

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

6th Report of Session 2014–15

**Electricity Market Reform (General)
Regulations 2014 and 8 related
instruments**

**Police and Crime Commissioner Elections
(Amendment) (No. 2) Order 2014**

Includes 9 Information Paragraphs on 13 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 (<i>Chairman</i>)	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 6.

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

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

Sixth 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 Contracts for Difference (Allocation) Regulations 2014

Date laid: 30 June 2014

Parliamentary Procedure: affirmative procedure

Draft Contracts for Difference (Definition of Eligible Generator) Regulations 2014

Draft Contracts for Difference (Standard Terms) Regulations 2014

Draft Contracts for Difference (Electricity Supplier Obligations) Regulations 2014

Draft Electricity Market Reform (General) Regulations 2014

Draft Electricity Capacity Regulations 2014

Date laid: 23 June 2014

Parliamentary Procedure: affirmative procedure

Draft Capacity Market Rules 2014

Draft Modifications to the Special Conditions of National Grid

Electricity Transmission plc's Transmission Licence (EMR No. 1 of 2014)

Date laid: 19 June 2014

Parliamentary Procedure: draft negative procedure

Draft Modifications to Transmission Licences and Documents maintained under Licences (EMR No. 2 of 2014)

Date laid: 16 June 2014

Parliamentary Procedure: draft negative procedure

Summary: This complex suite of secondary legislation and related documents has been laid by the Department for Energy and Climate Change to implement its programme of Electricity Market Reform (EMR) under the Energy Act 2013. We took evidence from the Energy Minister on 8 July, who described EMR as the biggest single reform of the electricity market since 1987-88.

We recognise that the Government have made considerable efforts to ensure that interested parties in the electricity market understand the EMR programme. However, it is important that consumers should also have a good understanding, and we see scope, and need, for the Government to take this forward, working with consumer groups as appropriate.

We welcome the fact that the Minister has now provided additional information to assist the House's scrutiny of these instruments; in considering any further instruments to take the programme forward, we urge the Government to bear in mind the desirability of ensuring that such secondary legislation as is required should be as clear and comprehensible as possible.

We draw these instruments to the special attention of the House on the grounds that they are politically or legally important or give rise to issues of public policy likely to be of interest to the House.

1. The Department for Energy and Climate Change (DECC) has laid these instruments, in each case with an Explanatory Memorandum (EM), and also with a number of impact assessments. They make up a suite of secondary legislation and related documents, by means of which DECC plans to implement its programme of Electricity Market Reform (EMR) under the Energy Act 2013 ("the 2013 Act"). In view of the significance of the secondary legislation, we took evidence on 8 July 2014 from the Rt. Hon. Michael Fallon, MP, then Minister of State for Energy,¹ in order to inform our scrutiny.

Electricity Market Reform (EMR)

2. In the EMs, DECC states that the EMR programme is intended to incentivise investment in low-carbon electricity generation, while improving affordability for consumers, and maintaining energy security. The Department says that EMR has been designed as a set of transitional arrangements intended to work with the market and address market failures, in order to ensure that low-carbon electricity generation is an attractive investment opportunity.
3. DECC states that the key elements of EMR will be delivered through two new mechanisms to incentivise the required investment: Contracts for Difference (CFDs), which will provide long-term revenue stabilisation to low-carbon plant, allowing investment to come forward at a lower cost of capital and therefore at a lower cost to consumers; and the Capacity Market, which will provide a regular retainer payment to reliable forms of capacity (both demand and supply side) in return for such capacity being available when additional electricity supply is required at times of peak demand. This will reduce the threat of blackouts due to insufficient capacity on the system.

EMR secondary legislation and related documents

4. The first five of the instruments subject to affirmative resolution relate to Contracts for Difference (CFDs). The *draft Contracts for Difference (Allocation) Regulations 2014* set out details of the procedure for applications for CFDs, including the assessment of applications, the contents of an allocation framework and how that is applied to an allocation round, and the budget for such rounds. The *draft Contracts for Difference (Definition of Eligible Generator) Regulations 2014* specify the relevant definition. The *draft*

¹ See:

[http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/SLSC-14-07-08-Ev1-TRANSCRIPT-Fallon-\(revised\).pdf](http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/SLSC-14-07-08-Ev1-TRANSCRIPT-Fallon-(revised).pdf)

Contracts for Difference (Standard Terms) Regulations 2014 control three aspects of the way in which a “generic” CFD (that is, one that follows a notification from the national system operator) may be drawn up, offered and publicised: provision to be included in standard terms issued or revised by the Secretary of State; the process for an applicant to request a change to the generic CFD terms; and controls on the process through which a CFD is completed and offered. The *Draft Contracts for Difference (Electricity Supplier Obligations) Regulations 2014* establish a mechanism to allow the CFD Counterparty to raise funds from all licensed electricity suppliers in Great Britain to pay for the liabilities that it has to make for payments to electricity generators under the Contracts for Difference scheme, and to return money to suppliers where appropriate.

5. The fifth of these instruments, the *draft Electricity Market Reform (General) Regulations 2014*, set out a number of general provisions relating to the CFD policy. These include a requirement on the EMR Delivery Body (namely, National Grid Electricity Transmission plc (NGET)) to provide information in relation to the strike price² applicable to any form of low-carbon electricity generation under CFDs; provisions determining how and when a supply chain statement application³ should be made and what it should cover, and setting out the circumstances in which the Secretary of State must not disclose information contained in a supply chain statement application; and provision to shield NGET (as the national system operator and EMR Delivery Body) against liability in damages to third parties arising out of its exercise of EMR delivery functions relating to the CFD.
6. The *draft Electricity Capacity Regulations 2014* and the *draft Capacity Market Rules 2014* establish a Capacity Market which is designed to ensure that sufficient electricity generating capacity is available to ensure security of electricity supply. Among other things, the draft Regulations deal with the Secretary of State’s role, including matters such as how and when the Secretary of State will determine whether to run a capacity auction, and providing for the Capacity Market to be implemented and administered by a combination of the Secretary of State, the Gas and Electricity Markets Authority (Ofgem), the EMR Delivery Body (NGET) and a Settlement Body. The Rules detail the operating framework set out in the Regulations, focusing on the technical and administrative rules and procedures for how the Capacity Market will operate.
7. Finally, the draft Modifications to the Special Conditions of National Grid Electricity Transmission plc’s Transmission Licence (EMR No. 1 of 2014) insert a new Special Condition into NGET’s transmission licence, with provisions which require NGET to implement certain business separation measures intended to manage conflicts of interest arising with other parts of its business while undertaking functions conferred on it as the EMR Delivery

² CFDs will require generators to sell energy into the market as usual but, to reduce exposure to fluctuating electricity prices, CFDs provide a variable top-up from the market price to a pre-agreed “strike price” which differs for different low-carbon technology. If the market price is lower than the strike price, a top-up payment is made to the generator. Conversely, if the market price exceeds the strike price, the generator is required to pay back the difference.

³ To be eligible to apply for a CFD and receive subsidy, generators in respect of projects of 300MW or more are to be required to demonstrate how they are likely to make a material contribution to the development of supply chains in the relevant low-carbon industry and/or technology.

Body. The draft Modifications to Transmission Licences and Documents maintained under Licences (EMR No. 2 of 2014) contain amendments consequential on the EMR secondary legislation described above.

Evidence session with Energy Minister

8. On 8 July, we took evidence from the Rt. Hon. Michael Fallon, MP, then Energy Minister. As well as hearing more about the objectives of the secondary legislation, we raised with him a number of concerns prompted by our scrutiny of the instruments.

Complexity

9. The number of statutory instruments laid, and the highly detailed nature of their provisions, are not conducive to a rapid understanding of their effect. We pressed the Minister on whether implementation of the EMR programme needed to be secured through such complex legislation. Mr Fallon said that this was the biggest single reform of the electricity market since 1987-88, “so inevitably there is some complexity in the regulations”.⁴ While accepting in principle that regulations could always be made clearer, he was “not sure how [the secondary legislation] could have been made necessarily more succinct”.⁵ He acknowledged that the Government would be laying additional secondary legislation.⁶

Consultation and engagement

10. We asked the Minister about the extent of consultation in relation to the statutory instruments, and about whether the Government had made changes to their proposals for implementation in the light of consultation responses. Mr Fallon mentioned three changes which had been made: quarterly, rather than annual, consolidation of the reserve fund; simplification of the pre-qualification paperwork; and restructuring the penalty regime in the capacity market.⁷ He also described the Government’s wider engagement with interested parties both before and since the formal consultation process, and said that this would continue, particularly in the case of the capacity market: “we will certainly want to build in lessons from the first auction [in December 2014] when we come to run the second”.⁸

Understanding in industry and among consumers

11. We pressed the Minister on whether he saw any risk that a lack of understanding among market participants could affect the progress of the EMR proposals. He told us of his confidence that the industry understood, and was interested in, both the CFDs and the Capacity Market: “I am satisfied that the industry, the potential generators, are ready to participate”;

⁴ Q1.

⁵ Q6.

⁶ Q10.

⁷ Q2.

⁸ Q3.

though he acknowledged that the test would come only when the Capacity Market had run its course.⁹

12. Mr Fallon said that, once the secondary legislation had been approved by Parliament, the Government would consider with Ofgem and others how to improve consumer understanding of the EMR arrangements.¹⁰ He acknowledged that until recently the Government had not made it sufficiently clear to consumers that their electricity bills needed to cover not only energy consumed, but also the cost of replacing generating capacity, and the cost of international commitments to use low-carbon technology: “these are the two things that perhaps the Government could work harder at getting over to consumers”.¹¹ We put to the Minister the case for involving consumer organisations, such as Which? and Citizens Advice, in the process of improving consumer understanding, and received some assurance that this was in the Government’s sights.¹²

Costs to consumers

13. We asked the Minister about the cost implications for consumers’ bills of implementation of the EMR programme. Mr Fallon acknowledged that bills would carry additional costs: roughly £2 a year for the Capacity Market, and £25 or £26 a year for the Contracts for Difference: “we have to make sure that we get good value for money for what the taxpayer is putting in.”¹³ We raised the concern that had been voiced by Which? among others, that implementation of EMR might favour more expensive technology over cheaper projects, to the financial detriment of consumers. Mr Fallon said that the Government wanted to see competition between technologies and among the technologies: “we see that as one of the main pressures on price and making sure that what our constituents pay is affordable.”¹⁴

Parliamentary oversight

14. We raised the issue of Government accountability to Parliament on implementation of the EMR programme. Mr Fallon said that the Secretary of State was under a duty to lay an annual report before Parliament to explain how the reforms would work out.¹⁵ He said that there were other statutory requirements on the Government to report to Parliament on other aspects of energy policy, including energy security.¹⁶
15. We put to the Minister that, in order to assist the House further in its consideration of the secondary legislation, he might provide some additional, succinct explanation of the legislation, to help members navigate through the statutory instruments and related documents. Mr Fallon has now done so, and we are publishing that further explanation as Appendix 1.

⁹ Q7.

¹⁰ Q6.

¹¹ Q8.

¹² Q6.

¹³ Q4.

¹⁴ Q9.

¹⁵ Q6.

¹⁶ Q8.

Conclusion

16. This suite of secondary legislation and related documents serves to implement what the Minister described to us as the biggest single reform of the electricity market since 1987-88. **We recognise that this is a large-scale and long-term programme, but we have some concern, as explained below, that its implementation has taken as complex a form as is embodied in the statutory instruments now before the House, to which the Government intend to add other statutory instruments later in the year.**
17. Our concern about complexity arises out of our view that legislation can be expected to work best if it is readily understood by those affected by it. **We recognise that the Government have made considerable efforts to ensure that interested parties in the electricity market understand the EMR programme. However, it is important that consumers should also have a good understanding, and we see scope, and need, for the Government to take this forward, working with consumer groups as appropriate.**
18. We have no doubt that the House is closely interested in electricity market reform and, hence, in this secondary legislation. We welcome the fact that the Minister has now provided additional information to assist the House's scrutiny of these instruments; in considering any further instruments to take the programme forward, we urge the Government to bear in mind the desirability of ensuring that such secondary legislation as is required should be as clear and comprehensible as possible.

B. Draft Police and Crime Commissioner Elections (Amendment) (No. 2) Order 2014

*Summary: According to the BBC the average turn out for the Police and Crime Commissioner (PCC) elections in 2012 was less than 15%. Those elections were run on a "digital by default" basis with information on the candidates only appearing on a dedicated webpage. The Order allows the Home Office to run a pilot exercise at the first PCC by-election that occurs to see whether the delivery of election booklets to residential premises significantly raises voter awareness about the candidates. When originally laid the instrument was only put forward on a contingency basis but the unexpected death of the West Midlands PCC, announced on 1 July, means a by-election will now take place on 21 August. Although the Electoral Commission is supportive of the arrangements for the pilot, the Committee remains uncertain whether the pilot, as currently structured, will yield robust results. **We recommend that the evaluation exercise to be conducted after the pilot should also consider the level, if any, of charge to be made and how the booklet influences voters' perception of candidates, in particular, if someone declines to contribute to it, whether not being included in it made a difference to how the candidate was viewed.***

The Order is drawn to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House and may imperfectly achieve its policy objective.

19. The Order was laid by the Home Office under the Police Reform and Social Responsibility Act 2011 and a revised version, to allow the pilot exercise to

be run at the forthcoming West Midlands Police and Crime Commissioner (PCC) by-election, was laid on 9 July. It is accompanied by an Explanatory Memorandum (EM) and although there is no Impact Assessment the cost to the Home Office of providing candidate information booklets in an average-sized police force area is estimated to be £0.3 million. As the West Midlands is a larger area, specific costs for this election are estimated at about £1 million for distribution of the booklets and a further £3 million for the running of the by-election itself.

20. According to the BBC, the average turn out for the PCC elections in 2012 was less than 15%. Those elections were run on a “*digital by default*” basis with information on the candidates only appearing on a dedicated webpage. The Order allows the Home Office to run a pilot exercise at the first PCC by-election that occurs to see whether the delivery of election booklets to residential premises significantly raises voter awareness about the candidates standing in a PCC election. When originally laid the instrument was only put forward on a contingency basis but the unexpected death of the West Midlands PCC, announced on 1 July, means a by-election will now take place on 21 August and the original draft instrument was re-laid with minor drafting amendments to facilitate this.
21. Although in principle this pilot seems like a sensible idea, the Committee has raised some questions with the Home Office about the methodology proposed.

Sample size

22. The Order would only permit the distribution of booklets for the first by-election that occurs and the Home Office will then assess the results and consider next steps. This seemed a rather small sample where other factors including the popularity of the candidate (or otherwise) might influence the turn out. To be able to draw more robust conclusions on whether and how booklets influenced the result it would seem preferable to base them on a larger sample.

Fairness of booklets if incomplete

23. The booklets will only contain the election addresses of those candidates willing to pay a contribution to the price of production. The Home Office has stated that it “will pay for the majority of the costs”; and

“The Order provides that the Police Area Returning Officers may seek a ‘reasonable sum’ from candidates as a contribution towards printing the booklets. This is in order to discourage any potential for individuals seeking to use the booklets inappropriately because they would otherwise be free. There is precedent for this. For example, each candidate contributed £750 to feature in election booklets during the 2011 local mayoral elections in Middlesbrough. It will be up to candidates as to whether they wish to participate in the booklets distributed to households.”

24. It should also be noted that this arrangement replaces the “freepost” option, so, if they choose not to participate in the booklets, candidates will have to pay for the printing and distribution of alternative leaflets themselves. The sum that candidates will be required to contribute has not yet been announced for the West Midlands by-election, but **a substantial sum could**

prove a barrier to some candidates, particularly independents. Given the by-election itself is going to cost £4 million these contributions seem nugatory and we trust the evaluation will consider this point carefully.

25. In the Middlesbrough case, cited as the precedent, all four candidates chose to be included. Neither the response from the Electoral Commission nor that from the Home Office addresses the question of fairness if someone chooses not to be included. **The Committee questions how a booklet that did not include information from all candidates would influence the electorate, and whether it could give an impression that the Home Office was endorsing those who appeared in the “official” booklet, if some did not.**

Other variables such as marketing

26. Paragraph 12.2 of the EM says that the Home Office “will track the performance of any marketing campaign that is run to raise awareness of the by-election”. This seems to introduce a second variable that might influence the turn out of the election – if there was a 10% improvement in the turn out how would the Home Office assess how much of the increase would be attributable to the booklets and how much to the marketing campaign? The website approach will remain as a constant factor but the response from the Home Office is unclear about the exact nature of the marketing activity planned:

“There will be additional marketing activity in line with the PCC elections in 2012 to supplement the booklets and the website. Candidates are not required to contribute to the costs of those wider marketing activities, and all marketing will be evaluated. In tracking the performance of any awareness raising activity during the by-election, the evaluation would isolate those who say they are aware of booklet only so we can see the impact the booklet had in comparison with those who had accessed candidate addresses via the ‘Choose My PCC’ website. The Home Office has discussed its plans for evaluating the pilot with the Electoral Commission, and the latter was content with the proposed approach.”

27. We note that in the EM to the revised Order this was altered to the Electoral Commission “is supportive”. We contacted the Electoral Commission directly to seek their view (published in full at Appendix 2). The Commission drew our attention to the report, published after the PCC elections in 2012, which found that a website-only approach was inadequate, with 37% of people who did not vote saying it was due to lack of awareness and only 22% stating that they felt they had enough information to make an informed choice about those standing. The Electoral Commission therefore states that it supports the intention of the Order and a full evaluation of the pilot. **They add that the evaluation should also specifically address whether, if a charge is to be made, the level of financial contribution requested from candidates was at an appropriate level.** The Electoral Commission also cites the precedent of the mayoral election, and makes no specific comment on how an incomplete booklet might be perceived.

Cost of translations

28. In considering policy more generally, the Committee asked whether PCC candidates in Wales would be asked to contribute a higher sum towards

booklets because of the higher cost of providing a dual language booklet. The Home Office responded that this was irrelevant to the current pilot. The Committee also asked the more general question about whether there would be an additional cost to candidates if they wished to publish their election address in more than one language to appeal to the sectors of the community whose first language is not English. The Home Office responded that such decisions would be left to the Police Area Returning Officer (PARO) in charge of the arrangements for the election.

29. Both responses simply defer the decision, neither makes a clear policy statement. Although the issue of Welsh may not arise with this particular by-election, according to the 2011 Census, 386,134 residents of the West Midlands spoke a language other than English as their main language, which represents 7.2% of the total resident population aged 3 and above. Within this group, the most commonly spoken language was Panjabi (17%), followed by Polish (13%) and Urdu (13%). Of these respondents 23% reported not being able to speak English well (1.6% of all residents above the age of 3), while 5% reported they could not speak English at all (0.4% of all residents above the age of 3). **We recommend that the Home Office publishes clear guidance for the PARO on this issue in relation to the forthcoming West Midlands PCC by-election.**

Conclusion

30. The Committee remains uncertain whether the pilot, as currently structured, will yield robust results. We note that the Electoral Commission is supportive of it as a fact finding exercise. The Committee is concerned that different candidates within the same election may receive different levels of publicity and queries how an “official” booklet that does not include all candidates will be perceived. **We recommend that the evaluation exercise to be conducted after the pilot should also consider the level of charges, if any, and how the booklet influences voters’ perception of candidates, in particular, if someone declines to contribute to it, whether not being included in it made a difference to how the candidate was viewed.**

INSTRUMENTS OF INTEREST

Draft Drug Driving (Specified Limits) (England and Wales) Regulations 2014

31. Section 4 of the Road Traffic Act 1988 (“the 1988 Act”) makes it a criminal offence to drive when under the influence of drink or drugs and section 5 of the 1988 Act makes it an offence to drive or be in charge of a motor vehicle with a concentration of alcohol in the body above a prescribed limit. The Crime and Courts Act 2013 introduced a similar approach for drugs by inserting a new section 5A into the 1988 Act: this instrument specifies limits for sixteen drugs for the purposes of section 5A. There is a “zero tolerance” approach for those drugs most associated with illegal use, a further eight drugs, which have medical uses, have limits identified by a Department for Transport panel of experts in line with a road safety, risk-based approach. Medicine manufacturers and health professionals will be providing guidance for patients who are prescribed medicines which contain the specified drugs so that they are made aware of the new legislation. Consideration of the appropriate limit for amphetamines is still under discussion.

Draft Equality Act 2010 (Equal Pay Audits) Regulations 2014

32. The Department for Culture, Media and Sport (DCMS) has laid these draft Regulations with an Explanatory Memorandum (EM) and impact assessment. In the EM, DCMS says that the aim of the Regulations is to ensure that employers found by an employment tribunal to have committed an equal pay breach are required to undertake a systematic evaluation of their pay and reward systems, to ensure that further breaches do not occur or that existing breaches do not continue. The audit will need to identify any differences in pay (including non-contractual pay) between men and women doing equal work in the same employment, provide reasons for any differences and set out an action plan for eliminating those differences, where they cannot be explained or justified otherwise than by reference to gender.
33. DCMS says that it carried out two consultation exercises related to these proposals. The first consultation ran for 12 weeks from May to July 2011: there were 116 responses. DCMS says that, while there was general support for equal pay audits to be required where there had been a clear breach of equal pay law, views differed about the precise nature of the equal pay audit requirements. The Government response was published in June 2012.¹⁷ A second consultation, on the detail of the proposal on equal pay audits, was held for eight weeks from May to July 2013; there were 43 responses. DCMS has finalised the Regulations in the light of that consultation; the Government response was published in June 2014.¹⁸

¹⁷ See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85570/government-response.pdf

¹⁸ See:

<https://www.gov.uk/government/consultations/equal-pay-audits-a-further-consultation>

Draft Local Audit (Auditor Panel Independence) Regulations 2014

34. The Department for Communities and Local Government (DCLG) has laid these draft Regulations with an Explanatory Memorandum. DCLG explains that, under the Local Audit and Accountability Act 2014, local public bodies must appoint their own auditors, and they must also appoint auditor panels, with a majority of independent members, to advise on the selection and appointment of an auditor. These Regulations amend the definition of an independent member. They add to the existing definition of persons who are not independent: persons who have commercial links with the relevant authority to be audited, and persons who have links with a prospective or appointed audit firm; persons who are, or have been in the last five years, members of an entity connected with the authority to be audited, where the connected entity is also a relevant authority; and, for the Greater London Authority (GLA), persons who are, or have been in the last five years members or officers of a functional body of the GLA.
35. DCLG states that consultation on a draft of these Regulations was held over four weeks to 20 December 2013. A summary of consultation responses was published in March 2014.¹⁹ In the EM, the Department refers briefly to points raised by respondents which the Government have not accepted. We sought further information from DCLG about why the consultation period was so short, and whether any respondents criticised the timing. We are publishing that further information as Appendix 3. We note that there were 130 responses to the consultation. While the concern about the timing voiced by one professional body appears not to have affected respondents generally, we would repeat our previously expressed view that six weeks should normally be the minimum duration for a consultation process.

Draft Local Government (Transparency) (Descriptions of Information) (England) Order 2014

36. The Department for Communities and Local Government (DCLG) has laid this Order with an Explanatory Memorandum (EM). The Order expands the descriptions of information about which local authorities may be required to publish information more frequently than annually, to cover information about any expenditure incurred by authorities, and information about any legally enforceable agreement entered into by authorities and any invitations to tender for such agreements. DCLG proposes that these areas of information should be published quarterly.
37. The Department says that it has had a regular dialogue with local government over the last three years about transparency and the publication of key datasets, and that there have been three consultations: the first from 7 February to 14 March 2011, about which DCLG published its response and a summary of the 229 responses six months later, in September 2011; the second about updating the Local Government Transparency Code and making it mandatory through regulations, from 25 October to 20 December

¹⁹ See:

<https://www.gov.uk/government/consultations/future-of-local-audit-consultation-on-secondary-legislation>

2012 – DCLG published its response 12 months later, in December 2013;²⁰ and the third, over five weeks to 17 January 2014, about a draft revised Code to ensure that it properly gave effect to the policy set out in the previous Government response. We sought further information from the Department about consultation responses, and we are publishing that information at Appendix 4.

38. In the EM, DCLG states that “transparency is the foundation of local accountability...The availability of data could also open new markets for running services and managing public assets to local businesses, the voluntary and community sectors and social enterprises”. Against this declaration, it is interesting to note that the Government response of December 2013 shows that there were 219 respondents, of whom only three were business respondents, and only six were from the voluntary and community sectors. **These results are open to different interpretations: but they beg the question of whether the Department is doing enough to involve all interested parties in its consultation processes or, if it is, whether the business and voluntary sectors share the Department’s view of its proposals.**
39. In the EM, DCLG states that some respondents to the most recent consultation said that it was unnecessary to extend the scope of the Code and make it a legal requirement for local authorities to publish certain data. We take this to refer to the five-week consultation process to January 2014: the Department has not published a summary of responses to that consultation since, as is stated in the information at Appendix 4, it took the view “that it would be more helpful to local authorities to publish a Frequently Asked Questions document”.
40. As noted above, however, in December 2013 DCLG did publish the Government response to the consultation carried out in autumn 2012. At paragraph 58 of that document, the Department states that “91 respondents were of the view that making regulations to require local authorities to publish information contained in the Code was unnecessary”; and that only six respondents supported the making of regulations. These details are not given in the EM. **We consider that the Explanatory Memorandum fails to give an accurate account of the balance of opinion in responses to all the consultation exercises, and we look to the Department to ensure that, in summarising information, its EMs do not omit important details.**

²⁰ See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266815/Transparency_Code_Government_Response.pdf

Improving planning performance – Draft Criteria for designation (Revised 2014)

41. In amending earlier legislation,²¹ the Growth and Infrastructure Act 2013 has made it possible for a planning application for major development to be made directly to the Secretary of State where the local planning authority (LPA) has been designated by him. Before such a designation can be made, criteria must be published by the Secretary of State, against which he will consider whether a LPA is “not adequately performing [its] function of determining applications”.²² The criteria must be contained in a document which is laid before Parliament for a period of 40 days (and which may come into effect only if neither House has voted against the document during this period).
42. The first criteria document was laid in June 2013 and came into effect 40 days later. It set out two separate measures against which LPAs’ performance would be assessed: a “speed” measure, providing that the threshold for designation was set at 30% or fewer of an LPA’s decisions made within the statutory determination period; and a “quality” measure, setting as a threshold that 20% or more of an LPA’s decisions on applications for major development had been overturned at appeal. We drew the first criteria document to the House’s attention in our 5th Report of Session 2013-14 (HL Paper 28). Since those criteria came into force, the Secretary of State has designated Blaby District Council (in November 2013), and Trafford Council (in May 2014).
43. The 2014 revision of the criteria document, which the Department for Communities and Local Government (DCLG) has now laid before Parliament, makes three amendments to the existing criteria: setting a higher threshold for the speed of decisions, raising it from 30% to 40% of decisions made on time; introducing an exemption for authorities that have decided no more than two applications for major development over the two-year assessment period; and making explicit the tests against which claims of exceptional circumstances will be judged before designations are finalised.
44. DCLG carried out consultation on the proposed changes over six weeks to 4 May 2014, and published a summary of the consultation in June.²³ In the EM, the Department says that 145 responses were received: 66% of these were from local authorities, 13% from developers, and 11% from representative organisations; fewer than 10% of replies were from individuals. DCLG states that responses showed broad support for increasing the “speed of decisions” threshold to 40%: some 64% of respondents agreed or gave qualified support; a further 14% were neither in favour nor against.
45. We have received additional information about these responses from DCLG which we are publishing at Appendix 4. This clarifies that, of the overall total of 145 responses, 69, or just under 50%, gave unqualified support to the

²¹ The Town and Country Planning Act 1990 (“the 1990 Act”).

²² Under Part 3 of the 1990 Act.

²³ See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319831/Planning_performance_-_Government_response_to_consultation.pdf

increase, while 24 (some 16%) gave qualified support. 96 of the 145 respondents were local authority respondents: of these, 37 (39% of local authority respondents) gave unqualified support to the increase and 20 (21%) gave qualified support.

46. In the EM, DCLG says that, where respondents' support was qualified, it was often contingent on a continued ability to use extension of time agreements or Planning Performance Agreements where appropriate. The additional information at Appendix 5 sheds more light on these points.

Draft Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014

Draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) (No. 2) Order 2014

47. The Marriage (Same Sex Couples) Act 2013, which made marriage of same sex couples lawful in England and Wales, was mainly brought into force on 13 March 2014. The Act also makes provision for the conversion of an existing civil partnership into marriage and for married couples to remain married if one party undergoes gender transition. These provisions are now being brought into force by a second series of instruments. This instrument sets out the procedures to be followed by couples who wish to convert their civil partnership into a marriage. Another affirmative order, the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) (No. 2) Order makes some of the consequential changes necessary in other legislation. That Order also removes a temporary provision that was needed in relation to Scotland as the Marriage and Civil Partnership (Scotland) Act 2014 received Royal Assent on 12 March 2014. At a later date further statutory instruments will be laid which are subject to the negative procedure and which will make provision for consular and armed forces conversions to take place overseas; for the registration of marriages and civil partnerships in which one or both parties have changed gender; and for amendments to secondary legislation. The intention is to bring this package of legislation into effect on 10 December 2014.

Jobseeker's Allowance (Homeless Claimants) Amendment Regulations 2014 (SI 2014/1623)

48. To be entitled to a Jobseeker's Allowance claimants must (amongst other things) be 'available for' and 'actively seeking' employment. Regulation 14(2)(b) of the Jobseeker's Allowance Regulations 1996 (SI 1996/207) allows an individual affected by a domestic emergency to be treated as available for employment for a maximum of one week per emergency, not more than four times in a year. Following discussions with groups representing the homeless and with voluntary organisations, Department for Work and Pensions concluded that this provision allowed insufficient time for a recently homeless person to address their situation. Consequently, these Regulations give Work Coaches the scope to allow recently homeless claimants to continue to receive benefit while they focus on finding accommodation. Homeless claimants may have difficulty in obtaining or keeping a job if they do not have ready access to washing facilities, clean clothes or a reliable postal or other contact address. The intention is not to create an indefinite relaxation of the rules and the application of the provision is conditional on the claimant taking steps to find living

accommodation. DWP state that clear guidance will be provided to help Work Coaches exercise this discretion consistently and in line with the policy intention.

Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (SI 2014/1686)

49. The Department for Energy and Climate Change (DECC) has laid these Regulations, with an Explanatory Memorandum (EM) and impact assessment (IA).
50. In the EM, DECC states that the Petroleum Act 1998 gives the Secretary of State the power to award exclusive licences to search, bore for and get petroleum; and that it also places a duty on the Secretary of State to make regulations prescribing the model clauses which are to be included in petroleum licences. DECC says that the last set of model clauses for landward petroleum exploration and development licences were set out in regulations made in 2004, and now need to be updated. All such licences contain certain provisions that ensure that the exclusivity which they incorporate is not retained without exploitation of the petroleum covered: in particular, by requiring the surrender of certain proportions of acreage at specified deadlines.
51. DECC explains that the existing retention provisions are inflexible; while they have worked well for licensees working conventional oil and gas fields, they accommodate unconventional reserves less well. In the IA, DECC says that the new set of model clauses should introduce greater flexibility into the provisions governing the retention of acreage, allowing greater areas than before to be retained. The Department says that this will enable the level of retention that shale gas companies say they need, but that, because it will be based on agreement between DECC and the licensee, it will not create a risk of land-banking.
52. The Department intends to bring the Regulations into effect a fortnight after laying them before Parliament, breaching the 21-day rule. In the EM, DECC “sends its unreserved apologies” for this breach which it attributes to delays within Government. **We find it regrettable that the period available for Parliamentary scrutiny has been curtailed, particularly when the cause of this curtailment appears to have been purely administrative and thus avoidable through better planning by the Department.**
53. DECC did not conduct a public consultation in relation to these changes. In the EM, it says that on 25 November 2013 it consulted existing licensees and UK Onshore Oil and Gas (UKOOG: the onshore trade association); and that UKOOG replied on 17 January 2014 “with a warm welcome”. The Department states that this was an appropriate level of consultation because the changes proposed here are of interest only to industry and other prospective licensees; and that the wider community has been given ample opportunity to feed its views to DECC in a full public consultation that forms part of DECC’s Strategic Environmental Assessment (SEA) ahead of the launch of a 14th Landward Licensing Round. It may well be the case that other parts of civil society have the opportunity to respond to the SEA consultation. However, **we question the Department’s assertion that the changes made by these Regulations, which are intended improve the compatibility of licences with shale oil, shale gas and coalbed methane, are of no interest to the wider community, given the level of**

controversy that surrounds “fracking” technology. Bringing the proposed changes to the attention of the wider community and inviting responses would have demonstrated whether this assertion was well-founded or not.

Explosives Regulations 2014 (SI 2014/1638)

Acetylene Safety (England and Wales and Scotland) Regulations 2014 (SI 2014/1639)

Petroleum (Consolidation) Regulations 2014 (SI 2014/1637)

Genetically Modified Organisms (Contained Use) Regulations 2014 (SI 2014/1663)

54. All four of these Regulations are consolidations and simplifications of existing legislation in some cases repealing legislation that is over a century old. They are the result of extensive consultation with industry and others to find where clarifications and improvements are needed while maintaining appropriate safety standards. The Committee commends the Health and Safety Executive for its efforts and regards these instruments as examples of best practice.

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

Drug Driving (Specified Limits) (England and Wales) Regulations 2014

Equality Act 2010 (Equal Pay Audits) Regulations 2014

Local Audit (Auditor Panel Independence) Regulations 2014

Local Government (Transparency) (Descriptions of Information) (England) Order 2014

Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014

Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) (No. 2) Order 2014

National Minimum Wage (Amendment) (No. 2) Regulations 2014

National Minimum Wage (Amendment) (No. 3) Regulations 2014

Renewables Obligation Closure Order 2014

Video Recordings Act 1984 (Exempted Video Works) Regulations 2014

Draft instruments subject to annulment

Improving planning performance – Draft Criteria for designation (revised 2014)

Instruments subject to annulment

SI 2014/1623 Jobseeker's Allowance (Homeless Claimants) Amendment Regulations 2014

SI 2014/1626 Universal Credit (Transitional Provisions) (Amendment) Regulations 2014

SI 2014/1637 Petroleum (Consolidation) Regulations 2014

SI 2014/1638 Explosives Regulations 2014

SI 2014/1639 Acetylene Safety (England and Wales and Scotland) Regulations 2014

SI 2014/1663 Genetically Modified Organisms (Contained Use) Regulations 2014

- SI 2014/1664 Pension Protection Fund (Entry Rules) (Amendment) Regulations 2014
- SI 2014/1667 Income-related Benefits (Subsidy to Authorities) and Discretionary Housing Payments (Grants) Amendment Order 2014
- SI 2014/1684 Kimberley Process (Fees) Regulations 2014
- SI 2014/1685 Teachers' Disciplinary (Amendment) (England) Regulations 2014
- SI 2014/1686 Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014
- SI 2014/1704 Crime and Courts Act 2013 (Application and Modification of Certain Enactments) Order 2014
- SI 2014/1705 Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2014
- SI 2014/1710 Local Audit (Auditor Resignation and Removal) Regulations 2014
- SI 2014/1711 Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014
- SI 2014/1740 Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2014
- SI 2014/1771 Waste Electrical and Electronic Equipment and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2014

APPENDIX 1: ELECTRICITY MARKET REFORM – LEGISLATIVE FRAMEWORK

Contracts for Difference (CFDs)

Primary legislation	
<p>Energy Act 2013</p> <p>Contains powers enabling the Secretary of State to implement the Contracts for Difference regime through a combination of regulations and a private law contract between generators and the CFD Counterparty.</p>	
Secondary legislation – 6 statutory instruments (including forthcoming OLR Regulations)	
The Contracts for Difference (Allocation) Regulations 2014	
<p>The Regulations set out, in Parts 2 to 9:</p> <ol style="list-style-type: none"> a) how applicants must apply for a Contract for Difference (CFD); b) how the delivery body must assess an application; c) how the Secretary of State establishes an allocation round; d) how an allocation framework (which contains the rules for the competitive process applied to applications for CFDs) is applied to an allocation round; e) what an allocation framework must and may contain; f) how a budget is set for allocation rounds; g) how the delivery body must decide whether a competitive process is required for the allocation of CFDs; h) when a CFD notification must be given and the process the delivery body needs to follow in respect of giving a CFD notification. <p>The Regulations also include a 3-tiered appeals procedure.</p>	<p style="text-align: center;">Allocation Framework</p> <p>The Allocation Framework sets out the allocation process, including the auction rules and the valuation formula that will be used.</p> <p>The Allocation Framework is not a statutory instrument and must only contain provision which is permitted by the Contracts for Difference (Allocation) Regulations 2014.</p> <p>The Allocation Framework also contains supplementary provision relating to:</p> <ul style="list-style-type: none"> • Information that applicants must provide at the point of application • Documents that National Grid must check to determine whether an applicant is a qualifying applicant • Additional qualification requirements • Any adjustments to timing of steps in the allocation round • Publication of information during and after the allocation round <p>An Allocation Framework must be published at least 10 days before an</p>

Part 10 of the Regulations allows the Secretary of State to direct the CFD Counterparty to offer a CFD to an eligible generator. This power might be used to offer CFDs to projects that are not currently suitable for the generic CFD allocation process, for example, CCS, nuclear and large tidal.

allocation round opens.

A copy of the latest draft of the Allocation Framework has been placed in the House Library.

The Contracts for Difference (Definition of Eligible Generator) Regulations 2014

These Regulations set out which persons are eligible generators for the purposes of applying for a CFD (under Chapter 2 of Part 2 of the Energy Act 2013 (“the Act”)).

The Contracts for Difference (Standard Terms) Regulations 2014

These Regulations control three aspects of the way in which a ‘generic’ CFD - one which is offered following a CFD notification from the Delivery Body - may be drawn up, offered and publicised. The Regulations:

- 1) set out the provision to be included in standard terms issued or revised by the Secretary of State;
- 2) govern the way in which an applicant may request a change to the generic CFD terms; and
- 3) control the process through which a CFD is completed and offered.

These Regulations also require that certain information be published concerning those applicants who successfully enter into a CFD.

The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014

These Regulations establish the ‘supplier obligation’ mechanism, which enables the CFD Counterparty to raise a levy from all licensed electricity suppliers in Great Britain to pay low

carbon generators entitled to payment under the Contracts for Difference scheme. The Regulations also:

- allow the CFD Counterparty to return money to suppliers where appropriate.
- set out arrangements for the CFD Counterparty to hold sums in reserve and to cover its losses in the situation of default by an electricity supplier.
- set out the arrangements for collection of a levy from all licensed electricity suppliers to pay for the CFD Counterparty's operating costs.

The Electricity Market Reform (General) Regulations 2014

These Regulations set out a number of general provisions relating to the Contract for Difference (CFD) policy, including:

- a requirement on the Delivery Body to provide information in relation to the CFD strike prices;
- provisions determining how and when a Supply Chain statement application should be made; and
- provision to shield National Grid Electricity Transmission plc (NGET) against liability in damages to third parties for anything done or omitted to be done in performing its EMR Delivery Body functions relating to the CFD.

The Contracts for Difference (Counterparty Designation) Order 2014

This Order designates the Low Carbon Contracts Company Ltd as a CFD Counterparty. By designating the Low Carbon Contracts Company Ltd as a CFD Counterparty, the company will be required to carry out the functions of a CFD Counterparty as set out in the Energy Act 2013 and related secondary legislation.

The making of this Order was not subject to Parliamentary procedure.

The Offtaker of Last Resort Regulations 2014 (Forthcoming – expected to be laid in Parliament in the autumn)

The Offtaker of Last Resort mechanism will help independent generators access the market by ensuring that eligible renewable generators have access to a 'backstop' PPA on specified terms with a credit worthy offtaker throughout the duration of their CFD.

*These Regulations will be laid in Parliament and are expected to be in force before the first CFD allocation round opens in the autumn. **The Regulations will be subject to the negative procedure.***

Capacity Market

Primary legislation

Energy Act 2013

Contains powers enabling the Secretary of State to implement the Capacity Market regime through a combination of the Regulations and the Rules.

Secondary legislation – 2 statutory instruments & Capacity Market Rules

The Electricity Capacity Regulations 2014

The Regulations establish a Capacity Market which is designed to ensure that sufficient electrical capacity is available to ensure security of electricity supply.

The Regulations contain provisions about:

- i. the Secretary of State's role, such as how and when the Secretary of State will determine whether to run a capacity auction, as well as providing for the Capacity Market to be implemented and administered by a combination of the Secretary of State, the Gas and Electricity Markets Authority, a Delivery Body (National Grid Electricity Transmission plc) and a Settlement Body (to which position the Secretary of State intends to appoint the Electricity Settlements Company Ltd).
- ii. the process for determining whether a capacity auction is to be held and the auction parameters for a capacity auction.
- iii. determining eligibility and holding capacity auctions, issuing capacity agreements, establishing and maintaining a register of capacity agreements and terminating a capacity agreement (with further detailed provision about each of these matters to be contained in the Capacity Market Rules 2014 referred to below).
- iv. payment and settlement provisions.
- v. dispute resolution and appeals.

The Electricity Capacity (Supplier Payment) Regulations 2014 (Forthcoming – to be laid in Parliament shortly)

The Electricity Capacity Regulations include provision for a levy on suppliers to fund the Settlement Body's costs to 31 March 2015. However, to align the Capacity Market and Contract for Difference Regulations, it was decided that a dedicated separate set of regulations ("the Supplier Payment Regulations") will be provided.

These are expected to be laid in Parliament just after summer recess and are expected to come into force in November 2014. The Supplier Payment Regulations will make provision for payment post 31 March 2015:

- *by electricity suppliers, of charges to fund the making of capacity payments and the Settlement Body's costs of performing its functions;*
- *to electricity suppliers, of a share of the amount of capacity provider penalty charges collected by the Settlement Body, after deducting the cost of making over-delivery payments to capacity providers under the Electricity Capacity Regulations; and*
- *adjustment of payments ("reconciliation") where further data becomes available to the Settlement Body after payment calculations have been made.*

The Capacity Market Rules 2014

The Capacity Market Rules 2014 ("the Rules") sit alongside the Electricity Capacity Regulations 2014 ("the Regulations").

The Rules provide the detail for implementing the operating framework set out in the Regulations. This means that the Rules focus on the technical and administrative rules and procedures for how the Capacity Market will operate and includes matters such as procedures relating to the day-to-day running of the Capacity Market, the process by which capacity providers pre-qualify, rules for running capacity auctions and issuing capacity agreements to successful bidders.

The Rules were laid in draft before Parliament on 19 June and are subject to a procedure equivalent to the negative procedure.

Licence Modification documents – applicable to CFDs and the Capacity Market

Modifications to the Special Conditions Of National Grid Electricity Transmission Plc's Transmission Licence (EMR No. 1 of 2014)

These Modifications to the Special Conditions of National Grid Electricity Transmission plc's Transmission Licence insert a new Special Condition 2N into the Transmission Licence of the National System Operator and Electricity Market Reform (EMR) Delivery Body, National Grid Electricity Transmission plc (NGET).

Special Condition 2N sets out a number of provisions which require NGET to implement certain business separation measures intended to manage conflicts of interest arising with other parts of its business while undertaking functions conferred on it as the EMR Delivery Body.

These separation measures include;

- the legal and functional separation of NGET from other relevant competitive businesses in the National Grid plc group;
- the establishment of EMR data handling and EMR administrative teams which are physically separate from other parts of NGET;
- restrictions on the use of confidential EMR information within NGET;
- restrictions on the disclosure of confidential EMR information;

- a compliance statement to be put in place;
- a compliance officer to be appointed; and
- a system of compliance reporting to be put in place.

The Licence Modifications were laid in Parliament on 19 June and are subject to a procedure equivalent to the negative procedure.

Modifications to Transmission Licences and Documents Maintained Under Licences (EMR No.2 of 2014)

Existing electricity transmission licences, industry codes and related agreements and documents require consequential amendments to meet the needs of reform being made the electricity market under powers contained in the Energy Act 2013 (c.32).

These modifications contain those amendments. These modifications are consequential on the suite of secondary legislation created for the reforms.

The Licence Modifications were laid in Parliament on 19 June and are subject to a procedure equivalent to the negative procedure.

APPENDIX 2: RESPONSE FROM THE ELECTORAL COMMISSION ON THE DRAFT POLICE AND CRIME COMMISSIONER ELECTIONS (AMENDMENT) (NO. 2) ORDER 2014)

The Electoral Commission welcomes the invitation of the House of Lords Secondary Legislation Scrutiny Committee to comment on the draft Order, above, laid before Parliament by the Home Office on July 9 2014.

Having recommended such a booklet be produced both before and since the first PCC polls in November 2012, the Commission supports the intention of the Order to provide for an information booklet about PCC by-elections to be delivered to households as a pilot measure.

- The Commission is satisfied that the approach proposed for the funding of such a booklet mirrors that used for mayoral elections in England, including for the Mayor of London
- The Commission welcomes the opportunities presented by a pilot scheme
- The Commission believes that the evaluation of the impact of a pilot scheme should include whether the level of financial support requested of candidates by the Returning Officer was appropriate.
- The Commission understands that all candidates will also have an equal opportunity the opportunity to publish their election address on a website provided by the Home Office, as was the case for the elections in November 2012

Background

There was very clear evidence from our survey of voters and non-voters that the lack of voters' awareness had a significant impact upon the first set of PCC elections on 15 November 2012 when provision was not made for every household to receive a candidate information booklet of type provided for the nearest comparative elections (those for elected Mayors).

Following the 2012 PCC elections, the Commission asked people who did not vote their reasons for not voting; about 37% of them gave a reason that related to a lack of awareness. This compares to the usual response rate of 6% or 7% of people who cite lack of information when asked to explain their decision not to vote at other elections.

The Commission also asked questions about whether people felt they had enough information to make an informed choice about those standing to be elected as a PCC and only 22% of people said they felt they did have enough information. By comparison, at the last set of local government elections in May, 63% of people said they had enough information to make an informed choice, so a lack of awareness was a significant factor in the historic low level of turn out at the last elections.

The Commission's report on how the 2012 PCC Elections were run may be found here:

http://www.electoralcommission.org.uk/data/assets/pdf_file/0003/154353/PCC-Elections-Report.pdf

Consultation on the draft Order

The Commission was consulted on this Order by the Home Office and identified two minor technical amendments which were both accepted.

Conclusion

The Commission supports the intention of the Order and a full evaluation of the pilot in order to help ensure that lack of information does not adversely impact voters' experience at future PCC elections in England and Wales.

APPENDIX 3: DRAFT LOCAL AUDIT (AUDITOR PANEL INDEPENDENCE) REGULATIONS 2014

Additional information from the Department for Communities and Local Government

The approach to consultation was cleared with ministers and took account of several factors:

- the broad policy approach in the new framework had been intensively consulted on prior to the introduction of the Bill;
- the draft regulations had been developed over an extended period with key partners, including CIPFA, the LGA, NALC, SLCC the NAO and the Audit Commission amongst others;
- the drafts had also been shared with the Bill committee; and
- the fairly limited wider interest in the content of these fairly technical regulations.

The consultation document was published on the GOV.UK website, permitting interested parties to feedback comments in writing direct to the Department, or via email to the Future of Local Audit's EEMA account. In addition, reflecting the short consultation period and Ministers ambition to finalise the audit regulations during this Parliament, we used an on line web portal to enable a more dynamic, interactive and transparent consultation. The interactive nature of the consultation enabled a dialogue to be opened and maintained, leading to better understanding of the policy intentions behind the regulations whilst enabling policy leads to probe further where there were areas of concern and analyse consultation responses as they were submitted.

4 of the 130 respondents expressed concern about the compressed consultation timetable: an audit firm; a district council; a town council; and a professional body representing local authority treasurers who commented: "There has been very limited publicity to bring this to the attention of interested parties, the timescale of 4 weeks is very short and the timing to co-inside with the Autumn Statement and the draft settlement in the run up to Christmas leads one to think that the DCLG was doing less than its best to encourage full engagement and a wide response."

9 July 2014

**APPENDIX 4: LOCAL GOVERNMENT (TRANSPARENCY)
(DESCRIPTIONS OF INFORMATION) (ENGLAND) ORDER 2014**

Additional information from the Department for Communities and Local Government

Q1: Did the Government make it explicit in any of the consultations mentioned in 8.2 of the Explanatory Memorandum that it proposed specifically to require publication of a) information about any expenditure incurred by authorities and b) information about any legally enforceable agreement entered into by authorities and any invitations to tender for such agreements? If so, please direct me to the document which the Government published which made this plain.

A1: The Government did make clear that it would be requiring quarterly publication of certain datasets, in its response to consultation document published in December 2013²⁴. This document formed the basis of the Government's third consultation on local government transparency and invited feedback and points of clarification, by 17 January 2014, on the draft Code which was annexed to the document (paragraph 8 refers).

In paragraph 7 of the document, the Government said that:

"Therefore he [The Secretary of State] is minded to make regulations under section 3 of the Act to make it a legal requirement to publish data in accordance with Part 2 of the revised Code and to make an Order under that section to ensure certain datasets must be published quarterly."

There were a number of other specific references to the Government intending to require quarterly publication of the datasets you refer to:

- Paragraph 31 of the document referred to the quarterly publication of details relating to invitations to tender and all legally enforceable agreements;
- Paragraph 44 third bullet referred to the quarterly publication of details about all transactions on a Government Procurement Card which is a component of incurred expenditure; and,
- Paragraph 63 set out the datasets where the Government intended to regulate to require local authorities to publish information. The first, second and seventh bullets make clear that the Government intended to require quarterly publication of the datasets you refer to in your question. Furthermore, you will see that each bullet references the relevant paragraph in the draft Code that was annexed to the document.

Crucially, as highlighted earlier, the Government made clear that it was inviting feedback and points of clarification on the draft Code that was annexed to the document. Part 2.1 of the draft Code which was annexed to the document set out the data that the Government would be requiring local authorities to publish on a quarterly basis, following the making of the relevant secondary legislation.

²⁴ Code of Recommended Practice for Local Authorities on Data Transparency: Government response to Consultation was published in December 2013,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266815/Transparency_Code_Government_Response.pdf

Q2: If this specific proposal was made explicit in any of these consultations, was it explicitly supported or opposed by respondents and, if so, in what proportions of total respondents? If so, please direct me to any published document which makes it plain.

A2: The Government did not receive any responses which referred specifically to whether the data you highlight should be published quarterly or on a different frequency.

In passing, Hertfordshire County Council referred to already publishing expenditure data on a monthly basis and being able to publish purchase card information on a quarterly basis. Newbury Town Council also referred to publishing every expenditure transaction on a monthly basis and complementing this with a detailed quarterly income and expenditure report. Southampton City Council and Surrey County Council both said that monthly publication of expenditure data would be a burden, but this frequency of publication was never part of the Government's proposal under Part 2 of the Code i.e. the mandatory section. One private respondent thought that allowing quarterly publication of expenditure data, instead of requiring monthly publication, might mean that the data would be more inaccurate and so avoid this, the Government should specify that the date of each expenditure transaction should be published in a day/month/year format. The Local Government Association's response made no reference to the frequency of publication of the datasets you highlight.

...the vast majority of responses the Government received were asking detailed questions or making detailed comments about the specific content and/or drafting of the Code itself. The Government judged that these could not be addressed effectively in a traditional government response document. So, in discussion with the Local Government Association, the Government's view was that it would be more helpful to local authorities to publish a Frequently Asked Questions document²⁵ which answered all of the technical points raised both during the consultation and at three workshops held in January and attended by 63 different local authorities. The Government thought that this would be a more helpful way of getting its responses out to those who need to implement the Code.

Q3: At 10.1, the Explanatory Memorandum says that the Order "has no direct impact on the private, voluntary or public sectors". Given the potentially wide scope of the information to be published quarterly by local authorities, how does the department justify the statement that the Order has no direct impact on the public sector? At 10.2, however, there is acknowledgement of an impact: what is the department's assessment of the impact?

A3: The Government maintains that the Order would have no direct impact on the public sector because it simply expands the scope of the Secretary of State's enabling power – it would enable him to require details of the datasets referred to in the Order to be published more frequently than annually. It is the subsequent use of the power that would have an impact on local authorities. The Government's intention is to make Regulations under section 3 of the Local Government, Planning and Land Act 1980 to make it a legal requirement for local authorities to publish data in accordance with Part 2 of the Local Government

²⁵ Local government transparency code 2014: frequently asked questions, May 2014,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308186/Local_Government_Transparency_Code_2014_Frequently_Asked_Questions_Final.pdf

Transparency Code 2014²⁶. It is this action which will create an impact on local authorities - of itself the Order would not require local authorities to do anything and so it cannot create an impact on them or other parts of the public sector.

However, the Government does recognise that the Order is a stepping stone towards its overall policy goal of making part of the Code a legal requirement on local authorities. It decided, therefore, that it would be helpful to Parliament and local authorities to publish an Impact Assessment²⁷ alongside the Order. Table 3 of the Impact Assessment sets out the impact on local authorities to whom the Code applies of publishing the quarterly information set out in the Code. The Government assesses the impact as £1.3 million a year. The Government will be meeting these costs in full, in line with its new burdens doctrine, if the relevant secondary legislation is put in place to make Part 2 of the Code a legal requirement on local authorities.

10 July 2014

²⁶ Local government transparency code 2014, May 2014,
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308185/Local_Government_Transparency_Code_2014_Final.pdf

²⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326686/Local_Government_Transparency_code_2014_-_IA.pdf

APPENDIX 5: IMPROVING PLANNING PERFORMANCE – DRAFT CRITERIA FOR DESIGNATION (REVISED 2014)

Additional information from the Department for Communities and Local Government

A clear majority of respondents supported the increase (whether this was unqualified support or qualified), including a majority of councils. Of the remainder, it is equally important to note that many simply offered no comment rather than opposing the change, so that only 22% overall were opposed (26% of councils).

	Total number of responses to this question, by answer given:	Percentage breakdown of responses to this question, by answer given:	Of those, how many were "councils or other local planning authorities":	Percentage breakdown of responses from councils:
Supported increase	69	48%	37	39%
Qualified support for increase	24	17%	20	21%
Didn't comment or express a view	20	14%	14	15%
Opposed increase	32	22%	25	26%
Total	145	100%	96	100%

Note that figures in this table may not sum to 100% exactly, or provide an exact match to figures in the consultation response document, due to rounding.

Of the 24 respondents who gave qualified support for the proposals, nine respondents indicated that they supported the increase in the threshold provided that they could continue to use Planning Performance Agreements or extension of time agreements. Another five stated that they did not object to the thresholds increasing but did not provide any further comment (because their response was phrased in terms of “not objecting” we recorded this as qualified support rather than outright support).

There were a few respondents who gave other reasons for qualifying their support:

- While accepting the increase in the threshold, some were sceptical about the approach to judging local authorities’ planning performance overall (four respondents);
- Continuing to allow local authorities to explain any exceptional circumstances which mean that a designation would be unreasonable (one respondent);
- A suggestion that designation should be based on performance on both speed and quality (one respondent);
- Ensuring sufficient resource and support is available, including in understanding the causes of delay in determining applications (two respondents);

- Delaying the introduction of the higher threshold by a year (one respondent); and
- Need to recognise there will be times when an applicant does not engage positively in the application process (one respondent).

Extension of time agreements

We recognise that there will be circumstances when applications for major development need longer to determine than the statutory time period. Planning performance agreements (PPAs) allow local authorities and applicants to agree a bespoke timetable for an application before it is submitted where it is clear that longer than the statutory period will be required to reach a decision. Authorities can also agree a post-submission extension of time, provided that this is agreed with the applicant in writing and sets a clear timeframe for determining the application.

The statistics that we collect on planning applications from local authorities, which we base the designations on, now collect information on extension of time agreements and PPAs and whether authorities determined applications within the timescales set out in these. Where applications are determined within the agreed timescale then these applications are counted as being “in time” for the purpose of assessing the local authority’s performance.

This approach is consistent with the outcome of the consultation on the approach to planning performance in November 2012. The change in how the statistics are collected was introduced in April 2013. Any authority at risk of designation who had applications subject to extension of time agreements or PPAs prior to April 2013 could ask for these to be taken into account as a reason why a designation would be unreasonable.

10 July 2014

APPENDIX 1: 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 15 July 2014 Members declared no interests.

Attendance:

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