Correspondence: Green Deal

Includes 3 Information Paragraphs on 5 Instruments

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

Historical Note

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

The Committee has the following terms of reference:

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

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

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

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

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

Members

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

Registered interests

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

Publications

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

Information and Contacts

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

Statutory instruments

Fourth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this report.

CORRESPONDENCE

Department for Energy and Climate Change: Green Deal

1. We wrote to the Minister of State for Energy about the volume and complexity of the secondary legislation implementing the Green Deal. We have received a reply of 30 June from Rt Hon. Gregory Barker MP, Minister of State, Department for Energy and Climate Change, and are publishing the correspondence at Appendix 1.
INSTRUMENTS OF INTEREST

Draft Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) (No. 2) Order 2014

2. This Order illustrates the waste of resource that is involved when incorrect legislation is promulgated. This Committee considered the original draft Order in June 2013, which was made as SI 2013/2025 and came into effect on 16 August 2013. Paragraph 7.3 of the Explanatory Memorandum to that instrument clearly outlined that the policy change should exclude parking offences.

“The decision has since been taken to increase the penalty levels (both fixed penalty and corresponding financial penalty deposit levels) for all road transport offences, except parking offences. The reason for doing so is to try to increase the levels of compliance with regulatory motoring and road transport requirements.”

3. This Order, however, amends the legislation to ensure that financial penalty deposits for fixed penalty parking offences revert to pre-August 2013 levels because SI 2013/2025 included some fixed penalty parking offences, “due to an accidental oversight due to the complexity of identifying and defining parking offences”. When the Department realised the error, officials wrote to the Association of Chief Police Officers (ACPO) notifying them and ACPO communicated this information to all forces and asked them to handle parking offences incurred by overseas registered vehicles through a summons rather than through the issue of a financial deposit. As a further measure, the fixed penalty system was set up not to accept the increased level parking fine. ACPO state that, to the best of their knowledge, there have been no cases where the increased amount for a parking fine has in fact been levied. However a great deal of time for the police, departmental officials and lawyers has been wasted because of ineffective checking of the original instrument. Our overview at the end of the last session drew attention to the need for Departments to improve their checking procedures and we remind Departments to be vigilant. We would also suggest that, if this legislation is so complex that even Departmental lawyers cannot navigate it correctly, it is in urgent need of simplification.

Adoption and Children Act Register Regulations 2014 (SI 2014/1492)
Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014 (SI 2014/1556)
Adoption Support Services (Amendment) Regulations 2014 (SI 2014/1563)

4. The Department for Education (DfE) has laid these three sets of Regulations with a shared Explanatory Memorandum. DfE says that the Regulations are part of a wider programme of adoption reform, and that they play an important part in achieving a key aim of the programme, for children to be adopted without delay.

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1 Road Safety (Financial Penalty Deposit) (Appropriate Amount)(Amendment) Order 2013.
5. In amending a previous instrument, SI 2014/1556 serves to enable the early placement of children with local authority foster parents who are also approved prospective adopters, finding suitable adopters as soon as reasonably practicable and placing a duty on adoption agencies to consider whether to seek to identify prospective adopters who may be suitable to adopt siblings. The instrument also makes it clear that, when considering whether contact between a child in care and their birth family is consistent with safeguarding and promoting the child’s welfare, the local authority must have regard to the child’s care plan. SI 2014/1563 provides that prospective adopters and adoptive parents are informed by their local authority of their adoption support entitlements and other prescribed information. SI 2014/1492 provides for the establishment and maintenance of the Register, which is a database that includes details of children waiting to be adopted and approved prospective adopters. The Register was launched in August 2001 and has hitherto been operated on a non-statutory basis.

6. DfE consulted on these Regulations (and draft statutory guidance) over a six-week period to 11 April 2014. The Department says that the majority of respondents were supportive of all three sets of Regulations. The Government response was published on 29 May 2014. While it seems clear that, with 61 respondents, the consultation process received contributions from a fair number of interested parties, we make the point that six weeks are a relatively short period of time for views to be gathered and expressed on measures as important as these.

Companies (Striking Off) (Electronic Communications) Order 2014 (SI 2014/1602)

7. The Department for Business, Innovation and Skills (BIS) has laid this Order with an Explanatory Memorandum (EM). BIS explains that hitherto the relevant legislation has stipulated that the registrar of companies must send a notice of strike-off to a company believed not to be trading, and the communications prior to such a notice, as letters by post. In amending the earlier legislation, the Order will permit the registrar to send these through alternative modes of communication, such as by e-mail. BIS states that the registrar will not mandate that electronic communications should be used to notify and inform every company and LLP. Companies and LLPs will have to stipulate that electronic communication is their preferred way of receiving information from the registrar; if any company does so, it will be under the duty to ensure that its e-mail details are kept up-to-date.

8. In the EM, BIS says little about consultation in relation to these changes, save to refer to its Company Filing Requirements consultation. We obtained additional information about this from the Department, which we are publishing at Appendix 2.

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4 See: https://www.gov.uk/government/consultations/adoption-getting-it-right-making-it-work.
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

- Green Deal (Qualifying Energy Improvements) (Amendment) Order 2014
- Local Audit (Delegation of Functions) and Statutory Audit (Delegation of Functions) Order 2014
- Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014
- Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) (No. 2) Order 2014
- Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) (No. 2) Regulations 2014

Draft instruments subject to annulment

- Modifications to the Smart Energy Code and the Smart Meter Communication Licences (Smart Meters No. 2 of 2014)

Instruments subject to annulment

- SI 2014/1492 Adoption and Children Act Register Regulations 2014
- SI 2014/1534 National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2014
- SI 2014/1556 Adoption and Care Planning (Miscellaneous Amendments) Regulations 2014
- SI 2014/1562 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Community Care) Regulations 2014
- SI 2014/1563 Adoption Support Services (Amendment) Regulations 2014
- SI 2014/1601 Feed-in Tariffs (Amendment) Order 2014
- SI 2014/1602 Companies (Striking Off) (Electronic Communications) Order 2014
- SI 2014/1603 Requirements for School Food Regulations 2014
- SI 2014/1612 Proscribed Organisations (Name Changes) Order 2014
APPENDIX 1: DEPARTMENT FOR ENERGY AND CLIMATE CHANGE: GREEN DEAL

Letter from Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee, to Rt Hon. Michael Fallon MP, Minister of State for Energy at the Department for Energy and Climate Change

The Committee will take evidence from you on 8 July, in relation to the secondary legislation which your Department intends to lay on aspects of electricity market reform.

At our meeting this week, we considered the draft Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014, which your Department laid on 4 June. We are publishing information about the draft Order in our latest Report, noting that the accompanying Explanatory Memorandum gives a list of other instruments relating to the Green Deal. We refer, not for the first time, to the extent and opacity of secondary legislation implementing the Green Deal, and we state our view that your Department needs to tackle the issue at source, by simplifying the scheme and the attendant legislation.

We would expect to question you about this as well, on 8 July. However, we would find it helpful if you could reply before then on this issue.

18 June 2014

Letter from Rt Hon. Gregory Barker MP, Minister of State at the Department for Energy and Climate Change, to Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee

Thank you for your letter of 18 June 2014 to Michael Fallon. The Green Deal falls within my remit rather than Michael’s and my officials have agreed with the Clerk to your Committee that I would write responding to the points in your letter (unfortunately I am not available to give evidence on 8 July).

I do take your point that there is on the face it a large number of Statutory Instruments relating to the Green Deal. Including the Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014 (the “RAO Amendment Order”) currently under consideration, there are eleven instruments relating to the Green Deal.

However, it is one of these, The Green Deal Framework (Disclosure, Acknowledgement, Redress, etc.) Regulations 2012 (S.I. 2012/2079 (as amended by S.I. 2012/3021 and S.I. 2013/139), that provides the key framework for managing the Green Deal.

The remaining, relatively short, statutory instruments deal with quite specific parts of this novel scheme, in the manner envisaged by the Energy Act 2011 (the “Energy Act”). Two (one for Scotland) prescribe the form of the acknowledgement which is required to be given when certain property transactions take place; sections 14 and 15 of the Energy Act require these regulations to be made. One requires disclosure of Green Deal plans in circumstances other than sale or letting of a property – as envisaged by section 13 of the Energy Act 2011.
That S.I. provides for important consumer protection in connection with certain types of more unusual property arrangements. The two Orders on Qualifying Energy Improvements and Energy Efficiency Improvements set out the types of improvement that can be installed under a green deal plan, in the manner provided for in the Energy Act 2011.

Finally, the two S.I.s made regarding consumer credit have been necessary in order to:

(i) provide for appropriate compensation for green deal providers in cases where this novel kind of finance is repaid early (as provided for by section 29 of the Energy Act 2011); and

(ii) provide clarity to the market as to who is to be treated as the “debtor” and “creditor” for the purpose of consumer credit regulatory obligations. This latter order was considered vital by stakeholders in order to give them sufficient clarity on the application of the consumer credit regime to green deal plans. This is, of course, also the purpose of the RAO Amendment Order which is currently before Parliament, and which is required due to the transfer of regulatory responsibility for consumer credit from the Office of Fair Trading to the Financial Conduct Authority.

I hope I have explained the rationale behind the set of SIs. Nevertheless, I do recognise that it is important to make Green Deal as simple as possible to keep down cost and complexity for business and consumers. We are constantly looking to improve the way it operates and learn from what is happening on the ground. We have just issued an updated Green Deal Assessment Report which will give householders clearer information on the improvements they can make to their home – and our new Green Deal Home Improvement Fund (providing substantial cashback for householders installing energy efficiency measures) has been kept as simple as possible. The new scheme has got off to a very positive start and we are supporting it through a marketing campaign and continuing demonstration of the value of good advice and trusted service delivery. We have also speeded up the processes by ‘which new companies are approved to operate in the market.

I hope this reassures the Committee that we want Green Deal to operate as efficiently and successfully as possible and will continue to make improvements.

30 June 2014
APPENDIX 2: COMPANIES (STRIKING OFF) (ELECTRONIC COMMUNICATIONS) ORDER 2014 (SI 2014/1602)

Additional information from Department for Business, Innovation and Skills

The Company Filing consultation followed on from the Red Tape Challenge, which highlighted the fact that many companies wanted to be able to receive electronic communications from Companies House as a matter of course. The consultation, which sought views on a number of company filing issues, was launched on 7 October 2013 and ended on 22 November 2013. The Department received 150 responses in total.

The intention is to allow the registrar to send electronic communications to a company, if the company supplies an e-mail address on incorporation. As part of the consultation, the Department stated its intention to ask all companies for an e-mail address on incorporation, but not to mandate for this. Companies House will therefore, only send e-mails with the express permission of the company.

Whilst we did not specifically seek views on this approach, the following general comments were received.

“Communications should be sent electronically as long as it is not mandated”

“Communications should only should be sent to a proprietary email e.g. not yahoo, Hotmail, Gmail”

We did however, ask the following question:

Are there any notices that should not be sent electronically?

We received 103 responses to this question with 46 respondents suggesting that all notices should be sent to companies electronically. Of those that thought some notices should be sent by email and followed by post, the reasons stated were in regards to the sending of important notices:

- 33 respondents suggested the sending of electronic communications relating to strike-off should be supported with a final letter by post;
- 13 respondents made this suggestion in regards to penalty notices;
- 5 respondents made this suggestion in regards to accounting/returns

In response to the concerns raised, Companies House will continue to send all final notices of strike off in hard copy; however, the amendments allow for the possibility of sending communications through alternative means in the future. The new Regulations allow Companies House to use any method of communications, including hard copy. This approach will enable the registrar to amend the way they interact with companies into the future.

23 June 2014
APPENDIX 3: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 1 July 2014 Members declared no interests.

Attendance:

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