Draft Child Poverty Act 2010 (Persistent Poverty Target) Regulations 2014

Draft Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014
Draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014

Local Government (Transparency Requirements) (England) Regulations 2014

Includes 6 Information Paragraphs on 6 Instruments

Ordered to be printed 28 October 2014 and published 30 October 2014

Published by the Authority of the House of Lords

London: The Stationery Office Limited

£price

HL Paper 55
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
INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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


Date laid: 16 October

Parliamentary Procedure: affirmative

Summary: As required by the Child Poverty Act 2010, the instrument sets the target percentage for persistent poverty by 2020, at less than 7%. Although the Explanatory Memorandum has some broad material on the overarching strategy it does not make clear the basis on which this target is calculated. We also note that the Ministerial Statement on 16 October stated that “the Government is committed to ending child poverty by 2020”. Through its further inquiries the Committee has gained a better understanding of the terms used and what the 7% target is based on, but we remain unclear about which target the Government are aiming for and how they intend to implement its policy. In debate the House may wish to press the Minister for further clarification.

These Regulations are drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

1. These Regulations are laid by the Department of Work and Pensions (DWP) under section 6(3) of the Child Poverty Act 2010 (“the Act”). The Act requires the Government to bring these Regulations into force by 31 December 2014. The instrument is accompanied by an Explanatory Memorandum (EM).

2. The instrument sets at less than 7% the target percentage for persistent poverty required by the Act. Section 2 of the Act states that it is the duty of the Secretary of State to ensure that the target is met by the end of the financial year beginning on 1 April 2020.

Definition of Terms

3. The EM has some broad material on the overarching strategy but does not make clear the basis on which this target is calculated. A number of terms are used without clear definition such as equivalised income (although this is explained as “adjusting for household size and composition”, it is not clear whether this adjustment is based on a standardised method).
4. A number of terms are set out in the Act for example:

- **Section 3** defines a household as in *relative poverty* if its total income is below 60% of the median equilvalised household income for the UK in a given year. (The median is the value of the midpoint in the range.)

- **Section 6** states *persistent child poverty* is where a child has lived in a qualifying household in relative poverty for at least 3 years out of a 4 year period.

The term “qualifying household in relative poverty” would appear to indicate a subset of all the households in that group, but its scope is undefined. Section 7 of the Act says that regulations may be made to define what is a qualifying household and the circumstances in which a child is or is not to be regarded as living in a qualifying household. The Explanatory Note, at the back of the instrument, clearly states that a definition of qualifying household has not yet been made and the EM makes no mention of the DWP intending to produce further regulations before the end of the year. We were therefore unclear about the definition of a key term in the calculation.

5. The Committee asked DWP to explain these definitions. They responded:

- “The 7% target figure is calculated by dividing the number of children persistently in poverty by the number of children in the UK overall. The proposed persistent poverty target is less than 7% of all children who live in “qualifying households” (see below) and are in persistent poverty (relative low income for at least 3 out of 4 years) in the UK.

- A *child* is defined in section 27 (1) of the Act (and has the same meaning as a child or qualifying young person for the purposes of assessing eligibility for child benefit) as a person who is under the age of 16, or is an unmarried/non-cohabiting 16–19 year old who is in full-time non-advanced education.

- **Equivalisation** is the process by which we adjust a household’s income in order to make it a fair comparison with incomes for households of different sizes and composition – you can’t apply one fixed poverty line to every household because households comprising of more people require more income to achieve the same standard of living as smaller households.

The Child Poverty measures use the Organisation for Economic Co-operation and Development (OECD) scale, which is the main equivalence scale now used in the Households Below Average Income (HBAI) series and equivalence scales of this type are commonly used in many other countries. The Before Housing Costs (BHC) scale values are shown in the table below.

OECD equivalence weights Modified OECD rescaled to couple without children=1

- First adult 0.67
- Second adult 0.33
- Children aged under 14 years 0.20
- Children aged 14 years and over 0.33
The construction of a household’s equivalence values from these scales is quite straightforward. For example, the equivalence scale value for a household containing a couple with a fourteen year old and a ten year old child would be 1.53 from the sum of the scale values:

\[0.67 + 0.33 + 0.33 + 0.20 = 1.53\]

This is made up of 0.67 for the first adult, 0.33 for their spouse, 0.33 for the fourteen year old child and 0.2 for the ten year old child. The total income for the family would then be divided by 1.53 in order to arrive at the measure of their equivalised income.

By way of illustration it is worth considering a single person, a couple with no children, and a couple with two children aged fourteen and ten, all having unadjusted weekly family incomes of £200 (BHC). The process of equivilisation, gives an equivalised income of £299 to the single person, £200 to the couple with no children, but only £131 to the couple with children.

- **A qualifying household** is commonly understood to be any household type eligible to be included in the survey sample used to measure child poverty. The four child poverty target measures in the Act are captured by the National Statistics publications Households Below Average Income and Low Income Dynamics, both of which use a well-recognised and established definition of a household. The surveys on which these poverty statistics are calculated cover private households, and there will therefore be a relatively small number of children in other household types (e.g. children in state institutions) which are not captured in the statistics.”

6. **These explanations make clear that most of these terms have a specific meaning in this context.** The Explanatory Memorandum should have included sufficient material on them for the uninitiated reader to understand how the target is defined. The House may also wish to consider whether, given the way that section 7 of the Act is worded (regulations may make provision), a “common understanding” of the term qualifying household is sufficient.

**Baselines**

7. To be able to consider likely progress towards this target the Committee asked what the current baselines are for relative and persistent poverty. DWP responded:

- “The Act sets a target of no more than 10% by 2020, for the level of relative poverty; the current level of relative poverty is 17%. This is for the financial year 2012/13 and is the latest period for which data is available. This figure is reported in the Households Below Average Income (HBAI) publication.

- These Regulations set a target of no more than 7% by 2020 for persistent child poverty. The most recently available persistent poverty statistics are for the period that covers 2005–2008. During this period 12 per cent of children were in persistent poverty. These figures are based on the British Household Panel Survey (BHPS) which ended in 2008. The remaining panel members were then subsumed into the new larger Understanding Society survey which began in 2009. In order to produce an updated persistent child poverty statistic we require four full waves of data. This
will not be available until the end of 2014 and it’s likely therefore a 2009/2010–2012/13 figure cannot be produced until 2015 at the earliest.”

8. This indicates a lengthy delay for the production of data. The Committee assumes, therefore, that the House will not be able to verify whether this statutory target has been met until about two years after the deadline has passed.

*Delivery of the Policy objective*

9. We also asked for an explanation of how the definitions interact. DWP responded:

> “Both relative and persistent poverty levels are in part dependent on how median income changes from year to year (which is driven by earnings but also other factors). They are also dependent on how incomes at the bottom change in relation to contemporary median income.”

10. So we remain unclear how the Government intend to deliver levels of child poverty below the 7% target because external factors, such as fluctuations in wage levels set by industry, will influence the value of the median income and therefore the number of households whose income is less than 60% of that figure. Fluctuations in the birth rate in low income households could similarly alter the number of children in scope.

*Which objective?*

11. There also appears to be some lack of clarity about the Government’s policy objective. The instrument sets the target at less than 7%, and section 2 of the Act places a duty on the Secretary of State to ensure that the target set is met by the end of the financial year beginning 1 April 2020. However the Minister’s Written Statement on 16 October stated that “… the coalition Government is committed to ending child poverty by 2020…”.¹ This is restated at paragraph 7.3 of the EM. While the two objectives are not mutually exclusive – zero is less than 7% – it is not clear why the target figure in the Regulations is not lower, particularly as the majority of consultation responses argued for 5% or less.

12. This is not the first time we have drawn the Department’s attention to the need for explanatory material to be clear and self-contained. Through its further inquiries the Committee has gained a better understanding of what the 7% target is based on but we remain unclear about which of the two stated targets the Government are aiming for and how they intend to implement their policy. In debate the House may wish to press the Minister for clarification.

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

**Draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014**

*Summary:* The purpose of these instruments is to set out the procedures to be followed by couples who wish to convert their civil partnership into a marriage. The current versions replace draft instruments previously laid on 3 July 2014. According to the Explanatory Memorandum (EM), the earlier drafts have been withdrawn following “reconsideration of elements of the procedure to address concerns raised by interested parties”. We have asked the Government to include more detail on the changes made to the proposed arrangements in a revised EM. Although there was extensive consultation in relation to the Act and general principles, it would appear that even a brief consultation on the proposed detail of these Regulations might have avoided the need to withdraw and re-lay these instruments and the uncertainty that will have been caused to those making arrangements for conversions soon after the planned 10 December implementation date.

*These instruments 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.*

13. The Draft Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 were laid by the General Register Office, part of the Home Office, and the Draft Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 was laid by the Government Equalities Office, part of the Department for Education. Both instruments were accompanied by an Explanatory Memorandum (EM). Both replace previous drafts of the instrument that were originally laid on 3 July 2014 and referred to in our 6th Report of this session.²

14. These instruments are intended to set down revised procedures to be followed by couples who wish to convert their civil partnership into a marriage. According to the EM, the earlier drafts were withdrawn following “reconsideration of elements of the procedure to address concerns raised by interested parties”.

15. We asked the Government to provide further explanation. The Equalities Office told us that they had received representations by, and on behalf of, stakeholders in the lesbian, gay, bisexual and transgender community, and by religious organisations that wished to celebrate marriages for same sex couples, stating that arrangements in the first draft regulations were too inflexible since they allowed conversions only to take place in a register office.

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16. Ministers were persuaded that a change of approach was warranted and, as a result, the revised drafts allow a superintendent registrar or deputy superintendent registrar to complete a conversion of a civil partnership into a marriage in a wider range of locations. The draft Regulations now provide (in regulations 10–12) that the conversion can be completed, and immediately followed by a ceremony, in locations where a same sex couple could marry. In the case of religious premises and ceremonies, all the protective “locks” contained in the Marriage (Same Sex Couples) Act 2013 still apply to ensure that religious organisations and officials are not compelled against their conscience to participate in a religious ceremony following a conversion. We have asked the Government to include more detail on the changes made to the proposed arrangements in a revised EM.

17. While we note that there was extensive consultation in relation to the Act and general principles, it would appear that even a brief consultation on the proposed detail of these Regulations might have avoided the need to withdraw and re-lay these instruments and the uncertainty that will have caused those making arrangements for conversions soon after the planned 10 December implementation date.

Date laid: 9 October

Parliamentary Procedure: negative

Summary: These Regulations require local authorities in England to publish the information specified in the Local Government Transparency Code 2014. In our view, neither the material which the Department for Communities and Local Government laid in support of the Regulations nor the further information which it has provided present hard evidence of direct economic benefit from the specific changes being made. We look to Government to take a more rigorous approach to establishing an evidence base and to presenting the results to Parliament.

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 Communities and Local Government (DCLG) has laid these Regulations which require authorities in England to publish the information specified in the Local Government Transparency Code 2014 (“the Code”) issued on 3 October 2014.3

19. In July of this year, we considered the draft Local Government (Transparency) (Descriptions of Information) (England) Order 2014 (“the draft Order”)4 which, in adding to the requirements of the Code, provided that authorities should publish on a quarterly basis information about any expenditure incurred by local authorities and information about any legally enforceable agreement entered into by authorities and any invitations to tender for such agreements. In our 6th Report of this Session,5 we commented that we considered that the Explanatory Memorandum (EM) to the draft Order failed to give an accurate account of the balance of opinion in responses to all the consultation exercises conducted by DCLG.

20. The material laid before Parliament in support of these Regulations adds to the information previously provided in the EM to the draft Order. However, we sought further clarification from the Department about the results of relevant consultation processes and about its use of evidence, and we are publishing the Department’s response as Appendix 1.

21. The Department received 219 responses to its 2012 consultation about updating the Local Government Transparency Code and making it mandatory through regulations; 91 of these opposed the use of regulations; only 15 explicitly supported it. We note that the Department now states that many of the 91 opposing respondents “will have been local authorities, who would naturally tend to be against regulation”; and that “it is perfectly reasonable to assume that if the 113 respondents who did not explicitly express a view were sufficiently concerned about Regulation then they would have said so in their response.” This is an interpretation which nicely

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4 This has now been made as SI 2014/2060.
5 HL Paper 27.
supports a pre-determined intention, but which does not indicate a Department open to differing views.

22. The Department has told us that it is not able to say how many of the respondents to the second consultation explicitly supported or opposed the proposed addition of four further categories of information for publication (trade union facility time; parking charges; other payments made to councillors from the public purse; and procurement cards). We are again left with the impression of a Department which did not wish to allow its intentions to be swayed by serious consideration of consultation responses.

23. Neither the material laid in support of the Regulations nor the further information now provided seem to us to present hard evidence of direct economic benefit from the changes being made. The Department has said that “crucially, what matters is what local people think”. In our view, however, such evidence as the Department has offered in this regard is partial and not sufficiently specific to the changes being made.

24. We recognise that it is for Government to decide on policy changes in this area as in others. In doing so, however, we look to Government to take a more rigorous approach to establishing an evidence base and to presenting the results to Parliament.
INSTRUMENTS OF INTEREST

Draft Consular Marriages and Marriages under Foreign Law (No. 2) Order 2014

25. This is another in the recent series of instruments required to remedy procedural error. In this case, the version made by the Privy Council as SI 2014/1110 had two additional articles that were not in the draft version previously cleared by Parliament. The new instrument sets out the correct position and repeals the previous Order. The Foreign and Commonwealth Office states that in its view Parliament approved the full extent of the order made by the Privy Council, the original Order is valid and that marriages, whether same or opposite sex marriages, conducted under it are valid. Confirmation of these issues would be a matter for the courts.

Draft Pensions Act 2014 (Consequential Amendments) (Units of Additional Pension) Order 2014

26. In his Budget Statement on 19 March 2014, the Chancellor announced that Class 3A voluntary contributions will be available for 18 months from October 2015. Payment of Class 3A contributions would allow a person to gain units of additional State Pension. Eligibility will be restricted to existing pensioners and people due to reach State Pension age before 6 April 2016. A number of instruments considered this week set up that scheme.6 This Order makes consequential changes to existing legislation to prevent a person experiencing any reduction in their State Pension or disablement pension as a result of having obtained units of additional pension. DWP state that around 156,000 pensioners receiving an invalidity increase could potentially benefit from the changes in this Order and around two million people who have inherited some additional State Pension (SERPS and/or State Second Pension) following the death of their spouse or civil partner.

Draft Statement of Changes in Immigration Rules (HC 693)

27. This Statement of Changes in Immigration Rules is a substantial volume covering a wide range of areas. In particular, to align with the changes made to the appeal process by section 15 of the Immigration Act 2014, it implements the new rules on administrative review, setting out when and how a person may apply to the Home Office to have a casework error in an immigration decision corrected. We note from the Explanatory Memorandum that the change was introduced at short notice “to prevent a surge in applications by Tier 4 applicants seeking to preserve their right of appeal”.

28. Further provisions make changes to the validation rules to ensure applicants have an opportunity to remedy errors or omissions which would render their application invalid and provide the Home Office with greater flexibility over

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6 See also Draft Social Security Class 3A Contribution (Units of Additional Pension) Regulations 2014, Draft Social Security (Contributions) (Amendment No. 5) Regulations and Social Security Class 3A Contributions (Amendment) Regulations 2014 (SI 2014/2746).
which services can be offered at premium service centres. The Statement of Changes also includes provision to:

- prevent Tier 1 (Entrepreneur) applicants within the UK relying on funds which are outside the UK;
- apply a “genuine vacancy assessment” to Tier 2 (Intra-Company Transfer) and Tier 2 (General) applications;
- set the annual allocation of places for the Youth Mobility Scheme for 2015;
- create a new provision for individuals acting as an organ donor to a recipient in the UK;
- provide flexibility within the Business Visitor route to allow scientists and researchers to collaborate on a UK-led international project;
- strengthen the Rules to prevent an individual coming to the UK to take part in a sham marriage or a sham civil partnership and harmonise the rules on Overseas Domestic Workers in a Private Household with the rules applying to general visitors to prevent repeat visits that amount to de facto residence; and
- provide protection against exploitation.

29. The Explanatory Memorandum states that amended guidance is being published on the visas and immigration pages of the GOV.UK website www.gov.uk/visasimmigration in time for these changes coming into effect.


30. The Department for Communities and Local Government (DCLG) has laid these Regulations with an Explanatory Memorandum (EM). DCLG explains that, in the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”), a new absolute ground for possession for anti-social behaviour was introduced in order to expedite the eviction of landlords’ most anti-social tenants. The Department states that the new ground is designed to be used for the most serious cases of anti-social behaviour, and that recently produced guidance7 for frontline practitioners on the use of the new powers in the 2014 Act advises landlords to use it selectively.

31. In the EM, DCLG states that secure tenants of local housing authorities and housing action trusts have a right to request a review of the landlord’s decision to seek possession under the new ground. Where such a review is requested, a local housing authority will have an opportunity to reconsider its decision, prior to court proceedings. This instrument sets out the basic requirements to be followed by a local housing authority and housing action trust when conducting a review.

32. We sought further information about this process from the Department and are publishing it as Appendix 2.

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33. An Agreement has been in place in some form since 1958 to allow the exchange between the UK and the USA of the technology, information and material to maintain nuclear submarines. The current instrument renews and updates the Agreement for a further ten years. The Agreement allows the transfer of non-nuclear components to the UK for this purpose, it does not permit the transfer of nuclear weapons or devices.

Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia (8952)

34. The Zone encompasses Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, and was established by a 2006 Treaty which prohibits those states from acquiring nuclear weapons or allowing them to be stationed on their territory. On 6 May 2014, the UK, China, France, Russia and USA signed a protocol to the Treaty which prohibits the signatory states from using nuclear weapons against any of the states in the Nuclear-Weapon-Free Zone. Similar Zones exist in parts of Latin America, South Pacific and Africa. The Explanatory Note to the instrument explains the circumstances in which the UK will not consider itself bound by the Treaty.
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**

- Consular Marriages and Marriages under Foreign Law (No. 2) Order 2014
- Employment Rights Act 1996 (Application of Sections 75G and 75H to Adoptions from Overseas) Regulations 2014
- Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014
- Legal Services Act 2007 (The Institute of Chartered Accountants in England and Wales) (Modification of Functions) Order 2014
- Maternity and Parental Leave etc. (Amendment) Regulations 2014
- Nursing and Midwifery (Amendment) Order 2014
- Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014
- Paternity and Adoption Leave (Amendment) (No. 2) Regulations 2014
- Pensions Act 2014 (Consequential Amendments) (Units of Additional Pension) Order 2014
- Referral Fees (Regulators and Regulated Persons) Regulations 2014
- Representation of the People (England and Wales) (Amendment No. 2) Regulations 2014
- Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015
- Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations 2014
- Social Security Class 3A Contributions (Units of Additional Pension) Regulations 2014
Social Security (Contributions) (Amendment No. 5) Regulations 2014
Social Security Contributions (Limited Liability Partnership) Regulations 2014
Statutory Shared Parental Pay (Adoption from Overseas) Regulations 2014
Statutory Shared Parental Pay (Parental Order Cases) Regulations 2014

Draft instruments subject to annulment
Breckland (Electoral Changes) Order 2014
Corby (Electoral Changes) Order 2014
Modifications to Standard Conditions of Electricity Supply Licence
North Somerset (Electoral Changes) Order 2014
Revised Guidance issued under section 182 of the Licensing Act 2003
Olympic Delivery Authority (Dissolution) Order 2014
South Ribble (Electoral Changes) Order 2014

HC 693 Statement of Changes in Immigration Rules
York (Electoral Changes) Order 2014

Instruments subject to annulment
8947 Amendment to the Agreement between the United Kingdom and the United States of America for Cooperation on the Uses of Atomic Energy for Mutual Defense Purposes
8952 Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia
SI 2014/2385 Plant Health (England) (Amendment) (No.2) Order 2014
SI 2014/2701 Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) (No. 2) Regulations 2014
SI 2014/2702 Immigration (Passenger Transit Visa) Order 2014
SI 2014/2705 European Communities (Designation) (No. 3) Order 2014
SI 2014/2720 Dover Harbour Revision Order 2014
SI 2014/2721 National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment No.2) Regulations 2014
SI 2014/2735 Jobseeker’s Allowance (Habitual Residence) Amendment Regulations 2014
SI 2014/2746 Social Security Class 3A Contributions (Amendment) Regulations 2014
SI 2014/2748 Official Feed and Food Controls (England) and the Food Safety and Hygiene (England) (Amendment) Regulations 2014
SI 2014/2765 Education (Student Support) (Amendment) Regulations 2014
SI 2014/2768 Immigration (Notices) (Amendment) Regulations 2014
APPENDIX 1: LOCAL GOVERNMENT (TRANSPARENCY REQUIREMENTS) (ENGLAND) REGULATIONS 2014 (SI 2014/2680)

Additional information from the Department for Communities and Local Government

Q1: There was correspondence between us, and between the Committee Chairman and your Minister, in relation to the draft Local Government (Transparency) (Descriptions of Information) (England) Order 2014. The Committee published information about the draft Order in its 6th Report of this Session. I would have hoped that Explanatory Memorandum to these Regulations would have referred to this instances of Parliamentary scrutiny of the draft Order. I note in particular that in Grand Committee – Column GC550 – Lord Ahmad undertook to follow up the debate by writing to Lord Mackenzie. If this has been done, it would be appropriate for the Explanatory Memorandum to set out whatever clarification was provided by Lord Ahmad.

A1: You said that it would have been appropriate for the Explanatory Memorandum to the above Regulations to include references to previous Parliamentary scrutiny. We respectfully disagree. The previous scrutiny related to the Local Government (Transparency) (Descriptions of Information) (England) Order 2014 which allows the Secretary of State to require information on all expenditure, all legally enforceable agreements entered into by an authority and invitations to tender to be published more frequently than annually. During Grand Committee on 24 July, in which Lord Mackenzie said that the opposition was not seeking to oppose the Order since it was very happy to sign up to it and is supportive of the issue of transparency, Lord Ahmad agreed to write to clarify a small number of issues. Lord Ahmad wrote to Lord Mackenzie on 29 August 2014 and a copy of the letter was placed in the libraries of the House.

The Order and Regulations cover quite different issues – the Order simply expands the scope of the Secretary of State’s enabling power whilst the Regulations place a legal obligation to comply with Part 2 of the Local Government Transparency Code 2014 issued on 3 October 2014. Given this and Lord Ahmad having made available to all noble Lords his letter to Lord Mackenzie, we do not agree that it was necessary for the Explanatory Memorandum to the above Regulations to include references to previous Parliamentary scrutiny.

The rest of this letter addresses your specific questions.

Q2: Is it correct that only 15 out of 219 respondents to the second consultation explicitly supported the making of Regulations?

A2: This is correct. However, it is perfectly reasonable to assume that if the 113 respondents who did not explicitly express a view were sufficiently concerned about Regulation then they would have said so in their response.

It is also important to look beyond headline statistics to understand a bit about who responded and the other evidence that is available. Many of the 91 respondents in the second consultation saying that it was unnecessary for the Government to regulate will have been local authorities, who would naturally tend to be against regulation. This 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\(^8\) (NAO) and Local Government Association which shows that local authorities have not been publishing key information.

**Q3:** You say that only a handful of the 58 respondents in the most recent [third] consultation said that it was unnecessary to extend the scope of the local government transparency code. Did DCLG explicitly ask respondents to that consultation to say whether they thought it was necessary or not to extend the scope of the local government transparency code?

A3: DCLG did not ask a question in the way you describe. However, the Department explicitly invited feedback on a draft code that was published with the Government’s response to the second consultation published in December 2013\(^9\). Respondents had an open invitation to comment on the draft code. It is reasonable to assume that where respondents had significant concerns about the scope of the code and it being extended, then they would have voiced these concerns.

It is also important not to overlook the second consultation\(^10\) which formed the backdrop to the Government publishing a draft code. Paragraph 17 of the second consultation made clear that the Secretary of State was taking the opportunity to propose additions to the code i.e. extend the scope of the code. Paragraph 26 of the second consultation proposed datasets that could be added to the code. And, question 3 of the second consultation asked respondents to say if there were any other datasets that they would like to see added to the code.

Therefore, the Government’s intentions have been very clear and respondents have had two consultations in which to comment on the scope of the code and any extension. In any event, we think that it would be wrong to presume that respondents are unable to express a view on a particular issue without a specific question – local authorities and other partners understand the transparency and open data agenda and are capable of, and do, provide sophisticated and considered observations whether prompted or not.

**Q4:** The second consultation proposed adding 4 more datasets to the information to be published: Trade Union Facility Time; Parking Charges; other payments made to councillors from the public purse; and procurement cards. Why did DCLG propose these additional categories of information? How many consultation respondents explicitly supported their inclusion, and how many opposed them?

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A4: Parking charges and how local authorities spend money are of interest to local people. 66 per cent of Bedford’s Citizen Panel\(^{11}\) said that they were interested in data being made available about council spending and budgets.

Aggressive and poorly designed parking policies by local authorities can have a detrimental impact on high streets and prevent them from thriving. The Portas Review\(^ {12}\) called for local areas to implement free controlled parking schemes and greater transparency about the revenue local authorities generate through parking. As part of its subsequent consultation and review on parking, the Government announced increased transparency over the income local authorities derive from parking charges\(^ {13}\).

The inclusion of trade union facility time follows the Government’s reform of facility time in central government. The cost of facility time in the public sector has been higher than in the private sector. Increased transparency enables taxpayers to see and challenge the cost to the public sector of employing staff who spend a lot of their time on union activities, as well as illustrating good and bad practice. The Government introduced a common reporting system for Whitehall departments and issued guidance to local authorities\(^ {14}\) to bring their practices into line with central government.

We have not been able, in the limited time available, to go through all 219 responses to see how many respondents explicitly supported or opposed each dataset you mentioned.

Q5: Does DCLG have hard evidence related to the specific proposals in the Regulations, or is it relying on the rather generalised material mentioned in the Explanatory Memorandum?

A5: An Impact Assessment\(^ {15}\) was published with the Regulations. This cites evidence which demonstrates the importance to local people and local authorities of publishing data, particularly on spending, because they believe it brings benefits (e.g. the Bedford and Local Government Association surveys). It also demonstrates the value of public sector data, notably the analysis supporting the Shakespeare review. Although, estimates of the monetary value of the datasets covered by the code are not available we believe that transparency about spending helps identify waste and poor procurement, as evidenced from DCLG’s own experience in publishing its transparency data\(^ {16}\). It would be difficult to design an evaluation project capable of separating out cause and effect (i.e. demonstrating that publication of a particular dataset directly leads to a monetary benefit). If such

\(^{11}\) “Citizens Panel Summer 2011 Survey Results Data Transparency” Bedford Borough Council, August 2011 (unpublished)


\(^{16}\) Expenditure by DCLG on procurement cards has reduced by over three quarters since the Department started publishing procurement card spend information in 2009–10.
an evaluation project could be designed, it is unlikely that it would be cost effective or good value for money to pursue it.

Crucially, what matters is what local people think. The London Borough of Redbridge makes over 230 datasets available through its ‘Datashare’ portal. The portal provides data in graphical formats, allows the public to interrogate data against their own criteria and submit their own ideas for data that should be published, and allows data to be linked between datasets. There are 80,000 registered users, over 1,000 visits a month to the portal, datasets are interrogated over 1,500 times a month and during a six month period over 1,700 datasets were downloaded. Local people are interested in seeing data from their local authority and where this is provided well, they will access it and use it.

Q6: At 12.1, the Explanatory Memorandum states that “there will be no direct monitoring or review of these Regulations”. Given DCLG’s repeated assertion of belief that greater transparency will bring economic and social benefits – and an apparent lack of hard evidence to demonstrate that – why will the Government not monitor the effect of the Regulations?

A6: We respectfully disagree that there is “an apparent lack of hard evidence” to demonstrate the economic and social benefits of transparency.

However, the paragraph you quote refers to the Government not monitoring local authorities’ compliance with the Regulations. There are already a number of ways in which any local authority’s non-compliance with the Regulations can be challenged, as set out in the Frequently Asked Questions document issued alongside the code. The Department will also keep an eye on implementation and will consider what steps it might take to address instances where specific failures are brought to its attention.

The NAO may also wish to review implementation of the Code by local authorities as part of its broader work on government transparency. The review by the NAO in 2012, cited earlier, found that “many of the releases do not include all of the information set out in the Code” and information was not being published in an accessible or timely way. This illustrates the need for the Code to be on a statutory footing.

The Government believes that there is evidence which supports the position that local people want to see data about their local authority published, there are benefits to data being published and too many local authorities are not publishing sufficient key information. Therefore, it has been necessary for the Government to regulate.

22 October 2014

APPENDIX 2: ABSOLUTE GROUND FOR POSSESSION FOR ANTI-SOCIAL BEHAVIOUR (REVIEW PROCEDURE) (ENGLAND) REGULATIONS 2014 (SI 2014/2554)

Additional information from the Department for Communities and Local Government

Sections 94 and 97 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) introduce a new absolute ground for possession for anti-social behaviour for secure and assured tenants respectively. The new ground enables landlords to seek possession of a tenant’s property if any of five specified conditions are met.

As is the case with other proceedings for possession, a landlord seeking possession under the new absolute ground would have to apply to the court for a possession order. The landlord is required to give the tenant notice of their intention to seek possession under the new ground. In respect to secure tenancies, the notice requirements are set out in section 83ZA of the Housing Act 1985 (as inserted by section 95 of the 2014 Act). The notice period is at least four weeks for a secure periodic tenancy, and one month for a secure tenancy of a fixed term.

The notice must specify the date after which the possession proceedings may be begun (section 83ZA(9)(a)). It must also inform the tenant of any statutory right of review that the tenant may have under section 85ZA, specify the reasons why possession is being sought, and explain where the tenant can obtain help and advice.

Section 85ZA of the Housing Act 1985 (as inserted by section 96 of the 2014 Act) gives secure tenants of local housing authorities and housing action trusts a statutory right to request a review of the landlord’s decision to seek possession under the new absolute ground.

A request for a review must be made in writing before the end of the period of 7 days beginning with the day on which the notice is served (s. 85ZA(2)).

Section 85ZA(6) also specifies that the review must be carried out, and the outcome communicated to the tenant, before the date on which possession proceedings could be begun.

The Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014 (“the Regulations”) set out the procedure for carrying out a review of the landlord’s decision to seek possession under the new absolute ground. The Regulations set out the tenant’s right to an oral hearing, the procedure for such hearings, as well as the procedure for carrying out reviews without an oral hearing. They also require that the decision on review is made by a person of appropriate seniority who was not involved in the original decision.

20 October 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 28 October 2014 Members declared no interests.

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.