Public Bodies (Abolition of the Home Grown Timber Advisory Committee) Order 2015

Draft Care and Support (Eligibility Criteria) Regulations 2014

Includes 3 Information Paragraphs on 3 Instruments

Ordered to be printed 16 December 2014 and published 18 December 2014

Published by the Authority of the House of Lords

London: The Stationery Office Limited

HL Paper 82
Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

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

The Committee has the following terms of reference:

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

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

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

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

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

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

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

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

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

Statutory instruments
Nineteenth Report

PUBLIC BODIES ORDER

A. Public Bodies (Abolition of the Home Grown Timber Advisory Committee) Order 2015

Introduction

1. The draft Public Bodies (Abolition of the Home Grown Timber Advisory Committee) Order 2015 has been laid by the Department for Environment, Food and Rural Affairs (Defra) under section 11(1) of the Public Bodies Act 2011 (“the 2011 Act”). The draft Order has been laid with an Explanatory Document (ED).

Overview of the proposal

2. The draft Order proposes the abolition of the Home Grown Timber Advisory Committee (“the HGTAC”), originally established by section 15 of the Forestry Act 1951: its establishment was carried forward by the Forestry Act 1967 (“the 1967 Act”). Its principal function was to advise the Forestry Commissioners in relation to their general duty to promote the establishment and maintenance of adequate reserves of growing trees across Great Britain. Under the 1967 Act, the Forestry Commissioners, in relation to England and Scotland, were required to consult the HGTAC before making regulations under that Act. Defra explains, however, that the advisory function is now provided by national advisory committees maintained under the 1967 Act.1

3. Defra states that the HGTAC is currently defunct; the last meeting took place in September 2005; the HGTAC members’ terms of office expired in 2006 and were not renewed because it was decided that as forestry was now a devolved matter, it would be more appropriate for advice to be received at national level instead. In October 2010, the Government announced that they would abolish the HGTAC, but doing so was delayed pending the outcome of the review of forestry issues by the Independent Panel on Forestry.2

Role of the Committee

4. 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

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1 These are: in Scotland, the Scottish Forestry Forum, supported by five Regional Forestry Forums; and in England, Regional Advisory Committees, now called Forestry and Woodlands Advisory Committees; the Expert Group on Timber Trade and Statistics; and the Expert Committee on Forest Science.

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.

Tests in the Public Bodies Act 2011: assessment of the proposals – sections 8 and 9 of the Explanatory Document

5. A Minister may make an Order under sections 1 to 5 of the 2011 Act only if he or she 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 (Abolition of the Home Grown Timber Advisory Committee) Order 2015 deals with the statutory tests in section 8, and with the conditions in section 9. We do not repeat the statements provided in the ED on these matters.

Consultation – section 11 of the Explanatory Document

6. Defra held a six-week public consultation on the proposal to abolish the HGTAC from 14 April to 30 May 2014: it was targeted towards key forestry-related interests, but was also open to all stakeholders and the wider public via the Departmental website. The Department says that it considered that a full 12-week consultation would have been disproportionate for a defunct body and the level of anticipated interest; and that there was no criticism of the six-week consultation from respondents. We consider that Defra’s handling of this consultation process was appropriate.

7. Five responses were received: three responses supported the intended abolition of the HGTAC, and two raised objections to it. Defra provides more detail of the responses in the ED.\(^3\) It also re-affirms its view that the fact that the HGTAC fell into abeyance in 2005 reflects the reality of forestry being a devolved matter; that it is principally for the Forestry Commissioners to determine how they should be delivering their balancing duty between the management of forests and the promotion and supply of timber; and that the advisory function of the former HGTAC in support of the Commissioners in this regard is now provided by the national advisory committees. Defra remains convinced that there is no genuine need to retain the statutory provision for the HGTAC.

Conclusion

8. 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.

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\(^3\) Defra has now published a summary of the consultation:
The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.

**B. Draft Care and Support (Eligibility Criteria) Regulations 2014**

*Date laid: 3 December*

**Parliamentary Procedure: affirmative**

**Summary:** These Regulations set out the national minimum threshold for adult care and support. They require a person to satisfy three conditions in order to be deemed to have eligible needs. Assessments are made by local authorities and part of their assessment will be based on the individual’s ability to achieve certain outcomes such as personal hygiene or feeding themselves (regulation 2). Other criteria include the carer’s need for support; for example, whether they have other care responsibilities (regulation 3). The Committee has received correspondence from the Care and Support Alliance suggesting that the criteria are set too high. However, the Department has undertaken practical tests to assess the effect of the changes. The setting of the eligibility criteria is a sensitive issue. The House will wish to consider whether this instrument sets them at an appropriate level. The House may also wish to enquire how this complex system is to be communicated simply and clearly to potential applicants.

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

9. These Regulations are laid by the Department of Health (DH) under the Care Act 2014 (the Act). They are accompanied by an Explanatory Memorandum (EM). The Department relies on the Impact Assessments prepared for the Act but sets out in section 10 of the EM an estimate of the specific effects of this instrument. Statutory guidance to support implementation of Part 1 of the Care Act was published on 23 October 2014. The guidance is not subject to Parliamentary scrutiny.4

**Background**

10. The Act places duties on local authorities in England to carry out an assessment of an adult’s needs for care and support (section 9) and a carer’s needs for support where it appears that an adult or a carer may have such needs (section 10). Section 13(1) of the Act requires local authorities then to determine, on the basis of their assessment, whether the care and support needs of those persons meet the eligibility criteria. These Regulations set out those eligibility criteria.

11. Under the Act, once a local authority has made an assessment, it is obliged to meet the needs of those who satisfy the eligibility criteria (subject to

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certain additional conditions relating to ordinary residence and financial standing also being satisfied). If none of the eligibility criteria relating to needs is satisfied, section 13 of the Act requires a local authority to give the adult or carer (as the case may be) written advice and information about certain matters relating to the outcome of the assessment.

The criteria

12. These Regulations set out the national minimum threshold for adult care and support. They require a person to satisfy three conditions in order to be deemed to have eligible needs. They are:

i) the adult’s needs arise from or are related to a physical or mental impairment or illness;

ii) as a result of the adult’s needs the adult is unable to achieve two or more of the outcomes specified in the regulations; and

iii) as a consequence there is, or is likely to be, a significant impact on the adult’s well-being.

13. Regulation 2 lists the specific outcomes that must be considered for an adult with care needs; for example, whether they can maintain nutrition or personal hygiene. Regulation 3 lists the criteria to be considered for assistance to a carer; for example, whether they can look after the person requiring care and any other care responsibilities they may have (for, say, a child). The criteria also include a provision for the assessment of fluctuating needs over a longer period.

14. There is extensive guidance to explain how the system should be implemented but, at over 500 pages, it is going to be beyond the understanding of most applicants. The House may wish to ask what information is going to be given to people with needs to help them understand what they need to do.

15. In supplementary material to the Committee, DH explained: “With such a wide range of complex factors to consider it is essential that the assessment and eligibility determination are carried out by assessors who have the appropriate training and skills to bring all of these together and determine the impact on the person’s wellbeing. Social care is not an exact science and it would not therefore be possible to set the eligibility based on an algorithm, therefore the eligibility threshold is based on criteria that assessors use their professional judgement to decide whether a person has eligible needs.”

Impact

16. In section 10 of the EM, the Department estimates that an additional 4,000 adults would become eligible for care and support following the introduction of the national eligibility threshold set out in these Regulations. In addition, a further 2,000 people may come forward for an assessment and be assessed as not having eligible needs. Taking an average assessment cost of £500, these 6,000 assessments would represent a cost of £3 million. Using 2015–2016 prices, it is estimated that care and support for an additional 4,000 people would increase expenditure by local authorities by £25.3 million per year.

5 See the Care and Support (Assessment) Regulations 2014 (SI 2014/2827).
17. The Department also anticipates a cost of £73.3 million to local authorities for provision of support to meet the eligible needs of extra carers coming into the system in 2015–16, rising to £251 million annually by 2019–20. This is based on DH’s assumptions about the increase in demand for assessment on the basis of the new rights in the Act, the likely proportion of such assessments that will lead to a determination that a carer is eligible for support, and the unit costs associated with that support.

Appropriate level?

18. Those assumptions are, however, challenged in a submission to the Committee from the Care and Support Alliance. While generally supportive of the Act, the Alliance expresses significant concerns about the level at which this instrument sets the new national eligibility criteria. It argues that eligibility criteria set at this high level will mean 340,000 older and disabled people will be without support to do things as basic as getting up, washing themselves, getting out of the house and managing bills. The submission also states that cuts to funding over recent years have meant that 500,000 of those who would have received care in the past, now do not qualify; and, that, although in theory local authorities are able to provide additional support to those who do not meet the new national criteria, in practice budget cuts prevent this and the need to meet the costs for those who are covered by the Act may jeopardise low level care services currently provided by local authorities (such as lunch clubs). The Alliance propose that the national eligibility threshold should be set at the equivalent of “moderate” as defined by the Fair Access to Care Services framework.

19. In its analysis of the response to consultation, in section 8 of the EM, the Department notes that there was a tension over the draft criteria, with some local authorities being concerned that they were set too low and the voluntary sector arguing that they were set too high. In response, the Department conducted research asking local authorities to evaluate the draft Regulations against recent real cases. The study found that those with substantial and critical levels of need would continue to be eligible under these criteria, the number of people with moderate levels of need who would be eligible for assistance might increase slightly, but very few with low levels of need would be eligible.

Conclusion

20. The setting of the eligibility criteria is a sensitive issue. The House will wish to consider whether this instrument sets them at an appropriate level. The House may also wish to enquire how this complex system is to be communicated simply and clearly to potential applicants.

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6 The Care and Support Alliance represents over 75 of Britain’s leading charities for the elderly and the disabled and their carers. Letter published in full on the SLSC’s website.
INSTRUMENTS OF INTEREST

**Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code A) Order 2015**

21. The Order brings into force a revision of Code A, issued under the Police and Criminal Evidence Act 1984, which deals with the exercise by police officers of statutory powers of stop and search. The changes revise the previous wording of the Code to make clear what constitutes “reasonable grounds for suspicion”. It also emphasises that officers who misuse these powers may be subject to performance or disciplinary procedures. The revisions also include updates from case law. The revision responds to research by Her Majesty’s Inspectorate of Constabulary which found that 27% of the stop and search records that they examined did not contain reasonable grounds to search people. The Inspectorate attributed this to poor levels of understanding among officers about what constitutes reasonable grounds and poor supervision. In support of this change to the Code, the College of Policing is working with Chief Constables and Police and Crime Commissioners to develop robust training for probationers, existing officers, supervisors and police leaders. In addition, training for frontline officers will include awareness of unconscious bias in decisions concerning the use of these powers. We are publishing key extracts from the Code, with the new material highlighted, at Appendix 1.

**Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2014 (SI 2014/3126)**

22. The Local Housing Allowance (“LHA”) arrangements were introduced in 2008 and apply to the majority of Housing Benefit claimants in the private rented sector. The LHA rate is generally increased by the lower of either 1% or the 30th percentile of market rents for that category of accommodation in that broad rental market area. However, for certain types of property in certain geographical areas there is increased flexibility to increase the rate by up to 4% to cope with shortages of a specified type of accommodation. This instrument sets out where and for which properties that higher rate will apply in 2015–16 (subject to the LHA maximum limits).

**Civil Childcare (Provision of Information About Young Children) (England) (Amendment) Regulations 2014 (SI 2014/3197)**

23. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). DfE says that early years providers are required to supply prescribed information about young children in their care to the Secretary of State and their local authority. The information is collected through the annual Early Years Census and the School Census. This instrument brings early years childminder agencies (“CMAs”) and childminders registered with CMAs into the scope of those required to supply prescribed information about young children. The Regulations were laid on 4 December 2014, to come into force on 1 January 2015. We sought further information from DfE about this timetable, which we are publishing at Appendix 2.

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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
- Care and Support (Business Failure) Regulations 2014
- Care and Support (Children’s Carers) Regulations 2014
- Care and Support (Market Oversight Criteria) Regulations 2014
- Films (Definition of “British Film”) Order 2015
- Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015

Instruments subject to affirmative approval
- Motor Vehicles (Variation of Speed Limits) (England and Wales) Regulations 2014

Draft instruments subject to annulment
- Ashfield (Electoral Changes) Order 2015
- Doncaster (Electoral Changes) Order 2015
- Lichfield (Electoral Changes) Order 2015
- Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code A) Order 2015

Instruments subject to annulment
- SI 2014/3126 Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2014
- SI 2014/3138 Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014
- SI 2014/3139 Nursing and Midwifery Council (Fees) (Amendment) Rules Order of Council 2014
- SI 2014/3142 Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) (Amendment) Regulations 2014
- SI 2014/3199 Business Improvement Districts (England) (Amendment) Regulations 2014
- SI 2014/3214 National Savings Stock Register (Amendment) Regulations 2014
APPENDIX 1: DRAFT POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE) (REVISION OF CODE A) ORDER 2015

Extracts from Codes of Practice – Code A Exercise by police officers of statutory powers of stop and search

1.5 An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry.

1.6 Evidence obtained from a search to which this Code applies may be open to challenge if the provisions of this Code are not observed.

2 Types of stop and search powers

2.1 This code applies, subject to paragraph 1.03, to powers of stop and search as follows:

(a) powers which require reasonable grounds for suspicion, before they may be exercised; that articles unlawfully obtained or possessed are being carried such as section 1 of PACE for stolen and prohibited articles and section 23 of the Misuse of Drugs Act 1971 for controlled drugs;

(b) authorised under section 60 of the Criminal Justice and Public Order Act 1994, based upon a reasonable belief that incidents involving serious violence may take place or that people are carrying dangerous instruments or offensive weapons within any locality in the police area, or that it is expedient to use the powers to find such instruments or weapons that have been used in incidents of serious violence;

(c) Not used;

(d) the powers in Schedule 5 to the Terrorism Prevention and Investigation Measures (TPIM) Act 2011 to search an individual who has not been arrested, conferred by:

(i) paragraph 6(2)(a) at the time of serving a TPIM notice;

(ii) paragraph 8(2)(a) under a search warrant for compliance purposes; and

(iii) paragraph 10 for public safety purposes.

See paragraph 2.18A.

(e) powers to search a person who has not been arrested in the exercise of a power to search (see Code B paragraph 2.4).

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8 New material in the latest revision is highlighted.
(a) **Stop and search powers** requiring reasonable grounds for suspicion – explanation

**General**

2.2 Reasonable grounds for suspicion is the legal test which a police officer must satisfy before they can stop and detain individuals or vehicles to search them under powers such as section 1 of PACE (to find stolen or prohibited articles) and section 23 of the Misuse of Drugs Act 1971 (to find controlled drugs). This test must be applied to the particular circumstances in each case and is in two parts:

(i) **Firstly,** the officer must have formed a genuine suspicion in their own mind that they will find the object for which the search power being exercised allows them to search (see Annex A, second column, for examples); and

(ii) **Secondly,** the suspicion that the object will be found must be reasonable. This means that there must be an objective basis for that suspicion based on facts, information and/or intelligence which are relevant to the likelihood that the object in question will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts and information and/or intelligence.

Officers must therefore be able to explain the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned (see paragraphs 3.8(d), 4.6 and 5.5).

2.2A The exercise of these stop and search powers depends on the likelihood that the person searched is in possession of an item for which they may be searched; it does not depend on the person concerned being suspected of committing an offence in relation to the object of the search. A police officer who has reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article, controlled drug or other item for which the officer is empowered to search, may stop and search the person even though there would be no power of arrest. This would apply when a child under the age of criminal responsibility (10 years) is suspected of carrying any such item, even if they knew they had it. (See Notes 1B and 1BA.)

**Personal factors can never support reasonable grounds for suspicion**

2.2B Reasonable suspicion can never be supported on the basis of personal factors. This means that unless the police have information or intelligence which provides a description of a person suspected of carrying an article for which there is a power to stop and search, the following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for stopping and searching any individual, including any vehicle which they are driving or are being carried in:

(a) A person’s physical appearance with regard, for example, to any of the ‘relevant protected characteristics’ set out in the Equality Act 2010, section 149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (see paragraph 1.1 and Note 1A), or the fact that the person is known to have a previous conviction; and
(b) Generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity.

2.3 Not used.

Reasonable grounds for suspicion based on information and/or intelligence

2.4 Reasonable grounds for suspicion should normally be linked to accurate and current intelligence or information, relating to articles for which there is a power to stop and search, being carried by individuals or being in vehicles in any locality. This would include reports from members of the public or other officers describing:

- a person who has been seen carrying such an article or a vehicle in which such an article has been seen.
- crimes committed in relation to which such an article would constitute relevant evidence, for example, property stolen in a theft or burglary, an offensive weapon or bladed or sharply pointed article used to assault or threaten someone or an article used to cause criminal damage to property.

2.4A Searches based on accurate and current intelligence or information are more likely to be effective. Targeting searches in a particular area at specified crime problems not only increases their effectiveness but also minimises inconvenience to law-abiding members of the public. It also helps in justifying the use of searches both to those who are searched and to the public. This does not, however, prevent stop and search powers being exercised in other locations where such powers may be exercised and reasonable suspicion exists.

2.5 Not used.

Reasonable grounds for suspicion and searching groups

2.6 Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or weapons or controlled drugs, and wear a distinctive item of clothing or other means of identification in order to identify themselves as members of that group or gang, that distinctive item of clothing or other means of identification may provide reasonable grounds to stop and search any person believed to be a member of that group or gang. (See Note 9.)

2.6A A similar approach would apply to particular organised protest groups where there is reliable information or intelligence:

(a) that the group in question arranges meetings and marches to which one or more members bring articles intended to be used to cause criminal damage and/or injury to others in support of the group’s aims;

(b) that at one or more previous meetings or marches arranged by that group, such articles have been used and resulted in damage and/or injury; and

(c) that on the subsequent occasion in question, one or more members of the group have brought with them such articles with similar intentions.
These circumstances may provide reasonable grounds to stop and search any members of the group to find such articles (see Note 9A). See also paragraphs 2.12 to 2.18, “Searches authorised under section 60 of the Criminal Justice and Public Order Act 1994”, when serious violence is anticipated at meetings and marches.

Reasonable grounds for suspicion based on behaviour, time and location

2.6B Reasonable suspicion may also exist without specific information or intelligence and on the basis of the behaviour of a person. For example, if an officer encounters someone on the street at night who is obviously trying to hide something, the officer may (depending on the other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried. An officer who forms the opinion that a person is acting suspiciously or that they appear to be nervous must be able to explain, with reference to specific aspects of the person’s behaviour or conduct which they have observed, why they formed that opinion (see paragraphs 3.8(d) and 5.5). A hunch or instinct which cannot be explained or justified to an objective observer can never amount to reasonable grounds.

2.7 Not used.

2.8 Not used.

Securing public confidence and promoting community relations

2.8A All police officers must recognise that searches are more likely to be effective, legitimate and secure public confidence when their reasonable grounds for suspicion are based on a range of objective factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to officers and they are well-informed about local crime patterns. Local senior officers have a duty to ensure that those under their command who exercise stop and search powers have access to such information, and the officers exercising the powers have a duty to acquaint themselves with that information (see paragraphs 5.1 to 5.6).

Questioning to decide whether to carry out a search

2.9 An officer who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out the search the officer may ask questions about the person’s behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be dispelled. (See Notes 2 and 3.) Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected. Reasonable grounds for suspicion however cannot be provided retrospectively by such questioning during a person’s detention or by refusal to answer any questions asked.

2.10 If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, there cease to be reasonable grounds for suspecting that an article of a kind for which there is a power to stop and search is being carried, no search may take place. (See Note 3.) In the absence of any other lawful power to detain, the person is free to leave at will and must be so informed.
2.11 There is no power to stop or detain a person in order to find grounds for a search. Police officers have many encounters with members of the public which do not involve detaining people against their will and do not require any statutory power for an officer to speak to a person (see paragraph 4.12 and Note 1). However, if reasonable grounds for suspicion emerge during such an encounter, the officer may detain the person to search them, even though no grounds existed when the encounter began. As soon as detention begins, and before searching, the officer must inform the person that they are being detained for the purpose of a search and take action in accordance with paragraphs 3.8 to 3.11 under “Steps to be taken prior to a search”.

(b) Searches authorised under section 60 of the Criminal Justice and Public Order Act 1994

2.12 Authority for a constable in uniform to stop and search under section 60 of the Criminal Justice and Public Order Act 1994 may be given if the authorising officer reasonably believes:

(a) that incidents involving serious violence may take place in any locality in the officer’s police area, and it is expedient to use these powers to prevent their occurrence;

(b) that persons are carrying dangerous instruments or offensive weapons without good reason in any locality in the officer’s police area; or

(c) that an incident involving serious violence has taken place in the officer’s police area, a dangerous instrument or offensive weapon used in the incident is being carried by a person in any locality in that police area, and it is expedient to use these powers to find that instrument or weapon.

2.13 An authorisation under section 60 may only be given by an officer of the rank of inspector or above and in writing, or orally if paragraph 2.12(c) applies and it is not practicable to give the authorisation in writing. The authorisation (whether written or oral) must specify the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised shall be no longer than appears reasonably necessary to prevent, or seek to prevent incidents of serious violence, or to deal with the problem of carrying dangerous instruments or offensive weapons or to find a dangerous instrument or offensive weapon that has been used. It may not exceed 24 hours. An oral authorisation given where paragraph 2.12(c) applies must be recorded in writing as soon as practicable. (See Notes 10 to 13.)
Monitoring and supervising the use of stop and search powers

**General**

5.1 Any misuse of stop and search powers is likely to be harmful to policing and lead to mistrust of the police by the local community and by the public in general. Supervising officers must monitor the use of stop and search powers and should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations. Supervising officers must satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with this Code. Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern and, if so, take appropriate action to address this. (See paragraph 2.8A.)

5.2 Senior officers with area or force-wide responsibilities must also monitor the broader use of stop and search powers and, where necessary, take action at the relevant level.

5.3 Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at force, area and local level. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.

5.4 In order to promote public confidence in the use of the powers, forces, in consultation with police and crime commissioners, must make arrangements for the records to be scrutinised by representatives of the community, and to explain the use of the powers at a local level. (See Note 19.)

**Suspected misuse of powers by individual officers**

5.5 Police supervisors must monitor the use of stop and search powers by individual officers to ensure that they are being applied appropriately and lawfully. Monitoring takes many forms, such as direct supervision of the exercise of the powers, examining stop and search records (particularly examining the officer’s documented reasonable grounds for suspicion) and asking the officer to account for the way in which they conducted and recorded particular searches or through complaints about a stop and search that an officer has carried out.

5.6 Where a supervisor identifies issues with the way that an officer has used a stop and search power, the facts of the case will determine whether the standards of professional behaviour as set out in the Code of Ethics (see http://www.college.police.uk/en/20972.htm) have been breached and which formal action is pursued. Improper use might be a result of poor performance or a conduct matter, which will require the supervisor to take appropriate action such as performance or misconduct procedures. It is imperative that supervisors take both timely and appropriate action to deal with all such cases that come to their notice.
**Notes for guidance**

**Officers exercising stop and search powers**

1. This Code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer’s duties without detaining the person or exercising any element of compulsion. It is not the purpose of the code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed he or she may question any person from whom useful information might be obtained, subject to the restrictions imposed by Code C. A person’s unwillingness to reply does not alter this entitlement, but in the absence of a power to arrest, or to detain in order to search, the person is free to leave at will and cannot be compelled to remain with the officer.

1A. In paragraphs 1.1 and 2.2B(a), the ‘relevant protected characteristics’ are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

1B. Innocent possession means that the person does have the guilty knowledge that they are carrying an unlawful item which is required before an arrest on suspicion that the person has committed an offence in respect of the item sought (if arrest is necessary - see PACE Code G) and/or a criminal prosecution) can be considered. It is not uncommon for children under the age of criminal responsibility to be used by older children and adults to carry stolen property, drugs and weapons and, in some cases, firearms, for the criminal benefit of others, either:

- in the hope that police may not suspect they are being used for carrying the items; or

- knowing that if they are suspected of being couriers and are stopped and searched, they cannot be arrested or prosecuted for any criminal offence.

Stop and search powers therefore allow the police to intervene effectively to break up criminal gangs and groups that use young children to further their criminal activities.

1BA. Whenever a child under 10 is suspected of carrying unlawful items for someone else, or is found in circumstances which suggest that their welfare and safety may be at risk, the facts should be reported and actioned in accordance with established force safeguarding procedures. This will be in addition to treating them as a potentially vulnerable or intimidated witness in respect of their status as a witness to the serious criminal offence(s) committed by those using them as couriers. Safeguarding considerations will also apply to other persons aged under 18 who are stopped and searched under any of the powers to which this Code applies. See paragraph 1.1 with regard to the requirement under the Children Act 2004, section 11, for chief police officers and other specified persons and bodies, to ensure that in the discharge of their functions, they have regard to the need to safeguard and promote the welfare of all persons under the age of 18.

2. In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unsuccessful searches, but to explain the grounds for the stop/search, to gain co-operation and reduce any tension there might be surrounding the stop/search.
3 Where a person is lawfully detained for the purpose of a search, but no search in the event takes place, the detention will not thereby have been rendered unlawful.

4 Many people customarily cover their heads or faces for religious reasons - for example, Muslim women, Sikh men, Sikh or Hindu women, or Rastafarian men or women. A police officer cannot order the removal of a head or face covering except where there is reason to believe that the item is being worn by the individual wholly or mainly for the purpose of disguising identity, not simply because it disguises identity. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex (see Code C Annex L).

5 A search of a person in public should be completed as soon as possible.

6 A person may be detained under a stop and search power at a place other than where the person was first detained, only if that place, be it a police station or elsewhere, is nearby. Such a place should be located within a reasonable travelling distance using whatever mode of travel (on foot or by car) is appropriate. This applies to all searches under stop and search powers, whether or not they involve the removal of clothing or exposure of intimate parts of the body (see paragraphs 3.6 and 3.7) or take place in or out of public view. It means, for example, that a search under the stop and search power in section 23 of the Misuse of Drugs Act 1971 which involves the compulsory removal of more than a person's outer coat, jacket or gloves cannot be carried out unless a place which is both nearby the place they were first detained and out of public view, is available. If a search involves exposure of intimate parts of the body and a police station is not nearby, particular care must be taken to ensure that the location is suitable in that it enables the search to be conducted in accordance with the requirements of paragraph 11 of Annex A to Code C.
Information from the Department for Education

Q: You have not carried out consultation on the Regulations – so how does DfE know what burden will be placed by them on CMAs? And why give less than a month’s notice between laying and coming into force of the Regulations, particularly since this spans Christmas? Could you not reasonably have given CMAs till, say, April 2015?

A: The ability to set up a CMA came into place on 1 September 2014 and CMAs are only now being established, and seeking to recruit and register childminders. Those setting up a CMA do so entirely voluntarily and in making an active choice to do so, they are agreeing to comply with the legal provisions put in place around CMAs.

Please find the following links (for information) to the three sets of Regulations SI 2014 No 1920 and Explanatory Memorandum; SI 2014 No 1921 and Explanatory Memorandum and SI 2014 No 1922 and Explanatory Memorandum which have been made so far to make provision for CMAs. The Explanatory Memorandums explain, at paragraph 10, that: “….An Impact Assessment has not been prepared for these CMA regulations. The changes brought about by the CMA provisions are assessed as deregulatory in nature and, in so far as they do not compel anyone to establish, or register with, a CMA there is no impact on the private or voluntary sectors. These instruments simply set out the matters which anyone considering establishing a CMA will need to demonstrate and the requirements which anyone registered as a CMA will need to meet…”.

The amendments to the Childcare (Provision of Information About Young Children) (England) Regulations 2009 are part of the broader arrangements already put in place for CMAs.

It is important to be clear that until the legislation was introduced enabling organisations to register as a CMA with Ofsted from September 2014, no CMAs could exist and, therefore, be consulted. However, the Department ran a joint public consultation on its plans for CMAs and on changes to the local authority role in early education funding which ran from March to May 2014. A range of stakeholders replied to this consultation including potential CMAs. Although the Department didn’t use its earlier public consultation to focus on the specific issue here, it did air the CMA role in relation to early education funding more generally. Furthermore although the Department hasn’t consulted formally on these latest Regulations, we have spoken with and consulted informally on a verbal basis with potential agencies, local authorities and a number of other stakeholders on the specific proposal that CMAs should be the point of contact for Early Years Census (EYC) returns for their registered childminders with/to local authorities. This has included 4Children, Merton LA, Trio Childcare, and St Bede Academy. None of the organisations we have spoken with have signalled or raised any concerns about the role that these regulations will give CMAs in relation to EYC returns.

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9 Some of these had taken part in our CMA trials, see paragraph 8.8 of the explanatory memorandum for SI 2014/1920.
The Regulations relating to CMAs (links above) require CMAs to register childminders, ensuring that they have the appropriate skills and expertise to meet registration requirements. CMAs will also be responsible for ‘quality assuring’ their registered childminders. This all means that CMAs will be collecting a range of data and information from their childminders – including details of the places they offer and the children filling them – which the CMA will then be able to use for a number of different purposes, e.g. billing parents and Early Years Census returns.

We expect that many CMAs will also offer brokerage and matching services for parents to help them find a childminder and this will mean that a CMA will be receiving data and information about children filling places, which again they’ll then be able to use for the purposes of Early Years Census returns.

The Early Years Census is collected annually in January and if we miss this opportunity we would not be able to collect this information or put arrangements covering CMAs in place until January 2016. It is, therefore, important to get these arrangements in place for the January 2015 collection and the guidance issued so that CMAs are aware of the requirements as they set up/put their internal processes in place. However, we do not think that there will be any CMAs with childminders registered in January 2015 who will fall into scope of the Early Years Census.

10 December 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 16 December 2014 Members declared the following interests:

Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code A) Order 2015

Lord Bowness

Close relation to a serving Police Officer

Attendance:

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