Draft Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

Channel Tunnel (International Arrangements) (Amendment) Order 2014

Food Information Regulations 2014

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

Includes 2 Information Paragraphs on 4 Instruments

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HL Paper 42
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
Eighth Report

INSTRUMENT 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 Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

Date laid: 7 July

Parliamentary Procedure: Affirmative

Summary: These Regulations fulfil the Department of Health’s commitment to incorporate the fundamental standards into the requirements for registering with the Care Quality Commission (CQC). The commitment was given in response to a number of high profile inquiries into malpractice including the Francis Inquiry into the Mid Staffordshire Hospital and the inquiry into Winterbourne View Hospital. The policy intention behind the fundamental standards is therefore to clarify the requirements that providers must meet, and make it more straightforward for CQC to bring prosecutions for the most serious breaches. This is intended to drive up the quality of care, and improve the ability of the regulator to hold providers to account where care is poor. The provisions on fundamental standards will come into effect for all providers on 1 April 2015. It is understood that the CQC will be producing draft guidance about compliance with these Regulations shortly and will be consulting on it over the summer.

The Regulations also set out the requirement, for NHS providers, for directors to be fit and proper persons (as defined) and the Duty of Candour, which will come into effect in autumn 2014. A second instrument will follow shortly to bring in the fitness of directors and the Duty of Candour for private sector providers from April 2015 which, according to the Department, will use slightly different definitions.

These Regulations are drawn to the special attention of the House on the ground that they may give rise to matters of policy interest.

1. The Regulations have been laid by the Department of Health (DH) under provisions of the Health and Social Care Act 2008. They are accompanied by an Explanatory Memorandum (EM) and three Impact Assessments (IA). The provisions requiring directors to be fit and proper persons (as defined) and the Duty of Candour will come into effect 21 days after the instrument is made, and are intended to be implemented in autumn 2014 for NHS providers and in April 2015 for private providers (by means of separate regulations). The provisions on fundamental standards will come into effect for all providers on 1 April 2015. The Care Quality Commission (CQC) will be producing draft guidance about compliance with these Regulations shortly and will be consulting on it over the summer.
2. These draft Regulations fulfil the Department of Health’s commitment\(^1\) to incorporate the fundamental standards into the requirements for registering with the CQC. The commitment was given in response to a number of high profile inquiries into malpractice including the Francis Inquiry into the Mid Staffordshire Hospital and the inquiry into Winterbourne View Hospital. The policy intention behind the fundamental standards is therefore to clarify the requirements that providers must meet, and make it more straightforward for CQC to bring prosecutions for the most serious breaches. This is intended to drive up the quality of care, and improve the ability of the regulator to hold providers to account where care is poor. There are three main parts to the Regulations.

Requirements in relation to the fitness of directors

3. Regulations 4 to 7 set out requirements for managers of regulated activities in NHS providers. In particular, regulation 5 introduces a new fit and proper person test for directors which requires a director to be “of good character” and have the qualifications, competence, skills and experience necessary for the relevant position. They must also not have been previously responsible for any serious misconduct or mismanagement in the course of carrying on a regulated activity and a director will be deemed to be unfit if they are bankrupt or are included on any barring list preventing them from working with children or vulnerable adults.

Requirements in relation to the Duty of Candour

4. Regulation 20 introduces a mandatory new Duty of Candour on “health service bodies” (that is, NHS Trusts, NHS Foundation Trusts, and Special Health Authorities), requiring them to be open with service users. When a specified safety incident has occurred in respect of care provided, the regulation sets out a clear set of legal duties for health service bodies about how and when to notify service users (or relevant representatives). It also defines what threshold of harm constitutes a safety incident for which such notification is required.

A second instrument for private providers

5. The Committee asked the Department why a second instrument is required to bring in the Duty of Candour and fitness of directors for the private sector and why DH could not include the private sector in these Regulations but with a different start date if implementation needed to be staggered. DH responded:

“It has always been the Department’s intention to implement the new regulations at the earliest opportunity. The Duty of Candour and the fit and proper persons test have been developed independently of each other, with separate consultations and additional policy work for each – and both have been done at a slightly later timetable than the fundamental standards. It has taken longer to establish what the impact

of these new measures will be on non-NHS providers, and this is not quite yet complete.

The reporting requirements for the Duty of Candour will also be slightly different for non-NHS providers than for NHS providers. Our guiding principle is to align the Duty to the existing reporting requirements for serious untoward incidents because this minimises the burden on providers: private providers already report incidents to CQC, and NHS providers use the existing National Reporting and Learning Service (NRLS). However, these two reporting mechanisms use slightly different definitions for what constitutes a notifiable safety incident, so the subsequent SI for non-NHS providers will reflect the slightly different definition of a safety incident for these providers.”

6. **This intention should have been made clearer in the Explanatory Memorandum to the Regulations. To have two different definitions of a safety incident also seems likely to cause confusion and the Committee will expect to see a full explanation of the differences and why they are necessary in the Explanatory Memorandum to the second instrument when it is laid.**

**Requirements relating to the fundamental standards**

7. Regulations 8 to 20 set out the fundamental standards of safety and quality, and each lists a set of desired outcomes. Providers who fall below these standards of care will be in breach of their registration with the CQC. The fundamental standards are:

- Care and treatment must be appropriate and reflect service users’ needs and preferences.
- Service users must be treated with dignity and respect.
- Care and treatment must only be provided with consent.
- Care and treatment must be provided in a safe way.
- Service users must be protected from abuse and improper treatment.
- Service users’ nutritional and hydration needs must be met.
- All premises and equipment used must be clean, secure, suitable and used properly.
- Complaints must be appropriately investigated and appropriate action taken in response.
- Systems and processes must be established to ensure compliance with the fundamental standards.
- Sufficient numbers of suitably qualified, competent, skilled and experienced staff must be deployed.
- Persons employed must be of good character, have the necessary qualifications, skills and experience, and be able to perform the work for which they are employed.
- Registered persons must be open and transparent with service users about their care and treatment (the Duty of Candour).
Where there is evidence that these outcomes have not been met, the regulation has been breached and the onus is on the provider to demonstrate that it had taken all reasonable steps to prevent that breach.

8. The areas covered by the fundamental standards are not new (with the exception of the Duty of Candour). They are basic tenets of health and care, and cover similar areas as previous regulations. The new standards, however, express with more clarity those outcomes a provider must achieve.

9. A key reason for restating the fundamental standards in this way is to place a legal responsibility on the provider. DH states that:

“In the case of Winterbourne View, for example, while a number of staff were convicted for the neglect and abuse of patients, it was not possible to hold the provider to account before the law in spite of the abuse that the provider allowed to occur. The registration requirements will place a specific duty on registered providers to meet the nutrition and hydration needs of service users and create an offence where a failure to do so results in avoidable harm to a service user and or significant risk of such harm occurring. This will make it possible to hold providers to account for seriously substandard care in a way that is not currently possible.”

**Penalty notices**

10. One of the principal aims of the new regulations is to allow CQC to bring a prosecution for the most serious breaches of those registration requirements that are likely to lead to harm. Regulations 22 to 24 create offences for failure to comply with these requirements and penalties according to its seriousness. Fixed Penalty Notices are to be used for minor breaches but offences that involve a direct risk of harm to service users have the maximum penalty of a £50,000 fine (or an unlimited fine if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force when the Regulations are made).

**Guidance**

11. We note that following initial trials with groups of both providers and patients, the CQC intends to publish draft guidance shortly for consultation over the summer. Paragraph 9.2 of the EM says its intention is to set out concisely what providers could do to meet the regulations and to guide providers on how they can demonstrate evidence of meeting the regulations for the purposes of CQC registration and on-going evaluation. We welcome this collaborative approach and the recognition that, to be effective, it is important that the guidance should be both concise and appropriate for the target audience.
B. Channel Tunnel (International Arrangements) (Amendment) Order 2014 (SI 2014/1814)

Date laid: 14 July

Parliamentary Procedure: Negative

Summary: To support the Government’s commitment to reintroduce exit checks by 2015, the Immigration Act 2014 made amendments to section 27 of and Schedule 2 to the Immigration Act 1971 to allow those already involved in outbound passenger processes, such as carrier and port operator staff, to be trained and designated to perform the basic checks required. This instrument extends those provisions to the Channel Tunnel. There appear to be, however, specific challenges in implementing the policy on that route. The Home Office presents the proposal as a “work in progress” with no clear statement of the degree of sophistication with which the proposal is to be implemented or whether the Home Office has the capacity to use the data collected. It is one of the vaguest EMs that this Committee has come across. As a result, it is difficult to determine whether the policy objective is likely to be achieved and whether it will represent value for money.

This Order is drawn to the special attention of the House on the grounds that it may imperfectly achieve its policy objectives; and that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

12. This Order has been laid by the Home Office under provisions of the Channel Tunnel Act 1987 to modify section 27 of the Immigration Act 1971. It covers trains arriving in and departing from the United Kingdom via the Channel Tunnel. It is accompanied by an Explanatory Memorandum (EM) but with no information on the costs and benefits of the proposal.

13. The Government have made a commitment to reintroduce immigration exit checks by 2015. To support this, the Immigration Act 2014 made amendments to section 27 of and Schedule 2 to the Immigration Act 1971 to allow those already involved in outbound passenger processes, such as carrier and port operator staff, to be trained and designated to perform the basic checks. This instrument extends those provisions to the Channel Tunnel.

14. The EM, however, says very little about how this is going to work and states that an Impact Assessment about the costs and benefits is “in development”.

Quite apart from the normal requirement that all supporting documentation should be available on the date an instrument is laid, the absence of even an indicative range of costs is surprising in an instrument due to come into effect within a few days.

15. Supplementary information from the Home Office states that:

“Exit checks will deliver important border security and migration management benefits – they will allow us to better control those leaving the UK, improve our knowledge of those who have no legal right to remain in the UK and support better policy making. Exit checks will enable us to mount an appropriate intervention in high priority cases, although there will be challenges in doing so where we collect data only shortly before departure.”
Using Advance Passenger Information (API) collected and provided to the Home Office by carriers, the UK already conducts electronic checks on a substantial number of passengers on outbound journeys. This allows us to target the most harmful individuals who are intending to leave the UK by those routes and informs us who has in fact left the country for immigration enforcement purposes. In 2013, API contributed to more than 450 arrests on outbound passengers.

We are working closely with Eurostar and Eurotunnel to determine the extent to which their existing or planned arrangements can support delivery of exit checks and what additional procedures will be required. The nature of some international rail traffic (such as the ability to simply ‘turn up and go’”) means that, in some circumstances, there is likely to be a need to conduct checks, including data capture and verification, at the port on departure. The new provisions will provide the means by which carriers and port operators can conduct such checks. We have been working with Eurostar and Eurotunnel on a series of trials to model options for delivering an exit check capability on their traffic. The new provisions play an important role in supporting the trials in providing carriers with greater legal certainty over their ability to conduct outbound checks, in particular to require passengers to produce travel documents and to conduct verification checks. Subject to securing these provisions, we expect to conclude the trials work over the course of the summer which will then support the development of robust costs for the impact assessment.”

16. This information explains that the scheme is currently a “work in progress”. The intention is for full exit checks to be established by April 2015, yet this instrument, including the offences, comes into effect next week. The additional material from the Home Office also indicates that some provisions, such as the embarkation cards, are being put in place as a contingency measure. The Home Office response also mentions that Eurostar trains present a specific challenge arising from the ability of passengers to buy a ticket for immediate travel which means that the advanced passenger arrangements for air travel will not simply read across. We recognise that, for a system of exit checks to be effective, all exit routes must be covered to ensure that those it is designed to monitor do not exploit the weakest link. It appears to us, however, that the Home Office’s plans at present are at a very early stage of development.

17. The effect of the legislation will be to transfer considerable administrative costs and responsibility to Eurostar and Eurotunnel staff and we are concerned that the Home Office cannot give even an indicative range of the sum that this will cost. We note that no IA was provided for the enabling provisions in the Immigration Act 2014 either. The costs for the carriers may be small or large depending on how closely the checks match existing arrangements. We assume that there will also be costs for the Home Office but no mention is made of them or about whether the Home Office has the capacity to process the flow of additional data and follow it up effectively. There will also be a need to provide information to travellers so that they allow sufficient time in their plans to pass through these additional checks. Given the recent well-publicised difficulties with passport delays at airports, this Order does not inspire confidence.
Conclusion

18. The Order extends provisions under the Immigration Act 2014 relating to exit checks to the Channel Tunnel. The Home Office itself states that there are specific challenges in implementing the policy on that route and we would have expected to see some sort of structured implementation plan, incorporating one or more pilot stages and evaluations of them before “going live”. The Home Office present the proposal as a “work in progress” with no clear statement of the degree of sophistication with which the proposal is to be implemented or whether the Home Office has the capacity to use the data collected. It is one of the vaguest EMs that this Committee has come across. As a result, it is difficult to determine whether the policy objective is likely to be achieved and whether it will represent value for money.
C. **Food Information Regulations 2014 (SI 2014/1855)**

*Date laid: 15 July*

*Parliamentary Procedure: Negative*

**Summary:** These Regulations enable enforcement of certain provisions of an EU Regulation on food information to consumers, and consolidate existing general food and nutrition labelling Regulations, in England. They serve to implement policy on providing food information, but some of the decisions taken on implementation prompt concern that the Government are not pursuing that policy with consistency across all aspects. We question the effectiveness with which the Department for Environment, Food and Rural Affairs has taken the policy forward, and we also criticise the inaccuracy of the Explanatory Memorandum in providing Parliament and others with an account of consultation responses.

We draw this instrument to the special attention of the House on the grounds that it may imperfectly achieve its policy objectives; and that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

19. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM), transposition note, and impact assessment. Defra states that the main purpose of the Regulations is to enable enforcement in England of certain provisions of the EU Regulation on food information to consumers (“the EU Regulation”); and that they also consolidate existing general food and nutrition labelling Regulations in England.

20. In the EM, Defra states that the overall aims of the EU Regulation are to allow consumers to have the information they need to make informed and healthy food choices, and to ensure they are not being misled; and also to protect consumers with food allergies and intolerances by providing them with sufficient and clear information to make safe food choices. SI 2014/1855 is needed to provide powers to enforce the provisions of the EU legislation, and to remove any overlapping UK food labelling legislation.

21. Defra says that the Regulations meet domestic policy aims by including a proportionate, effective and risk-based approach to enforcement of the EU Regulation; they take advantage of derogations contained in it and carry forward some EU-permitted national measures. In the EM, Defra itemises the derogations and national measures that are being applied, including:

- a derogation for minced meat (“the minced meat derogation”) that does not comply with the fat and/or collagen compositional requirements of the EU legislation, so that such products will have to be labelled with a national mark indicating that they are for the UK market only; and

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• a national provision allowing information on allergens (“the allergens national provision”) for non-prepacked foods to be provided in any manner, including orally: where oral communication is used, there must be clear indication via a label attached to the food, or on a notice, menu, ticket or label that the allergen information can be obtained from a member of staff.

22. Defra consulted in relation to the Regulations over twelve weeks to 30 January 2013; it published a summary of responses eighteen months later, on 16 July 2014.³ A total of 108 responses were received, 63 from organisations and 45 from members of the public. In the EM, the Department says that the overall view of respondents supported the need for domestic legislation in order to make the EU legislation workable and enforceable in the UK; and that there was general support for adopting the minced meat derogation mentioned above.

23. We sought additional information from Defra about consultation responses, and also about the decisions about the minced meat derogation and the allergens national provision. That information is published as Appendix 1.

Consultation responses

24. Defra has told us that eight consultation responses supported the minced meat derogation, and six opposed it. In our view, this split of opinion does not justify the statement in the EM that there was “general support” for the derogation. Defra has also told us that there were six e-mails following an almost identical format, in which members of the public expressed concerns about the allergens national provision, as well as three general responses which supported the proposed position and four which opposed it. None of these details are given in the EM. We consider that these are significant omissions from the information provided in support of the Regulations.

Minced meat derogation

25. In the summary of consultation, Defra states that the derogation was opposed by the Department of Health (DH) on public health grounds. In the additional information which Defra has now provided in response to our questions, the Department says that it reached its position on the derogation in complete agreement with DH. Defra further explains that the derogation covers both levels of fat and levels of collagen in minced meat. It states that, while there are public health implications around fat, there are none around collagen levels; but that meeting the collagen levels specified in the EU Regulation would have caused real practical difficulties and hence cost for a large number of food businesses. In accordance with policy to take advantage of EU derogations, the Government decided to allow the derogation for now, but carry out an informal review, after three years, to find out the impact that the derogation specifically had on levels of fat in minced meat.

26. The instrument serves to enforce the EU Regulation which aims to provide information needed by consumers to make informed and healthy food choices, and to avoid being misled. We are not persuaded that the decision to adopt the minced meat derogation will meet these aims; we would also comment that an undertaking to carry out an informal review in three years’ time does not give the impression that the needs of consumers are being prioritised.

Allergens national provision

27. We asked Defra what evidence was available to demonstrate that the catering industry reliably informs food-allergic consumers about allergens in the absence of written information. In the additional information now provided, the Department refers extensively to enforcement activities to be taken in the future, but provides no hard evidence that the voluntary best practice guidance which the Food Standards Agency has so far offered has been successful in protecting food-allergic consumers. We note Defra’s declaration that the measures that it has taken enhance, rather than detract from, the protection of food-allergic consumers. We have not been shown hard evidence to support this declaration. In this respect as well, we are concerned that the Regulations will not achieve the aim of ensuring that consumers are provided with essential information to make healthy choices. Our concern is strengthened by the knowledge that choices based on inadequate information about allergens can in some cases immediately and adversely affect the well-being of those consuming the food chosen, to the extent of being life-threatening.

Conclusion

28. These Regulations serve to implement policy on providing food information to consumers, but some of the decisions taken on implementation prompt concern that the Government are not pursuing that policy with consistency across all aspects. At the same time as questioning the effectiveness with which the Department for Environment, Food and Rural Affairs has taken the policy forward, we also criticise the inaccuracy of the Explanatory Memorandum in providing Parliament and others with an account of consultation responses.
CORRESPONDENCE

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

29. In our 6th report of this Session, we published information about this draft Order, criticising the failure of the Explanatory Memorandum (EM) to give an accurate account of the balance of opinion in responses to all the relevant consultation exercises. We wrote to Mr Kris Hopkins, MP, Parliamentary Under-Secretary of State in the Department for Communities and Local Government (DCLG), to underline our concern. We have now received a reply from Mr Hopkins, which we are publishing at Appendix 2. The reply has not lessened our dissatisfaction with the EM to the Order. **We note Mr Hopkins’ agreement that EMs need to be clear, informative and accurate, and we shall continue to monitor material laid by DCLG (and other Departments) in support of secondary legislation to ensure that these qualities are achieved.**

30. In the current Session, our terms of reference have been extended to enable us to bring a statutory instrument to the special attention of the House on the ground that that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation. If we consider that a Department has failed to provide the House with the information that it needs in order to carry out effective scrutiny of secondary legislation, we are now able to highlight such a failure through use of this reporting ground, as is exemplified by our commentaries in this Report on the Channel Tunnel (International Arrangements) (Amendment) Order 2014 (SI 2014/1814) and on the Food Information Regulations 2014 (SI 2014/1855).
Crime–Treaty between the United Kingdom and China on Mutual Legal Assistance in Criminal Matters (Cm 8911)

31. The Treaty between the UK and the People’s Republic of China provides an international framework for mutual legal assistance in criminal matters. This includes the provision of help to investigate crimes that occur in either state, for example taking statements from people or obtaining expert evaluations, and assistance in searches and seizures either for evidence or the proceeds of crime. The Treaty does not provide any rights to extradite a person. The UK has similar bilateral mutual assistance treaties with 39 other countries.⁴

Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613)
Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 (SI 2014/1614)

32. The Maritime Labour Convention was presented to Parliament in a White Paper (Cm 7049) and came into force internationally on 20 August 2013. The UK ratified the Convention on 7 August 2013 and has 12 months to ensure our laws meet its requirements. This instrument and two others laid at the same time⁵ form the bulk of the transposition. They impose duties and requirements for the protection of seafarers on ships to which the Convention applies in relation to:

- the minimum age for employment on board such a ship and night work;
- shipowner use of recruitment and placement services;
- seafarer employment agreements;
- wages;
- rights to repatriation;
- crew accommodation;
- food and catering;
- medical care; and
- shipowners’ liability towards such seafarers.

⁴ See: https://www.gov.uk/government/publications/international-mutual-legal-assistance-agreements
33. Previous regulations relating to medical certifications, hours of work and the survey and certifications of ships are already in force. A further instrument to complete the set, the Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014 (SI 2014/1616) is expected to be made soon. The Convention consolidates amendments of various ILO Conventions, many of which have already been ratified by the UK, so the changes are generally small and low cost. The exception is the requirements for crew accommodation which will increase the costs of building and operating new ships but will only apply to existing ships if a major modification is carried out. A full list of the specific changes to current legislation is provided at Annex 2 to the Explanatory Memorandum. There has been extensive consultation with the industry who are generally supportive and the detailed guidance for industry, in the form of Merchant Shipping Notices, is already available. We commend the Department of Transport for an impressive piece of 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

- Electoral Registration Pilot Scheme Order 2014
- Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2014
- Representation of the People (Scotland) (Amendment No. 2) Regulations 2014

Draft instruments subject to annulment

- North West Leicestershire (Electoral Changes) Order 2014
- South Hams (Electoral Changes) Order 2014
- South Kesteven (Electoral Changes) Order 2014
- Stratford-on-Avon (Electoral Changes) Order 2014

Instruments subject to annulment

8911 Crime–Treaty between the United Kingdom and China on Mutual Legal Assistance in Criminal Matters

- SI 2014/1613 Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014
- SI 2014/1811 Port Security (Port of Londonderry) Designation Order 2014
- SI 2014/1816 Driving Theory Test Fees (Various Amendments) Regulations 2014
- SI 2014/1833 Forest Reproductive Material (Great Britain) (Amendment) (England and Scotland) Regulations 2014
- SI 2014/1834 Civil Proceedings Fees (Amendment No. 2) Order 2014
- SI 2014/1862 Road Vehicles (Construction and Use) (Amendment No. 2) Regulations 2014
SI 2014/1865  Housing (Right to Buy) (Limit on Discount) (England) (Amendment) Order 2014
SI 2014/1878  Human Medicines (Amendment) (No. 2) Regulations 2014
SI 2014/1888  Air Navigation (Amendment) (No. 2) Order 2014
SI 2014/1890  European Communities (Designation) (No. 2) Order 2014
SI 2014/1894  Diseases of Swine Regulations 2014
SI 2014/1896  Export Control (Syria Sanctions) (Amendment) Order 2014
SI 2014/1899  Local Justice Areas (No. 2) Order 2014
SI 2014/1901  First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2014
SI 2014/1902  Agriculture (Miscellaneous Revocations) Regulations 2014
SI 2014/1917  Care Planning and Care Leavers (Amendment) Regulations 2014
SI 2014/1919  Judicial Discipline (Prescribed Procedures) Regulations 2014
SI 2014/1925  Legal Services Act 2007 (Licensing Authority) Order 2014
SI 2014/1933  Tax Credits (Settlement of Appeals) Regulations 2014
SI 2014/1937  Provision of Services (Amendment) Regulations 2014
SI 2014/1945  Public Lending Right Scheme 1982 (Commencement of Variation and Amendment) Order 2014
APPENDIX 1: FOOD INFORMATION REGULATIONS 2014 (SI 2014/1855)

Additional information from the Department for Environment, Food and Rural Affairs

Q1: The summary of responses states: “There is both support and opposition for the derogation on compositional standards for minced meat.” How many respondents supported the derogation? How many respondents opposed the derogation?

A1: Of those consultation responses that put forward a view on the minced meat derogation, 8 were for it and 6 against. Those for allowing the derogation included Which?, 3 Local Authority Organisations (including the South West and the East of England associations), the British Retail Consortium (BRC) and the British Meat Processors Association (BMPA). Those against allowing the derogation were 4 individual Trading Standards Departments, one public analyst and the Association of Public Analysts. 3 of these (all Trading Standards Officers) were primarily concerned about the public health impacts of higher fat levels and the other three about the potential for consumers to be misled.

Q2: The summary also says: “The derogation was opposed by Department of Health (DH), as well as other health-based stakeholders, on public health grounds…” Does Defra not accept DH’s view that allowing the derogation goes against public health concerns? If Defra thinks otherwise, what evidence does Defra have for this contrary view? On the other hand, if Defra accepts DH’s view, what consideration overrules public health concerns and thus makes the case for the derogation?

A2: Defra and DH discussed this matter at some length following the consultation and in light of the public health concerns. The derogation on minced meat covers two things; levels of fat and levels of collagen. There are no public health implications around collagen levels, but there are around fat. However it is meeting the collagen levels specified in the EU Regulation that would have caused real practical difficulties and hence cost for a large number of food businesses. After further discussion, it was decided that, in accordance with the Government’s policy to take advantage of EU derogations, we allow the derogation for now, but would carry out an informal review, after 3 years, to find out the impact that the derogation specifically had on levels of fat in minced meat. If we found that the derogation was being used to place on the market minced meat with elevated levels of fat, we would consider removing the derogation altogether. Industry is aware of this and the ball is in their court.

We have reached our position on the derogation in complete agreement with DH. It may be helpful to explain in a little more detail where these particular provisions come from. They originate in meat Hygiene Regulations and were designed to regulate the production of minced meat in approved premises rather than as a public health measure. They were transferred into the Food Information Regulations in order to consolidate the information requirements of food into a single instrument, but still their intention is not as a public health measure, but as a “fair information” and “better functioning of the market” measure.

The impact of the minced meat provisions on costs, to industry and of course inevitably passed on to consumers, largely stems from the need to comply with the collagen/meat protein ratio criteria, rather than the criteria for fat. While we found that some minced meat on the UK market exceeded the EU fat levels, the large majority did not and our estimate of cost for meeting the fat criteria was modest.
Requiring industry to comply with EU collagen limits however would have been prohibitive (estimates from industry ranged in the tens, even hundreds of £millions) and DH were able to recognise this important distinction. So having discussed with us the possible public health impacts of allowing the derogation, DH agreed on the way forward, and it was decided to go ahead with the derogation in the Food Information Regulations 2014 (which also was in accordance with the Government policy to take advantage of EU derogations), but on the basis that a review of the policy would be carried out after 3 years. This means that, if adverse impacts result, specifically if fat levels in minced meat continue in excess of EU limits, the Government could then consider (subject to consultation etc.) making Regulations that would withdraw the derogation. In taking this approach, we have kept intact the “fair information to consumers” aspects of the Regulation while avoiding costs, which would otherwise inevitably been passed to UK consumers.

Q3: As regards the national measure allowing information on allergens for non-prepacked foods to be provided in any manner including orally, the summary states that “a number of responses, with very similar responses, expressed doubt that allergen information could be reliably and consistently provided in catering outlets other than in written format. They thought that allowing cafes’ and restaurants’ serving staff to correctly communicate this important information exposed food allergic consumers to risk of misunderstanding…FSA [the Food Standards Agency]…are happy that the catering industry can cope with this flexibility and introduce effective allergen labelling with the flexibility of being able to offer this information without it necessarily having to be written down…FSA will work with industry to ensure that whatever way it is provided, it is consistent and reliable.” How many respondents supported, and how many opposed, the provision allowing information on allergens for non-prepacked foods to be provided in any manner including orally? What evidence is available to demonstrate that the catering industry reliably informs food allergic consumers about allergens in the absence of written information? And what concrete steps will be taken by the FSA, and when, to ensure that the catering industry provides such information in a consistent and reliable way?

A3: There were 6 e-mails following an almost identical format in which members of the public expressed concerns that allergen information might be wrongly given, citing poor English language and low pay in the food service sector. In the general responses, of those where there was a clear view, three (including Allergy Action and the Food Standards and Labelling ((Local Authority)) Focus Group) supported the proposed position (allowing information to be given orally) and 4, (including the Children’s Food trust, a member of the public and 2 councils) were against it. Others discussed the issue, mainly to express the view that if oral provision of information were to be allowed, clear audit must be available to show how the accuracy and reliability of the information has been ensured.

The FSA has had voluntary best practice guidance in place for a number of years which a proportion of the food service sector have used to enable them voluntarily to provide allergen information, including orally. The FSA has published advisory leaflets and free online allergen training for SMEs to raise awareness of the new provisions and will continue its communications working in partnership with its interested parties to ensure awareness is as high as possible. Furthermore, the FSA has trained enforcement officers on the technical aspects of the allergen provision and allergen management, this will start to cascade down to food businesses. Enforcement officers will expect food business operators to be able to show the systems that they have in place to ensure that the food allergy information given by
their members of staff is accurate and ensure that food business operators are aware that a failure to provide accurate allergen information will be an offence and a contravention for which an improvement notice may be served.

Under Article 8(5) of Regulation (EU) No 1169/2011 [the EU Regulation on food information to consumers] food business operators, within the business under their control, must ensure compliance with the requirements of food information and relevant national provisions which are relevant to their activities. Furthermore, they must verify that such requirements are met. This means that, when supplying information relating to Annex II food allergens orally, food business operators are under an obligation to ensure that the correct information is given. Enforcement authorities will check that that information about the relevant allergens is being given, that it is correct and that the food business operator is verifying the correctness of the information being given. As part of their enforcement work, officers will be able to ask food business operators to show them what verification methods they use and assess their adequacy. A failure to give the correct allergen information or a failure or the part of a food business operator to verify that the correct allergen information is being given, would constitute a contravention of the responsibilities of the food business operator and would be a contravention for which enforcement action could be taken.

What is important is that the relevant information is imparted to the consumer consistently and accurately in all circumstances, including for example where meals are prepared to order. There is a risk with written allergens information that this may not be updated when recipes or suppliers change and allowing the allergen information to be provided orally provides flexibility, enabling food business operators to respond quickly to such changes. The measures we have taken enhance, rather than detract from, the protection of food-allergic consumers.

23 July 2014
APPENDIX 2: CORRESPONDENCE – LOCAL GOVERNMENT (TRANSPARENCY) (DESCRIPTIONS OF INFORMATION) (ENGLAND) ORDER 2014

Letter from Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee, to Mr Kris Hopkins MP, Parliamentary Under-Secretary of State at the Department for Communities and Local Government

The Committee considered this draft Order at its meeting yesterday.

In the Explanatory Memorandum (EM), your Department states that there have been three consultations relevant to local government transparency and the publication of key information. Nothing is said in the EM about whether respondents to the first and second of these consultations supported the Department’s proposals. Only as regards the third consultation is there an indication in the EM that “some respondents...said that it was unnecessary to extend the scope of the local government transparency Code and make it a legal requirement for local authorities to publish certain data.”

Your Department makes no mention in the EM of the fact that, of the 219 respondents to the second consultation process, 91 were of the view that making regulations to require local authorities to publish information contained in the Code was unnecessary, and only six supported the making of regulations.

We are commenting on the draft Order in our Report this week, making known our view that the EM fails to give an accurate account of the balance of opinion in responses to all the consultation exercises. We shall look to your Department to ensure that in future, in any EMs laid with statutory instruments, summaries of information about consultation exercises do not omit important details.

I am copying this to Sir Bob Kerslake, as your Department’s Permanent Secretary.

16 July 2014

Letter from Mr Kris Hopkins MP to Lord Goodlad

Thank you for your letter of 16 July. I am sorry that the Committee feels the Explanatory Memorandum did not fully reflect the responses the Department received during its consultations. We will reflect on the Committee’s advice and how the Department might address concerns about Explanatory Memorandums it drafts.

This Order does not, itself, place any statutory requirements on local authorities. It provides an enabling power for the Secretary of State to subsequently require certain categories of information, in this instance spending and contract information, to be published more frequently than annually.

The Department's most recent consultation set out the Government’s intention to require local authorities to publish information on a quarterly basis about their spending and contracts. It is this consultation that is most relevant to the content of the Order and so the Explanatory Memorandum focused on summarising the responses to this. Links to previous consultation documents were provided.
While a number of respondents in the second consultation did say that it was unnecessary for the Government to regulate will have been local authorities, this was in line with expectations from earlier consultation and was less than half of respondents – the majority of respondents in the second consultation did not seek to oppose regulation. And, there is a body of evidence from the National Audit Office and Local Government Association which shows that local authorities have not been publishing key information.

I agree entirely with your central point – that Explanatory Memorandums need to be clear, informative and accurate. We will continue to look carefully at how we draft these documents so that they meet the standards the Committee expects.

22 July 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](http://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 29 July 2014 Members declared no interests.

Attendance:

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