Correspondence:
Maternity Allowance (Curtailment) Regulations 2014
Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014

Includes 6 Information Paragraphs on 7 Instruments

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HL Paper 76
**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 6.

**Publications**

The Committee’s Reports are published on the internet at [www.parliament.uk/seclegpublications](http://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**

Eighteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this report.

CORRESPONDENCE

*Maternity Allowance (Curtailment) Regulations 2014 (SI 2014/3053)*  
*Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014 (SI 2014/3054)*

1. When considering these instruments the Committee noted that they breached the 21-day rule by 10 days, even though they only relate to babies due on or after 5 April 2015. We sought further justification from the Department for Work and Pensions for the breach (see correspondence in Appendix 1) given that we had doubts about whether there would have been any detriment had the legislation not been brought into force until the normal date of 11 December. We regret the Minister’s letter does nothing to dispel our doubts. **In situations like this, where two Departments have to coordinate their legislation, care should be taken to ensure their timetable allows sufficient time for the normal scrutiny process.**

INSTRUMENTS OF INTEREST

*Draft State Pension Regulations 2015*

2. The Pensions Act 2014 introduces a new state pension for people reaching state pension age on or after 6 April 2016. These Regulations support the introduction of the new single tier scheme. In particular, they:

- specify a minimum of 10 years’ National Insurance contributions or credits before a person will qualify for any new state pension. Entitlement to a full rate pension under the new scheme will require 35 years of paid or credited UK National Insurance contributions (contributions made in another EEA country will not count);
- specify at 5.8% per annum the rate at which a person who defers claiming their new state pension will accrue an increase to their new state pension when they finally claim it;
- provide that the new state pension will not generally be payable to prisoners;
- make transitional provisions enabling a person in the new state pension scheme to inherit a deferral payment where their deceased spouse or civil partner had deferred a state pension under the current scheme; and
• make transitional amendments to regulations relating to the sharing of state scheme rights following divorce or dissolution of a civil partnership for provision accrued under the current scheme. There will be no shareable state scheme rights under the new scheme. The new state pension will be based solely on a person’s own National Insurance record.

**Draft Youth Justice Board for England and Wales (Amendment of Functions) Order 2014**

3. The purpose of this Order is to give additional functions to the Youth Justice Board for England and Wales (“the Board”), so that it can more effectively prevent offending and reoffending by children and young persons. This Order extends the Board’s functions in line with the Ministry of Justice’s *Transforming Youth Custody* consultation response\(^1\) and recommendations made by the Triennial Review of the Youth Justice Board.\(^2\) Changes proposed include: an extension of grant-making powers to fund new services such as the delivery and running of Junior Attendance Centres by local authorities, rather than the National Offender Management Service; enabling the Board to provide assistance to local authorities and others in relation to computerised case management systems; and, requiring the Board to take responsibility, on behalf of the Ministry of Justice, for managing education delivery in directly managed secure young offender institutions catering for 15–17 year old young offenders.

4. The Order also gives the Board new concurrent powers with the Secretary of State to release temporarily trainees from secure training centres (a type of youth detention accommodation for young people between 12 and 17 years). This power also includes a power to recall trainees at any time during the period of temporary release, whether or not the conditions of the temporary release have been broken. Recall could occur if a trainee breaches release conditions through, for example, failing to return at a specified time, entering a prohibited location or using phones or the internet where this has been specifically prohibited. The ability to recall even if conditions have not been breached provides some flexibility in the management of temporary release if, for example, for safety reasons, it is necessary for an activity to be ended earlier than planned. The Order does not give the Board new powers to recall to custody young people released on licence more generally.

**Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory (Amendment) Regulations 2014 (SI 2014/3075)**

5. The Department for Energy and Climate Change has laid these Regulations to make amendments to an earlier instrument\(^3\) which governs the process for submitting and approving applications relating to Clean Development Mechanism (“CDM”) and Joint Implementation (“JI”) projects under the Kyoto Protocol. These are “flexible mechanisms” which enable Parties to the

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\(^1\) *Transforming Youth Custody* – Government response to the consultation.

\(^2\) Triennial Review of the Youth Justice Board for England and Wales – Combined Report on Stages One and Two.

\(^3\) The Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory Regulations 2005 (SI 2005/2903).
Protocol, and private entities, to invest in projects which reduce carbon emissions and generate carbon credits in respect of carbon reductions which result from those projects. The Regulations transfer the function of determining appeals relating to CDM and JI project applications from the Secretary of State to the First-tier Tribunal; replace a criminal sanction relating to CDM/JI project applications with a civil penalty; introduce a new right of appeal in connection with the civil penalty; and make a number of other minor clarifying amendments. We sought further information from the Department about its statement that the replacement of criminal sanction by a civil penalty would be “less of a burden”; and also about the effectiveness of such a penalty to deter bribery. We are publishing that information at Appendix 2.


**Non-Commercial Movement of Pet Animals (Amendment) Order 2014 (SI 2014/3158)**

6. The Committee considers it bad practice if Government Departments arrange formal consultation exercises which largely coincide with holiday periods, such as the month of August, since this makes it difficult for interested parties to prepare and submit responses. In the case of the instruments listed below, both the Department for Energy and Climate Change (DECC) and the Department for Environment, Food and Rural Affairs (Defra) arranged consultation over August; and, while both Departments have explained that they took other steps to alert stakeholders and find out their views, the Committee remains concerned that the timing of the formal consultation process may have served to disadvantage interested parties.


7. DECC has laid these Regulations with an Explanatory Memorandum (EM). They implement an EU Regulation\(^4\) which reduces the scope of the Aviation EU ETS\(^5\) to an intra-EEA scope from 1 January 2013 until 31 December 2016, meaning that it will only cover emissions from flights between two EEA airports. In order to allow time to implement these new provisions, there is an extraordinary two-year compliance cycle for 2013 aviation emissions: data for both 2013 and 2014 are to be reported and allowances are to be surrendered by 31 March 2015 and 30 April 2015 respectively. The EU Regulation also introduces a new exemption for non-commercial operators emitting less than 1,000 tonnes CO\(_2\) per year until 2020, as well as simplified procedures for operators emitting less than 25,000 tonnes CO\(_2\) per year.

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\(^5\) The Aviation EU ETS requires all aircraft operators that operate flights into or out of aerodromes in the EEA (e.g. a flight between New York and London) to monitor their CO\(_2\) emissions from 1 January 2010; to submit an independently verified report of those CO\(_2\) emissions to their regulator by 31 March of the following year; and, from 30 April 2013, to surrender the corresponding number of EU emissions allowances to their regulator.
8. In the EM, DECC says that it held four stakeholder workshops in November and December 2013 and February and June 2014 to update stakeholders on negotiations and the likely outcome; and that public consultation was held over a six-week period from 11 August to 22 September 2014, receiving seven responses which broadly sought clarity on how the proposed amendments would impact on their operations. We sought further information about this process from DECC, in particular about the decision to arrange public consultation over the summer holiday, and we are publishing DECC’s responses as Appendix 3. The Department has confirmed that the Government response has now been published.  

*Non-Commercial Movement of Pet Animals (Amendment) Order 2014 (SI 2014/3158)*

9. Defra has laid this Order with an Explanatory Memorandum (EM). Defra states that the rules for the non-commercial movement of pet dogs, cats and ferrets into and around the European Union are set out at EU level: their purpose is to protect against the spread of rabies. A new EU pet travel Regulation \(^7\) ("the EU Regulation"), which replaces a European Regulation from 2003, will come into effect on 29 December 2014. Defra says that the EU Pets Regulation is directly applicable but offers Member States flexibility in a number of areas; this Order ties down these areas of flexibility and updates the provisions of previous domestic legislation, \(^8\) to enable effective enforcement of the EU Regulation in Great Britain.

10. The changes made include the EU Regulation’s requirements on the minimum qualifications required for persons, other than veterinarians, permitted to implant micro-chips to prepare a pet for overseas travel: Defra says that the Order implements these requirements in line with proposed domestic micro-chipping requirements in England and Wales, which will apply to all dogs. \(^9\) In addition, where a pet animal has complied with all applicable preventive health measures other than the requirements on rabies, the Order sets at four months the maximum period during which the animal is required to remain in quarantine. \(^10\) Defra says that this is consistent with the maximum period that applies to other animals that require quarantine under the Rabies Order.

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\(^8\) Notably, the *Non-Commercial Movement of Pet Animals Order 2011* (SI 2011/2883).

\(^9\) In October of this year, Defra laid the draft Microchipping of Dogs (England) Regulations 2014 which require that, from April 2016, all keepers of dogs in England must have their dog micro-chipped. We drew these Regulations to the special attention of the House in our 13\(^{th}\) Report of the current Session (HL Paper 64).

\(^10\) Where a non-compliant pet is licensed into quarantine under the Rabies Order, or where an owner applies in advance for a licence (for example when the owner needs to travel urgently at short notice), the EU Regulation requires these pets to remain in quarantine for a maximum period of no more than six months.
11. Defra held a consultation on the changes to the pet travel scheme over six weeks from 4 August to 14 September 2014. There were 170 responses: 45% of respondents agreed that the changes to the pet travel scheme would bring benefits, whilst a further 35% indicated that they neither agreed nor disagreed. Defra notes that many respondents felt strongly that the introduction of a four-month maximum quarantine period should only go ahead if supported by scientific evidence regarding the incubation period of rabies. Defra has published its consultation response\(^\text{11}\) which refers to such evidence. We sought further information from Defra about its handling of consultation on this Order, and are publishing that information as Appendix 4.

\textit{Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014 (SI 2014/3140)}

12. The Department for Business, Innovations and Skills (BIS) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. In replacing an earlier instrument from 2009,\(^\text{12}\) the Regulations reduce the list of sensitive words and expressions for which companies, limited liability partnerships (“LLPs”) and businesses need approval to use in their name. BIS explains that, when a company incorporates, it is required to have a registered name, which cannot be one that is already in use by another company; and there are also circumstances where it may not be appropriate for a company to use a certain word within its name. BIS gives as an example that a company cannot use the word “government” unless it has approval from the Secretary of State. Any word or expression that is on the sensitive word or expression list must have approval from the Secretary of State, and views must be sought from any other appropriate body before the word or expression can be used in a company or business name.

13. While the word “Regulator” remains on the list for which approval must be obtained, one of the words which this instrument removes from that list is “Regulation”. We asked BIS for further information about this decision, and we are publishing that information as Appendix 5. We note that, despite the changes made to the list, Companies House has a general power under the Companies Act 2006\(^\text{13}\) which means that, should a name suggest a connection with Government, Companies House can require the company to seek the approval of the Secretary of State before granting the whole name. It is clearly important that Companies House remains vigilant in case a name wrongly suggests that the company concerned is acting on behalf of Government.

\(^\text{11}\) \url{https://www.gov.uk/government/consultations/pet-travel-planned-changes-to-the-eu-scheme}


\(^\text{13}\) Section 54.
Criminal Justice and Data Protection (Protocol No. 36)(Amendment) Regulations 2014 (SI 2014/3191)

14. The original Regulations were laid in draft on 3 November 2014 and were debated on 17 November 2014. That debate also included discussion on the wider issue of the UK’s opt-in to 35 EU police and justice measures. In our 13th Report of this session, we concluded that, although poorly explained, the original Regulations were largely administrative. The original instrument was also considered by the Joint Committee on Statutory Instruments which identified 13 drafting errors. Due to the accelerated timetable, instead of the normal procedure of a revised draft of the affirmative being laid, the Home Office undertook to correct the errors by means of a negative instrument to coincide with the making of the main Regulations. That is the purpose of this instrument and why it breaches the 21-day rule. It is purely to correct drafting errors and does not affect the policy.

14 HL Paper 64.
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**

- Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2014
- State Pension Regulations 2015
- Youth Justice Board for England and Wales (Amendment of Functions) Order 2014

**Draft instruments subject to annulment**

- Erewash (Electoral Changes) Order 2015
- High Peak (Electoral Changes) Order 2015
- West Dorset (Electoral Changes) Order 2015

**Instruments subject to annulment**

- 8972 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
- SI 2014/3053 Maternity Allowance (Curtailment) Regulations 2014
- SI 2014/3054 Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014
- SI 2014/3075 Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory (Amendment) Regulations 2014
- SI 2014/3076 Merchant Shipping (Prevention of Air Pollution from Ships) and Motor Fuel (Composition and Content) (Amendment) Regulations 2014
- SI 2014/3078 Occupational Pensions (Revaluation) Order 2014
- SI 2014/3099 Healthy Start Vitamins (Charging) Regulations 2014
- SI 2014/3104 Fish Labelling (Amendment) Regulations 2014
- SI 2014/3120 Heat Network (Metering and Billing) Regulations 2014
- SI 2014/3134 Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations 2014
Statistics of Trade (Customs and Excise) (Amendment) Regulations 2014

Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014

Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2014

Non-Commercial Movement of Pet Animals (Amendment) Order 2014

Criminal Justice and Data Protection (Protocol No. 36) (Amendment) Regulations 2014
APPENDIX 1: CORRESPONDENCE ON MATERNITY ALLOWANCE (CURTAILMENT) REGULATIONS 2014 (SI 2014/3053), AND STATUTORY MATERNITY PAY AND STATUTORY ADOPTION PAY (CURTAILMENT) REGULATIONS 2014 (SI 2014/3054)

Letter from Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee, to Rt Hon. Steve Webb MP, Minister of State at the Department of Work and Pensions

Section 3 of the Explanatory Memorandum (EM) accompanying the instruments states that the normal 21-day period between the laying of an instrument and its being brought into force (“the 21-day rule”) has been breached on this occasion because DWP needed to align the commencement date for these regulations with two instruments laid by the Department for Business, Innovation and Skills (BIS): namely, the Statutory Shared Parental Pay (General) Regulations 2014 (made as 2014/3051) and the Shared Parental Leave Regulations 2014 (made as 2014/3050), which were subject to the affirmative resolution procedure. The BIS Regulations were laid just before the summer recess, on 21 July, and made on 18 November 2014. This was broadly in line with guidance from the Whips which advises that six weeks should be allowed for an instrument to pass through scrutiny.

The DWP Regulations, which are subject to the negative procedure, were laid on 20 November, breaching the 21-day rule by 10 days so that they could also take effect on 1 December 2014. Our first impression is that it was extremely unlikely that it would have been feasible for those negative instruments to comply with the normal scrutiny timetable.

Paragraph 3.4 of the EM reinforces this by explaining that DWP had “considered delaying the coming into force date of the DWP Regulations in order to avoid breaching the 21-day rule. However, as the BIS Regulations cannot operate until the DWP Regulations have come into force, this would have meant that the entire shared parental leave and pay system could not operate.”

We are aware that the DWP Regulations could not be laid before the BIS regulations were made because the Joint Committee on Statutory Instruments, rightly, does not allow Departments to anticipate Parliament’s agreement to an affirmative instrument.

However, we might have found these arguments more persuasive had paragraph 7.6 of the EM not explained that this change will affect women who are due to give birth on or after 5 April 2015, or parents who adopt a child after 5 April 2015. 1 December is 18 weeks before the earliest certified date of confinement. When questioned about this, your officials stated that the new provision is required to cater for babies due from 5 April 2015 but who are born prematurely. In addition, they said some mothers “might want to give their employers a curtailment notice at the point they notify their intention to take maternity leave – which is 15 weeks before the due date – so could be before Christmas for those due in early April.”

Having considered this further information, the Committee none the less concluded that the 21-day period was breached unnecessarily because, had the DWP legislation been brought into effect on the correct day (11 December), that would still have left over 16 weeks to the 5 April 2015 operative date.
Our view is further supported by a Press Notice on the Government website yesterday which states that mothers “will still take at least 2 weeks of maternity leave after the birth but after that working couples have the opportunity to share up to 50 weeks ...” which shifts the operative date forward a further two weeks. We also note that footnote 3 to that Press Notice states: “The pattern of leave must be agreed between the employer and employee, with 8 weeks’ notice”. We would be grateful for clarification about the difference between this period and the 15-week period mentioned by your officials.

We would also be grateful to receive further evidence on why a commencement date of 1 December was thought necessary. Our impression is that the likelihood of any mother taking action under this system before Christmas 2014 is extremely slim and we would invite you to provide evidence of the numbers that you anticipate will apply for shared leave during the period 1 to 11 December.

I am also copying this letter to Jo Swinson MP, Parliamentary Under Secretary of State at BIS, for any comments she may wish to add.

3 December 2014

Letter from Rt Hon. Steve Webb MP to Lord Goodlad

I sincerely regret that the Department for Work and Pension (DWP) had to breach the 21 day rule in this particular case and accept that it is far from ideal.

In your letter you have requested further evidence on why a commencement date of 1 December was thought necessary. The Shared Parental Pay and Shared Parental Leave Scheme (the Scheme) is a Department for Business, Innovation and Skills (BIS) policy initiative. The new statutory arrangements will apply in respect of a child whose expected week of childbirth falls on or after 5 April 2015. It is usual for legislation that is commenced with a child’s due date to come into effect earlier to enable an early birth to benefit from the statutory arrangements and provide sufficient time to enable those women who have premature births to access the Scheme. The start date of the Scheme was carefully considered to come into effect in advance of the 15 week period necessary for an expectant mother to give her employer notice that she would be taking maternity leave and an expectant father to notify his employer that he would be taking paternity leave. Such parents with a baby due on or after 5 April are required to notify their employers before Christmas.

Regarding your request for clarification about the difference between the eight week notice period for employers and employees to agree a pattern of leave and the notice period of 15 weeks before the expected week of birth mentioned by DWP officials, these two issues are different. The 8 week notification is the minimum notice period required by the Regulations for a woman to notify her intention to curtail her maternity pay or her maternity allowance. A similar 8 week notice period is required by the Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014 to curtail maternity leave, and 8 weeks’ notice is required by the Statutory Shared Parental Pay (General) Regulations 2014 and the Shared Parental Leave Regulations 2014 (BIS Regulations) to notify eligibility for shared parental leave and pay and to book a period of absence. Eight weeks’ notice is therefore required for employers and employees to agree a pattern of shared parental leave. By contrast, a woman must notify her employer 15 weeks before her due date of her intention to take maternity leave and the date from which she wants to start her maternity leave.
Whilst a woman cannot end her maternity leave for at least 2 weeks after the birth for health and safety reasons, she can give notice before the birth to curtail her maternity leave and pay or allowance on a specific date, which would enable her partner to start taking shared parental leave and pay before her maternity leave has ended. However, notwithstanding the different notice periods required for taking maternity leave (15 weeks) and curtailing maternity leave and/or statutory maternity pay or maternity allowance and notifying employers of an intention to take shared parental leave and/or pay (eight weeks), it was anticipated that some women giving notice of their intention to take maternity leave might wish, at the same time, to be able to give their employer notice of their intention to curtail that leave and/or their statutory maternity pay in order to opt into shared parental leave and pay.

We do not have figures on the estimated numbers of those who will take advantage of the Scheme from 1 to 11 December 2014.

I would like to add that the policy intention of choosing the 1 December to bring the Regulations into force must be considered in the light of the genuine and well-founded belief by BIS, having laid their affirmative Regulations on 21 July, that this would allow sufficient time to bring all elements of the Scheme into effect without breaching the 21 day rule. The BIS Regulations came before the Secondary Legislation Scrutiny Committee on the 14 October and the Joint Committee on Statutory Instruments on the 15 October which would have enabled the affirmative Regulations to be debated and approved by both Houses by early November. Unfortunately Parliamentary time was not available for this to happen and the BIS Regulations were made on the 18 November. As you rightly point out in your letter, the DWP Regulations could not be laid before the BIS Regulations were made because the Joint Committee on Statutory Instruments does not allow Departments to anticipate Parliament’s agreement to an affirmative instrument. DWP had no choice but to breach the 21 day rule in order to follow the Joint Committee on Statutory Instruments’ Twenty-second Report of Session 2010–12. Paragraph 3.7 of that report states that the Committee considers it conceptually incomplete for instruments to be made which refer to other legislation which does not exist and that it would “discourage Departments from doing so”.

I would also add that careful consideration had been given to how to ensure that breach of the 21 day rule did not occur, including discussions with the Whips Office to try and expedite the debates. Steps were also taken, if a breach did occur, to mitigate the possibility of all those affected by the Regulations being unaware of their content. This included publishing the finalised drafts of the DWP Regulations on 15 October on GOV.UK and DWP making the draft DWP Regulations available to the Vote Office for Members of Parliament and the Printed Paper Office for Peers, prior to the debates of the BIS affirmative Regulations. In addition, SIS wrote to an extensive list of interested stakeholders to draw their attention to the draft Regulations. Whilst, therefore, the 21 day rule has regrettably been breached, the mitigating steps taken mean that in practical terms any resulting detriment to those affected by these Regulations has been minimised as far as possible.

8 December 2014
Appendix 2: Greenhouse Gas Emissions Trading Scheme (Amendment) and National Emissions Inventory (Amendment) Regulations 2014 (SI 2014/3075)

Additional information from DECC

Q1: The Committee noted that the existing criminal sanction is being replaced by a civil penalty, and that the EM says that this will be less of a burden: could you spell out more clearly why this change implies “less of a burden” for those affected?

A1: Imposing a civil penalty will be less of a burden for the Government, businesses and individuals and is in line with the Government’s better regulation agenda. Criminal sanctions are costly and time-consuming for both businesses and regulators. In order to issue a criminal sanction the Government must undertake a costly, time-consuming and slow process, which involves the preparation of prosecution documentation and attendance at court. The cost or expense of bringing criminal proceedings is significant and in this instance is seen to be disproportionate to the offence likely to be committed. In addition many of the companies that submit applications to the UK Designated National Authority (DNA) or Designated Focal Point (DFP) are registered outside the UK, this further complicates the Government’s ability to issue criminal sanctions.

Q2: The Committee also considered that the sector concerned is a high-value industry in which substantial sums may change hands in third countries as bribes, and questioned how a fine of £1,000 might be thought sufficient to counteract such behaviour – could you also respond to that question.

A2: As noted in the EM, the civil penalty will be set at £1000, this level of penalty is consistent with similar regimes such as the National Emissions Inventory Regulations 2005. It is worth noting that the £1000 penalty is similar to other regimes used across Government. For example the penalty for late tax returns and penalties for mistakes in tax return. The consultation HMRC conducted when developing its new penalty regimes for late filing or late payment of tax indicated that when dealing with high value industries, the fact that a penalty is being charged (and will have to be included in company accounts) can have a large deterrent effect, perhaps more than the level of the penalty.

Relating to the issue of bribery in host countries, the new civil penalty fine (and the criminal penalty that it replaces) is applicable when false or misleading information is submitted to the DNA/DFP in connection with an application made under regulation 5 of the 2005 Regulations and so is not specifically intended to address bribery in the host country at the implementation stage. For the reasons referred to above and set out in the EM, the Department considers that a penalty of £1000 is sufficient to provide an appropriate incentive to ensure that accurate information is provided to the DNA/DFP as part of the application process. In addition, the UNFCCC process has a number of checks and balances built in to ensure that credits are only issued to projects that generate monitored and verified emissions reductions. For example the Clean Development Mechanism (CDM) Executive Board requires that project participants in a CDM project contract a designated operational entity (DOE) to verify the data which has been collected by the project participants. The DOE is an independent auditor accredited by the CDM Executive Board.

8 December 2014
APPENDIX 3: GREENHOUSE GAS EMISSIONS TRADING SCHEME (AMENDMENT) REGULATIONS 2014 (SI 2014/3125)

Additional information from DECC

Q1: Why did DECC arrange this consultation over only six weeks, of which three fell in the August holiday period?

A1: As these regulations were implementing an already agreed EU Regulation and as such are not considered to be contentious it was agreed with Parliamentary Unit and Better Regulation Team that a 6 week period for consultation would be sufficient. Consideration was given to the fact that the consultation fell during the summer holidays but the impact of this was deemed to be small given the that a high level of informal consultation with stakeholders had already taken place (primarily through the workshops mentioned in the EM). In addition there was a limited number of consultation questions that could be posed in relation to the UK regulations (the EU Regulation itself had already come into force, so the UK could only consult on domestic legislation to reflect the EU Regulation, with very limited scope for policy discretion).

Q2: Did DECC receive any complaints about the timing?

A2: No, DECC did not receive any complaints about the timing of the consultation.

1 December 2014
APPENDIX 4: NON-COMMERCIAL MOVEMENT OF PET ANIMALS (AMENDMENT) ORDER 2014 (SI 2014/3158)

Additional information from the Defra

Q: Why did Defra run the formal consultation over the August holiday period? Did Defra receive any complaints about this timing? When did the BVA “webinar” take place?

A: The SI implements and enables enforcement of a directly applicable EU Regulation which comes into effect on 29 December. Because the SI needed to be in place for 29 December, our implementation timetable meant that a consultation over the summer was inevitable. However, we took several factors into account when deciding how to run the consultation. The first is that the changes that EU Regulation 576/2013 will make to the existing EU pet travel scheme are limited in extent: the fundamentals of the scheme are unchanged. In addition, we undertook an extensive programme of stakeholder engagement on the changes. We therefore considered a four week consultation appropriate but, mindful of the holiday period, extended this to six weeks with the last two weeks falling after the school holidays.

We have not received any complaints about the timing of the consultation.

The BVA webinar took place on 22 July, roughly two weeks before the consultation started. Over 1,000 people registered to take part. The final slide of [the Defra] presentation trailed the consultation and [it] encouraged participants to take part.

3 December 2014
APPENDIX 5: COMPANY, LIMITED LIABILITY PARTNERSHIP AND BUSINESS NAMES (SENSITIVE WORDS AND EXPRESSIONS) REGULATIONS 2014 (SI 2014/3140)

Additional information from BIS

Q: One of the words on the list of those no longer protected is “Regulation”. Does this mean that a company can now style itself, for example, as “the Company Business Names Regulation Company”? Could the relaxation in control proposed by these Regulations leave open the possibility of a company choosing to give the wrong impression of its role in relation to statutory instruments?

A: At the outset of the Red Tape Challenge the sensitive names list is one that we have considered carefully. There has been one informal consultation on company names when the Company and Commercial Challenge was in the Red Tape Challenge spotlight – where the general consensus was that the sensitive names list added burdens to business. If a word is on the sensitive names list this does not mean that a company is prohibited from using the word, but if it does wish to use the word must seek approval or support.

As part of the formal consultation we asked whether we should remove the entire list, whether it should say the same, or if it could be reduced. The response to the consultation once again suggested that the list should be reduced. The words that should be on the list should only be those that if used as part of a company name could cause harm to the public. The types of words that this would include are ‘bank’, ‘government’ or similar: words that suggest the company has a particular status.

Throughout the consultation we received many letters supporting the continued use of some words, e.g. Co-operative. The words ‘Regulation’ and ‘Regulator’ were words that did not attract particular views. In such cases we considered whether the words could suggest a position of authority and how many times the word had been requested in the past year. In the case of Regulation this was 4 times, and the word had been granted twice... Companies House have not been contacted by any third parties complaining about any companies who use the word ‘regulation’ in their name. On balance with a remit to reduce words where possible we felt that the inclusion of the word Regulator in a company name was likely to mislead the public more than the word ‘Regulation’.

[It is] correct [that] if the regulations are agreed from next year a company could register as ‘The Business Names Regulation Company’. However currently there could already be ‘The Business Names Statutory Instrument Company’. We do not regulate other words associated with the legislative process such as law or legislation. Therefore on balance we felt that a company with the name ‘regulator’ could be more harmful to the general public, and therefore kept on the list.

There is one additional point...Companies House has a general power under s54 of the Companies Act 2006 which means that should a name suggest a connection with government then Companies House can require the company to seek the approval of the Secretary of State before granting the whole name. Therefore...if the name The Business Names Regulations 2015 Company Ltd was thought to suggest that the company was acting as an organisation writing legislation on behalf of the government then the company would have to seek approval and the relevant government department would have to determine whether the name was appropriate.

2 December 2014
APPENDIX 6: 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 instruments considered at the meeting on 9 December 2014 Members declared no interests.

Attendance:

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