulations come into force.
32. The Home Office review also looked at the sums provided to families and found that they significantly exceed what is necessary to meet essential living needs because the sum takes no account of the economies of scale available to a household. These Regulations therefore move to a simplified system where a standard rate (£36.95) is provided to each supported person of whatever age. The effect of this will be that a couple with two children, currently paid £178.44 a week will, from 6 April, receive £147.80 per week. The Committee was particularly concerned that there are no transitional provisions indicated, so that current recipients will experience a sudden drop in income in April. There is also no mention of how the change is to be communicated to recipients.

Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (SI 2015/659)

33. On 26 January 2015, Lord Ahmad of Wimbledon repeated a Written Statement about Community Pubs. He said that the Government planned to bring forward secondary legislation at the earliest opportunity so that in England the listing of a pub as an Asset of Community Value would trigger a removal of the national permitted development rights for the change of use or demolition of those pubs that communities have identified as providing the most community benefit. That is the purpose of this Order, laid by the Department for Communities and Local Government (DCLG). In amending earlier legislation, the Order provides that development which comprises the change of use or demolition of buildings which are used as drinking establishments and which are supported by the local community is not permitted development for the purposes of the General Permitted Development Order.

City of Birmingham (Scheme of Elections) (Amendment) Order 2015 (SI 2015/666)

34. On 22 January, the Department for Communities and Local Government (DCLG) laid the City of Birmingham (Scheme of Elections) Order 2015 (SI 2015/43), to specify a scheme of elections for the ordinary elections of councillors of the City from 2017 onwards, consisting of whole council elections every four years. In the accompanying Explanatory Memorandum (EM), DCLG explained that the Order followed a review of the governance and organisational capabilities of the City council, led by Sir Bob Kerslake, which recommended in December 2014 that a combination of predominantly single member wards, a smaller number of members and all-out elections would make the council stronger and much more directly accountable. SI 2015/43 came into force on 16 February.

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9 HL WS 200.

10 In our 7th Report of Session 2012-13 (HL Paper 32), we reported on the draft Assets of Community Value (England) Regulations 2012, made under the Localism Act 2011. Those Regulations provided for the introduction of the Assets Scheme, requiring a local authority to maintain a list of buildings and other land in its area which were of community value.


35. On 13 March, DCLG laid this Order to amend SI 2015/43, so that the first elections of city Councillors will take place in 2018, not 2017. In the EM to the amending Order, DCLG says that having whole council elections in Birmingham in 2017 would result in elections being held in a year when generally no elections are held in metropolitan district councils; and that, if 2017 were an election year in Birmingham, it would mean that, in 2017, only one of the seven West Midlands authorities would hold an election, which would be “potentially confusing to the electorate across the West Midlands”.

36. On 16 March, the House considered a motion, moved by Lord Hunt of Kings Heath, to take note of SI 2015/43. In responding to the debate, Lord Ahmad of Wimbledon, Parliamentary Under-Secretary of State at DCLG, acknowledged that, following publication of the Kerslake review, matters had moved swiftly. He said that, for the reasons set out in the EM, the Department had been persuaded that a start date of 2018 would be better than 2017. **We are left with the impression that, since the general timing of future elections in metropolitan district councils has not changed over the last year, the Department’s efforts to move matters forward swiftly may have been at the expense of full consideration of the implications of the changes being made, with the resultant need for an amending instrument to be laid less than two months after the first Order.**

**Civil Procedure (Amendment No. 2) Rules 2015 (SI 2015/670)**

37. These measures are part of the wider Government policy to reform the role of judicial reviews. Following further consultation, and measures in sections 84 and 87 of the Criminal Justice and Courts Act 2015, these Rules amend the courts’ handling of judicial reviews that may be refused on the grounds that any decision would be highly likely to have made no substantial difference to the outcome. The Rule change also allows a party to a judicial review to apply to the court to have an intervener pay costs incurred as a result of the intervention. The Ministry of Justice state that the policy intention is to ensure that those who voluntarily intervene in a judicial review do so with a more appropriate measure of costs liability.
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

Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No.2) Order 2015

Draft instruments subject to annulment

HC 1116  Statement of Changes in Immigration Rules

Instruments subject to annulment

SI 2015/482  Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2015
SI 2015/483  Control of Major Accident Hazards Regulations 2015
SI 2015/493  Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015
SI 2015/496  Social Security Benefits Up-rating Regulations 2015
SI 2015/498  Occupational and Personal Pension Schemes (Transfer Values) (Amendment and Revocation) Regulations 2015
SI 2015/508  Merchant Shipping (Survey and Certification) Regulations 2015
SI 2015/533  Judicial Pensions (Miscellaneous) (Amendment) Regulations 2015
SI 2015/546  Universal Credit (EEA Jobseekers) Amendment Regulations 2015
SI 2015/548  Court of Protection (Amendment) Rules 2015
SI 2015/551  Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) Regulations 2015
SI 2015/559  National Health Service (Clinical Negligence Scheme) Regulations 2015
SI 2015/564  Immigration (Biometric Registration) (Objection to Civil Penalty) (Amendment) Order 2015
SI 2015/565  Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2015
SI 2015/569  Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2015
SI 2015/570  National Health Service (Charges for Drugs and Appliances) Regulations 2015
SI 2015/573  Harbour Directions (Designation of Harbour Authorities) Order 2015
SI 2015/575  Solvency 2 Regulations 2015
SI 2015/579  Firefighters’ Pension Scheme (Amendment) (England) Order 2015
SI 2015/581  National Health Service Pension Scheme (Amendment) Regulations 2015
SI 2015/590  Firefighters’ Compensation Scheme and Pension Scheme (England) (Amendment) Order 2015
SI 2015/592  Teachers’ Pension Scheme (Amendment) Regulations 2015
SI 2015/594  Teachers’ Superannuation (Additional Voluntary Contributions) (Amendment) Regulations 2015
SI 2015/600  Child Trust Funds (Amendment) Regulations 2015
SI 2015/601  Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015
SI 2015/602  Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2015
SI 2015/605  Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations 2015
SI 2015/607  Social Security Contributions (Limited Liability Partnership) (Amendment) Regulations 2015
SI 2015/610  Plant Health (England) Order 2015
SI 2015/611  Firearms (Variation of Fees) Order 2015
SI 2015/623  National Savings Regulations 2015
SI 2015/624  National Savings (No. 2) Regulations 2015
SI 2015/625  Police Appeals Tribunals (Amendment) Rules 2015
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WORK OF THE COMMITTEE IN SESSION 2014-15

Flow of Instruments

38. This report sets out a statistical summary of the Committee’s activity in the current session (2014-15) in paragraphs 57 to 59 below. The rise in the number of Statutory Instruments (SIs) laid has continued. In the first year of this Parliament the Committee considered 721 instruments. Over subsequent sessions that figure has slowly crept up, to 998 in session 2013-14 and 1153 in the current session, a level similar to that common in the previous Parliament (see Chart 2). Within the overall total, the proportion of affirmative instruments has increased significantly, currently standing at 29%. The degree to which this is due to the large number of correcting instruments is discussed in paragraphs 44 to 46 below.

39. While the Government’s efforts to complete unfinished business have boosted the laying of secondary legislation, two other factors have made a small contribution to the general increase. In evidence to our inquiry into Government consultation practice,14 the Rt Hon Oliver Letwin MP, Minister for Government Policy in the Cabinet Office, mentioned that part of the increase in the number of instruments might have arisen from the Government’s deregulation programme. His Red Tape Challenge invited the public to identify obsolete legislation: the removal of it from the statute book required new statutory instruments to revoke the redundant legislation. The second factor is the consideration of Treaties. Early in the session we noted that Treaties made under section 20 of the Constitutional Reform and Governance Act 2010, which are subject to a negative procedure, were not being scrutinised elsewhere in the House.15 As our terms of reference include instruments, not only Statutory Instruments, subject to parliamentary procedure, these Treaties are within the scope of this Committee.

40. Nearly a quarter of all SIs laid this session have come from the Home Office (13.2%) and the Ministry of Justice (11.1%), and so immigration and courts reform has remained high on the agenda. HM Treasury, and the Departments for Business, Innovation and Skills, Health, and Transport have each produced about 8% of SIs. Some of these SIs have been the most controversial and have prompted a number of external representations, particularly those relating to copyright (the Draft Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 and related instruments) and the recent Draft Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015. Such submissions give the Committee a broader insight into the potential effects of the legislation and we are grateful to those who have taken the trouble to write to us. As well as reflecting in our reports the issues raised in these submissions, we publish them on our website so that the material is available to Parliament as a whole.

14 Oral evidence page 15
Poor planning

41. In our last end of session Report we highlighted our concern that Departments were not allowing sufficient time for due process in Parliament before the date that an instrument was intended to come into effect. We referred them to Government guidance which says that they should allow a minimum of six sitting weeks for all parliamentary stages to take place. From the start of this session, we have reminded Departments of the need to take into account the implications of the Fixed-term Parliaments Act 2011, namely that the session would end no later than 30 March 2015. Unfortunately these reminders to plan effectively appear to have had little effect (see Chart 1): over 14% of the entire session’s SIs were laid in February and a further 13.7% in the first two weeks of March.

42. At the end of January, there were more than 100 affirmative instruments in progress listed in the House of Lords Business. At the end of February, there were 81, with new and significant affirmative instruments still being laid (for example, on standardised tobacco packaging and counter-terrorism).

43. This lack of planning has led to more requests from Ministers for the Committee to accelerate its consideration of instruments. But Departments need to bear in mind that a compressed scrutiny period (or an ineffective scrutiny period such as when an instrument is laid over the Christmas recess to come into effect by the New Year) limits the time available to anyone who may wish to make representations. The Committee will therefore only agree to accelerated consideration where the Minister provides a clear and convincing argument for expedition, such as public safety. If a Minister choses to publicise a specific commencement date for legislation to come into force, the responsibility lies with the Department to take the necessary steps to lay the instruments sufficiently in advance of that date.

Corrections

44. Last year we also remarked on the larger than usual number of correcting instruments, commenting that this not only wasted the Committee’s time but also increased the risk of confusion amongst those required to comply with the law. Sadly the trend has continued. We set out our findings for 2014 in our report published in January 2015. We have received a positive response from the Government stating their intention to address the points raised in the report by means of a specialist team within Cabinet Office, “the Statutory Instruments Hub”. The letter is published in full at Appendix 3.

45. We welcome the Cabinet Office’s intention to improve the accuracy of Departments’ drafting and hope that the Hub will start work quickly. In 2014, 1051 instruments were laid, of which 12.29% of affirmatives and 3.73% of negative instruments were replaced, giving an overall correction rate of 6.18%. For the first three months of 2015, the correction rate for the 446 instruments laid had increased to 7.62% (3.82% for negatives and 16.67% for affirmatives – see Chart 6). Given these figures, the Hub may

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16 See for example correspondence on Maternity Allowance (Curtailment) Regulations 2014 (SI 2014/3053), and Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014 (SI 2014/3054) in our 18th Report of this session (HL Paper 76).

wish to turn its attention first to finding out why so many affirmative instruments have required correction.

46. The higher than usual percentage of affirmatives (29%) laid this session may in part be due to the large number of corrections that have been needed. Many are due to drafting errors in the legal text but a proportion continue to demonstrate process errors. For example, HM Treasury laid two instruments relating to different policy areas which both sought to insert a new section 53E into an existing SI. This clearly illustrates a lack of overview by the Department in the handling of its legislation.

Consultation

47. The Committee has always taken the view that good quality public consultation at key stages in the development of legislation is an important way of improving its accuracy and effectiveness. Since the publication of the Consultation Principles by the Cabinet Office in July 2012 we have been observing Departments’ practice more closely. We have published a number of reports on this matter, most recently in January 2015. In evidence to us in December 2014, Mr Letwin appeared to take some of our points on board. An interim response from the Government to our January 2015 report has been received and is published separately, in our 31st Report.

48. A major concern to us was the absence of monitoring within Government of the handling of consultations. Such was the Committee’s concern about this issue that, from the start of this session, the grounds on which the Committee may report instruments were extended to include a new ground, namely that there “appear to be inadequacies in the consultation process which relates to the instrument”. We have used this ground eight times during this session on the most egregious examples, that is 9% of the total number reported. More often, we have either requested supplementary information about the consultation or asked for an Explanatory Memorandum (EM) to be replaced because the summary of the consultation process and outcome contained in it has been poor. There is the occasional glimmer of hope. For example, we commended the draft Insolvency (Protection of Essential Supplies) Order 2015, laid by the Department for Business, Innovation and Skills, for a concise and complete commentary, and also the summary in the draft Care and Support (Eligibility Criteria) Regulations 2014, laid by the Department of Health, but these remain the exception rather than the rule.

Impact Assessment

49. Summaries of Impact Assessments (IAs) in the EM are also being skimped over. The instruction published on our website is that a hard copy should

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18 For example, the Elections (Policy Development Grants Scheme) (Amendment) (No 2) Order 2015 (SI 2015/ 302) which revoked and replaced the Elections (Policy Development Grants Scheme) (Amendment) Order 2015 ((SI 2015/ 302) laid a few days earlier. See our 27th Report of this Session (HL Paper 120).
21 HL Paper 147
always be attached to an SI – a web link is not enough - and that a brief summary of the net effects of the legislation should be set out in the EM as well. Some Departments appear to take the view that no information is required if there are no costs to industry or voluntary bodies. But costs within the public sector are also pertinent to the Committee’s consideration of whether the legislation is implementing the policy appropriately or in the most effective way. A summary of outline costs is helpful even when an IA is not required, such as, for example, “only a dozen additional cases are expected as a result of this legislation with administrative costs of about £500 each to issue the licence.”

50. We would also welcome greater clarity in the IA about which options have been considered and rejected. Although there is a specific section on the front page of the IA for a brief summary of options considered, in our experience, this tends to provide only the option being implemented by the legislation and the status quo (the “do nothing” option).

Quality of EMs in general

51. A second new ground for reporting was also introduced at the beginning of the session. This concerned the quality of EMs. We have drawn nine (10.1%) instruments to the attention of the House on the ground that “the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.”

52. Of necessity, Departments have to be selective in deciding what material to include in EMs, but they need to avoid giving the impression that they have deliberately omitted information that might call into question the policy objective promoted by an instrument. During this session, the Department for Communities and Local Government (DCLG) laid several instruments requiring local authorities to publish information about their activities. These included the draft Local Government (Transparency) (Descriptions of Information) (England) Order 2014. Its EM failed to give an accurate account of the balance of opinion in responses to all the consultation exercises, and we stressed the need for Departments to ensure that summaries in EMs did not omit important details. DCLG subsequently laid the Local Government (Transparency Requirements) (England) Regulations 2014 (SI 2014/2680) which we drew to the attention of the House on the ground of policy interest. We noted that the Department was unable to say how many consultation respondents supported or opposed the publication of certain categories of information, and we said that this “left the impression of a Department which did not wish to allow its intentions to be swayed by serious consideration of responses”. Near the end of the session, DCLG laid the Local Government (Transparency Requirements) (England) Regulations 2015 (SI 2015/480), adding to the requirements on local authorities. We also drew this instrument to the attention of the House, commenting that the Department had signally failed to provide accurate and reliable information in support of the Regulations.

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22 11th Report, see para 22.
23 See our 6th, 11th and 30th Reports of this session, (HL Papers 27, 55 and 142).
53. If an EM is deficient, we have the additional recourse of asking Departments to re-lay the EM with the corrected or additional information that we felt was necessary to understand the policy intent. This has the advantage of ensuring that any reader can access the correct information from the Legislation.gov.uk website without having to cross-check against this Committee’s reports. In this session, we have asked for 46 EMs to be replaced. Besides omissions and inaccuracies, common faults include failing to explain the context and, instead, expecting the reader to follow a web link to look through extensive material, White Papers or “government strategies”, to pick out the small section that is relevant to the particular instrument. Similarly, the material that will follow the legislation, such as guidance or instructions to officials, needs to be available and properly summarised in order to enable the Committee to assess whether the implementation of the policy proposed will be fully effective.

Analysis of grounds for report

54. In 2013-14 we reported on 59 SIs (5.9%) out of a total of 998. For this session, the figures are 89 (7.7%) out of 1153. Although this appears a higher rate of reporting, the outcome is distorted by a single report on a group of 17 instruments arising from the Care Act 2014. If the figure is adjusted to take account of that, the reporting rate is 6.3%: very close to the level for the previous session.

55. Although the rate of reporting has remained much the same, there has been some change in which grounds are chosen as the basis for reporting. 17 SIs have been reported in this session on the new grounds of poor information or inadequate consultation, and fewer have been reported than last session on the ground that they may imperfectly achieve their objective (six (6.7%) in 2014-15 as opposed to 13 (22%) in 2013-14). The new grounds for reporting allow the Committee to highlight administrative defects in the preparation and procedures associated with an instrument. Now that these grounds for reporting are available to the Committee, a report concluding that an instrument may imperfectly achieve its policy objective may be seen as a much stronger criticism. Members of the House and Departments may wish to bear this in mind when reading future reports.

Public Bodies Orders

56. Only four Orders were laid in this session under the Public Bodies Act 2011. Just one caused us particular concern, the draft Public Bodies (Abolition of the Library Advisory Council for England) Order 2014, which raised issues about its timing: the Order was laid shortly in advance of publication of the outcome of a significant review into Public Library provision and we felt it premature to clear the Order before the recommendations of that review were known. From the indications in the Government response to our last annual review of Public Bodies Orders, we very much doubt whether any more of these Orders will be put forward for our consideration.

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24 See our 14th Report of this session (HL Paper 66).
25 See our 15th and 21st Reports of this session, (HL Papers 68 & 94).
Statistical Analysis

57. We met 28 times in session 2014–15 and published 33 reports on a total of 1153 instruments (340 affirmatives, 808 negatives, and 5 Public Bodies Orders). We drew 44 affirmatives and 45 negatives to the special attention of the House: a reporting rate of 12.9% for affirmatives and 5.5% for negative instruments. We held two evidence sessions, and have published a number of written submissions from members of the public and organisations which have greatly broadened our understanding of the impact of the SIs.

58. We have drawn 89 instruments (that is 7.7% of the total number considered) to the special attention of the House in this session as follows:

- 68 instruments (76.4%) on the ground of political importance or public policy interest;
- 6 (6.7%) on the ground that the explanatory material laid in support provides insufficient information;
- 3 (3.4%) on the grounds of imperfectly achieving its policy objective;
- 4 (4.5%) on the ground that there appear to be inadequacies in the consultation process;
- 3 (3.4%) on the ground of public policy interest and inadequacies in the consultation process;
- 2 (2.2%) on the grounds of imperfectly achieving its policy objective and that the explanatory material laid in support provides insufficient information;
- 1 (1.1%) on the ground of inappropriately implementing European Union legislation;
- 1 (1.1%) on the grounds of being inappropriate in view of changed circumstances since the enactment of the parent Act and that the explanatory material laid in support provides insufficient information;
- 1 (1.1%) on the grounds of imperfectly achieving its policy objective and that there appear to be inadequacies in the consultation process;

59. In deciding which instruments to draw to the special attention of the House, we have continued to limit our reports to those on which we believe the House may wish to take action. In order to alert Members to other instruments which appear to be of interest, are topical or follow an unusual process, we have continued to include in our reports short information paragraphs on instruments. In this session, we included 149 such paragraphs (covering 206 (17.9%) of the total instruments), compared to 184 last session (covering 238 (24%) of the total instruments). See Chart 4.
Chart 1 – Number of instruments laid by month in session 2014–15

Chart 2 – Number of instruments laid each calendar year since 2005
# Chart 3 – Number of instruments reported on and the ground for reporting

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<td>TOTALS</td>
<td>1153</td>
<td>45</td>
<td>68</td>
<td>68</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>6</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>
Chart 4 – Percentage of statutory instruments that were the subject of short paragraphs compared with the last four sessions

Chart 5: Correction rates for Session 2014-15

<table>
<thead>
<tr>
<th>SIs</th>
<th>Number laid</th>
<th>Number of SIs replaced by correction</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affirmative</td>
<td>340</td>
<td>44</td>
<td>12.9</td>
</tr>
<tr>
<td>Negative</td>
<td>808</td>
<td>27</td>
<td>3.34</td>
</tr>
<tr>
<td>Total</td>
<td>1148*</td>
<td>71</td>
<td>6.15</td>
</tr>
</tbody>
</table>

* Does not include the 5 PBOs

Chart 6: Correction rates for 2015 to end of session

<table>
<thead>
<tr>
<th>SIs</th>
<th>Number laid</th>
<th>Number of SIs replaced by correction</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affirmative</td>
<td>132</td>
<td>22</td>
<td>16.67</td>
</tr>
<tr>
<td>Negative</td>
<td>314</td>
<td>12</td>
<td>3.82</td>
</tr>
<tr>
<td>Total</td>
<td>446</td>
<td>34</td>
<td>7.62</td>
</tr>
</tbody>
</table>
APPENDIX 1: CORRESPONDENCE ON TEMPORARY EXCLUSION ORDERS (NOTICES) REGULATIONS 2015 (SI 2015/438)

Letter from James Brokenshire MP, Minister for Security and Immigration.

Thank you for your letter of 18 March regarding how this instrument and how the Temporary Exclusion Order (TEO) legislation is intended to operate.

First, you asked for more information on who “P’s representative” might be, where “P” is a person on whom the Secretary of State has decided to impose a TEO. P’s representative is a person who has the authority to act on behalf of P. As you have noted, this might be a parent (where P is under 18 years of age) or a legal representative. You asked what function P’s representative might be expected to fulfil. Where P’s representative is a legal representative, they might provide legal advice to P or represent P to the Secretary of State, for example, if P wishes to apply for a statutory review of the Secretary of State’s decision to impose a TEO on him or her.

You suggested that a lawyer might be unwilling to take on the role of P’s representative, as that might put them under suspicion for promoting terrorist activities. It is usual for individuals suspected of involvement in terrorism-related activity to have legal representation, for example in criminal prosecutions, appeals against immigration decisions, deprivation of citizenship cases, or in court reviews of civil orders such as of the Secretary of State’s decision to impose a Terrorism Prevention and Investigation Measures notice. These representatives do not come under suspicion for promoting terrorist activities on account of providing this service.

Second, you sought clarification of how the absent P might find out that he or she is subject to a TEO. You asked where the notice to be handed to P would come from, if a carrier were refused authority to carry P to the UK. Standard processes are already in place by which a carrier informs an individual that it has been refused authority to carry, and the next steps to take. The content of that notice depends on the reason for which the carrier has been refused authority to carry, and is provided to the carrier by the Government. TEOs will use this existing system.

Third, you raised the issue of the TEO system not being comprehensive. You asked about partner countries and what happens if a TEO subject returns to the UK from a different country. I note that this issue touches on the broader policy issues and the underlying primary legislation rather than the specifics of the regulations themselves but, as the Government made clear throughout the passage of the Counter-Terrorism and Security Act, the operation of this power will depend on the circumstances of each case.

The Government has engaged with a number of international partners on the implementation of this measure. As explained during the Bill’s passage, we have prioritised engagement with Turkey, France, and a number of other EU countries. This is for the obvious reason that these are the countries which are currently most likely to be transited by people travelling to or from Syria or Iraq. As the Government also made clear, it is mindful of the possibility that those subject to TEOs might be exposed to risks in particular countries as a result of being subject to a TEO. It is therefore perfectly proper that in some instances, in order to avoid these risks materialising, the Government would choose not to liaise with certain
countries to enforce a TEO. The need to prioritise work with particular countries, and to treat certain countries differently, was made clear and, I believe, recognised by both Houses, in approving the measure.

23 March 2015
APPENDIX 2: CORRESPONDENCE ON SCHOOL GOVERNANCE (CONSTITUTION AND FEDERATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2014 (SI 2014/1257)

Letter from Lord Nash, Parliamentary Under Secretary of State for Schools, Department for Education.

In the Second Report of Session 2014-15 of the Secondary Legislation Scrutiny Committee you made the following recommendation.

“In laying these Regulations, the Department intends that the governing bodies of maintained schools should review the adequacy of their constitution and membership, and that a primary consideration in their decisions should be the skills that governors require to be effective. Ofsted’s recent inspections of academies and maintained schools in Birmingham have underlined the importance of effective governance. The Department has said that it will monitor the operation of the Regulations through its Advisory Group on Governance. Given the importance of good governance, as demonstrated by recent events, we look to the Department to treat this monitoring as a priority; and we expect that the House may wish to be informed of the outcome of this monitoring by the end of the Session.”

The requirement for maintained school governing bodies to reconstitute under the School Governance (Constitution) (England) Regulations 2012 came into force on 1 September 2014, with governing bodies having until 1 September 2015 to complete the reconstitution process.

In autumn 2014, I wrote to all chairs of governors, Directors of Children’s Services, and Diocesan Directors of Education about the specific opportunity created by the requirement to reconstitute. My letters made it clear that treating it as a paper exercise would be a wasted opportunity. Governing bodies need to take this opportunity to review their effectiveness, membership and structure, and make changes that ensure the governing body is not just fit for purpose, but highly dynamic and professional in their approach. Copies of my letters can be found via these links.

Letter from Lord Nash to Directors of Children’s Services:

Letter from Lord Nash to all Chairs of Governors:

Letter from Lord Nash to Diocesan Directors of Education:

Many governing bodies are still in the process of reconstitution and the Department recently surveyed local authorities to gauge how well the process is working. A total of 39 responses were received from a wide coverage of local authorities in both rural and urban areas. The main findings are as follows:
Most governing bodies are actively considering their size and structure, with many making reductions in size.

There is widespread use of skills audits prior to reconstitution.

There appears to be some difficulty in recruiting governors with the right skills where schools are located in rural areas.

All local authorities are providing support to schools. This includes briefings to chairs and/or clerks, newsletters, workshop sessions, bespoke training, telephone and email advice, local authority attendance at governing body meetings, guidance documents on local authority websites, a self-evaluation tool based on the ‘Twenty Questions’, and a reconstitution toolkit.

Some local authorities have challenged schools on their proposed constitution, such as where the arrangements do not fulfil the legal requirements, or where they are retaining very large governing bodies or reappointing ineffective governors.

Most local authorities are reviewing how they make local authority governor nominations – mainly by use of skills audits. However, there are some local authorities which still appear to be using a political element in their nominations process. This is unacceptable.

There is a mixed response on the level of Diocesan involvement. Most local authorities have had a positive experience, but some have stated that Dioceses have had limited involvement or can be slow to act.

The vast majority of local authorities have told us that they think reconstitution will improve governing body effectiveness and they are confident that it will have a positive effect in the long term.

We are encouraged by what we have heard so far about the greater use of skills audits and the active role local authorities are playing in supporting governing bodies in the reconstitution process. Where local authorities have reported difficulties in recruiting governors, they have told us that they have made greater use of SGOSS, the organisation we fund to recruit skilled governors for schools to fill vacancies.

Whilst it is encouraging that many local authorities have reviewed their own appointments arrangements as part of the reconstitution process, it is disappointing that small number of local authorities continue to use a political element in appointing local authority governors. My letter to Directors of Children’s Services made it clear that this unacceptable practice and we shall be following this up with them.

Our monitoring of the reconstitution process is ongoing and it is too early to assess the impact that the changes will have. However, I am confident that as more skilled governors are recruited we will see an improved outcome for the future of governance.

23 March 2015
APPENDIX 3: NUMBER OF CORRECTIONS TO STATUTORY INSTRUMENTS IN 2014

Letter from Richard Heaton, Permanent Secretary for the Cabinet Office and First Parliamentary Counsel, and Jonathan Jones, Treasury Solicitor, to Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee

Number of corrections to Statutory Instruments in 2014
Thank you for your letter of 16 January 2015 enclosing your Committee’s report. As we have said before, we attach great importance to high standards in the drafting and making of secondary legislation. It is one of the most important areas of work for government lawyers. We also acknowledge that for the citizen seeking to conduct their lives and businesses within the law, accurate and accessible rules and regulations are vital.

We know that there is room for improvement, and we welcome your Committee’s analysis and suggestions.

We agree that the issues you identify are not confined to matters of drafting alone, and will require a concerted focus from all those involved in the process of making secondary legislation. We are therefore writing to all Permanent Secretaries and Parliamentary clerks, drawing their attention to your report, reminding them of the importance of proper planning when making secondary legislation, and encouraging them to use the support of their legal teams.

We will also be highlighting the role of the SI Hub; and this is because we are determined to use that initiative not only to promote good drafting, but also as a centre of excellence for the overall process of SI preparation – for example in the provision of guidance and training to policy officials, and in helping to plan for and manage the making of SIs. It is an opportunity to improve standards generally.

So, for example, we have discussed your sensible recommendation that the Cabinet Office should review correcting instruments to categorise the types of error which occur. We are asking the SI Hub to take this forward. This should help us to identify where we should focus our efforts to make the greatest improvements. We will benefit from the fuller analysis behind your Committee’s report and our officials are pursuing this with your advisers.

24 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 March 2015 Members declared the following interests:

Teachers’ Pension Scheme (Amendment) Regulations 2015 (SI 2015/592)

Teachers’ Superannuation (Additional Voluntary Contributions) (Amendment) Regulations 2015 (SI 2015/594)

Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 (SI 2015/601)

Baroness Humphreys
The member declares an interest as a former teacher.

Police Federation (Amendment) Regulations 2015 (SI 2015/630)

Police Appeals Tribunals (Amendment) Rules 2015 (SI 2015/625)

Police (Conduct) (Amendment) Regulations 2015 (SI 2015/626)

Lord Bowness
The member’s daughter is a Police Officer.

Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015 (SI 2015/660)

Lord Borwick
The member declares an interest as a property developer.

Attendance:

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