HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

13th Report of Session 2014–15

Draft Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014

Draft Microchipping of Dogs (England) Regulations 2014

Correspondence: Draft Regulation of Investigatory Powers Codes of Practice

Includes 4 Information Paragraphs on 5 Instruments

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

Historical Note

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

The Committee has the following terms of reference:

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

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

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

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

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

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

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

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

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

Statutory instruments
Thirteenth 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 Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014

Date laid: 3 November

Parliamentary Procedure: affirmative

Summary: The Committee is disappointed that such important Regulations, relating to one third of the total opt-in provisions, should be rushed through without full explanation and sufficient time for the Committee to provide a fully informed view to the House. The EM is muddled and only makes oblique reference to where key information can be found. As a result this report simply sets out information that will aid the House in its debate on these provisions. It appears that this instrument is largely administrative. It is required to transpose the EU legislation that these 11 elements of the opt-in are based on, so that the UK will be in a position to opt back into them without the risk of infraction proceedings. The decision on whether these are the right 11 is part of the broader debate, but this instrument appears to be simply the mechanism that enables the Government to pursue their policy decision.

This instrument is 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. This draft affirmative instrument has been laid by the Home Office under section 2(2) of the European Union Act 1972. It is accompanied by an Explanatory Memorandum (EM). An Impact Assessment is provided in a separate document (Cm 8897) which was published in July 2014. A Transposition Note, usually required for European legislation, has not been laid.

Background

2. Article 10(4) of Protocol No. 36 to the EU Treaties enabled the Government to decide, at the latest by 31 May 2014, whether or not the UK should continue to be bound by the approximately 130 “third pillar” measures on police and criminal justice cooperation which were adopted before the Treaty of Lisbon came into force in 2009. On 24 July 2013, following endorsement of both Houses of Parliament, the Prime Minister formally notified the

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President of the Council that the UK had decided to opt out of all former third pillar measures. The effect of this decision is that these measures will cease to apply to the UK from 1 December 2014.

3. Under Article 10(5) of Protocol No. 36, the UK may notify the Council of its wish to participate in certain of the measures which have ceased to apply to it. Following detailed discussions with the Commission and Council, agreement was reached in principle on 35 measures. The majority of these do not require further action, but 11 of the measures need to be transposed into national law and that is the purpose of these Regulations.

Content

4. All 35 opt-in measures chosen relate broadly to the mutual exchange of information that will assist in criminal investigations, tracking down criminals, prosecutions or confiscating the proceeds of crime. The Committee’s remit is confined to the 11 transposed by this instrument. It should also be noted that, whatever wider debate might occur on the opt-in, procedurally this instrument will require a discrete resolution by each of the two Houses. The Commons considered these Regulations on Monday 10 November.²

5. The EM provided looks as if it has been cut and pasted from another document, and has more detail on items in the wider policy area than it does on the items to which these Regulations specifically relate. It is does not provide the clarity of explanation the Committee expects. For example, paragraph 4.4 of the EM states that the items that require further transposition into national law are asterisked on the list. We are told at paragraph 7.1 that there are 11 such items, but there are only nine asterisks. Further investigation revealed that the first two items each implement two measures:

i, ii. **Confiscation and Freezing Orders** – these enable domestic courts to transmit restraint orders and confiscation orders which they have made themselves, or to enforce orders made by other Member States for the confiscation or freezing of property or evidence as part of criminal proceedings.

iii, iv. **Two European Criminal Records Information System (ECRIS)** measures that require Member States to share information about the convictions of EU nationals in another Member State or of its own nationals abroad. These Regulations make provision to implement these measures, including establishing the Chief Constable of Hampshire, under whom the Association of Chief Police Officers (ACPO) Criminal Records Office formally operates, as the UK’s central authority.

v. **European Supervision Order (ESO)** – these enable a suspect or defendant subject to a pre-trial non-custodial supervision measure (such as supervised bail) set by a Member State in which they are not resident, to be supervised in their home, or another Member State, until such time as their trial takes place.

² HC Deb, 10 November 2014, cols 1199–1270.
vi. **Joint Investigation Teams (JITs)** – this Framework Decision aims to prevent and combat crime (especially drug trafficking, people trafficking and terrorism) by providing for closer cooperation between police forces, customs authorities and other competent authorities in Member States.

vii. **Mutual Recognition of Financial Penalties** – these Regulations require Member States to collect financial penalties (of over £55.31 or €70) transferred by other Member States, as they would a domestic financial penalty. The enforcing Member State that collects the financial penalty can keep it (but compensation order monies must be remitted back to the victim). These Regulations provide that money collected in this way goes to the Consolidated Fund.

viii. **Prisoner Transfer** – this measure provides for the compulsory transfer of foreign national offenders between Member States without the consent of the prisoner. It also restricts the circumstances by which a Member State can refuse to accept back one of its nationals.

ix. **Swedish Initiative** – these Regulations transpose into domestic law provisions to simplify the exchange of information and intelligence between law enforcement authorities in Member States for the purposes of conducting criminal investigations by providing a standard form to be used and a time bound (eight hour) process.

x. **Trials in absentia** – there are five EU measures which deal with the issue of judgments handed down following a trial at which the person concerned did not appear personally. These instruments require mutual recognition of judgments. The Regulations align the criteria to ensure adequate safeguards for the defendant in relation to four of those measures: the Arrest Warrant, confiscation orders, mutual recognition of financial penalties and prisoner transfers. (The fifth measure which relates to trials in absentia, which the Government has decided not to rejoin is the Probation Framework Directive.)

xi. **Data Protection** – this implements the Framework Decision to establish a common level of protection and an appropriate level of security when Member States exchange personal data within the framework of police and judicial cooperation in criminal matters. It applies to “competent authorities”, in the UK this includes police, the National Crime Agency and many government departments.

**Government documentation**

6. The Government has published two significant Command Papers on these issues:

- **Decision pursuant to Article 10 of Protocol 36 to the Treaty on the Functioning of the European Union (Cm 8671)** published 9 July 2013. This 155 page document sets out details of all the measures that were subject to this decision and highlighted 35 measures that the Government would negotiate with the Commission and Council to seek to rejoin.

- **Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union (Cm 8897)** published 3 July 2014. This 252 page document contains Impact Assessments for all the measures that the Government are seeking to rejoin including the 11 in these Regulations.
Reports by Parliamentary committees

7. The Lords’ European Union Committee has examined the appropriate considerations to be made in selecting which items to opt back into and taken expert evidence. In particular, the EU Sub-Committee on Justice, Institutions and Consumer Protection (“the EU Justice Sub-Committee”) and the EU Sub-Committee on Home Affairs, Health and Education conducted a joint inquiry into the UK’s 2014 opt-out decision. The report, “EU police and criminal justice measures: The UK’s 2014 opt-out decision”, was published on 23 April 2013. The inquiry was re-opened on 18 July 2013 and a follow-up report was published on 31 October 2013. Both reports were debated in the House of Lords on 23 January 2014.

8. The EU Sub-Committees endorsed the 35 measures that the Government are seeking to rejoin, but recommended that they should also seek to rejoin:
   - implementing measures related to Europol’s continued operation;
   - the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law;
   - the European Judicial Network;
   - the European Probation Order; and
   - the Convention of Driving Disqualifications.

   The Report by the EU Sub-Committees also sought clarification of progress towards implementing the “Prüm Decisions” on cross-border exchange of DNA and fingerprint information to prevent and investigate serious criminal offences, in particular what will happen to the EU funding that the Government received to implement the system if the UK does not opt in by a certain date.

9. The Government’s response to that report, received on 31 December 2013, provides the most concise (17 pages) synopsis of the unresolved issues around this policy and the positions of the EU Sub-Committees and the Government on which former third pillar items should be revived.

10. The EU Justice Sub-Committee is currently conducting an inquiry entitled the UK’s Opt-in and International Agreements which, amongst other things, is examining the consequences of the policy for legal certainty in international agreements and the consistency of the policy with Treaty provisions and general principles of EU law.

Timetable

11. The timetable has been fixed for some years and yet the Home Office has left taking action until very close to the deadline. The Home Secretary wrote to the Committee requesting expedited consideration of the instrument but the letter does not explain why it is necessary, nor why the instrument could not have been laid earlier, given that the 1 December deadline has been known

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5. Further details on their webpage.
since 2009. The EU Justice Sub-Committee has been severely critical of the Government’s delivery of information to support their policy which has consistently been provided late and very close to the date of the decision, expressing its concern that “the absence of this information would prevent the House from being able to take a properly informed decision”.\(^6\)

12. In supplementary material to the Committee, Home Office officials explained that to be able to rejoin the 35 measures, the UK needs the agreement of the Commission and the Council (which one depends on the particular EU measure). They had hoped to reach agreement earlier, but Spain held matters up and they only managed to secure complete agreement last week. Once again this fails to explain whether any of the measures in this instrument proved the sticking point or why the draft Regulations could not have been laid earlier (since they are in any case being debated on a contingency basis, as they cannot be signed until the Commission and Council give their formal consent to the opt-in on 1 December).

*The policy objective*

13. The EM also fails to explain why EU legislation from 2002–09 still requires transposition, when normal practice requires it to be transposed within 12–18 months of agreement. In supplementary material we have discovered the 130 or so EU measures in the police and criminal justice area agreed prior to the Treaty of Lisbon in 2009 were not automatically subject to European Court of Justice jurisdiction and the Commission had no powers to bring infraction proceedings for failing to implement them. So in a number of cases transposition was not done.

14. However from 1 December the UK will be under an immediate international obligation to comply with the 35 measures it is seeking to rejoin and to have fully transposed them, or face the threat of infraction proceedings. The UK is already largely compliant with the 35 measures but these Regulations would complete the transposition of 11 of them into national law so the UK can be fully compliant.

*Impact*

15. The EM does not make a clear statement about the impact of the provisions included in these Regulations. The EM refers to Cm 8897 where the IAs are published, but we would normally expect a brief summary of the costs and benefits of a measure to be included in the EM itself. Our analysis of the IAs indicates that, because the systems in question have been operating for some time, for the majority there is no additional cost anticipated from transposition. However, confiscation orders will entail some additional training costs of about £10,000 in the first year and the ECRIS measures are estimated to cost an additional £0.8 million a year to administer but with significant benefits from improved information to the police. According to the IAs some savings may also result from prisoner transfer (about £10 million a year) and ESOs (about £3 million a year) by reducing the number of foreign nationals requiring supervision or custody in the UK.

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\(^6\) Para 96 of the *Follow up report*. 

Consultation

16. We also note that the section on consultation analysis makes a passing reference to the views of various Parliamentary committees without stating what they were and how they influenced the draft Regulations. We are not told, for example, whether those committees also recommended that other provisions should be included in the opt-in. This report has tried to remedy that defect (see paragraph 8 above).

Conclusion

17. The Committee is disappointed that such important Regulations, relating to one third of the total opt-in provisions, should be rushed through without full explanation and sufficient time for the Committee to provide a fully informed view to the House. As a result, this report simply seeks to provide information to the House that will aid it in its debate on these provisions.

18. The EM is muddled and only makes oblique reference to where key information can be found. It appears that this instrument is largely administrative. It is required to transpose the EU legislation that these 11 elements are based on into national law, so that the UK will be in a position to opt back into them without the risk of infraction proceedings. The decision on whether these are the right 11 is part of the broader debate, but this instrument appears to be simply the mechanism that enables the Government to pursue their policy decision.


Date laid: 28 October

Parliamentary Procedure: affirmative

Summary: These draft Regulations require that, from April 2016, all keepers of dogs in England must have their dog microchipped. Some 76% of responses to a 2012 consultation supported this approach. The Dogs Trust have set aside £6 million for the provision of free microchips to veterinarians, local authorities and housing associations ahead of April 2016.

We draw these Regulations 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.

19. The Department for Environment, Food and Rural Affairs (Defra) has laid these draft Regulations which require that, from April 2016, all keepers of dogs in England must have their dog microchipped with their and their dog’s details registered on a reunification database.

20. In the accompanying Explanatory Memorandum (EM), Defra says that there are estimated to be approximately 7.3 million dogs in England (a number projected to increase in line with the number of households by 1.4% each year), and that currently there are approximately 4.8m (66% of all dogs) dogs registered on a microchip database in England. This leaves an estimated 2.5 million dogs in England that are not microchipped.
21. Defra says that, since microchipping was introduced 20 years ago, a voluntary approach to increasing the number of dogs microchipped has been followed. In the Department’s view, however, it is likely that maintaining the current voluntary approach would be constrained by a ceiling on the number of dogs that would be microchipped which would be well below what the Government would consider an acceptable level.

22. Over the last three years, an average of 102,000 stray dogs per year were passed on to English local authorities. Approximately 56,000 dogs were reunited with their owner, by being identified through a collar; by the owner enquiring after the dog; or, in around 23,000 cases, through a microchip. Of the remaining 46,000 dogs, 8,000 were put to sleep, 28,500 stray dogs were passed to welfare organisations for re-homing and 9,000 were re-homed by local authorities. The annual cost incurred both by local authorities and welfare organisations in dealing with stray dogs is approximately £32.5m.

23. In the EM, Defra says that it consulted on dangerous dogs policy in 2010 and 2012. The 2010 consultation, which ran for 12 weeks, did not seek views on the method of introducing compulsory microchipping. The 2012 consultation, held over an eight-week period from 23 April to 15 June, focused on responsible dog ownership, including seeking views on the way in which compulsory microchipping should be introduced in England.

24. The Government response to the 2012 consultation was published in February 2013.\(^7\) 27,000 responses were received: 96% supported compulsory microchipping (up from 84% of 1875 responses to the 2010 public consultation). In launching that consultation, the Department proposed the option of microchipping all puppies only. The Government response explains that only 10% of respondents favoured that option, as against some 76% of responses which favoured requiring all dogs to be microchipped within a year of legislation coming into force. The Regulations implement the latter option.

25. In the impact assessment (IA), Defra states that the cost of having a dog microchipped by a veterinarian is approximately £10–90; and that the cost of entering the details on the database and taking on a “lifetime update service” is £16.\(^8\) In the EM, Defra says that a number of animal welfare groups (including Blue Cross and the Battersea Dogs and Cats Home) and local authorities have been offering free microchipping for many years; and that the Dogs Trust have set aside £6 million for the provision of free microchips to veterinarians, local authorities and housing associations ahead of April 2016. Information in the IA\(^9\) suggests that this sum will cover the cost of microchipping 1.1 million dogs; the cost of microchipping the remainder will fall to the public. After 6 April 2016, owners of dogs found by the police or local authorities not to have a microchip will be given a short period to comply with the microchipping law. If they do not, they will face a fine of up to £500.

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\(^8\) IA, paras 38–40.

\(^9\) IA, para 115.
CORRESPONDENCE

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

26. The Committee considered these draft Orders in our 9th Report of this Session,\(^\text{10}\) noting that the additional guidance on how the Codes will be enforced by the Office of Surveillance Commissioners and the Intelligence Services Commissioner is not publicly available. In our 12th Report of this Session,\(^\text{11}\) we published correspondence with Rt Hon. Mike Penning MP, Minister of State at the Home Office, which sought to clarify the status of this unpublished guidance in relation to the Codes of Practice and how it might be treated by the courts. Further correspondence with Rt Hon. Mike Penning MP on the issue of the interpretation of the Codes of Practice by the courts is published at Appendix 1.

\(^{10}\) 9th Report, Session 2014–15, HL Paper 47.
INSTRUMENTS OF INTEREST

Draft School Admissions Code

27. The Department for Education (DfE) has laid the School Admissions Code (“the Code”), and the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) (Amendment) Regulations 2014 (SI 2014/2886; “the Regulations”), with a shared Explanatory Memorandum (EM). The Code revises and replaces the existing School Admissions Code 2012 (“the 2012 Code”). Its purpose is to ensure that all school places for maintained schools (excluding special schools) and academies are allocated and offered in an open and fair way; it contains mandatory requirements and guidelines on the arrangements by which children are admitted to maintained schools. The Regulations amend Admission Regulations from 2012 to give effect to certain provisions of the revised Code. The Admission Regulations 2012 contain provisions on the arrangements by which children are admitted to maintained schools in England, and on the referral of objections to the Schools Adjudicator in respect of maintained schools and academies. The Code and the Regulations are to come into force on 19 December 2014, in order to affect arrangements being determined for the admission of pupils in the school year 2016–17.12

28. In the EM, DfE says that the Code introduces specific, limited changes to the 2012 Code. It describes the overarching aim of the changes as being to improve the fair and open allocation of places in maintained schools and academies, and to support the Government’s social mobility agenda by allowing (but not requiring) admission authorities to give priority for school places to disadvantaged children, who may currently find it difficult to access a school place at the best schools.

29. DfE consulted on the Code between 22 July and 29 September 2014, a ten-week period which included the summer holiday month of August. In response to our questioning, DfE has provided additional information about the timing of this consultation, which we are publishing as Appendix 2. The Department says that only a very small number of respondents voiced concern about this.

30. In the EM, DfE says that the proposed changes were tested in advance of consultation with key stakeholders, and that, during the consultation period, further stakeholder engagement was carried out, including meetings with interested representative groups. Over 400 responses were received: the proposals were broadly welcomed, although some issues were raised regarding specific details of the policy or how the proposals might work in practice. On 30 October 2014, the Department published a summary of the consultation responses.13

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13 https://www.gov.uk/government/consultations/changes-to-the-school-admissions-code
Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms (8951)

31. Protocol No. 15 was agreed at the Brighton Conference on 20 April 2012, it was the product of two years of negotiations on the reform of the European Court of Human Rights to refocus its purpose and deal with a significant backlog of 160,000 unresolved cases. The Brighton Declaration represents political agreement in principle to amend the Convention on the Protection of Human Rights and Fundamental Freedoms in five respects:

- To add a reference to the principle of subsidiarity to the Preamble to the Convention to help define the boundaries of the Courts’ role;
- To change the rules so that all judges appointed can serve the full nine-year term (rather than be required to retire automatically at age 70);
- To remove the right of parties to a case before the Court to veto the relinquishment of jurisdiction in favour of the Grand Chamber (a move intended to improve the consistency of the Court’s case law);
- To reduce the time limit for applications to the Court from six to four months: and
- To tighten the admissibility criteria to make it easier for the Court to reject trivial applications.

32. By 6 October 2014 Protocol No. 15 had been ratified by 10 states and signed by a further 29. It will come into force once it has been ratified by all 47 High Contracting parties to the Convention.\(^{14}\)

Firefighters’ Pension Scheme (England) Regulations 2014 (SI 2014/2848)

33. The Department for Communities and Local Government (DCLG) has laid these Regulations, with an Explanatory Memorandum (EM): they establish a scheme (“the 2015 scheme”) for the payment of pensions and other benefits to firefighters in England. In line with the recommendation of the final report of the Public Service Pensions Commission under Lord Hutton, key features of the 2015 scheme include pension benefits based on career average earnings, a normal pension age of 60, and average member contributions of 13.2%. There is to be transitional protection for those closest to retirement. The Fire Brigades Union (FBU) has described the proposals as unacceptable on the grounds that they are based on unaffordable and unfair contribution rates and an unrealistic retirement age. The FBU’s campaign for changes has included four days of strike action by firefighters in England starting on 31 October 2014. In the EM, DCLG refers to two consultation exercises in relation to the Regulations (from December 2013 to March 2014, and from May to July 2014), and says that, as a result, a number of changes have been made (explained in particular at paragraph 8.6 of the EM).\(^{15}\)

\(^{14}\) For further information see also HL Deb, 28 October 2014, cols WS 105–6.

\(^{15}\) The House of Commons has published a detailed Library Note, SN 6585: http://www.parliament.uk/briefing-papers/SN06585/firefighters-pension-schemes-current-reforms
Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2014 (SI 2014/2852)

34. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. In amending an earlier instrument, the Regulations simplify how exemptions from the requirement for an environmental permit are managed for small sewage discharges. The amendments remove three requirements on operators of small sewage discharges: registration of a septic tank or sewage treatment plant; keeping records of maintenance for five years; and notifying the Environment Agency if the small sewage discharge ceases. The registration scheme is replaced with conditions that septic tanks and sewage treatment plants need to meet in order to be used without an environmental permit. The conditions work with the technical requirements specified by the Environment Agency in guidance to operators, compliance with which is part of the conditions. The conditions together with the technical requirements will be known as general binding rules.

35. In the EM, Defra states that public consultation on the proposals was held online from 30 April to 10 June 2014. The Department says that 120 responses were received, and that respondents broadly supported the proposals for a simpler regulatory framework, providing that measures remained in place to protect water resources, drinking water supplies, sensitive areas and protected species. This broad-brush assessment should be considered against the greater detail provided in the Government response to the consultation (published 9 October 2014) which sets out that 64 respondents (53%) were in favour of removing registration, while 48 respondents (40%) opposed doing so.

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16 The Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675).
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**

Single Source Contract Regulations 2014

**Draft instruments subject to annulment**

Leicester (Electoral Changes) Order 2014

Modifications to the Standard Conditions of Electricity Supply Licences 2014

School Admissions Code

**Instruments subject to annulment**

8951 Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms

8956 Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile


SI 2014/2833 Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014

SI 2014/2841 Rating Lists (Valuation Date) (England) Order 2014

SI 2014/2847 Immigration Services Commissioner (Application Fee) (Amendment) Order 2014

SI 2014/2848 Firefighters’ Pension Scheme (England) Regulations 2014


SI 2014/2862 Statutory Paternity Pay and Statutory Adoption Pay (General) (Amendment) Regulations 2014

SI 2014/2864 Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2014

SI 2014/2865 Feed-in Tariffs (Amendment) (No. 2) Order 2014

SI 2014/2867  Local Justice Areas (No. 3) Order 2014


SI 2014/2879  Central Securities Depositories Regulations 2014

SI 2014/2882  REACH Enforcement (Amendment) Regulations 2014

SI 2014/2886  School Admissions (Admission Arrangements and Coordination of Admission Arrangements) (England) (Amendment) Regulations 2014

APPENDIX 1: CORRESPONDENCE ON THE DRAFT REGULATION OF INVESTIGATORY POWERS CODES OF PRACTICE 2014

Letter from Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee, to Rt Hon. Mike Penning MP, Minister of State at the Home Office

At a meeting yesterday, the Secondary Legislation Scrutiny Committee considered your letter, for which many thanks, in response to my further letter of 29 October. This is an important topic and I have no doubt that you will appreciate why the Committee is concerned to allay any outstanding concerns it may have about the Codes. It is for this reason that I wish to raise one further point in respect of your most recent letter.

The point is in relation to your statement in the second paragraph of your letter; “Irrespective of the nature of the guidance it should always be clear that it is not legally binding and the Intelligence Services Commissioner has asked me to say that he has not provided any guidance to supplement the code. He may have expressed a view on interpretation of the code but it would be clear that it is just a view and is not legally binding”.

The reference to “interpretation” is a cause for concern. It envisages circumstances where a provision in the code is open to different interpretations and the Commissioner has given a non-legally binding view on which one should be applied. If such a provision were breached and that breach was put before a court, how would a court decide which interpretation should be legally binding and therefore on which interpretation it should base its findings?

Given that the statutory instruments associated with the Codes are to be debated in the House of Lords on Monday 10 November, I would be most grateful if a reply could be received at your very earliest convenience and, in any event, by Thursday 6 November.

5 November 2014

Letter from Rt Hon. Mike Penning MP to Lord Goodlad

Thank you for your further letter of 5 November about the RIPA Codes of Practice. I am very sorry to have missed your deadline for reply. You ask how a court will determine which interpretation of the Code is correct in a situation where a provision of the Code has been breached.

The Codes are intended to provide guidance to a wide range of public authorities each operating in a multitude of different circumstances. As such the Codes cannot specify the exact way in which their provisions should be applied in every situation on the ground and there is necessarily some room for interpretation. Where necessary, the Office of Surveillance Commissioners and the Intelligence Services Commissioner may assist public authorities in reaching the best interpretation for any given situation. As I have previously said, they will also advise the public authorities to seek independent legal advice if there is any doubt about the lawfulness of an interpretation.
With so many good minds applied to the situation I find it very unlikely that the public authority will alight on an interpretation that breaches the Codes. However in those circumstances it would ultimately be for the court itself to determine independently how the Codes should be interpreted, in the same way that the courts determine independently the application of any other laws or statutory guidance.

10 November 2014
APPENDIX 2: DRAFT SCHOOL ADMISSIONS CODE

Additional Information from the Department for Education

[You asked] whether respondents to the consultation on changes to the School Admissions Code raised concerns about the timing of the consultation, given that the early part of the consultation included the August summer holiday period...This was mentioned by a very small number of respondents to the consultation (on an initial search in response to your query we found three responses which raised it, out of over 440 responses), but was not generally raised as an issue by respondents, or by people contacting us outside of the consultation.

...it might helpful if I provide some additional background. The changes to the Code (and accompanying regulations) are being made to a tight timescale to ensure that, subject to local consultation and parliamentary approval, schools who wish to can put the changes in the Code into practice for entry to school in 2016. In order to do this, it was important that the Code came into force before Christmas (to give admission authorities sufficient time to consult on the changes within the statutory timeframe for admissions consultations). These timescales meant that we had the option of running a ten week consultation which would include August, or running a short consultation in September.

Whilst we recognised that covering the August period might mean that some contacts, particularly in schools, would have been on holiday for part of the consultation period, we felt that it was important to allow the maximum time available for everyone to respond the consultation, particularly as the consultation was also of particular interest to LAs and representative organisations (such as faith groups, FASNA, etc), which continue to operate over the summer, as well as parents. However, we ensured that a significant period of the consultation took place outside the holiday period.

We also worked proactively to mitigate the impact of the consultation encompassing the August period. We emailed a large number of stakeholders as the consultation was launched, to alert them to it. We then undertook follow-up communications with stakeholders at the start of September to remind them that the consultation was in process – including LAs, schools, and other key stakeholders with an interest. We followed up with some representative bodies by phone and emails and encouraged them to use their networks to raise awareness.

7 November 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 11 November 2014 Members declared no interests.

Attendance:

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