Secondary Legislation Scrutiny Committee

2nd Report of Session 2014–15

Public Bodies (Marine Management Organisation) (Fees) Order 2014

School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014

Jobseeker’s Allowance (Supervised Jobsearch Pilot Scheme) Regulations 2014

Correspondence:
Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014

Includes 6 Information Paragraphs on 10 Instruments

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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

Second Report

PUBLIC BODIES ORDER

A. Draft Public Bodies (Marine Management Organisation) (Fees) Order 2014

Introduction

1. The draft Public Bodies (Marine Management Organisation) (Fees) Order 2014 has been laid by the Department for Environment, Food and Rural Affairs (Defra) under sections 4(1) and (3)(b) and section 6(1) of the Public Bodies Act 2011 (“the 2011 Act”). The draft Order has been laid with an Explanatory Document (ED) and impact assessment.

Overview of the proposal

2. The draft Order proposes to extend the ability of the Marine Management Organisation (MMO) to recover the costs it incurs in dealing with licence applications under Part 4 of the Marine and Coastal Access Act 2009 (“the 2009 Act”).

3. In the ED, Defra states that the MMO is a public body which was set up under the 2009 Act (and launched in 2010) to regulate activities in the seas around England. It is responsible for delivering priorities such as: regulation of major industry; marine planning; protecting the natural environment and promoting biodiversity; licensing activities in the marine area; fisheries management; providing UK statistical information to support data analysis; preventing illegal fishing; and making European funding available to the fishing industry.

4. The 2009 Act created a new marine licensing system for most UK waters, replacing the system that had previously been established under the Food and Environmental Protection Act 1985 (“the 1985 Act”). The new system came into effect in April 2011. The Department explains that developments subject to licensing can range from small projects, such as installation of buoys or construction of small jetties, to larger harbour or wind farm developments. The Secretary of State for Defra is one of several “licensing authorities” defined under the 2009 Act, and his licensing functions are delegated to the MMO under that Act.1 The MMO is responsible for most licensing in English inshore and offshore waters and in relation to Welsh and Northern Ireland offshore waters.

5. Defra states that the MMO has the power to charge for marine licence applications under section 67(1)(b) of the 2009 Act. Under the 1985 Act, the licensing authority was able to charge a reasonable fee for marine licence applications, although the Government did not fully recover the costs of issuing licences. The Department explains that the Government have now begun to move towards full cost recovery under the 2009 Act, but that this

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1 Except for some oil and gas-related activities which are licensed by the Department for Energy and Climate Change.
has not yet been achieved, in part because the scope of the charging power in section 67 of the 2009 Act is insufficient to allow the recovery of costs incurred in the following activities:

- monitoring sites where licensable activity is taking place (e.g., verifying that aggregate dredging is undertaken within the boundary of the dredge site). In the ED, Defra says that this monitoring is the main cost that MMO cannot currently recover; in the impact assessment (IA), the annual cost is put at £300,000 (paragraph 22);
- reviewing monitoring reports required from licence-holders (e.g., surveys of sea floor deposits, suspended solids assessment). In the IA, Defra gives a figure of some £150,000 as the annual cost of this activity (paragraph 21); and
- varying existing licences (e.g., change of vessel name on issued licence or significant variation including assessment). In the IA, Defra gives a figure of some £224,000 as the annual cost of this activity (paragraph 20).

6. The purpose of the draft Order is to enable the MMO to charge for marine licensing monitoring, variations and transfers. It includes the level of fees that may be charged for different descriptions of activities. Defra states that the hourly fee has been calculated on a consistent basis with the new marine licensing fee structure proposed in a separate consultation by Government. Fees for simple or routine projects are charged on an hourly basis but subject to caps; fees for monitoring associated with disposal sites use a formula based on annual tonnage.

Parliamentary consideration of the Public Bodies Bill

7. Defra explains that the inclusion of the MMO in the Public Bodies Bill was debated at Committee stage in this House, on 7 March 2011. An amendment had been tabled to remove a group of bodies from the Bill, including the MMO. In the light of the Government’s explanation that, as regards the MMO, the changes were minor and were intended to remove the financial burden from the taxpayer, the amendment was withdrawn.

Role of the Committee

8. The Committee’s role, as set out in its Terms of Reference, is to “report on draft orders and documents laid before Parliament under section 11(1) of the 2011 Act in accordance with the procedures set out in sections 11(5) and (6)”. A key aspect of this role is the Committee’s power to trigger the enhanced affirmative procedure which would require the Government to have regard to any recommendations made by the Committee during a 60-day period from the date of laying. The Committee may also take oral or written evidence in order to aid its consideration of the orders.

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Tests and conditions in the Public Bodies Act 2011
Assessment of the proposals – section 7 of the Explanatory Document

9. A Minister may make an Order under sections 1 to 5 of the 2011 Act only if he considers that it serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers (section 8 of the 2011 Act). Section 8(2) of the 2011 Act specifies two conditions: that an Order does not remove any necessary protection, and does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. The ED for the draft Public Bodies (Marine Management Organisation) (Fees) Order 2014 deals with the statutory tests in paragraphs 7.11 to 7.15, and with the conditions in paragraphs 7.16 and 7.17.

Efficiency

10. Defra states that the proposals to modify the MMO’s charging powers are part of a wider strategy for marine licensing which aims among other things to improve cost recovery by the MMO. The Government and the MMO have focused on reducing unnecessary burdens on businesses and other users, by increasing the number of exempt activities which do not require a marine licence, expanding the use of longer licences, bringing in fast-track licensing for simple applications, and agreeing a “Coastal Concordat” to coordinate the consenting process for coastal development in England. The MMO has also taken other steps to improve its efficiency, e.g., to reduce processing times and increase case officer utilisation for chargeable work. Defra says that, together with acquiring the power to charge for monitoring and licence variations and the proposed revision to the fees and charges structure, these measures should increase cost recovery from around 60% to 96%.

Effectiveness

11. The Department says that the proposed extension of the MMO’s charging powers contributes to effectiveness by improving the rate of cost recovery, reducing reliance on either cross-subsidy from other marine users or public subsidy; ensuring that essential monitoring, to verify compliance with licence conditions, is adequately funded, and that as a result the marine environment continues to be protected; and limiting impacts on smaller businesses by capping the amounts payable on smaller or routine projects.

Economy

12. Defra states that at present the MMO cannot recover the annual overall costs for monitoring and variations of licences, which amount to £674k in total; the proposed extension of the MMO’s charging powers is expected to recover around £600k annually. Allowing the MMO to charge for these activities will result in a saving to the taxpayer.
Accountability

13. The Department says that the proposed extension of the MMO’s charging powers will not reduce the MMO’s accountability to Ministers. At paragraph 7.15 of the ED, Defra describes current arrangements for accountability, which will continue to apply. These include the fact that the Chair and Chief Executive of the MMO are directly accountable to Ministers for the exercise of various functions carried out by the MMO; and also that performance is regularly reviewed by a cross-Government sponsorship group chaired by Defra and reported through the publication of the MMO’s Annual Report.

Necessary protection; right or freedom

14. Defra comments that the power to modify funding arrangements which will enable the MMO to charge for its regulatory activities will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Consultation – section 8 of the Explanatory Document

15. Defra carried out consultation on the proposal to extend the MMO’s ability to recover the costs described above between 12 July and 5 September 2013; it published a summary of responses in February 2014. 26 responses were received from a range of sectors including business, recreational, regulatory and non-government organisations. The Department says that most respondents agreed the overall principle and recognised the need to recover costs. However, it also notes that the following main issues emerged from the consultation: the overall level of fees for marine licensing and impacts on smaller businesses; proportionality, efficiency and transparency; the rationale and method of charging for monitoring; the rationale for charging for simple administrative changes for variations; the method of charging for complex variations; and processing matters.

16. In response, Defra says that the Government and the MMO aim both to ensure that the administration of marine licensing is as efficient as possible, and also to recover fully the costs of administering marine licences, while avoiding cross-subsidisation and excessive burdens on smaller projects. Monitoring by the MMO will be limited to ensuring compliance with licence conditions: minor projects will often not require any monitoring at all. The Order will clarify the definition of basic administrative changes for licence variations, while for more complex variations the MMO will provide estimates of likely costs to applicants. The MMO will evaluate its performance through its Stakeholder Forum Group, Customer Satisfaction Survey and Key Performance Indicators.

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4 The consultation period was some eight weeks in length, but spanned the August holiday season. Defra has confirmed, however, that it received no criticism of the timing from respondents.

Conclusion

17. The 2011 Act provides at section 4(2) that the consent of HM Treasury (HMT) is required to make an Order under section 4 of the Act. At paragraph 13.1 of the ED, Defra states that HMT has given this consent, provided that Defra seeks an early legislative opportunity to amend section 67 of the 2009 Act so that these charging powers are brought within the Act itself. **We also consider it desirable that what Defra describes as the insufficiency of the charging powers in the 2009 Act should be remedied in due course by amendment of that Act.**

18. In approving the 2011 Act, however, the House agreed that the Government should be able to extend the MMO’s charging powers by means of an Order under the Act. **We consider that the Government have demonstrated that the draft Order serves the purpose of improving the exercise of public functions as set out in the 2011 Act, in line with the considerations contained in it. We are content to clear it within the 40-day affirmative procedure.**
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 ground specified.

A. School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 (SI 2014/1257)

Date laid: 19 May

Parliamentary Procedure: negative

Summary: In laying these Regulations, the Department for Education intends that the governing bodies of maintained schools should review the adequacy of their constitution and membership, and that a primary consideration in their decisions should be the skills that governors require to be effective. Ofsted’s recent inspections of academies and maintained schools in Birmingham have underlined the importance of effective governance. The Department has said that it will monitor the operation of the Regulations through its Advisory Group on Governance. We look to the Department to treat this monitoring as a priority; and we expect that the House may wish to be informed of the outcome of this monitoring by the end of the Session.

We draw this instrument to the special attention of the House on the ground that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House.

19. The Department for Education (DfE) has laid these Regulations, with an Explanatory Memorandum (EM). DfE states that, in amending or revoking a number of earlier instruments, the Regulations serve the following purposes:

- to provide that, by 1 September 2015, all maintained school governing bodies in England will have to be constituted under the framework established by Regulations in place since 2012;
- to ensure that governors have the skills required to contribute to the effective governance and success of schools or federations of schools;
- to introduce a new procedure for removing surplus governors, replacing the “first in last out” rule; and
- to ensure that a person subject to a direction of the Secretary of State under section 128 of the Education and Skills Act 2008 is disqualified from holding office as a governor of a maintained school.7

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7 DfE states that section 128 is a power of the Secretary of State to direct that a person may not take part in the management of an independent school, on grounds connected with the person’s suitability to take part in the management of an independent school. The Department intends to bring this provision (and associated regulations) into force later in the year.
20. In the EM, DfE summarises the overall purposes of the changes as being to simplify the legislative framework by ensuring that there is a single consistent approach across all maintained schools, and to enable more effective governance by ensuring that the primary consideration in decisions about the constitution and membership of governing bodies is the skills that they require to be effective. The Department’s intention is that the proposed changes prompt governing bodies to think more explicitly and more regularly about whether their constitution and membership is fit for purpose.

Consultation

21. DfE explains that the principles underpinning the proposed changes were initially subject to a short consultation with members of the Department’s Advisory Group on Governance (AGOG)\(^8\) in July 2013. Over eight weeks from mid-January to mid-March 2014, DfE held a public consultation targeted at local authorities, governing bodies, governance organisations and other interested parties. In May 2014, the Department published a Government response to the consultation.\(^9\)

22. DfE says that there were 235 responses to the consultation, and that a majority of them supported the proposals and the principles underpinning the changes. The Department acknowledges concerns raised about the practicalities of having a small governing body, but adds that most respondents supported the principle that governing bodies should be no bigger than they need to be and have all the skills necessary to carry out their functions. Some concern was also expressed that, whilst they supported the aim that all governors have the necessary skills to fulfil their role, some governing bodies had difficulty with governor recruitment.

Statutory guidance

23. In parallel with the January 2014 consultation document, DfE published draft statutory guidance\(^10\) for leaders and governing bodies of maintained schools and local authorities which supports the framework put in place by the 2012 Regulations. This includes guidance on the skills which governors and governing bodies require. The Government response of May 2014 says that 68% of respondents felt that the guidance was clear and found the descriptions of the skills helpful and comprehensive without being too prescriptive.

24. The guidance notes that the specific skills that governing bodies need to meet their particular challenges will vary, and that such bodies must therefore determine what these skills are and be satisfied that the governors they appoint have them. However, the guidance also says that “experience has

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\(^8\) AGOG includes representatives of the Catholic Church, the Church of England, the National Governors’ Association, the head teacher associations, Freedom and Autonomy for Schools National Association, Information for School and College Governors, National Co-ordinators of Governor Services, Ofsted and SGOSS (Governors for Schools).


shown…that all governors need a strong commitment to the role, the inquisitiveness to question and analyse, and the willingness to learn. They need good inter-personal skills, a basic level of literacy in English (unless a governing body is prepared to make special arrangements), and sufficient numeracy skills to understand basic data.” It stresses the importance of governing bodies seeking to secure or develop within their membership appropriate expertise, and notes that effective governing bodies “set aside a budget to fund appropriate and necessary continuing professional development for their members”.

Role of governors

25. The role of governors has been one of the issues highlighted in recent weeks in the Government’s actions in response to allegations of extremism in a number of schools in Birmingham. On 9 June 2014, Sir Michael Wilshaw, HM Chief Inspector (HMCI), sent the Secretary of State for Education an advice note on academies and maintained schools in Birmingham, in the light of inspections carried out earlier in the year. We note that the HMCI’s recommendations included a review of the current arrangements for school governance, giving serious consideration to mandatory training for all governors, the introduction of professional governors where governance is judged to be weak, and requiring all schools to publish a governors’ Register of Interests.

Conclusion

26. In laying these Regulations, the Department intends that the governing bodies of maintained schools should review the adequacy of their constitution and membership, and that a primary consideration in their decisions should be the skills that governors require to be effective. Ofsted’s recent inspections of academies and maintained schools in Birmingham have underlined the importance of effective governance. The Department has said that it will monitor the operation of the Regulations through its Advisory Group on Governance. Given the importance of good governance, as demonstrated by recent events, we look to the Department to treat this monitoring as a priority; and we expect that the House may wish to be informed of the outcome of this monitoring by the end of the Session.

B. **Draft Jobseeker’s Allowance (Supervised Jobsearch Pilot Scheme) Regulations 2014**

*Date laid: 4 June*

**Parliamentary Procedure: affirmative**

**Summary:** These Regulations introduce a pilot scheme which will require certain persons claiming Jobseeker’s Allowance to attend 35 hours a week for 13 weeks for supervised job search as a condition of receiving their benefit. The pilots will be conducted in certain areas specified in the Regulations and will be completed by 30 April 2015. While the Committee has in the past commended well-structured pilot exercises as a means of informing policy development, it is unable to do so on this occasion due to a lack of information on how the scheme will work in practice. The Explanatory Memorandum provides minimal information on the pilot scheme and none at all on the cost of the exercise. We found virtually no material in the public domain about this proposal. No evidence is offered on why DWP expects the format and 13 week duration to be more successful than the existing interventions or why a shorter intervention might not be more cost-effective. We understand that the pilots will cost more than the existing programmes to run but not how they are expected to provide value for money, particularly when the candidates selected will be those who have failed to engage with the Work programme. We therefore suggest that, before the House is asked to approve these Regulations, DWP offers, preferably through a revised Explanatory Memorandum, a much clearer explanation of how the scheme is intended to operate and what the perceived costs and benefits of the policy are likely to be.

**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. (First use)**

27. These Regulations have been laid by the Department of Work and Pensions (DWP) under provisions in the Social Security Contribution and Benefits Act 1992, the Jobseeker’s Act 1995 and the Housing Grants, Construction and Regeneration Act 1996. They are accompanied by an Explanatory Memorandum (EM). The report below incorporates additional information supplied by the Department at the Committee’s request.

28. These Regulations introduce a pilot scheme which will require selected persons claiming Jobseekers Allowance (JSA) to attend 35 hours a week for 13 weeks for supervised job search as a condition of receiving their benefit. The pilots will be conducted only in the areas specified in regulation 6 (East Anglia, Black Country, Mercia, Surrey & Sussex and West Yorkshire). Two groups of 3,000 pre-Work Programme claimants and 3,000 post-Work Programme claimants will be included with two further groups of 3,000 claimants receiving the normal Jobcentre Plus service being identified to act as control groups.

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12 The Work Programme supports claimants at risk of long-term unemployment for a period of up to two years. Depending on circumstances, claimants may join this at different stages of their claim to Jobseeker’s Allowance. However, the most common referral points are 39 weeks for 18–24 year olds, and 52 weeks for those aged 25 and over.
29. The EM states that the pre-Work Programme pilot is aimed at those claimants who in the Department’s view are “not taking sufficiently effective steps to secure employment”. The post-Work Programme pilot will target claimants who have “not engaged with the benefits regime and who remain on benefit after 6 months of post-Work Programme support from Jobcentre Plus”.

30. The Committee asked who would decide which candidates fitted these criteria and were informed that claimants will be selected at the discretion of their Jobcentre Plus work coach. Guidance will be produced to support work coaches in this decision but will not be available until September.

31. The Committee also enquired how this would fit with the existing JSA regime because we would have expected that any post-Work Programme candidates who have failed to engage would be subject to sanctions. DWP responded: “While claimants will indeed be subject to sanctions if they fail to carry out the requirements for entitlement and/or activities under their Claimant Commitment, there will still be some who are not as engaged (in a broader sense) with the system of benefits and employment support.”

32. DWP informed us that at the point of referral, claimants would be able to make representations if they felt the pilot would not be appropriate for them. Where the work coach decides that a referral should nevertheless be made, the normal appeal route will be open to a claimant who refuses to attend and is sanctioned as a result. Mandated claimants who fail to attend or participate will not be paid Jobseeker’s Allowance for four weeks (or 13 weeks for a subsequent breach).

33. Claimants in the control group will be randomly selected but will not be informed that they are part of the pilot, as they will continue to receive the standard service.

Content of the pilot

34. The exact content of the pilots has not been specified but the design has been informed by a small-scale test conducted at the Wolverhampton Jobcentre (see paragraph 8.4 of the EM). DWP informed us that potential providers will be making proposals for the scheme’s content as part of their bids, but they need to comply with certain Minimum Service Levels required by DWP:

- “On day one, the provider must: assess the claimant’s skills and experience, IT skills and job readiness; and start to develop an individually tailored action plan and claimant portfolio.

- In week one, the provider must: carry out a number of activities with the claimant on a one-to-one basis, including career options and guidance and reviewing and updating CVs.

- On an ongoing basis, providers must: review and update the claimant’s portfolio, CV and action plan; build the claimant’s confidence and discuss career aspirations; and coach and support the claimant with job applications.”
**Duration and cost**

35. DWP is aiming to launch the pilots on 6 October 2014 and they will need to be completed by 30 April 2015 when these Regulations cease to have effect.

36. The Committee noted that the test scheme at Wolverhampton Jobcentre had only required the claimants to attend for two hours a day for two weeks. We therefore asked DWP why 13 weeks had been chosen as this seems comparatively long for such intensive supervision. DWP said that the evaluation would consider whether this is the optimum duration but 13 weeks “provides sufficient time for claimants to adapt and benefit from the increased requirements, support and enhanced job search routine. At this point in their claim, the pilot participants will have already been supported by the Jobcentre Plus Offer or post-Work Programme support longer than this before referral to the Supervised Jobsearch Pilots. It also gives providers a reasonable amount of time to work with claimants to ensure that the work is effective.” Furthermore, it would allow DWP to monitor the intensity in actual jobsearch as part of a structured daily routine.

**Cost**

37. There is no financial analysis provided about how much these pilots will cost. DWP stated that due to the “on-going commercial competition, we are not able to provide accurate costings and any published estimates may affect the result of the tendering process. We are, however, expecting the per capita cost to be more than both the Jobcentre Plus Offer and the Work Programme due to the intensive support provided. The total spend on the pilots will form part of the evaluation.”

38. Noting that previous schemes have included a premium if the candidate finds a job part way through the course, we enquired how providers will be reimbursed. DWP replied: “For the purpose of this pilot, payment is not related to job outcomes. Providers will be paid for the number of starts on the programme and then for service delivery. The standard of service delivery will be monitored and payment will be related to the providers consistently meeting the required minimum service levels.”

**Role of the provider**

39. DWP told us that the providers are outside suppliers, who will be selected as a result of a procurement process involving suppliers on the Employment Related Support Services (ERSS) Framework. The pilots will be provider-led and we note from paragraph 7.10 of the EM that they will be given “certain Employment Officer functions” enabling them to compel the claimants to apply for vacancies or to accept a job offer with a potential sanction of loss of benefit for a period from three months to three years if the claimant does not comply. As sanctions may mean a loss of benefit to the claimant, we asked what checks would be made to ensure that the providers used these powers consistently and in the same way as Jobcentre staff. DWP responded:

“There will be provider guidance in place detailing their role and responsibilities, to ensure that this function is applied consistently. Consideration of whether to apply any sanction (either higher or lower level) will be undertaken by a Labour Market Decision Maker, and this applies both in Jobcentre Plus and the pilots. The decision must take into account the claimant’s circumstances and any other relevant..."
information to determine whether the claimant had good reason for the failure.”

**Public statements of the policy**

40. Although this is not clear from the EM, DWP confirmed that it is their intention to publish results of both the qualitative and quantitative evaluations.

41. While the Committee has in the past commended well-structured pilot exercises as a means of informing policy development, it is unable to do so on this occasion due to a lack of information on how the scheme will work in practice. We found virtually no material in the public domain about this proposal. The EM provides minimal information on the pilot scheme and none at all on the cost of the exercise: most of the information provided above has been obtained through additional questioning.

42. No evidence is offered on why DWP expects the format and 13 week duration to be more successful than the existing interventions or why a shorter intervention might not be more cost-effective. We understand that the pilots will cost more than the existing programmes to run but not how they are expected to provide value for money, particularly when the candidates selected will be those who have already failed to engage with the Work programme. **We therefore suggest that, before the House is asked to approve these Regulations, the DWP offers, preferably through a revised Explanatory Memorandum, a much clearer explanation of how the scheme is intended to operate and what the perceived costs and benefits of the policy are likely to be.**

**CORRESPONDENCE**

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014

43. We drew this instrument, which introduces a residence test which individuals will need to satisfy in order to access to civil legal aid, to the attention of the House in our 40th Report of Session 2013–14 session on the grounds that it was legally important and gave rise to matters of policy interest. Shailesh Vara MP, Parliamentary Under-Secretary of State for Justice, has subsequently written to us addressing the points raised in that report and we are publishing his letter of 9 June at Appendix 1.
INSTRUMENTS OF INTEREST

Draft Banking Act 2009 (Banking Group Companies) Order 2014
Draft Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014
Draft Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) (Amendment) Regulations 2014
Draft Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014

44. HM Treasury (HMT) has laid these four draft instruments with Explanatory Memoranda (EMs) and impact assessments. In the EMs, HMT describes the purpose of the instruments as being to underpin the extension of the special resolution regime (SRR) to central counterparties (CCPs), investment firms and banking group companies (BGCs). It explains that the Banking Act 2009 (“the 2009 Act”) established a SRR for banks and building societies, giving the UK authorities a permanent framework and tools for dealing with failing UK banks and building societies. The Financial Services Act 2012 amended the Act to extend the scope of the SRR to CCPs, BGCs and investment firms. HMT refers to imminent and longer-term EU legislation which will establish a framework for recovery and resolution for investment firms and holding companies, as well as banks and credit institutions across the EU, but says that, given the uncertainty around the timetable for European legislation, the UK Government have chosen to press ahead with domestic legislation in this area.

45. The draft Banking Act 2009 (Banking Group Companies) Order 2014 specifies conditions which must be met by an undertaking in the same group as a bank if it is to be a “banking group company” for the purposes of the SRR.

46. The draft Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014 relates to the application of the SRR to recognised central counterparties (“RCCPs”), and places restrictions on the making of partial property transfers made in respect of RCCPs. HMT says that it provides legislative safeguards for the benefit of direct and indirect users of clearing services provided by RCCPs, giving such users greater certainty as to how a partial property transfer might affect their contractual rights.

47. The draft Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 serves to exclude from the scope of the SRR firms of a description required by the Capital Requirements Directive to hold the lower minimum level of operating capital of €125,000. HMT says that the failure of an investment firm of this description is unlikely to prove of systemic significance or to threaten UK financial stability.

13 Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.
48. The draft Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) (Amendment) Regulations 2014 serve to apply third party compensation arrangements for partial property transfers to transfers made in respect of investment firms. HMT says that this ensures that creditors are no worse off as a result of resolution action taken by Authorities with respect to a failing investment firm, which results in the transfer of part of the failing entity, than they would have been if the entire entity had entered resolution.

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014

49. In our account of the work of the Committee in the 2013–14 Session, we said that we had found that the volume of secondary legislation laid by the Department for Energy and Climate Change (DECC) in relation to the Green Deal and other schemes, with its frequent use of jargon and opaque terminology, made it difficult for interested parties to understand. This draft Order is another example of that difficulty.

50. In the Explanatory Memorandum (EM), DECC says that the draft Order relates to the Green Deal energy efficiency scheme; and that it amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) in consequence of amendments which were made to the Consumer Credit Act 1974 in February 2014 by the Consumer Credit Act 1974 (Green Deal) (Amendment) Order 2014 (SI 2014/436).

51. DECC explains that, on 1 April 2014, responsibility for consumer credit regulation transferred from the Office of Fair Trading to the Financial Conduct Authority. The consumer credit regulatory regime was therefore transferred from the legislative framework of the Consumer Credit Act 1974 to the framework established by the Financial Services and Markets Act 2000 (“the 2000 Act”). The Regulated Activities Order (RAO) under the 2000 Act sets out which activities are regulated for the purposes of that regime. DECC says that the amendments to the RAO are intended to mirror the approach taken in SI 2014/436, to ensure that the policy introduced in February 2014 will remain in place under the new consumer credit regulatory regime. The drafting of the RAO amendments has therefore been kept in the same terms as SI 2014/436, as far as possible. The EM provides considerably more detail about the effect of the latest draft Order.

52. In the EM, a list is given of 11 other instruments relating to the Green Deal. DECC says that it plans to update its Green Deal Provider Guidance after the draft Order is made. In our view, the extent and opacity of the relevant secondary legislation, which continues to proliferate, points to a need for the Department to tackle the issue at source, by simplifying the scheme and the attendant legislation. We are pursuing the issue with the Minister of State for Energy.

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Draft Housing (Right to Buy) (Maximum Percentage Discount) (England) Order 2014

Housing (Right to Buy) (Limit on Discount) (England) Order 2014 (SI 2014/1378)

53. The Department for Communities and Local Government (DCLG) has laid this draft Order. In the accompanying Explanatory Memorandum (EM), DCLG states that anyone who exercises the right to buy a dwelling-house under the Housing Act 1985 (“the 1985 Act”) may be entitled to a discount equal to a percentage of the price before discount. Hitherto, the maximum percentage discount in respect of a house has been 60%. This Order increases the maximum percentage discount for houses to 70%, bringing the discount limit for houses in line with the figure for flats.

54. In the EM, DCLG says that it consulted in December 2011 and January 2012 on increasing the maximum right to buy discount; and that it saw no need for a further formal consultation because the relevant considerations concerning any increase in the maximum discount had not changed substantially since the consultation in January 2012. In the March 2012 summary of that exercise, however, DCLG said that, having considered the range of views expressed, it had decided not to change discount rates. We asked the Department for further information to explain its decision now to change the discount rate, and we are publishing this as Appendix 2.

55. In parallel with this Order, DCLG has laid the Housing (Right to Buy) (Limit on Discount) (England) Order 2014 (SI 2014/1378), to increase the maximum cash cap on discounts for Right-To-Buy purchases. In 2014–15, the cap is being increased from £100,000 to £102,700 for properties within the 33 London authorities; and from £75,000 to £77,000 for properties in the rest of England. The Government intend to amend the discounts annually in line with increases in the Consumer Prices Index.


56. Due to a procedural error by the Department of Transport, this Order replaces an incorrectly laid instrument originally considered by the Committee in its 24th Report of Session 2013–14 as SI 2013/3031. The Committee drew attention to the policy underlying that instrument because it exempted specified rail vehicles operated by London Underground Limited (LUL) from three requirements under the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (which are aimed at ensuring access to public transport for disabled persons). The Order extended indefinitely certain previous exemptions that were due to expire on 31 December 2013. The Committee drew particular attention to one which related to the length of the audible door closure warning on tube trains, which had been granted only a short-term exemption to May 2015 because LUL had failed to conduct the comparative trials and produce the evidence that it undertook to provide when the original exemption was granted. The Committee alerted the House to provisions in the draft Deregulation Bill which included a proposal to convert the granting of this type of exemption into an administrative process, thereby removing any parliamentary scrutiny from the process, because of previous concerns with how the exemptions system was operating. Those provisions are still in clause 33 and Schedule 9.
of the Bill currently before the House of Commons, and Members may wish
to be aware of these concerns when the Bill comes before this House.

Civil Legal Aid (Remuneration) (Amendment) (No. 4) Regulations 2014
(SI 2014/1389)

57. This instrument revises the mechanism by which lawyers in the Family Court
are paid “bolt-on fees” according to the number of pages of evidence in the
bundle. The Regulations make a new distinction between the “court bundle”
and the “advocate’s bundle”. The President of the Family Division has, in
seeking to streamline procedures and focus the attention of the court on the
issues which need to be resolved, approved changes to Practice Direction
27A to introduce a maximum 350 page limit on the size of a court bundle in
most family cases. However bolt-on fees under the Remuneration
Regulations provide for different bundle bolt-on fees where the court bundle
is 351 pages or more. To ensure that the lawyer is adequately compensated
for work done, the bolt-on fees will be paid according to the size of the
advocate’s bundle, that is the number of pages the advocate is required to
review and assess in preparation for the hearing. Advocates will, however, be
required to produce a paginated list of the documents that have been served
which should be agreed with the other parties, to ensure that only those
documents that are relevant and necessary to the case are included in the
advocate’s bundle for legal aid purposes. The change is expected to be cost
neutral but to contribute to the efficiency of the Family Court by focusing
the documentation that the court is required to consider on key issues.

Public Lending Right Scheme 1982 (Commencement of Variations)
Order 2014 (SI 2014/1457)

58. The Department for Culture, Media and Sport (DCMS) has laid this Order
with an Explanatory Memorandum (EM). In the EM, DCMS states that
audio-books and e-books are non-traditional book material available for loan
in public libraries and from public library websites. Audio-books can be
borrowed in person, and are popular with people with visual impairments
and difficulty in reading traditional books. E-books are electronic books
available via a public library website by download: recent figures show that,
in 2012–13, issues of e-books for public libraries in England were 803,085,
an increase of 80.6% on the previous year.

59. The Public Lending Right (PLR) is the right of authors to receive
compensatory payment for the loans of their printed books from public
libraries in the UK. This Order amends the PLR Scheme so that it covers e-
books downloaded on the premises of a public library, audio-books borrowed
from a public library, and their producers and narrators. (E-books
downloaded outside the premises of a public library are not covered by the
amendments made in the Order, because the relevant provisions in the
Digital Economy Act 2010 do not cover such downloads.)

60. DCMS carried out a public consultation on the proposals over four weeks in
February and March of this year. DCMS has said that, because the PLR is a
targeted and specialist area, it considered that the four-week period was
adequate. 20 responses were received. The Department says that there was
broad support for the majority of the proposals put forward: a Government response was published in May.\textsuperscript{15}

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**

- Anonymous Registration (Northern Ireland) (No. 2) Order 2014
- Banking Act 2009 (Banking Group Companies) Order 2014
- Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014
- Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014
- Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) (Amendment) Regulations 2014
- Donations to Candidates (Anonymous Registration) Regulations 2014
- European Parliamentary Elections (Anonymous Registration) (Northern Ireland) Regulations 2014
- Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014
- Housing (Right to Buy) (Maximum Percentage Discount) (England) Order 2014
- Northern Ireland Assembly (Elections) (Amendment) Order 2014
- Political Parties, Elections and Referendums (Civil Sanctions) (Amendment) (No. 2) Order 2014
- Representation of the People (Northern Ireland) (Amendment) Regulations 2014
- Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2014

**Draft instruments subject to annulment**

- Newark & Sherwood (Electoral Changes) Order 2014
- North Dorset (Electoral Changes) Order 2014
- Revised Guidance issued under section 182 of the Licensing Act 2003
- Wellingborough (Electoral Changes) Order 2014
Instruments subject to annulment


SI 2014/1270 General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2014

SI 2014/1272 General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) (Amendment) Regulations Order of Council 2014

SI 2014/1273 General Medical Council (Licence to Practise and Revalidation) (Amendment) Regulations Order of Council 2014


SI 2014/1275 Misuse of Drugs and Misuse of Drugs (Safe Custody) (Amendment) (England, Wales and Scotland) Regulations 2014

SI 2014/1277 Portsmouth Harbour (Abolition of Portsmouth and Gosport Joint Board) Revision Order 2014

SI 2014/1309 Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2014

SI 2014/1333 Channel Tunnel Rail Link (Planning Appeals and Assessment of Environmental Effects) (Revocation) Regulations 2014

SI 2014/1362 European Communities (Designation) Order 2014


SI 2014/1376 Misuse of Drugs (Designation) (Amendment) (No. 2) (England, Wales and Scotland) Order 2014


SI 2014/1378 Housing (Right to Buy) (Limit on Discount) (England) Order 2014

SI 2014/1382 Crossrail (Insertion of Review Clauses) Regulations 2014

SI 2014/1383 Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2014

SI 2014/1386 Child Support (Consequential and Miscellaneous Amendments) Regulations 2014

SI 2014/1389 Civil Legal Aid (Remuneration) (Amendment) (No. 4) Regulations 2014
SI 2014/1398 Flexible Working Regulations 2014
SI 2014/1403 Energy Efficiency (Encouragement, Assessment and Information) Regulations 2014
SI 2014/1451 Immigration (European Economic Area) (Amendment) Regulations 2014
SI 2014/1453 Child Trust Funds (Amendment No. 2) Regulations 2014
SI 2014/1457 Public Lending Right Scheme 1982 (Commencement of Variations) Order 2014
APPENDIX 1: LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (AMENDMENT OF SCHEDULE 1) ORDER 2014

Letter from Shailesh Vara MP, Parliamentary Under-Secretary of State for Justice at the Ministry of Justice, to Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee

I am writing to respond to the 40th report of the House of Lords Secondary Legislation Scrutiny Committee (SLSC), published on 8 May 2014, which considered the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014 (“the Order”).

The Government believes that, in principle, individuals should have a strong connection to the UK in order to benefit from the civil legal aid scheme and that the residence test we have proposed is a fair and appropriate way to demonstrate that connection. The draft Order would therefore amend the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) to introduce a residence test for civil legal aid. The test will require an individual to be lawfully resident in the UK, Crown Dependencies or British overseas territories at the time they apply for civil legal aid and secondly, to have been lawfully resident there for a continuous period of 12 months in the past.

There will be a number of exceptions to the test, set out within the draft Order, for asylum seekers, successful asylum seekers, resettled refugees, serving members of Her Majesty’s UK armed forces and their immediate families, children under 12 months (from the second limb of the test only) and certain types of case in Schedule 1 to LASPO which broadly relate to an individual’s liberty, where they are particularly vulnerable or where the case relates to the protection of children.

Other reports, litigation and timing of debates

Your Committee’s report notes the interest of the Joint Committee on Statutory Instruments (JCSI) in the residence test and the Order. I understand that the JCSI formally considered the Order at its meeting on 7 May and requested a memorandum from the Department on vires. This was submitted on 13 May and will be considered by the JCSI in due course. In line with the standing orders of the House of Lords and usual practice, no Parliamentary debate will be scheduled in advance of the JCSI completing its consideration of the Order.

Your Committee’s report also notes the interest of the Joint Committee on Human Rights (JCHR) in the proposed residence test. The JCHR published a detailed report considering the policy as a whole on 13 December 2013 and the Government responded on 27 February 2014 setting out a number of further exceptions and modifications to the test. Whilst I understand that the JCHR will of course take a continuing interest in the residence test and the Order, I do not agree with your Committee’s recommendation that Parliamentary debates should be postponed pending a further report from the JCHR. I do not consider that this would be necessary given the substantive consideration of the residence test already carried out by the JCHR and I am not currently aware of any intention on the part of the JCHR to specifically consider or report upon the Order.

Finally, your Committee’s report notes that the residence test is the subject of judicial review proceedings, with a substantive hearing having been held on 3–4 April 2014. I do not agree with your Committee’s recommendation that it would
be premature to debate the draft Order before judgment in that hearing is delivered. At the time of writing no judgment has been delivered and I have no specific indication as to when this will be handed down. In the circumstances, I do not think it would be reasonable to expect Parliament to wait for an indefinite period of time before any debates can be held. The Government has clearly set out its views on the issues raised within the litigation I note that the courts did not consider it necessary or appropriate to delay a substantive hearing until Parliamentary consideration of the Order. Notwithstanding any future decision of the Court, I consider Parliament is entitled to take a view now on whether or not to approve the draft Order, having regard to the arguments which have been made.

Operation of the test and guidance
Your Committee’s report seeks clarity on a number of questions regarding the operation of the residence test. I should reiterate that it has always been the intention, as signalled in the Explanatory Memorandum to the draft Order, that the Government would in due course lay a further statutory instrument amending the Civil Legal Aid (Procedure) Regulations 2012 (“the Procedure Regulations”). These regulations are made under LASPO and make detailed provision about the making and withdrawal of determinations that an individual qualifies for civil legal services. The Procedure Regulations are thus the appropriate place to make provision on the further operational points queried by your Committee.

In order to aid Parliamentary consideration of the draft Order, we published a Policy Statement on 31 March setting out our intended approach to evidential requirements, which would be reflected in the planned further instrument amending the Procedure Regulations. However, I appreciate your Committee’s concern to ensure that Parliament is fully informed of how the residence test will operate in advance of any debates on the draft Order. I am therefore happy to respond to the specific questions raised in your report.

To further aid Parliamentary consideration of the draft Order, I also intend to publish a draft of the instrument we intend to subsequently make amending the Procedure Regulations. This will be a draft instrument only and is therefore likely to be amended before it is made, including in response to points raised in debate on the draft Order. Nonetheless, I hope publication of the draft instrument will be welcomed. I will write again to your Committee shortly with a copy of the draft instrument and will arrange for copies to be placed in the Library of both Houses as well as on the Transforming Legal Aid consultation webpage at https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps.

Urgent cases
We recognise that there will be some cases where the need for legal advice and/or assistance is urgent and it would not be appropriate to require evidence of residence in advance of application. There is already some provision at Part 5 of the Procedure Regulations (regulations 50–53) which ensure that emergency representation can be provided in certain circumstances on limited evidence (e.g. demonstrating that the financial means test is satisfied), provided that the Director of Legal Aid Casework at the Legal Aid Agency considers it would be in the interests of justice to do so. In appropriate cases, the Director may require any necessary documentation to be subsequently provided within a specified time limit.
I am happy to clarify that the existing emergency representation provisions set out in the Procedure Regulations will also apply to the evidence required to satisfy the residence test. Thus the Director will be able to determine an application for emergency representation without receiving the evidence specified by the Procedure Regulations where the Director considers it would be in the interests of justice to do so. Where appropriate, the Director will be able to require that evidence proving that the residence test is satisfied is subsequently provided.

**Flexibility and appeals**

As set out in our response to the JCHR and subsequently in the Explanatory Memorandum to the draft Order, we intend that where the personal circumstances of the client (e.g. age, mental health, homelessness) may make it impracticable for evidence to be supplied, the legal aid provider will be able to adopt a flexible approach. This is not a blanket exception and in such cases provider will be expected to take all reasonable steps to establish, as far as possible, that the client meets the residence test requirements. The provider will need to record the reasons for its approach to the residence test, including any reliance on the provision for flexibility, in an attendance note. The Legal Aid Agency will review such notes and, where the provider has clearly not acted in compliance with the Procedure Regulations any claim for remuneration relating to that matter will disallowed. The Legal Aid Agency may take further action under the contract if they consider this appropriate, depending on the facts of the case.

Where an application for civil legal aid is refused on the grounds that the residence test is not met and the individual considers that they are, in fact, lawfully resident (or that the provider should have taken a flexible approach in view of their personal circumstances or that one of the exceptions to the residence test applies), existing rights of review will apply as follows. For Controlled Work an individual will be entitled to request an internal review under the provider’s own complaints process. For Licensed Work, where a determination is made by the Legal Aid Agency that the case is out of scope the client will have a right of review by the Agency. In respect of both Controlled and Licensed Work, the applicant will ultimately be able to seek judicial review of any decision not to provide funding, as is the case with other decisions in respect of the scope of the civil legal aid scheme.

I am happy to put on record my appreciation and admiration for the work of the SLSC and I am grateful for the opportunity to respond to set out the Government’s views. I hope that this letter clarifies the issues raised in your Committee’s 40th report and I trust it will assist the subsequent Parliamentary debates. I will place a copy of this response in the Library of both Houses.

9 JUNE 2014
SHAILESH VARA
APPENDIX 2: DRAFT HOUSING (RIGHT TO BUY) (MAXIMUM PERCENTAGE DISCOUNT) (ENGLAND) ORDER 2014

Additional information from the Department for Communities and Local Government

Q1: Given the Government’s decision after the 2011–12 consultation not to change the discount rate, and the statement in the latest EM that the relevant considerations concerning any increase in the maximum discount have not changed substantially since the consultation in January 2012, what was the basis for the decision to effect such an increase now?

A1: At the time that the consultation “Reinvigorating Right to Buy and One for One” was published, the Government’s main focus was to address concerns that Right to Buy discounts were not effective in enabling social tenants to exercise their Right to Buy. In terms of the discounts, the consultation and the respondents focussed on the proposal to increase the cash cap. The consultation also sought views on whether to increase the minimum and maximum discount (percentage) rates. The majority of those that commented on the discounts rates felt the rates should remain as they were but there was a degree of support for an increase in the rates.

The Right to Buy scheme was originally designed so that the discount was for a set percentage of the value of the property. The percentage depended on the length of time for which someone had been a public sector tenant. The discount cap was introduced to provide a ceiling to avoid excessive discounts in high value areas. However, the previous Government’s policy to reduce discount caps had resulted in the cap becoming the main constraint on the size of discounts, rather than – as initially intended – the percentage rate. The Government’s view was that the simplest and most immediate way of improving the Right to Buy offer at that time was to introduce the £75,000 cap across the country. This meant that, in many more cases, in more parts of the country, the cap was no longer the limit on the discount to which a tenant is otherwise entitled. In 2013, the Government further increased the cap to £100,000 in London in recognition of the unique nature of the housing market compared with the rest of the country.

As part of the commitment to continuously review the effectiveness of the discounts, the Government has now taken the decision to increase the maximum percentage discount for houses, to bring it in line with the maximum percentage discount available for flats. This provides tenants with a clear message on the discount levels available for all tenants and ensures that those living in houses will be able to accrue the same percentage discount as that available to those living in flats. In non-high-value areas (i.e. those not limited by the cash cap) this will mean more tenants will be entitled to the same maximum percentage discounts regardless of whether they live in a house or flat.

Increasing the percentage for houses will help more tenants to exercise their Right to Buy. In particular, this change will make home ownership more accessible for older tenants who have lived within their communities for a significant period of time and are most likely to qualify for the maximum percentage discount. These are long-term tenants who may currently be prevented from taking up their Right to Buy because they are unable to access a sufficient level of mortgage finance.
Q2: What views were expressed to the Government by the targeted group (mentioned in paragraph 8.2 of the EM) which included the Council of Mortgage Lenders, Local Government Association, Building Societies Association and National Housing Federation?

A2: Ahead of introducing the proposed increase in the maximum percentage discount for houses, we invited representations from local authorities (through the Local Government Association knowledge hub) and the main umbrella organisations representing social landlords themselves – the Local Government Association, the National Housing Federation and the Council of Mortgage Lenders. None had specific concerns or comments to make on the discount changes per se. The National Housing Federation had wider concerns about further changes to the Preserved Right to Buy policy in line with previous concerns they had raised about the general impact of the policy on Housing Associations. We have separately discussed these concerns with the Federation and with the Housing Regulator. We recognise that a significant increase in the number of Preserved Right to Buy sales could put a strain on the business plans of some housing associations, and we would want to be aware of that at an early stage if this becomes the case.

Our view at the moment, however, based on the evidence that the Federation has submitted, and the other feedback that we have received, is that the impact of increased sales as a result of policy changes since April 2012 should be manageable for the vast majority of housing associations.

13 June 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 17 June 2014 Members declared the following interests:


Lord Bichard
Non-executive Director, The Key (service to school leaders in England and Wales)

General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2014 (SI 2014/1270)

General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) (Amendment) Regulations Order of Council 2014 (SI 2014/1272)

General Medical Council (Licence to Practise and Revalidation) (Amendment) Regulations Order of Council 2014 (SI 2014/1273)

Lord Eames
Married to Lady Christine Eames, Lay Member of the General Medical Council

Attendance:

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