

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

9th Report of Session 2014–15

**Draft Electricity and Gas (Energy Companies
Obligation) (Amendment) (No. 2) Order 2014**

Draft Fuel Poverty (England) Regulations 2014

**Public Service (Civil Servants and Others) Pensions
Regulations 2014**

**Independent Educational Provision in England
(Prohibition on Participation in Management)
Regulations 2014**

**Social Security (Jobseeker's Allowance and
Employment and Support Allowance) (Waiting
Days) Amendment Regulations 2014**

Includes 8 Information Paragraphs on 13 Instruments

Ordered to be printed 14 October 2014 and published 17 October 2014

Published by the Authority of the House of Lords

London: The Stationery Office Limited
£price

HL Paper 47

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 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

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

Ninth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.

A. Draft Electricity and Gas (Energy Companies Obligation) (Amendment) (No. 2) Order 2014

Date laid: 22 July

Parliamentary Procedure: affirmative

Summary: This draft Order makes changes to the Energy Companies Obligation (ECO), which requires large gas or electricity suppliers to achieve carbon reduction targets, and home heating cost reduction targets, by promoting energy efficiency measures at domestic properties. A major change is that the overall carbon emissions target for the current ECO obligation period is being reduced by 33%. The Government believe that the changes made by the draft Order should mean that energy bills to consumers will be at least £30–35 lower than would otherwise be the case.

The Department for Energy and Climate Change consulted on these changes in March and April of this year. 68% of respondents opposed the 33% reduction in the overall carbon emissions target implemented in this Order. The Government have decided to proceed with the reduction in the interest, as they see it, of domestic energy consumers. The information presented in support of the instrument does not demonstrate that such consumers explicitly agree with the steps proposed. We are concerned that the Department's approach runs the risk of discrediting the process of consultation.

The House may wish to press the Government to explain more clearly their proposal to reduce energy companies' costs, through lowering the carbon reduction target in the current obligation period, at a time when there are unanswered questions about the level of those companies' profitability.

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

1. The Department for Energy and Climate Change (DECC) has laid this draft Order with an Explanatory Memorandum (EM) and impact assessment. It amends the Electricity and Gas (Energy Companies Obligation) Order 2012 (SI 2012/3018: the "ECO Order"), which requires large gas or electricity suppliers to achieve carbon reduction targets, and home heating cost reduction targets, by promoting the installation of energy efficiency measures at domestic properties. These targets are the carbon emissions reduction obligation ("CERO"), the carbon saving community obligation and the home heating cost reduction obligation. A major change made by the draft Order is a 33% reduction in the overall carbon emissions target, from 20.9

MtCO₂ to 14 MtCO₂, for the current ECO obligation period (ending 31 March 2015).

Background – Energy Company Obligation

2. The Energy Company Obligation (ECO) period began on 1 January 2013. The ECO requires large energy suppliers to deliver energy efficiency improvements in households in order to meet their defined targets. The obligation is expressed in terms of energy efficiency outcomes (carbon tonnes saved, notional reductions on home heating costs), not expenditure. DECC states in the EM that, since achieving these targets imposes costs on the obligated companies, who pass those costs through to domestic consumers, the costs of the ECO policy are borne by households (albeit that energy efficiency improvements delivered will reduce the energy bills of recipient households).
3. The original Impact Assessment for the scheme estimated these costs as being around £1.3bn per year on average. DECC says that, while the Government's monitoring of the scheme's costs has found concrete evidence to support the view that costs were around £1.3–1.4bn per year, some obligated companies have said that the obligation could end up costing considerably more, with resulting pressures on consumer bills.
4. After deciding to review the scheme to ensure that it remained as cost-effective as possible, the Government announced a set of proposals in December 2013 which were intended to reduce the costs of the scheme without compromising those elements directed at the alleviation of fuel poverty. The Secretary of State for Energy and Climate Change presented the proposals in an Oral Statement on 2 December 2013.¹ The proposals were set out in a consultation document published on 5 March 2014; the Government's conclusions have been confirmed in the consultation response published on 22 July 2014.²
5. This Order gives effect to those elements of the consultation outcome which are relevant to the current period of the ECO (up to 31 March 2015); a new Order is expected to be laid before Parliament in the autumn, creating a new obligation period (from 1 April 2015 to 31 March 2017). A major change made by the draft Order (in Article 4) is a 33% reduction in the overall carbon emissions target, from 20.9 MtCO₂ to 14 MtCO₂ for the current ECO obligation period (ending 31 March 2015). DECC says that evidence gathered since January 2013 indicates that the low level of progress towards suppliers' individual CERO targets was due to cost pressures under the current CERO obligation. The Department states that, since this element of the ECO scheme does not specifically focus on promoting energy efficiency measures to those in fuel poverty, the best approach to reducing the cost of the ECO scheme to domestic energy consumers is to lower the carbon emission reduction target.

¹ See: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131202/debtext/131202-0001.htm#13120212000002>

² See: [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335002/future_energy_comp any_obligation_government_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335002/future_energy_company_obligation_government_response.pdf)

6. DECC says that, in the light of the Government's December 2013 proposals, obligated energy companies made announcements to the effect that, if these proposals were implemented, they would expect their energy bills to consumers to be £30–35 lower than would otherwise be the case. The Government believe that the final decisions now taken should allow for energy bill reductions in line with, if not greater than, the levels anticipated in December 2013.
7. In the impact assessment accompanying the draft Order, DECC says that the “impact on energy bills from the final ECO package will depend on how the obligated suppliers deliver the targets and how suppliers choose to pass through costs to bills” (paragraph 130). It adds, however, that public statements from the largest obligated energy suppliers suggest that “these suppliers have already implemented cost reductions through limiting price increases in 2013 and/or introduced the reductions at various dates during the first quarter of 2014” (paragraph 131). It refers to a press release issued by Energy UK in May 2014,³ which published a table detailing the actions of each company. While this table indicates that savings are being passed to customers who do not have fixed tariffs, it appears to show that at least two of the companies are not passing ECO-related savings on to their fixed-contract customers. We note as well that, in July 2014, Which? issued a press release saying that, while the Government's decision to cut the cost of the Energy Company Obligation was welcome, more needed to be done to ensure that energy suppliers pass on the full benefit of the cost reduction to their customers.⁴

Consultation

8. The Department consulted on changes to the Energy Company Obligation (ECO) over six weeks between 5 March and 16 April 2014. DECC received 266 responses from key stakeholders, including obligated energy suppliers.
9. The July 2014 consultation summary states that 68% of respondents disagreed with the proposed 33% reduction in the 2015 CERO target. In the EM, DECC describes this outcome as follows: “It must be noted that, in strictly numerical terms, the majority of respondents opposed the proposals to significantly reduce the level of ambition of the CERO element of ECO. This may reflect the fact that many respondents were from the industries involved in supplying the carbon-saving measures in question, or represented the interests of households who might be recipients of these measures (for example, local authorities). The Government has also needed to bear in mind the perspective of household energy bill payers, who ultimately bear the costs of the obligation, but who are less likely to respond to a formal consultation of this sort.” We sought further information from the Department about the consultation process, which we are publishing at Question 1 in Appendix 1.

³ See: <http://www.energy-uk.org.uk/press-releases/940-statement-on-energy-companies-obligation-restructure.html>

⁴ See: <http://www.which.co.uk/news/2014/07/energy-companies-urged-to-cut-energy-bills-374819/>

10. The quotation above from the EM suggests that the Department is uncomfortable with the results of its own consultation process. It refers, for example, to the views expressed by the majority of respondents “in strictly numerical terms”. It has further explained this phrase, by saying that it intended to stress the need for caution about treating the raw number of respondents on each side of a particular question as being representative. While understanding this concern, we would in turn make the point that, in any analysis of consultation responses, it is important to see a numerical or quantitative breakdown as well as a qualitative assessment.
11. In the EM, DECC also states that its consultation process was unlikely to elicit the views of household energy bill payers, on whom the ECO scheme has a very significant impact. In the additional information now provided, the Department stresses that it engaged with the sorts of organisations who represent the interests of consumers, and worked with them in the consultation process. **While this is to be commended, it does not demonstrably justify the assertion that, in taking forward the 33% reduction in the 2015 CERO target, the Government are adopting “the perspective of household energy bill payers”: energy consumers may well wish to see lower bills, but they might well prefer not to rely on their suppliers’ mediation of cost savings from reduced carbon reduction targets. We are concerned that the Department’s approach runs the risk of discrediting the process of consultation: its arguments for disregarding the two-thirds of consultees who disagreed with its proposals may not carry great weight with those respondents.**

Energy company costs and revenues

12. Further information about the costs and revenues of energy companies has become available since the Department laid this instrument before Parliament. In particular, at the end of July of this year, Ofgem published its monthly Supply Market Indicator⁵ which, as reported in the media, estimated that in the twelve months from that date suppliers would make an average pre-tax profit of £106 per customer, representing a margin of 8%: this contrasted with Ofgem’s estimate a year before of an average pre-tax profit of £53 per dual fuel customer, a margin of 4%.⁶
13. We pressed the Department to comment on this information, and asked in particular whether it saw reason to re-consider the proposed reduction in carbon reduction targets if, as reported, energy firms might in fact achieve higher profits than previously assumed. We are publishing the Department’s responses at Questions 2, 3 and 4 in Appendix 1.
14. In its responses, the Department states, among other things, that Ofgem’s Supply Market Indicator is not a forecast of actual profits of suppliers and should not be used as such; that the Competition and Markets Authority will undertake a thorough investigation of issues relating to pricing and

⁵ See: <https://www.ofgem.gov.uk/gas/retail-market/monitoring-data-and-statistics/understanding-energy-prices-great-britain/supply-market-indicator>

⁶ See BBC report: “Energy firms to ‘double’ profit margins, predicts Ofgem” – <http://www.bbc.co.uk/news/business-28563296>

profitability in the energy market;⁷ that the Department sees no reason to reconsider decisions on ECO which have largely been taken with a view to reducing pressures on consumer bills; but that it recognises that there has been some lack of certainty, and of transparency, around the costs to companies of the obligation, and it is now publishing relevant information.

Conclusions

15. The House will be interested to see that the Government have laid this instrument in confirmation of the proposal to reduce the overall carbon emissions target for the current ECO obligation period by 33%. While this reduction was opposed by a majority of consultation respondents, the Government have decided to proceed in the interest, as they see it, of domestic energy consumers. The information which they have presented in support of the instrument does not demonstrate that such consumers explicitly agree with the steps proposed by the Government.
16. In its impact assessment, the Department recognises that the impact on energy bills of the changes made to the carbon emissions target will depend on how the obligated suppliers deliver the targets and how suppliers choose to pass through costs to bills. However, in the information now provided to us, DECC says that the size of the ECO obligation and the size of energy company profits are not directly related. It seems to us that there is a disconnection between these two statements. If the profits of energy companies are excessive – a question to be considered in Competition and Markets Authority’s investigation, scheduled to report by the end of 2015 – it is arguable that consumers’ bills could be reduced by reining in those profits, without necessarily scaling back current carbon reduction targets under the ECO obligation.
17. **The House may wish to press the Government to explain more clearly their proposal to reduce energy companies’ costs, through lowering the carbon reduction target in the current obligation period, at a time when there are unanswered questions about the level of those companies’ profitability.**

⁷ The investigation was announced in June 2014: the final report from that investigation is to be published by the end of 2015. See: <https://www.gov.uk/government/news/energy-market-referred-to-cma>

B. Draft Fuel Poverty (England) Regulations 2014

Date laid: 22 July

Parliamentary Procedure: affirmative

Summary: These Regulations establish an objective of ensuring that as many as is reasonably practicable of the homes of persons in England living in fuel poverty have an energy efficiency rating of Band C, by 31 December 2030. The Department for Energy and Climate Change, which has carried out consultation on the adoption of a different indicator for measuring fuel poverty, says that this target implies improving the energy efficiency of a significant number of households since, at present, around 5% of fuel-poor homes have an energy efficiency rating of Band C or above as defined in the relevant methodology.

These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

18. The Department for Energy and Climate Change (DECC) has laid these draft Regulations with an Explanatory Memorandum (EM). DECC states that the Warm Homes and Energy Conservation Act 2000 (“the 2000 Act”) places a duty on the Secretary of State to make regulations setting out an objective for addressing the situation of persons in England who live in fuel poverty. In order to satisfy this duty, these Regulations establish an objective of ensuring that as many as is reasonably practicable of the homes of persons in England living in fuel poverty have an energy efficiency rating of Band C, by 31 December 2030.
19. On 22 July 2014, the Secretary of State for Energy and Climate Change made a Written Statement announcing the laying of these draft Regulations, as well as other steps to “overhaul the framework to tackle fuel poverty in England”.⁸

Background – measuring fuel poverty

20. In the EM, DECC says that, at present, some 2.3m households in England (around 10% of all households) are fuel-poor. In line with the 2000 Act, the Government published a UK Fuel Poverty Strategy in 2001 designed to ensure that as far as reasonably practicable no person in England lived in fuel poverty by 2016. Measured using the so-called “10% indicator”, under which a household was deemed to be fuel-poor if its modelled energy needs accounted for more than 10% of household income, fuel poverty fell to low levels in 2003–04 before rising consistently to 2010.
21. Professor Sir John Hills of the London School of Economics was commissioned by the present Government to conduct out an independent review of fuel poverty in England. The review found that the Government’s approach to measuring fuel poverty was flawed, notably because the “10% indicator” was unduly sensitive to energy prices. The Hills Review made a number of recommendations, including a change to the measurement approach through the adoption of a new “low income high costs indicator.”

⁸ HC Deb, 22 July 2014 col 114WS.

22. After consultation, the Government adopted this indicator as the primary measure of fuel poverty. In July 2013, in the Fuel Poverty Strategic Framework, the Government confirmed the intention to amend the 2000 Act, through the Energy Bill then before Parliament, to create a duty on the Secretary of State to set a new fuel poverty target, as a consequence of the Hills Review. The Strategic Framework proposed that the new fuel poverty target should be focused on improving the energy efficiency of the homes of the fuel-poor households.

Objective set in Regulations

23. The draft Regulations set an objective of ensuring that as many as is reasonably practicable of the homes of persons in England living in fuel poverty have an energy efficiency rating of Band C. The target date for achieving this objective is 31 December 2030: interim objectives underpinning this objective will be specified in a new fuel poverty strategy.
24. DECC says that this target implies improving the energy efficiency of a significant number of households. At present, around 5% of fuel-poor homes have an energy efficiency rating of Band C or above as defined in the relevant methodology. Improving a fuel poor home to Band C implies a reduction in the energy needed to meet an adequate standard of heating, thereby supporting households on a low income to keep warm at home, and raising living standards. In aggregate, the new target also implies working to close the gap in standards between fuel-poor and non-fuel-poor households even as standards improve overall.

Consultation

25. DECC says in the EM that, while there has been no specific consultation on the draft instrument, the Government consulted on its response to the Hills Review in 2012, and on the framework for measuring fuel poverty.
26. In the summary of responses to the latter consultation (published in July 2013),⁹ DECC states that over 75 responses were received. In response to a question about the proposal to adopt the low income high costs indicator, 55% of respondents supported changing the definition, while a further 25% supported changing the definition subject to amendments to certain elements of the proposed framework (namely the energy costs threshold). DECC sums this up by saying that the majority of respondents supported changing the definition, though concerns were raised about the complexity of the low income high costs indicator. The Department reaffirms its belief that the framework of the new indicator represents a more accurate definition to use as the basis for measuring fuel poverty, and a significant improvement on the current definition.

⁹ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211135/government_response_fuel_poverty_consultation.pdf

C. Public Service (Civil Servants and Others) Pensions Regulations 2014 (SI 2014/1964)

Date laid: 24 July

Parliamentary Procedure: negative

Summary: This instrument implements the reforms recommended by the Hutton Review to civil service and certain other public service pension schemes that were enabled by the Public Services Pensions Act 2013. The reforms include a pension calculated by reference to the member's career average earnings and a normal pension age equal to the state pension age.

These Regulations are drawn to the special attention of the House on the grounds of policy interest.

27. This instrument sets out the detail of the reforms recommended by the Hutton Review to civil service and certain other public service pension schemes that were enabled by the Public Services Pensions Act 2013. The Regulations are accompanied by an Explanatory Memorandum (EM) but no Impact Assessment.

Content of the Regulations

28. The reforms include a pension calculated by reference to the member's career average earnings and a normal pension age equal to the state pension age. Specifically Part 3 sets up the governance arrangements for the scheme while Parts 4 and 5 describe eligibility for membership and how benefits accrue. In particular Part 5 sets out the basic operation of the career average scheme which will build up a pension account for each member with 2.32% of their pensionable earnings a year, to which, at the start of each scheme year (1 April), indexation is applied. Parts 6 and 7 provide details on retirement benefits, including on ill health grounds, Part 8 covers the benefits payable in the case of the death of a member, Part 9 puts the contribution structure in place, Part 10 covers transfers into, and out of, the scheme and Part 11 puts in place the measures to control the future costs of the scheme. Schedule 1 provides options for members to purchase additional benefits and Schedule 2 deals with the arrangements needed to cover those members who transition from the current Principal Civil Service Pension Scheme (PCSPS) into the new arrangements.

Consultation

29. Of the ten trades unions that the proposals were put to, five agreed to the proposal, four rejected it and one reserved their position pending further clarification of an issue specific to their workforce. Only one of the unions has cited the pension reform as part of a dispute with employers (alongside several other issues) and taken strike action on that basis.

Transition

30. The final salary sections of the PCSPS were closed to new entrants (except in limited circumstances) in 2007 and a CARE section, nuvos, introduced for new recruits. New entrants to the Civil Service from 1 April 2015 will be enrolled into the new pension scheme ("alpha"). Schedule 2 provides for current members of the PCSPS who will reach their scheme pension age (60

or 65 depending on section in the PCSPS) on or before 1 April 2022 will continue to accrue benefits in the PCSPS and will not be eligible to join the new scheme. Those who reach their pension age in the PCSPS between 2 April 2022 and 1 September 2025 will be offered a choice of two dates as to when they will cease accruing in the PCSPS and begin to accrue in the new scheme. Their choice will be between 1 April 2015 and a specific date based on their age and set out in the PFA (although the further from pension age the sooner the member will have to move into the new scheme). For all members the final salary used in calculating PCSPS benefits in the final salary sections will be the salary on leaving employment covered by the scheme, not the date of transfer into the new arrangements.

31. Information about the new arrangements and what their options are will be sent to all members of the scheme in October 2014. From 1 April 2015 all members will pay the same level of pension contributions for their salary band (based on their actual earnings), no matter which version of it they belong to, classic, classic plus, premium, nuvos or alpha. Further information for civil servants is available on www.civilservicepensionscheme.org.uk.
32. The Committee was somewhat surprised to see Cabinet Office's statement that all this transitional activity will apparently be at nil cost to the public sector, but the Cabinet Office maintains that the costs of transition are offset by the benefits of simplifying the scheme.

D. Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 (SI 2014/1977)

Date laid: 25 July

Parliamentary Procedure: negative

Summary: These Regulations prescribe the grounds on which the Secretary of State may give a direction prohibiting a person from taking part in the management of an independent school. The Department considers that the Regulations are necessary because it has found its existing powers to be ineffective in tackling some forms of conduct which may make a person unsuitable for such a management role, in particular, extremist conduct and professional misconduct. We have received correspondence from the independent school sector setting out its concerns about the Regulations.

These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

33. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. The Regulations, made under section 128 of the Education and Skills Act 2008 (“the 2008 Act”), prescribe the grounds on which the Secretary of State may give a direction prohibiting a person from taking part in the management of an independent school. Those include that a person is convicted of an offence, given a caution for an offence, or is subject to relevant findings in respect of an offence, if the Secretary of State concludes that the conviction, caution, finding or conduct makes the person unsuitable to take part in the management of an independent school; or that a person has engaged in conduct which the Secretary of State finds to be relevant, and concludes that it makes them unsuitable. DfE states that, since Academies (including free schools) are independent schools, the Regulations apply to them.
34. DfE says that the Government believe that the independent sector should continue to be comparatively unregulated; but that such relatively light-touch regulation means that there is a greater danger that unsuitable individuals will be able to secure management posts or become a proprietor of an independent school. Although the Secretary of State currently has a power in section 142 of the Education Act 2002 to make a direction prohibiting a person from taking part in managing an independent school,¹⁰ the Department has found the existing power to be ineffective in tackling some forms of conduct which may make a person unsuitable for such a management role, in particular, extremist conduct and professional misconduct. These Regulations are intended to enable the Department to tackle these issues more effectively.

¹⁰ DfE says that this section will be repealed when section 128 of the 2008 Act is brought into force.

35. DfE consulted on these proposals over nine weeks to 10 April 2014 and published a Government response on 22 July 2014.¹¹ There were 20 responses. DfE says that, of the key questions asked, 61% of respondents agreed that additional powers were required; 61% agreed that the additional powers would address the issues of misconduct and extremism; and 72% agreed that a conduct ground was needed. The Department says that it made two major changes to the Regulations as a result of the consultation: individuals who have been given a direction based on a conviction or caution will now be able to seek a variation or revocation on the same basis as those given a direction based on a conduct ground; and the term “so egregious” in the conduct grounds has been amended to become “so inappropriate”.
36. We received a letter of 28 July 2014 from Mr Matthew Burgess, General Secretary of the Independent Schools Council, setting out the concerns which that body had voiced in its consultation response, above all that the grounds on which the Secretary of State may make a direction under section 128 of the 2008 Act (“a section 128 direction”) were wholly subjective. Mr Burgess had not seen the Regulations as laid by the Department, albeit that he understood that DfE intended to lay them and bring them into force on 1 September 2014. We asked DfE to respond to the points made by Mr Burgess, and we have received a response dated 2 September 2014. We are publishing Mr Burgess’ letter and DfE’s response on our website.¹²
37. We recognise that the issues addressed by these Regulations are difficult and of considerable current concern. As already mentioned, the consultation process showed that a majority of respondents supported most key elements of the Department’s proposals. This was not the case for the proposal that section 128 directions should be made by the Secretary of State. While 44% of respondents agreed with this intention, 44% also disagreed: suggestions were made for other bodies, such as the Disclosure and Barring Service, to make such directions. In its consultation response, the Department has set out its reasons for proceeding with its proposal that the Secretary of State should make the decisions on these cases: it mentions in particular that the decisions made might not just be related to risk of harm with children, but might also include issues such as extremism and financial conduct, and prohibitions related to other factors (for example, being a disqualified solicitor).

¹¹ See: <https://www.gov.uk/government/consultations/management-of-independent-schools-proposed-regulations>

¹² See: <http://www.parliament.uk/seclegpublications>

E. Social Security (Jobseeker's Allowance and Employment and Support Allowance) (Waiting Days) Amendment Regulations 2014 (SI 2014/2309)

Date laid: 4 September

Parliamentary Procedure: negative

Summary: This instrument increases, from three days to seven days, the number of unpaid "waiting days" served following a new claim to Jobseeker's Allowance (JSA) or Employment and Support Allowance (ESA) and applies to all claims starting after 27 October 2014. Claimants who are exempt from waiting days under current rules will continue to be exempt. The Department estimates that this change will generate savings of approximately £50 million in 2015–16.

This instrument 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.

38. This instrument is laid by the Department of Work and Pensions (DWP) under provisions of the Jobseekers Act 1995 and the Welfare Reform Act 2007 with an Explanatory Memorandum (EM) and an Impact Assessment. A report by the Social Security Advisory Committee has also been laid with a Government response.¹³
39. The instrument increases, from three days to seven days, the number of unpaid "waiting days" served following a new claim to Jobseeker's Allowance (JSA) or Employment and Support Allowance (ESA) and applies to all claims starting after 27 October 2014. Claimants who are exempt from waiting days under current rules will continue to be exempt.
40. This intention was announced by the Chancellor of the Exchequer on 26 June 2013 and it was confirmed in the Budget statement of 19 March 2014 that this would also apply to ESA. DWP estimates that this change will generate savings of approximately £50 million in 2015–16, although these will decrease in subsequent years as Universal Credit is rolled out. DWP states that these savings will be invested in new measures to support people into work.
41. The Social Security Advisory Committee, a statutory consultee, has issued a report based on public consultation which, in particular, asked the Government for a more robust analysis of the potential impact this change might have on claimants. An Impact Assessment is now attached to the instrument which indicates that approximately 70% of JSA claimants and 40% of ESA claimants will serve waiting days at the start of their award and this legislation will have the effect of reducing the value of their first benefit payment by an average of £40 for JSA claimants and £50 for ESA claimants.

¹³ <https://www.gov.uk/government/publications/social-security-jobseekers-allowance-and-employment-and-support-allowance-waiting-days-amendment-regulations-2014-ssac-report>

INSTRUMENTS OF INTEREST

Draft Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014

Draft Shared Parental Leave Regulations 2014

Draft Statutory Shared Parental Pay (General) Regulations 2014

42. The Department for Business, Innovation and Skills (BIS) has laid these instruments with a shared Explanatory Memorandum (EM). In the EM, BIS states that the Children and Families Act 2014 and these Regulations give effect to the Government's commitment to encourage shared parenting from the earliest stages of pregnancy, including the promotion of a system of flexible parental leave. The policy objective is to create choice for families in how they look after their children; to create more equity in the workplace and reduce the gender penalty resulting from women taking long periods of time out of the workplace on maternity leave; and to encourage shared parenting.
43. The draft Shared Parental Leave Regulations 2014 and the draft Statutory Shared Parental Pay (General) Regulations 2014 provide an entitlement for a mother/adopter and a child's father/adoptive parent or a mother's or adopter's partner to take shared parental leave and pay. They set out the qualifying requirements that must be satisfied by an employee, and also by their partner, for the employee to qualify for shared parental leave and pay. They also set out the notice and evidence requirements which must be met for the employee to qualify for shared parental leave, and for employees and agency workers to qualify for statutory shared parental pay. Shared parental leave and pay can be taken at any time after the birth of a child, or the placement of a child for adoption or with prospective adopters, and must be taken before the child's first birthday or the first anniversary of the placement.
44. Shared parental leave and pay arises from untaken maternity leave and statutory maternity pay or maternity allowance, or untaken adoption leave and statutory adoption pay. An eligible mother or adopter must curtail her maternity or adoption leave in order for shared parental leave to arise. The draft Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014 enable an expectant mother or a mother on maternity leave, or an adopter or a prospective adopter, to give notice to end her maternity leave or his or her adoption leave on a specific future date. Where maternity or adoption leave has been curtailed under these Regulations, the balance of the untaken leave may be taken as shared parental leave if the parents satisfy entitlement and notification criteria.

Draft Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2014

Draft Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2014

45. The use of covert surveillance and the interference with property in investigations is limited by the Regulation of Investigatory Powers Act 2000 (RIPA). The Home Office has revised these two Codes with the aim that the tests of necessity and proportionality should be better understood by public authorities and applied more consistently. A six week public consultation also

resulted in a number of changes to improve the clarity and accuracy of the revised Codes. In particular they:

- Include the requirement for local authorities to get judicial approval for their use of RIPA (Protection of Freedoms Act 2012);
- Restrict local authority use of directed surveillance under RIPA to offences which attract a sentence of six months imprisonment or more (Protection of Freedoms Act 2012);
- Increase the authorisation levels for the use of undercover officers and introduce judicial oversight by the Office of Surveillance Commissioners the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013;
- Include a reference that when an undercover officer is deployed to build up their cover profile an authorisation should be obtained if private information is likely to be acquired;
- Include a reference that any police officer deployed as a ‘relevant source’ in England and Wales will continue to uphold the principles and standards of professional behaviour set out in the College of Policing Code of Ethics.

The Committee notes that the additional guidance on how the Codes will be enforced by the Office of Surveillance Commissioners and the Intelligence Services Commissioner, mentioned at paragraph 9 of the EM, is not publicly available.

Proceeds of Crime Act 2002 (External Investigations) Order 2014 (SI 2014/1893)

46. The instrument facilitates the seizure of any proceeds of crime located in the UK in cooperation with a request by an overseas authority. The Order is for the specific purpose of investigations following a criminal conviction abroad with a view to confiscation of the proceeds of that crime. The investigation has to be related to conduct which would constitute an offence in the UK if it occurred here. As with all mutual legal assistance (MLA) matters, the Secretary of State has a wide discretion to refuse such requests. A non-exhaustive list can be found at page 11 of the MLA guidance published on www.gov.uk which includes human rights considerations (including whether the death penalty might apply), cost (proportionality) and other policy matters which are regarded as fundamental to our legal system.

English Coast (Isle of Wight) Order 2014 (SI 2014/1940)

47. This Order, laid by the Department for Environment, Food and Rural Affairs, specifies that the coast of the Isle of Wight is to be treated as part of the English coast for the purposes of the Marine and Coastal Access Act 2009 (“the 2009 Act”). Part 9 of the 2009 Act aims to improve public access to the English coastline, providing secure and consistent rights for people to enjoy the coast by making a coastal margin available for access around the coast of England. Natural England is developing future proposals to apply the new right of coastal access around the English coast, including the Isle of Wight. It is now working to a deadline of 2020 to complete this work.

Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2014 (SI 2014/1976)

48. The instrument sets up procedures permitting the deportation of persons while their appeal against deportation is pending. Amongst other things, it sets the conditions for short term re-entry so that the deportee may attend appeal hearings in person. The Committee asked questions about the practicalities of this and the information provided by the Home Office is included in Annex 2.

School Teachers' Pay and Conditions Order 2014 (SI 2014/2045)

49. The Department for Education (DfE) has laid this Order with an Explanatory Memorandum (EM). The Order, which came into force on 1 September 2014, provides for the pay and conditions of school teachers employed in local authority maintained schools in England and Wales to be determined by reference to the "School Teachers' Pay and Conditions Document 2014" ("the Document"¹⁴). This replaces the equivalent provisions in a document published in 2013 ("the previous Document"), and introduces a number of changes. The changes cover primarily the application of the September 2014 pay award to teachers, changes to simplify the arrangements for leadership pay, the removal of mandatory pay differentials between roles, and removal of mandatory differentials between allowances.
50. A year ago, we drew to the special attention of the House¹⁵ the School Teachers' Pay and Conditions Order 2013 (SI 2013/1932), which related to the previous Document. In doing so, we noted that the Government had allowed only four weeks, spanning Christmas 2012, for responses to its main consultation on the changes flowing from the 21st report of the School Teachers' Review Body (STRB). We said that we regarded this as very poor practice.
51. We note that, in the EM to the latest Order, the Department states that "in the light of comments from the Secondary Legislation Scrutiny Committee on the consultation on the School Teachers' Pay and Condition Document 2013, we allowed consultees six weeks to respond at each stage [when] revisions were proposed by the Secretary of State to the 2014 Document". DfE has included three annexes in the EM which summarise responses to the relevant consultation processes.
52. We welcome the fact that the Department has taken what is, in our view, a more measured and appropriate approach to consultation on these issues, which must have allowed interested parties a better opportunity to make their views known. While it is clear that not all the changes being implemented enjoy the support of all consultees, the Department has identified revisions made in the light of consultation responses.

¹⁴ The full title of the Document is the "School Teachers' Pay and Conditions Document 2014 and Guidance on School Teachers' Pay and Conditions".

¹⁵ 12th Report, Session 2013–14, HL Paper 54.

Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 (SI 2014/2120)

53. At present, when a court sentences an offender it is under a duty to order payment of a surcharge; that is, a specified sum of money which goes towards funding victims' services. The sentences which attract payment of a surcharge and the amounts to be ordered are set out in the Criminal Justice Act 2003 (Surcharge) Order 2012. The current instrument amends the 2012 Order to extend the range of offences so that a surcharge will now also be payable when the magistrates' court imposes an immediate custodial sentence (for adults, a sentence of up to 6 months and, for those under 18, a sentence specified in section 76 of the Powers of Criminal Courts (Sentencing) Act 2000). This change, combined with increases to financial penalties such as Penalty Notices for Disorder, is expected to raise up to an additional £50 million to fund victims' services.

Police (Amendment) Regulations 2014 (SI 2014/2372)

Police (Promotion) (Amendment) Regulations 2014 (SI 2014/2373)

Appointment of Chief Officers of Police (Overseas Police Forces) Regulations 2014 (SI 2014/2376)

54. These instruments implement recommendations in the Winsor review,¹⁶ aimed at strengthening police leadership by opening it up to those with more diverse experience. They permit individuals to join the police force at the rank of superintendent as part of the Direct Entry (Superintendent) Programme and allow those taking part in the Fast Track Programme to be promoted more quickly from the rank of constable to inspector. They also implement amendments made by section 140 of the Anti-Social Behaviour, Crime and Policing Act 2014 which allow not only people who have served as constable in any part of the United Kingdom but also a police officer from an approved overseas police force of at least the specified rank to apply for appointment as chief constable or Commissioner. Following a consultation exercise by the College of Policing, SI 2376 designates the relevant countries or territories, police forces and ranks that are eligible for consideration.

¹⁶ Independent Review of Police Officer and Staff Remuneration and Conditions: Final Report https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/250812/8325_i.pdf

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

Broadcasting (Independent Productions) (Amendment) Order 2014

Compensation (Claims Management Services) (Amendment) Regulations 2014

Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014

Shared Parental Leave Regulations 2014

Statutory Shared Parental Pay (General) Regulations 2014

Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2014

Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2014

Instruments subject to annulment

8921 Environment-Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Bio Safety

SI 2014/1616 Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014

SI 2014/1892 Scotland Act 1998 (Agency Arrangements) (Specification) Order 2014

SI 2014/1893 Proceeds of Crime Act 2002 (External Investigations) Order 2014

SI 2014/1920 Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014

SI 2014/1921 Childcare (Childminder Agencies) (Miscellaneous Amendments) Regulations 2014

SI 2014/1922 Childcare (Childminder Agencies) (Cancellation etc.) Regulations 2014

SI 2014/1940 English Coast (Isle of Wight) Order 2014

SI 2014/1941 Education (National Curriculum)(Attainment Targets and Programmes of Study)(England)(Amendment)(No. 2) Order 2014

SI 2014/1942 Control of Explosive Precursors Regulations 2014

- SI 2014/1959 School Governance (Constitution and Federations) (England) (Amendment) (No. 2) Regulations 2014
- SI 2014/1966 Home Loss Payments (Prescribed Amounts) (England) Regulations 2014
- SI 2014/1975 Sulphur Content of Liquid Fuels (England and Wales) (Amendment) Regulations 2014
- SI 2014/1976 Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2014
- SI 2014/1986 Coal Industry (Superannuation Scheme Winding Up) (Revocations and Savings) Regulations 2014
- SI 2014/2007 Port Security (Port of Rosyth) Designation Order 2014
- SI 2014/2038 Immigration and Nationality (Fees) (Consequential Amendments) Order 2014
- SI 2014/2040 Judicial Appointments and Discipline (Addition of Office) Order 2014
- SI 2014/2044 Civil Procedure (Amendment No. 6) Rules 2014
- SI 2014/2045 School Teachers' Pay and Conditions Order 2014
- SI 2014/2054 Ukraine (European Union Financial Sanctions) (No.3) Regulations 2014
- SI 2014/2059 Civil Proceedings Fees (Amendment No. 3) Order 2014
- SI 2014/2067 Prospects College of Advanced Technology (Incorporation) Order 2014
- SI 2014/2068 Prospects College of Advanced Technology (Government) Regulations 2014
- SI 2014/2081 Misuse of Drugs (Amendment No. 2) (England, Wales and Scotland) Regulations 2014
- SI 2014/2096 Special Educational Needs (Miscellaneous Amendments) Regulations 2014
- SI 2014/2103 Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014
- SI 2014/2114 Motor Vehicles (Tests) (Amendment) Regulations 2014
- SI 2014/2115 Goods Vehicles (Plating and Testing) (Amendment) Regulations 2014
- SI 2014/2116 Road Vehicles (Registration and Licensing) (Amendment) Regulations 2014
- SI 2014/2117 International Carriage of Dangerous Goods by Road (Fees) (Amendment) Regulations 2014
- SI 2014/2118 Public Service Vehicles (Operators' Licences) (Fees) (Amendment) Regulations 2014
- SI 2014/2119 Goods Vehicles (Licensing of Operators) (Fees) (Amendment) Regulations 2014
- SI 2014/2120 Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014

- SI 2014/2122 Police Act 1997 (Criminal Records) (Amendment) (No. 3) Regulations 2014
- SI 2014/2123 Control of Noise (Code of Practice on Noise from Audible Intruder Alarms) (Revocation) (England) Order 2014
- SI 2014/2128 Tribunal Procedure (Amendment No. 3) Rules 2014
- SI 2014/2147 Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014
- SI 2014/2158 Independent Inspectorates (Education and Boarding Accommodation) Regulations 2014
- SI 2014/2169 Prison and Young Offender Institution (Amendment) Rules 2014
- SI 2014/2172 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) (Amendment) Regulations 2014
- SI 2014/2179 Education (Prescribed Courses of Higher Education) (Information Requirements) (England) Regulations 2014
- SI 2014/2210 Proscribed Organisations (Name Changes) (No. 2) Order 2014
- SI 2014/2216 Motor Cars (Driving Instruction) (Amendment) Regulations 2014
- SI 2014/2264 Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2014
- SI 2014/2319 Childcare Providers (Information, Advice and Training) Regulations 2014
- SI 2014/2328 Armed Forces Early Departure Payments Scheme Regulations 2014
- SI 2014/2234 Whole of Government Accounts (Designation of Bodies) Order 2014
- SI 2014/2263 Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) (No. 2) Order 2014
- SI 2014/2329 Intellectual Property Act 2014 (Amendment) Regulations 2014
- SI 2014/2336 Armed Forces Pension Regulations 2014
- SI 2014/2338 Tuberculosis (Deer and Camelid) Slaughter and Compensation (England) Order 2014
- SI 2014/2339 Forest Law Enforcement, Governance and Trade (Amendment) (Fees) Regulations 2014
- SI 2014/2341 Licensing Act 2003 (Hearings) (Amendment) Regulations 2014
- SI 2014/2357 Export Control (Russia, Crimea and Sevastopol Sanctions) Order 2014
- SI 2014/2358 Vehicle Excise and Registration (Consequential Amendments) Regulations 2014

- SI 2014/2362 Building (Amendment) Regulations 2014
- SI 2014/2363 Bathing Water (Amendment) (England) Regulations 2014
- SI 2014/2366 Smoke Control Areas (Authorised Fuels) (England) (No. 2) Regulations 2014
- SI 2014/2371 Financial Services Act 2012 (Consequential Amendments) Order 2014
- SI 2014/2372 Police (Amendment) Regulations 2014
- SI 2014/2373 Police (Promotion) (Amendment) Regulations 2014
- SI 2014/2376 Appointment of Chief Officers of Police (Overseas Police Forces) Regulations 2014
- SI 2014/2381 Infrastructure Planning (Applications: Prescribed Forms and Procedure) (Amendment) Regulations 2014
- SI 2014/2382 European Economic Interest Grouping and European Public Limited-Liability Company (Amendment) Regulations 2014
- SI 2014/2386 Register of Presumed Deaths (Fees) Regulations 2014
- SI 2014/2397 Social Security (Contributions) (Amendment No. 4) Regulations 2014
- SI 2014/2398 Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2014
- SI 2014/2400 Community Design (Amendment) Regulations 2014
- SI 2014/2401 Patents (Amendment) (No. 2) Rules 2014
- SI 2014/2402 Independent Police Complaints Commission (Investigation of Offences) Order 2014
- SI 2014/2403 Police (Performance) (Amendment) Regulations 2014
- SI 2014/2404 Smoke Control Areas (Exempted Fireplaces) (England) (No. 2) Order 2014
- SI 2014/2405 Registered Designs (Amendment) Rules 2014
- SI 2014/2406 Police (Complaints and Misconduct) (Amendment) Regulations 2014
- SI 2014/2410 Reserve Forces (Payments to Employers and Partners) Regulations 2014
- SI 2014/2411 Patents (Supplementary Protection Certificates) Regulations 2014
- SI 2014/2417 Licensing Act 2003 (Permitted Temporary Activities) (Notices) (Amendment) Regulations 2014
- SI 2014/2420 Plant Health (Forestry) (Amendment) (England and Scotland) Order 2014
- SI 2014/2422 Criminal Legal Aid (Remuneration) (Amendment) (No.2) Regulations 2014

SI 2014/2437 Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) Regulations 2014

APPENDIX 1: DRAFT ELECTRICITY AND GAS (ENERGY COMPANIES OBLIGATION) (AMENDMENT) (NO. 2) ORDER 2014

Additional information from the Department for Energy and Climate Change

Q1: In the Explanatory Memorandum, you say: “8.3. It must be noted that, in strictly numerical terms, the majority of respondents opposed the proposals to significantly reduce the level of ambition of the CERO element of ECO. This may reflect the fact that many respondents were from the industries involved in supplying the carbon-saving measures in question, or represented the interests of households who might be recipients of these measures (for example, local authorities). The Government has also needed to bear in mind the perspective of household energy bill payers, who ultimately bear the costs of the obligation, but who are less likely to respond to a formal consultation of this sort.” If, as the EM states, household energy bill payers are less likely to respond to a formal consultation of this sort, why did DECC not arrange a consultation process that reached such payers and encouraged them to respond?

A1: There are approximately 28 million household energy bill payers and it is questionable whether it would have been possible or appropriate to design a consultation process that specifically encouraged them to respond individually, although, as a public consultation, responses from individuals were welcome and were received. However, in keeping with other consultations DECC conducts which impact on energy bill payers, DECC ensured that it engaged fully with the sorts of organisations who represent the interests of consumers, and who are themselves in active contact with the energy bill-paying public. Consumer groups such as Consumer Futures, and organisations specifically representing households who struggle with fuel costs, such as the Fuel Poverty Advisory Group, are members of the DECC-run ECO Steering Group, which was used both to inform the framing of consultation proposals and to provide feedback during the consultation period. (The agenda, papers and minutes of this Steering Group are also available publicly, link below).¹⁷

Other organisations of this nature (for example, National Energy Action, Energy Action Scotland, Citizen’s Advice, and Which?) also submitted formal written responses to consultation. However, since these sorts of organisations tend to be nationally-based and are therefore relatively few in number, they may represent only a small proportion of respondents in crude numerical terms. The point that the Explanatory Memorandum was attempting to make was the need to be cautious about treating the raw number of respondees on each side of a particular question as being representative.

25 July 2014

Q2: The BBC is reporting that, a year ago, Ofgem estimated that suppliers would make an average pre-tax profit of £53 per dual fuel customer, a margin of 4%; but in the year ahead they now expect energy firms to make £106 per customer, increasing their margin to 8%. Does DECC accept these estimates by Ofgem? If not, why not?

¹⁷ See: <https://www.gov.uk/government/groups/energy-company-obligation-eco-steering-group>

A2: These figures come from Ofgem's Supply Market Indicator, a monthly snapshot of estimated costs and revenues of an average large energy supplier. It is useful as a tool to help consumers understand the factors that make up their bill and relative movements in the price of these over time. It is not a forecast of actual profits of suppliers and should not be used in that way. This is because to produce it Ofgem must make a number of assumptions including how companies purchase wholesale energy (i.e. their hedging strategies) and how much energy consumers use. The actual profits of an individual company significantly depend on these factors.

The Competition and Markets Authority (CMA) will undertake a thorough investigation of issues relating to pricing and profitability in the energy market – in their referral document, Ofgem asked the CMA explicitly to look at whether profits are excessive.

Q3: Does DECC have an estimate of the extent to which the savings to energy companies of the proposed reduction in the carbon reduction target will contribute to the companies' pre-tax profits, and the apparent increase in their margins as estimated by Ofgem?

A3: DECC is not able to make an estimate of the contribution which reductions in the costs of ECO may make to companies' pre-tax profits, as opposed to the effect of other costs and cost-changes they face, for example wholesale costs and transmission and distribution costs. In principle, the size of the obligation and the size of company profits are not directly related.

The underlying figures from Ofgem's Supply Market Indicator shows that the main driver of changes in margins over the past year has been a reduction in average wholesale energy costs that suppliers face, which account for around 50% of the average household dual fuel bill.

The level of actual profits made by the supply arm of the largest energy companies is available through the Consolidated Segmental Statements, which Ofgem require companies to produce no more than 6 months after the end of their financial year.

Q4: Does DECC see no reason to re-consider the proposed reduction in carbon reduction targets in the light of apparently higher profits for energy firms?

A4: DECC's assumption is that, in a competitive energy retail market, the costs of meeting an obligation such as ECO are passed through in full to energy consumers, and the obligated companies have committed to bill reductions as a result of the proposed changes to the ECO targets. As noted above, the size of the obligation and the size of company profits are not directly related, and DECC sees no reason to reconsider decisions on ECO which have largely been taken with a view to reducing pressures on consumer bills.

However, DECC recognises that there has been some lack of certainty, and of transparency, around the costs to companies of the obligation. The Secretary of State therefore wrote to the energy companies earlier this year, exercising legal powers to require them to provide a variety of information about their costs. While the Department is still considering some elements of the information received, this has allowed DECC to publish information on the costs of meeting the obligation on a quarterly basis, available at <https://www.gov.uk/government/collections/green-deal-and-energy-company-obligation-eco-statistics#quarterly-statistics>. Over time, this information will provide for a better understanding of how the actual costs of delivery of ECO change/reduce as the policy changes come into effect.

2 October 2014

**APPENDIX 2: IMMIGRATION (EUROPEAN ECONOMIC AREA)
(AMENDMENT) (NO. 2) REGULATIONS 2014 (SI 2014/1976)**

Additional information from the Home Office

Q1: If someone who has been deported wishes to attend their appeal in person what will be the conditions?

- *Will they be under guard the whole time they are here to prevent them slipping away?*
- *Can the Secretary of State require that, where the technology is available, they participate by video link only?*

A1: A person who has been deported from the UK under the Immigration (European Economic Area) Regulations 2006 and who wishes to make submissions in person before the First Tier Tribunal or Upper Tribunal may apply to the Secretary of State for the Home Department for permission to be temporarily admitted (within the meaning of paragraphs 21 to 24 of Schedule 2 to the Immigration Act 1971) as applied by Regulation 29AA. That person must be granted such permission unless, in accordance with EU law, to do so may cause serious troubles to public policy or public security. The concepts of public policy and public security are well recognised in law and practice. That person will be liable to be held in immigration detention for the duration of their stay. That person may also be recalled to prison depending on the nature of the removal.

Regulation 29AA does not place any bearing on the availability of video link technology. The availability of video link is a matter for the Ministry of Justice and HM Courts and Tribunal Service. The availability of video link technology cannot deprive an EEA national of her or his rights under EU law to submit her or his defence in person, subject to the serious troubles to public policy or public security exception.

Q2: What is the definition of serious irreversible harm if the person is being deported from the UK for say burglary offences and faces arrest in their home country for similar offences – is that irreversible harm or would it only relate to torture/execution?

A2: Serious and irreversible harm has the same meaning as in section 17(3) of the Immigration Act 2014. The Government's view is set out in guidance, which is available at this link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336878/EEA_Amendment_No_2_Regulations_2014.pdf and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336866/Section_94B.pdf The relevant extract is set out below:

Real risk of serious irreversible harm

4.1 When deciding whether it is appropriate to certify a human rights claim under section 94B, case owners must consider whether an out-of-country appeal would result in a real risk of serious irreversible harm before the appeals process is exhausted. The serious irreversible harm test is derived from the European Court of Human Rights (ECtHR), who use it to determine whether they should issue Rule 39 injunctions preventing removal.

4.2 The term “real risk” is a relatively low threshold and has the same meaning as when used to ascertain whether removal would breach ECHR Article 3. However, the terms serious and irreversible must be given their literal meaning. “Serious” indicates that the harm must meet a minimum level of severity, and “irreversible” means that the harm would have a permanent or very long-lasting effect on the person’s family and/or private life. Caseworkers must consider not only the impact on the FNO’s Article 8 rights, but also those of any qualifying partner as defined in Section 19 of the Immigration Act 2014 or child. The test relates to the period between deportation and the conclusion of any appeal and will not be met solely because the person will be separated from their family in the UK during that period.

4.3 It will not normally be enough for an individual to provide evidence that the harm will be either serious **or** irreversible. In order for certification not to be possible, any harm that would result from an out-of-country right of appeal must be both serious *and* irreversible.

4.4 By way of example, in the following scenarios where a person is deported before their appeal is determined it is unlikely, in the absence of other factors, that there would be serious irreversible harm while an out-of-country appeal is pursued:

- A person will be separated from their child/partner for several months while the individual appeals against a human rights decision
- A family court case is in progress
- A child/partner is undergoing treatment for a temporary or chronic medical condition that is under control and can be satisfactorily managed through medication or other treatment and does not require the person liable to deportation to act as a full time carer
- The FNO has a medical issue which does not lead to an Article 3 breach
- A person has strong private life ties to a community that will be disrupted by deportation (e.g. they have a job, a mortgage, a prominent role in a community organisation etc.)

4.5 Although the serious irreversible harm test sets a high threshold, there may be cases where that test is met. Such cases are likely to be rare, but case owners must consider every case on its individual merits to assess the likely effect of a non-suspensive right of appeal. The following is a non-exhaustive list of indicators which case owners should look for:

- The person has a genuine and subsisting parental relationship with a child who is seriously ill, requires full-time care, and there is no one else who can provide that care
- The person has a genuine and subsisting long-term relationship with a partner who is seriously ill and requires full-time care because they are unable to care for themselves, and there is no one else who can provide that care

4.6 The onus is on the Secretary of State to demonstrate that there is not a real risk of serious irreversible harm. However, if a person claims that a non-suspensive appeal would result in serious irreversible harm, the onus is on that person to substantiate the claim with documentary evidence, preferably from official sources, for example a signed letter on letter-headed paper from the GP responsible for treatment, a family court order, a marriage or civil partnership certificate,

documentary evidence from official sources demonstrating long-term co-habitation, etc. Case owners should expect to see original documents rather than copies.

August 2014

APPENDIX 3: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 14 October 2014 Members declared the following interests:

Police (Amendment) Regulations 2014 (SI 2014/2372)
Police (Promotion) (Amendment) Regulations 2014 (SI 2014/2376)
Appointment of Chief Officers of Police (Overseas Police Forces)
Regulations 2014 (SI 2014/2376)
Independent Police Complaints Commission (Investigation of Offences)
Order 2014(SI 2014/2402)
Police (Performance) (Amendment) Regulations 2014 (SI 2014/2403)
Police (Complaints and Misconduct) (Amendment) Regulations 2014 SI
2014/2406)

Lord Bowness

Daughter works as a Police Officer

Attendance:

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