

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

21st Report of Session 2014–15

**Public Bodies (Abolition of the Advisory
Committees on Pesticides) Order 2015**

**Public Bodies (Abolition of the Library
Advisory Council for England) Order 2014**

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Includes 9 Information Paragraphs on 14 Instruments

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

Historical Note

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

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).
- (2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives;
 - (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation;
 - (f) that there appear to be inadequacies in the consultation process which relates to the instrument.
- (3) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Andrews	Lord Eames	Baroness Stern
Lord Bichard	Rt Hon. Lord Goodlad (<i>Chairman</i>)	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 8.

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

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Twenty First Report

PUBLIC BODIES ORDERS

A. Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015

Introduction

1. The draft Public Bodies (Abolition of the Advisory Committees on Pesticides) 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 Advisory Committee on Pesticides (the ACP) and the Advisory Committee on Pesticides (Northern Ireland) (the ACP (NI), jointly referred to as “the ACPs”. The ACPs were established under the Food and Environment Protection Act 1985 (“the 1985 Act”) to advise Ministers “on any matters relating to the control of pests in furthering the general purposes” of that Act. The general purposes include developing means to protect the health of human beings, creatures and plants, to safeguard the environment and to secure safe, efficient and humane methods of controlling pests; and making information about pesticides available to the public.
3. The draft Order proposes to abolish the ACPs as statutory NDPBs and to replace them with an expert committee of Defra, which would work for a number of UK Departments and for the Devolved Administrations. Defra says that developments since the 1985 Act was passed – notably the strengthening of the Department’s in-house team dealing with pesticides, and the far greater involvement of the EU in the regulatory system – mean that the role for the UK regulator (the Health and Safety Executive, reporting to the Ministers) and for independent expert advice to support and challenge this work has changed. The Government has concluded that there is a continuing need for the work of the ACPs, but that this could be better delivered through a different model, namely a committee of experts.

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 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 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 Advisory Committees on Pesticides) Order 2015 deals with the statutory tests in section 8, and with the conditions in section 9.
6. Defra prefaces section 8 by stating that the public function which is addressed by the draft Order is the provision of advice to Ministers on pesticides regulation and approvals. It acknowledges that there are a number of strong features of the current ACPs, which include their independence, right of direct access to the Ministers, technical expertise and transparency, and says that the proposed successor arrangements, which will cover the current range of issues, will retain these strengths. Defra adds, however, that there will be several areas of improvement, arising in particular from the greater flexibility made possible by the new body's non-statutory nature.

Efficiency

7. Defra states that abolition of the ACPs and their replacement with an expert committee will be more efficient, because the requirement to consult the ACPs set out in the 1985 Act is very broad. The proposed expert committee would be able to offer advice on any matter within its remit, but would not routinely be asked for advice to support decisions which do not raise new or contentious issues. The new committee will thus be able to devote more time to the most important questions.

Effectiveness

8. The Department says that the new arrangements should be more effective than those they replace in two main respects. First, a non-statutory basis will provide greater flexibility, particularly because terms of reference can be updated to reflect the changing EU regulatory regimes (explained further in paragraphs 8.5 and 8.6 of the ED). Second, the new body will fall under new arrangements to strengthen the science and evidence base to support policy across Defra, operating within a closer network of expert bodies overseen by Defra's Chief Scientific Adviser, supported by his Science Advisory Council (itself an NDPB). This will provide greater co-ordination of scientific advice and evidence-gathering within the Department.

Economy

9. Defra states that the costs of the ACPs are modest: the Department pays around £25,000 per year for administering meetings, meeting Members' travel and subsistence costs, and for recruitment campaigns. The costs to Defra of the Secretariat based in the Health and Safety Executive (HSE) amount to around £40,000 per year. Similar amounts are also drawn from industry funding. The costs of the successor expert committee are likely to be

slightly less, though there are no potential jobs impacts arising from this proposal, since the size of the very small Secretariat for this body within the HSE will remain unchanged.

Accountability

10. The Department says that the new expert committee will retain the high degree of independence and transparency that characterised the ACPs. The new committee will bring together independent scientific experts and work independently of Government and in an open manner; it will provide advice to the Ministers and to the Food Standards Agency; and it will be able to put advice direct to any of the Ministers where the members consider this appropriate. Defra states that Ministers will be closely engaged with the committee's work, commissioning some of that work and considering its advice, and will also be involved in recruiting and appointing committee members. They will not however control the committee's operations, which will remain at arms' length.

Necessary protection; right or freedom

11. Defra states that the ACPs' statutory functions as advisory bodies have no impact on personal protections, rights or freedoms; and that it follows that abolition of the ACPs' functions will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The proposals would not impose any new costs, administrative burdens, or information obligations on companies or third sector organisations.

Consultation – section 11 of the Explanatory Document

12. Defra carried out consultation on the proposal between 8 March and 15 May 2012. Defra included three options in the consultation: to maintain the status quo, so that the ACPs would remain as NDPBs; to abolish the ACPs with no replacements; or to replace the ACPs with an expert committee (Defra's preferred option).
13. A total of 45 responses were received: 30 from the farming/growing industry and businesses, six from government advisory bodies and nine from the public or Non-Government Organisations (NGOs). No respondents supported abolition without replacement. 12 supported the status quo, though some of these said that they could support Defra's preferred option if concerns were met about ensuring that an expert committee could advise with independence. 24 respondents supported replacing the ACP with an expert committee. The remaining respondents did not support any of the three options above the others. Defra has published a consultation summary.¹

¹ <https://www.gov.uk/government/consultations/the-future-of-the-advisory-committee-on-pesticides>

Conclusion

14. A key issue in considering the proposed abolition of the ACPs, set up as NDPBs, and their replacement by an expert committee of the Department, is the independence with which advice from such a committee will be provided. Concern about this issue was voiced by a number of respondents to the consultation in 2012. The summary explains that the response from the ACP itself, while recognising the advantages of flexibility offered by the proposal, saw potential disadvantages from a perceived loss of independence and a loss of pro-activity.
15. The ED addresses the issue at several points. In particular, at paragraph 7.16, Defra stresses the Government's commitment that, where Departments are considering reconstituting bodies as expert scientific committees, they should put in place a number of safeguards: such committees must provide independent advice in line with the Government's Principles for Scientific Advice² and the Code of Practice for Scientific Advisory Committees³; and escalation routes must be in place to ensure that advice from expert scientific committees can be submitted directly to Ministers, as appropriate. Defra confirms that these requirements will be met in establishing the successor to the ACPs and will be written into the draft terms of reference.
16. Given the importance of independent scientific advice to government, when the House considers this draft Order, it will wish to press the Minister on this issue, not least to seek confirmation whether in its ongoing contacts with the ACP the Department has been able to allay its concerns in the light of the safeguards described above. **On balance, however, 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.**

² <https://www.gov.uk/government/publications/scientific-advice-to-government-principles/principles-of-scientific-advice-to-government>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf

B. Public Bodies (Abolition of the Library Advisory Council for England) Order 2014

17. In our 15th Report of this Session, we recommended that this draft Order should be subject to the 60-day enhanced affirmative procedure under the Public Bodies Act 2011. We said that we did not consider that the Government had adequately demonstrated that the draft Order served the purpose of improving the exercise of public functions as set out in the 2011 Act; or that it was sensible to proceed with abolition of the Advisory Council on Libraries (ACL) before DCMS published the outcome of the Independent Library Report (ILR). We invited the Minister to provide further justification of the proposed abolition of the ACL.
18. We have received a letter dated 22 December 2014 from the Minister, which we are publishing at Appendix 1, in which he explains that the outcome of the ILR was published on 18 December. While the ILR makes no reference to the ACL, the Minister highlights the recommendation by the ILR (supported by the Government) of the establishment of a Task and Finish Group (TFG), to “foster and promote a new and dynamic way of working for libraries”. He also sets out his reasons for considering that that the draft Order will improve the exercise of public functions. **In the light of his letter, we now 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, and therefore make no recommendations for the draft Order to be amended.**

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

C. Draft Smoke-free (Private Vehicles) Regulations 2015

Date laid: 17 December

Parliamentary Procedure: affirmative

Summary: The dangers of passive smoking are well established and smoking inside buildings has been banned for some time. Evidence indicates that ventilation in vehicles is insufficient to mitigate the effects and so this instrument proposes requiring the driver not to smoke when children under 18 are in the car and to prevent anyone else from smoking. Failure to do so will result in a £50 Fixed Penalty Notice.

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.

19. These Regulations have been laid by the Department of Health under provisions of the Health Act 2006 (which allows the designation of smoke-free places) as modified by section 95 of the Children and Families Act 2014 which extended that provision to private vehicles. The Regulations are accompanied by an Explanatory Memorandum (EM) and an Impact Assessment.
20. Existing legislation has two offences: smoking in a smoke-free place or failing to prevent smoking in a smoke-free place. Under current legislation, enforcement officers, usually from the Local Authority, can issue a Fixed Penalty Notice (FPN) to someone smoking in a smoke-free place but there is no provision for an FPN for the offence of failing to prevent smoking and anyone accused of committing that offence would go to court. These Regulations also designate police forces as enforcement authorities for smoke-free private vehicles and set a £50 FPN as the penalty for both offences.
21. Current legislation requires a no-smoking sign to be displayed in all smoke-free places including public vehicles but these Regulations exclude private vehicles from that requirement.
22. The harms caused by secondhand smoke are well known and there is no safe level of exposure. Children are more vulnerable to secondhand smoke exposure in vehicles as they breathe more rapidly and inhale more pollutants than adults. Scientific evidence also shows that ventilation does not eliminate the risks to health of secondhand smoke in enclosed places, so the only effective protection is prevention.
23. Evidence quoted in the EM states that a significant number of children say that they are exposed to secondhand smoke in private vehicles. In a 2012 survey, 26% of 11–15 year olds reported being exposed to secondhand smoke in their family's car and 30% in someone else's car. Only 30% felt able to ask the person to stop smoking and, as children, they have limited ability to select an alternative means of transport. The Government therefore feel preventative legislation is necessary. However to check on its

effectiveness the Regulations include a requirement for them to be evaluated within five years of coming into force.

24. For the purposes of these Regulations a child is a person under 18 years of age. It will not be an offence for a driver under the age of 18 to smoke if they are alone in a vehicle because more than one person must be present for a private vehicle to be required to be smoke-free, but an offence would be committed whether the second person was under 18 or not.
25. The Regulations will come into effect on 1 October 2015. The Department of Health states that the long lead time is to allow for training of enforcement officers and for a public awareness campaign, which could not take place during the election purdah period.

D. Draft Universal Credit (Work-Related Requirements) In Work Pilot Scheme and Amendment Regulations 2015

Date laid: 1 December

Parliamentary Procedure: affirmative

Summary: This instrument would give DWP very wide powers to pilot ways of “supporting Universal Credit claimants who are in low-paid work to increase their earnings”. Although a “Test and Learn” strategy is mentioned, no detailed plans are published, and we are told they are still under development. Four general themes for trials are identified: increased support to progress, working with employers, applying conditionality to claimants and using financial levers. Claimants who do not comply with the trials will be liable to sanctions. The Committee is concerned that the legislation seems to be equivalent to a “skeleton Bill”, where very wide powers are being sought without any detail being given about how and on whom they might be used. DWP’s response that they are still developing the detail of what they might trial first in Universal Credit, and the lack of any published document to explain the strategy, does not seem to match the undertakings about transparency given during the passage of the Welfare Reform Bill (which became the Welfare Reform Act 2012) through Parliament.

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

26. These Regulations have been laid by the Department for Work and Pensions (DWP) under the Welfare Reform Act 2012 (“the Act”) along with an Explanatory Memorandum (EM).

Background

27. The Regulations create a framework for pilot schemes to be run under section 41 of the Act which provides for claimants who are in work to be subject to the work search requirements and work availability requirements under sections 17 and 18 of the Act. For claimants already in work this means that they must be available for more work or better paid work and take any steps required by DWP to find such work.

28. The EM states that when Universal Credit was initially launched there was insufficient knowledge as to what kind of intervention was likely to be most effective in increasing the earnings of in-work claimants. Some proposals have been derived from a consultation exercise in early 2013 but the proposed strategy is described as only intended to test “a range of propositions which fall under four general themes”. They are:
- **“The support we can offer** – including looking at who is best placed to provide effective support; what types of digital support can help people progress and what are the role of skills and other provision
 - **The role of employers** – exploring how we can best work with employers to drive progression and to get employers to shape our approaches.
 - **The impact of conditionality** – including exploring what impact that applying conditionality to people in-work has and how this affects earnings progression.
 - **Using financial levers** – exploring whether additional financial levers, over and above the inherent incentives in Universal Credit, can drive earning progression.”

Unlike previous legislation proposing pilot schemes under Universal Credit, this pilot has no geographical limits.

How will the pilots be structured?

29. Following initial consideration, the Committee asked for further information on the DWP’s plans. The Department responded:
- “Paragraph 7.12 of the Explanatory Memorandum sets out the Department’s general strategy for promoting in-work progression. In order to achieve the Government objective, we are developing a full strategy to build the evidence for in-work progression and this will include activity in and out of Universal Credit, including delivering Randomised Controlled Trials (RCTs) in the Live Service and delivering employer-led trials through the UK Futures Fund. These Regulations support the delivery of RCTs and are one of the tools that will help facilitate this approach.”
30. Bearing in mind a proposal to introduce sanctions and unspecified “financial levers” into the pilot scheme, the Committee remained unsatisfied with the very loose description of the way these powers were intended to be used. We therefore asked the Minister, Lord Freud, for a more detailed explanation of how DWP intended to exercise the powers set out in the instrument. His letter is published at Appendix 2.
31. In his response, the Minister states that this is a new area and, in the context of the limited evidence available, DWP has developed a comprehensive “Test and Learn” strategy to inform the trialling and that this has been endorsed by an external advisory group of experts and academics. Whilst this is a helpful reply, we note that the strategy does not seem to be set out in a published document. Furthermore, whilst we are reassured by the Minister’s statement that no in-work claimants will be subjected to stronger conditionality than that found in the out-of-work regime, we note that reference is made to one of the early pilots involving testing the impact of sanctions on claimant behaviours. The Committee is aware that there are some ethical

considerations about the use of RCTs in this way because they treat similar groups differently. We were concerned that the DWP's memorandum did not address this aspect of how the trials are to be structured.

Numbers affected?

32. The Committee was concerned that the current number of eligible claimants was likely to be small, raising questions about the robustness of any evidence derived from a pilot. DWP's initial response to this point was unsatisfactory in that it did not address the short term:

“By the time that Universal Credit is fully rolled out it is forecast that around 1 million Universal Credit claimants will fall within the 'working – could do more' category and be eligible for these trials. The volumes that any particular trial will require will be dependent on the nature and design of the trials and could range from a few hundred to several thousand. Certainly, if we are to be able to draw quantifiable robust learning from trials we will need to recruit significant numbers of claimants.”

33. In the Minister's letter, he mentions that the first large-scale RCT will commence in early 2015 and run until 2016 and that it will involve at least 15,000 Universal Credit claimants. **The House may find it helpful if the Minister were to provide some indication of the current number of eligible claimants to enable a better understanding of the context of the trial.**

Duration

34. The Regulations are time-limited to three years but the Secretary of State may extend the period without further reference to Parliament. Such extensions would be made by order under section 41(5)(a) of the Act for which no parliamentary procedure is provided.

Impact

35. Section 10 of the EM states that there is no impact on the public sector. This seemed to us to be unlikely especially if there are a variety of interactions with the claimant to be catered for. When we queried this with DWP we were told:

“Paragraph 14 of the 2012 Act Impact Assessment refers to the fiscal costs through the transition period to Universal Credit which includes the costs of implementing Universal Credit. £15 million of the overall Universal Credit budget has been allocated to fund a range of tests and trials to determine the best method to promote progression amongst low earning Universal Credit claimants. The trials supported by these Regulations fall within that budget.”

36. It is, in our view, misleading to state that there is no impact on the public sector: provision may have already been set aside for piloting and no additional costs are envisaged, but the testing will cost up to £15 million.

Conclusion

37. During debate on the Welfare Reform Bill, a number of Members of the House expressed concern about the hardship that might be caused to people that were not properly thought through. They generally welcomed proposals to pilot new measures but repeatedly sought assurance that the results of the pilots would be published and made available to Members of both Houses. Baroness Hollis said: “at the core of research must be the integrity of publication”.⁴ Baroness Hayter welcomed the piloting but said that “the exact purpose of a pilot needs to be absolutely clear at the start ... What is the pilot meant to achieve and, therefore, how should it be monitored and evaluated.”⁵ In response, Lord Freud told the House: “Transparency is important. One provision in the amendment is that we go to Parliament to ask for permission to pass the regulations. That is a transparent process; it is not hidden. We would have to explain what we are doing and why”.⁶
38. DWP’s response that they are still developing the detail of what they might trial first in Universal Credit and the lack of any published document to explain the strategy does not seem to match the undertakings about transparency given during the passage of the Bill. This provision seems to be the equivalent to a “skeleton Bill”, where very wide powers are being sought without any detail being given about how and on whom they might be used.
39. Because, once agreed, the initial three-year period can be extended by the Minister without reference to Parliament, because of the wide range of sanctions as well as incentives that may be used, and because a new Minister in a new government would be free to use these powers in a very different way, we are concerned about the very broad nature of the powers permitted by this instrument. **We therefore draw it to the special attention of the House on the ground that the explanatory material laid provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.**

⁴ HL Deb, 1 November 2011, cols GC 428–433.

⁵ Ibid col GC432.

⁶ Ibid col GC433.

**E. Education (Independent School Standards) Regulations 2014
(SI 2014/3283)**

Date laid: 15 December

Parliamentary Procedure: negative

Summary: These Regulations set out the minimum standards that all independent schools must meet, and introduce new requirements to raise standards in education and safeguard children. It is not clear that liaison between the Department and the independent schools sector has allowed the sector sufficient opportunity to consider the proposed changes to the standards at appropriate length, or that the sector has been allowed adequate time, for implementation of the new standards to be achievable only three weeks after the Regulations were laid. While proposals from the Department have been in the public domain since consultation was launched at the end of June, schools may reasonably have wanted to see the standards as specified in the Regulations as laid before considering detailed implementation.

We draw these Regulations to the special attention of the House on the ground that they may imperfectly achieve their policy objectives.

40. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. DfE states that, in replacing Regulations from 2010,⁷ the instrument sets out the minimum standards that all independent schools (including academies and free schools) must meet, and introduces new requirements to raise standards in education and safeguard children. The standards relate to the following matters: quality of education provided; spiritual, moral, social and cultural (SMSC) development of pupils; welfare, health and safety of pupils; suitability of staff, supply staff, and proprietors; premises of and accommodation at schools; provision of information; manner in which complaints are handled; and quality of leadership in and management of schools.

**Education (Independent School Standards) (England) (Amendment)
Regulations 2014 (SI 2014/2374)**

41. The standards relating to the SMSC development of pupils are unchanged from those specified in the Education (Independent School Standards) (England) (Amendment) Regulations 2014 (SI 2014/2374), which came into force on 29 September 2014. They require proprietors of independent schools actively to promote the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. We brought SI 2014/2374 to the special attention of the House in an earlier Report,⁸ on the ground that there appeared to be inadequacies in the consultation process. DfE had consulted on the changes made by those Regulations over a six-week period which included school holidays, from 23 June to 4 August of this year. The Committee had received a number of comments from respondents in the independent schools sector complaining about the Department's handling of the consultation.

⁷ The Education (Independent School Standards) (England) Regulations 2010 (SI 2010/1997).

⁸ 10th Report, Session 2014–15, HL Paper 51.

42. We queried this handling when we took evidence, on 18 November, from Lord Nash, Parliamentary Under-Secretary of State for Education.⁹ Lord Nash said that the changes made by the Regulations were not likely to trouble the vast majority of schools. However, because there might be schools which were not promoting British values, and where the resulting climate might be more likely to breed extremism, the Department felt that this was a special and urgent case, which justified a shorter consultation. Lord Nash indicated his Department's intention to implement changes to the remaining standards for independent schools in January: the latest Regulations serve that intention.

Education (Independent School Standards) (England) Regulations 2014 (SI 2014/3283)

43. As is made clear by the list already given of matters to which the standards relate, the latest Regulations bear heavily on the way in which independent schools are run. In the EM, DfE says that most independent schools offer high-quality education and care to children, but that cases that continue to come to light have led the Department to review the independent school standards and identify specific areas to strengthen. Its objective is to help ensure that all children in independent schools receive the best possible education and welfare, are not exposed to poor quality teaching and are not exposed to extremist teaching and curriculum content.

Consultation

44. In section 8 of the EM, DfE explains that consultation relating to the changes made in these Regulations started at the same time as the consultation which preceded SI 2014/2374, but ran for eight (rather than six) weeks, from 23 June to 18 August. DfE says that the consultations generated 1,529 responses, and that, of these, 909 "campaign" responses were primarily focused on changes to the standards for the SMSC development of pupils. The Department had already considered these "campaign" responses in finalising SI 2014/2374, and did not re-consider them in finalising the latest Regulations.
45. DfE gives details in the EM of the level of support among respondents for the changes proposed to the standards: it is clear that some of the changes met with considerable disagreement. For example, DfE says that the changes to the standards for quality of education reflect an intention to ensure that schools that currently only secure "adequate" inspection judgments (and only just meet the quality of education standard) are likely to need to improve their provision, to meet the amended standards. 75 respondents agreed with the changes proposed, 220 disagreed and 44 were not sure. In the EM, DfE says that the majority of negative feedback related to the proposal that pupils' progress should be assessed with reference to "national norms", and that it has amended the Regulations to remove such references. The Department published a summary of the consultation on 18 December 2014, which provides more information about concerns expressed.¹⁰

⁹ See: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/secondary-legislation-scrutiny-committee/government-consultation-practice/oral/16495.html>

¹⁰ See: <https://www.gov.uk/government/consultations/proposed-new-independent-school-standards>

Letter from the Education Minister

46. We have received a letter of 17 December 2014 from Lord Nash, offering an update on progress in commencing the new independent school standards, notably through laying the latest Regulations before Parliament. We are publishing that letter as Appendix 3. Lord Nash acknowledges that the Department is not allowing a full term to elapse between laying the Regulations and bringing them into force, as it has otherwise undertaken to do as normal practice, but he states that “the sector has been aware of and preparing for potential changes since the launch of the consultation on 23 June 2014”.

Conclusions

47. We welcome the explanations which the Minister has given us, both in his evidence on 18 November and in his letter of 17 December. We have no doubt that he and his Department have maintained ongoing liaison with the independent schools sector, as he describes. **It is not clear, however, that such liaison has allowed the sector sufficient opportunity to consider the proposed changes to the standards at appropriate length, or that the sector has been allowed adequate time, for implementation of the new standards to be achievable only three weeks after the Regulations were laid. While proposals from the Department have been in the public domain since the consultation process was launched at the end of June, schools may reasonably have wanted to see the standards as specified in the Regulations as laid, before considering detailed implementation. Given this uncertainty, we question how effectively the Regulations will serve the objective of helping to ensure that all children in independent schools receive the best possible education and welfare.**

INSTRUMENTS OF INTEREST

Draft British Nationality (General) (Amendment) Regulations 2015
Draft Immigration (Provision of Physical Data) (Amendment) Regulations 2015

48. These Regulations expand the range of immigration and nationality applications for which the applicant can be required to provide biometric information to include:
- applicants for British citizenship;
 - applicants for transit visas (for passing through the UK); and
 - non-EEA nationals, with an enforceable EU law right, applying for documentation to evidence their right to enter or reside in the UK.
49. They also set out new rules for the use and retention of the biometric information provided with these applications. The Home Office states that the changes made by these Regulations enable the use of biometric information to fix and manage a person's identity from when they first apply to come to the UK from overseas until they are granted British citizenship and obtain a British passport (if applicable), thereby minimising the risk that fraudulent applications will be successful.

Draft Immigration (Biometric Registration) (Amendment) Regulations 2015
Draft Immigration (Biometric Registration) (Amendment) (No. 2) Regulations 2015
Draft Immigration (Leave to Enter and Remain) (Amendment) Order 2015

50. The first stage of the programme required applications to be made for a biometric immigration document where an applicant within the UK applied for an extension which brought the total period of leave to more than six months. This was completed in 2012 and around 1.5 million biometric immigration documents have been issued. The second stage, implemented by three instruments, will apply to foreign nationals from outside the EEA or Switzerland who apply from overseas to stay in the UK for more than six months: it is estimated that this group will represent around half a million people per year. The document will be issued on arrival in the UK allowing verification of the applicant's identity and, for example, that the English requirements are met (to prevent fraud). A short-term entry vignette will allow the applicant entry to the UK to collect the biometric document, which takes the form of a card with a chip containing fingerprints and a digital facial image.

Draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015

51. **This instrument appears to be another example of a Government department not fully considering the implementation of a policy change before laying instruments and having to withdraw or correct them: the Committee is concerned at the increased frequency with which this is occurring.**

52. These Regulations are intended to come into force at the same time as section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which will remove the cap on fines imposed in the magistrates' courts on summary conviction with the aim of ensuring that section 85 operates coherently in relation to Level 5 fines (which are currently £5,000 and will become unlimited). The Regulations also provide for exceptions for some customs offences and for alternative fines of a finite amount. This instrument replaces the draft Legal, Aid, Sentencing and Punishment of Offender Act 2012 (Disapplication of section 85(1), Fines Expressed as Proportions and Consequential Amendments) Regulations 2014 which were laid on 9 June 2014 and subsequently withdrawn. The Ministry of Justice has also withdrawn the Legal, Aid, Sentencing and Punishment of Offender Act 2012 (Increases to Levels 1 to 4 Fines) Order 2014, also laid on 9 June, which proposed to raise all Level 1–4 fines by 400%. The Explanatory Memorandum to the Regulations states that there are no immediate plans to re-lay the legislation that was in the Order, so Level 1–4 fines will remain at current levels.

Draft National Employment Savings Trust (Amendment) Order 2015

53. The National Employment Savings Trust (NEST) was established under section 67 of the Pensions Act 2008 to support automatic enrolment in pension schemes for lower paid workers and to address a market failure in the provision for pension schemes for smaller employers. This instrument revises the conditions for transfer in and out of the scheme to make it better for small firms but the implementation date is 1 April 2017 and the reason for the long lead time was not clear from the Explanatory Memorandum other than it is linked to EU approval for the provision of State Aid. Additional material from the Department for Work and Pensions is provided at Appendix 4 to explain the timetable for the change.

Draft Protection of Freedoms Act 2012 (Code of Practice for Powers of Entry and Description of Relevant Persons) Order 2015

54. Section 42 of the Protection of Freedoms Act 2012 required all Government Departments to review their powers of entry with a view to considering whether to take action to repeal, re-write or add safeguards to them. This instrument proposes to bring into force a Code of Practice which sets out considerations that should apply before, during and after the exercise of powers to enter premises. The Powers of Entry Code of Practice is intended to apply to all powers of entry that are not devolved or subject to a separate statutory Code of Practice: for example, powers that provide for the investigation of an offence by a police officer will not be covered because they are already subject to PACE Code B. The Powers of Entry Code also provides a description of the “relevant persons” who must have regard to it. The review has identified 1,237 separate powers of entry. Further information on how the Government plan to take it forward is provided in Appendix 5.

***Draft Social Security (Penalty as Alternative to Prosecution)
(Maximum Amount) Order 2015***

55. The purpose of the instrument is to increase from £2,000 to £5,000 the maximum amount of an administrative penalty that may be offered as an alternative to prosecution for a benefit fraud offence under section 115A (3)(b) of the Social Security Administration Act 1992. The Explanatory Memorandum (EM) states that the £2,000 maximum has been in force for nearly two and a half years, but the Government is raising the limit because it considers that there are still too many people committing benefit fraud, resulting in a £1.2 billion a year loss. As the scheme has been running for some time, the Committee expected to see a more evidence-based explanation for the increase. Additional information from the Department for Work and Pensions is included in Appendix 6 and the Department has been asked to revise its EM so that all who look at the instrument will see that information.

***Draft Code of Practice for the Housing and Care of Animals Bred,
Supplied or Used for Scientific Purposes***

56. The Animals Scientific Procedures Act 1986 regulates the use of protected animals in scientific procedures, and it requires a Code of Practice to set out the minimum standards for the care and accommodation of such animals. This version of the Code includes both the mandatory standards that are in force until 31 December 2016 (Section 1 of the Code) and the mandatory standards that come into force from 1 January 2017 (Section 2 of the Code) and advice how to meet those standards (section 3). Changes in EU law made by Directive 2010/63/EU have prompted a thorough review of standards. Revised guidance was published in March 2014 on how the Home Office enforces the Act; this revised Code on Accommodation follows extensive consultation with a range of groups representing both industry and animal welfare concerns.

Mines Regulations 2014 (SI 2014/3249)

57. The Mines Regulations 2014 consolidate and update previous legislation to protect people working at mines by requiring the mine operator to manage and control the major hazards at mines (fire, flammable/explosive gases and dust, ground movement, inrushes of water or other materials, transport through shafts, mass transport below ground and the use of explosives). Previous legislation placed most duties on the individual mine manager rather than on the business that operates the mine (as a legacy of the nationalised coalmining industry when the State was the employer). In the new Regulations the main duties will be placed on the operator of the mine, that is, the person or corporate body in overall day-to-day control of the mine. There has been extensive consultation, and most operators and the Union of Democratic Mineworkers support the revised legislation but the National Union of Mineworkers and National Association of Colliery Overmen, Deputies and Shotfirers were against the change in principle. As this might present a barrier to the effective implementation of the new legislation the Committee asked for further details from the Health and Safety Executive about these unions' views. The information is set out in Appendix 7.

Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 (SI 2014/3259)
Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014 (SI 2014/3260)
Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 2014/3263)

58. The Department for Environment, Food and Rural Affairs (Defra) has laid these three sets of Regulations, with an Explanatory Memorandum and a “Supplementary Evidence Paper” dated December 2014. Defra states that the Common Agricultural Policy (CAP) was introduced in 1962 and has undergone several reforms; and that the latest reform is the new CAP which starts from 1 January 2015, and which seeks to strengthen the competitiveness and sustainability of agriculture in Europe.
59. The Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 relate to direct payments made to farmers under the CAP. Using the flexibility available to Member States over aspects of CAP implementation, the Regulations set out how certain discretions will be exercised in England, in relation to direct payments, including as regards “greening” – the requirement to follow specific environmental farming practices – and the young farmer payment, which is available to farmers from the ages of 18 to 40 years.
60. The Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014 provide for the Secretary of State and Ministers of the devolved administrations jointly to exercise functions of the UK Competent Authority and UK Co-ordinating Body.
61. The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 cover administration, enforcement and environmental control across all aspects of the CAP (including direct payments).
62. Defra states that, together, these three instruments ensure that CAP reform has full and proper effect in relation to England.

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

British Nationality (General) (Amendment) Regulations 2015

Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015

Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2015

Immigration (Biometric Registration) (Amendment) Regulations 2015

Immigration (Biometric Registration) (Amendment) (No. 2) Regulations 2015

Immigration (Leave to Enter and Remain) (Amendment) Order 2015

Immigration (Provision of Physical Data) (Amendment) Regulations 2015

Judicial Pensions Regulations 2015

Justification Decision (Generation of Electricity by the UK ABWR Nuclear Reactor) Regulations 2015

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015

Legal Services Act 2007 (The Law Society) (Modification of Functions) Order 2015

Local Audit (Appointing Person) Regulations 2015

Local Audit (Smaller Authorities) Regulations 2015

Microchipping of Dogs (England) Regulations 2015

Misuse of Drugs Act 1971 (Amendment) Order 2015

Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2015

National Employment Savings Trust (Amendment) Order 2015

Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) (England and Wales and Scotland) Order 2015

Proceeds of Crime Act 2002 (Investigations: Code of Practice) (England and Wales) Order 2015

Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) (England and Wales) Order 2015

Protection of Freedoms Act 2012 (Code of Practice for Powers of Entry and Description of Relevant Persons) Order 2015

Regulation of Investigatory Powers (Communications Data) (Amendment) Order 2015

Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2015

Renewable Heat Incentive Scheme (Amendment) Regulations 2015

Social Security (Penalty as Alternative to Prosecution) (Maximum Amount) Order 2015

Draft instruments subject to annulment

Code of Practice for the Housing and Care of Animals Bred, Supplied or Used for Scientific Purposes

Modifications to the Standard Conditions of Electricity Supply Licence

Modifications to the Standard Conditions of Electricity Supply Licences (Machine-Readable Codes No. 1 of 2015)

Modifications to the Standard Conditions of Gas Supply Licences (Machine-Readable Codes No. 1 of 2015)

Instruments subject to annulment

SI 2014/3190 Road Traffic Act 1988 and Motor Vehicles (Driving Licences) (Amendment) Regulations 2014

SI 2014/3205 Civil Enforcement of Parking Contraventions Designation Order 2014

SI 2014/3215 Health Education England Regulations 2014

SI 2014/3217 Railways (Interoperability) (Amendment) Regulations 2014

SI 2014/3224 Local Audit (Auditor Panel) Regulations 2014

SI 2014/3225 Civil Aviation (Miscellaneous Revocations) Regulations 2014

SI 2014/3228 Social Security (Contributions) (Amendment No. 6) Regulations 2014

SI 2014/3230 Ukraine (European Union Financial Sanctions) (No.3) (Amendment No.2) Regulations 2014

SI 2014/3233 Heathrow and Gatwick Airports – London Noise Insulation Grants (Revocations) Scheme 2014

SI 2014/3243 Plant Health (Fees) (England) (Amendment) Regulations 2014

SI 2014/3244 Railways and Rail Vehicles (Revocations and Consequential Amendments) Order 2014

SI 2014/3248 Mines Regulations 2014

SI 2014/3249 Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2014

- SI 2014/3255 Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014
- SI 2014/3257 High Court (Distribution of Business) Order 2014
- SI 2014/3258 Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014
- SI 2014/3259 Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014
- SI 2014/3260 Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014
- SI 2014/3263 Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014
- SI 2014/3276 Misuse of Drugs (Designation) (Amendment) (No. 3) (England, Wales and Scotland) Order 2014
- SI 2014/3277 Misuse of Drugs (Amendment No. 3) (England, Wales and Scotland) Regulations 2014
- SI 2014/3279 Police and Criminal Evidence Act 1984 (Remote Reviews of Detention) Regulations 2014
- SI 2014/3280 Tax Credits (Exercise of Functions) Order 2014
- SI 2014/3281 Air Navigation (Overseas Territories) (Amendment) (No. 2) Order 2014
- SI 2014/3282 Data Protection (Assessment Notices) (Designation of National Health Service Bodies) Order 2014
- SI 2014/3284 Licensing Act 2003 (Personal licences) (Amendment) Regulations 2014
- SI 2014/3285 Education (National Curriculum) (Attainment Targets and Programmes of Study) (England) (Amendment) (No. 3) Order 2014
- SI 2014/3286 National Curriculum (Exceptions for First, Second, Third and Fourth Key Stages) (England) (Amendment) (No. 2) Regulations 2014
- SI 2014/3296 Family Procedure (Amendment No. 4) Rules 2014
- SI 2014/3297 Family Court (Composition and Distribution of Business) (Amendment) Rules 2014
- SI 2014/3298 Civil Jurisdiction and Judgments (Protection Measures) Regulations 2014
- SI 2014/3299 Civil Procedure (Amendment No. 8) Rules 2014
- SI 2014/3300 Criminal Justice (European Protection Order) (England and Wales) Regulations 2014
- SI 2014/3302 Air Navigation (Amendment) (No. 4) Order 2014
- SI 2014/3306 Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2014
- SI 2014/3307 Legal Services Act 2007 (Commencement No. 12, Supplementary and Transitory Provision) Order 2014

- SI 2014/3308 Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2014
- SI 2014/3309 Children (Performances and Activities) (England) Regulations 2014
- SI 2014/3312 Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) (No. 2) Regulations 2014

APPENDIX 1: PUBLIC BODIES (ABOLITION OF THE LIBRARY ADVISORY COUNCIL FOR ENGLAND) ORDER 2014

Letter from Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee, to Ed Vaizey MP, Minister of State at the Department for Culture, Media and Sport and the Department for Business, Innovation and Skills

The Committee has now considered this draft Public Bodies Order (PBO) and agreed that it should be subject to the enhanced affirmative procedure.

We are setting out our conclusions in our 15th Report of this session, published this week. We are making it clear that we do not consider that the Government have adequately demonstrated that the draft PBO serves the purpose of improving the exercise of public functions as set out in the Public Bodies Act 2011; or that it is sensible to proceed with abolition of the Advisory Council on Libraries (ACL) before the outcome of the Independent Library Report (ILR), commissioned by your Department, is known.

We also say in our Report that we are inviting you, as the Minister responsible for the PBO, to provide further justification of the proposed abolition of the ALC in the light of the outcome of the ILR. If you wish to offer this further justification, we would ask you to do so in good time before the period of the enhanced affirmative procedure expires.

25 November 2014

Letter from Ed Vaizey MP to Lord Goodlad

I have noted that the Committee considers that this Order should be subject to the enhanced affirmative procedure as well as noting the Committee's conclusions.

I remain of the view that the function of advising the Secretary of State does not require a statutory body and that the arguments set out previously remain and support this position. However, I welcome the opportunity to provide further justification for the proposed abolition of the Advisory Council on Libraries (ACL), particularly in light of the publication of the Independent Library Report (ILR).

The ILR was published on 18 December and as previously indicated to the Committee the terms of reference of the ILR did not include consideration of the statutory requirement of the Public Libraries and Museums Act 1964. I can also confirm that the ILR makes no reference to the ACL.

However, I would like to draw the Committee's attention to one of the key recommendations of the ILR, which is the establishment of a Task and Finish Group (TFG). This recommendation is strongly supported by Government, and I believe the partnership to be created by the TFG will foster and promote a new and dynamic way of working for libraries.

The proposed functions of this Group are far wider than the sole advisory function of the ACL and importantly it will also be focused on delivery. Unlike the ACL, the membership of the TFG will be flexible and dynamic, so that it can adapt to suit the specific tasks involved. The TFG will report jointly to Ministers and the Local Government Association and will be independent of government. It will be led by councils, comprising a range of technical experts including Arts Council

England, BBC, the British Library and the Society of Chief Librarians amongst others, but there will be no Ministerial appointments. At this stage the TFG will have a limited life cycle and will help ensure that the actions detailed in the ILR are delivered, but it will set direction of the library sector for years to come. It will also provide the necessary leadership, be the advocate for public libraries in England and will take forward programmes to support a number of specific objectives arising from the ILR.

The primary aim and minimum membership of ACL are prescribed by a statute and this structure would not lend itself to being run as set out above as a joint partnership body with local government and other key partners from the library sector, and would therefore not be suitable to take on these additional functions and deliver effectively. These functions are broader than the sole statutory function of the ACL “to advise the Secretary of State upon such matters connected with the provision or use of library facilities whether under this Act or otherwise as it thinks fit, and upon any questions referred to it by him”. The TFG will be open and transparent and will publish both its action plan and regular progress reports. I am of the view that the establishment of the TFG and its range of functions further negate the requirement for the ACL.

The ILR highlights some of the existing work currently being undertaken within the library sector, such as Arts Council England’s “Envisioning Libraries for the Future” and The Society of Chief Librarians’ Universal Offers. In addition to this, and the work to be delivered by the TFG, DCMS will continue to work with relevant bodies, including Arts Council England, Local Government Association, the Society of Chief Librarians and the Chartered Institute for Library and Information Professionals to ensure appropriate intelligence about the library sector is captured, and that sufficient advice is made available, to enable the Secretary of State to fulfil his statutory duty.

Your letter also commented that the Committee did not consider that the Government had adequately demonstrated that the draft PBO serves the purpose of improving the exercise of public functions. I remain of the view that the ACL is an unnecessary duplication of the knowledge and sector expertise already found amongst other statutory and non-statutory organisations and within DCMS, and with the planned creation of the TFG, it will be even more redundant.

For the reasons already stated above, I remain of the view that the function of advising the Secretary of State does not require a statutory body. With advice and guidance from stakeholders, officials at DCMS are very well-placed to perform the function of providing advice to the Secretary of State, including on the use of his statutory powers. It is worth noting that the ACL was never called upon to provide any advice in relation to the exercise of the Secretary of State’s powers.

The absence of the ACL will release staff resources from the burden of Ministerial Chair and members’ appointment procedure, the secretariat function will no longer be required and nor will the process of authorising and paying members expenses. This allows staff resources to be more efficiently and effectively deployed on developing and maintaining vital working relationships with key stakeholders and maintenance of support to the Secretary of State to meet his statutory duty.

22 December 2014

APPENDIX 2: DRAFT UNIVERSAL CREDIT (WORK-RELATED REQUIREMENTS) IN WORK PILOT SCHEME AMENDMENT REGULATIONS 2015

Letter from Lord Freud, Minister for Welfare Reform, Department for Work and Pensions, to Lord Goodlad

The Committee has asked for more detail on how the powers of these Regulations would be exercised.

Background

Before I respond to your points, it may be helpful to set out what we are aiming to achieve.

Under Universal Credit (UC) we are, for the first time, helping people who are on benefits and in low paid work to improve their income, increase aspirations and independence and tackle in-work poverty. For the individual, in-work progression can be achieved by increasing the number of hours in work, either with the same or a different employer or moving to a better-paid job.

Through UC, we believe we have a number of different levers that we could use to help and encourage people in low paid work to progress, including:

- support to address barriers and attitudes to progression;
- the conditions we place on people to drive desired behaviours and the potential penalties that could be applied where people fail to take reasonable action;
- working with employers to test innovative approaches to supporting in-work progression; and
- financial incentives to influence claimant behaviours and the outcomes we want to achieve.

However, with limited historical evidence on effective in-work progression approaches both nationally and internationally, we need to commit to testing a range of different approaches to understand what works for who and why.

In the context of limited evidence, DWP has developed a comprehensive *Test and Learn* strategy to demonstrate and quantify employment retention and progression. Our trialling strategy has been informed through an open-policy making process and in collaboration with a number of key Departments.

This *Test and Learn* strategy has been shaped and endorsed by an external advisory group of experts and academics. The result is an approach that utilises Randomised Control Trials to provide greater flexibility in testing a wide range of options. This is a departure from the more static DWP trialling of the past and we believe that this more dynamic approach provides the best opportunity to build the evidence we need.

The broad wording of these Regulations provide an essentially flexible vehicle for exploring the impact and role of each of the key levers for different claimant groups which is critical if we are to optimise our learning and the societal benefits of earnings progression.

The first Randomised Control Trial will set the baseline for effective interventions, assessing the role of Work Coach support, conditionality and sanctions. Where

necessary, once this baseline has been quantified we will continue this Test & Learn approach and vary the intensity and/or impact of the levers for different claimant groups.

Throughout the trials, no in-work claimants will be subjected to stronger conditionality than that found in the out-of-work regime, and all wider protections and safeguards will apply to ensure that, for example victims of domestic violence or those with caring responsibilities are not disadvantaged.

This approach represents genuine testing and is a key element in continuously improving and evolving the Universal Credit system. The learning from this is crucial in forming decisions on what support is effective for low-earning claimants.

Randomised Control Trials (RCT)

It is intended that the first large-scale RCT to make use of these powers will commence in early 2015, will run through 2015 and 2016 and involve at least 15,000 Universal Credit claimants.

To give you a clearer sense of the focus of the first proposed trial, we plan to test the impact of fundamental elements of a core in-work service in Universal Credit Live Service. These involve:

- providing Work Coach support to each low-earning claimants to set relevant goals, address barriers and define actions that, if followed, should help them to earn more; and
- making some requirements mandatory, such as the requirement to search for additional work, and testing the impact of different frequencies of more challenging conversations with claimants on the progress they are making (initially testing fortnightly and bi-monthly conversations).
- testing the impact of sanctions on claimant behaviours. Sanctions would be applied where a claimant fails, without good cause, to participate in interventions or fails to undertake reasonable activity to earn more. Testing and learning about these impacts is vital and will offer a greater insight on sanctions with in-work claimants and informing decisions on the role they should play in any national delivery model.

The fundamental aim of this approach is to drive greater independence from benefits by getting people to take greater accountability so they can earn and work more.

This first trial will help deliver this by:

- setting and embedding clear expectations for our claimants;
- providing tailored support based on the individual's circumstances; and
- re-enforcing the consequences of non-compliance, so claimants fully understand the implications of their actions.

We aim to build on the findings from this and earlier learning to develop further RCTs under these powers.

6 January 2015

APPENDIX 3: EDUCATION (INDEPENDENT SCHOOL STANDARDS) REGULATIONS 2014 (SI 2014/3283)

Letter from Lord Nash, Parliamentary Under-Secretary of State for Schools, Department for Education, to Lord Goodlad

I am writing to provide an update on the Department's progress in commencing the new Independent School Standards (ISS).

You will recall that we discussed the ISS at length during the Evidence Session on 18 November. At that session, I made clear that the intention was to bring the remainder of the new ISS into force in January 2015. This follows the commencement of a new Spiritual, Moral, Social and Cultural (SMSC) standard on 29 September 2014. I can confirm that the Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283) (the ISS Regulations) that introduce changes to the other ISS: Part 1, Parts 3–4 and Parts 6–8 have now been laid before both Houses. The changes will come into force on 5 January.

We discussed the rapid implementation of the ISS at the Evidence Session and I would like to reiterate that, although the Department has not been able to give a term's notice between laying the SI and bringing it into force, the sector has been aware of and preparing for potential changes since the launch of the consultation on 23 June 2014.

When the consultation was launched, it was publicised via the GOV.UK website; we wrote to representative organisations; we highlighted it in the regular local authority update; and we wrote to individual independent schools;

The consultation set out the Department's intention to implement the majority of the new ISS after the October half term;

The changes to the SMSC Part of the ISS were brought into force on 29 September 2014. We wrote to schools in advance of this and in that letter reiterated that we were planning to make the remaining changes in the autumn;

Because of the complexity of some of the consultation responses, to Part 4 in particular, and our ongoing liaison with the sector, in particular with the Independent Schools Council, we made the decision to push back implementation of the remaining ISS from October 2014 to January 2015; and

We wrote to schools on 12 December 2014 to inform them that the regulations would be laid on 15 December 2014 and would be coming into force on 5 January 2015.

So whilst the Department has not been in a position to give schools a full term's notice between laying the SI and bringing it into force, it is fair to say that schools are well aware of the proposed changes and aware that the initial intention was to commence them in October 2014.

I acknowledge that not giving a full term's notice is not ideal, but in this instance I feel the changes we are making are crucial to raise standards and maximise the safeguarding regime. As we have already delayed our intended implementation date by one half-term I am convinced that, as the new ISS are now ready, it's imperative that we implement them at our earliest opportunity and don't delay any longer.

I can confirm that the Department plans to publish the full consultation response to the changes to the ISS on 18 December 2014. We also intend to issue guidance on the changes in the New Year.

I would also like to draw your attention to the Explanatory Memorandum (EM) that accompanies the ISS regulations. You will recall the discussion in the Evidence Session about the need for the EM to provide a summary of the main points that came out of the consultation. I hope you agree that the attached EM provides a concise summary of the consultation, including, where appropriate, the number of respondents in favour of and against suggested changes. It also highlights the key areas where the Department has amended the regulations as a result of consultation. As always, full details will be provided in the consultation response document.

17 December 2014

APPENDIX 4: DRAFT NATIONAL EMPLOYMENT SAVINGS TRUST (AMENDMENT) ORDER 2015

Additional material from the Department for Work and Pensions to explain the timetable for the changes to NEST

“Background

The National Employment Savings Trust (NEST) was established to underpin automatic enrolment to focus on a target market of low to moderate earners and smaller employers who the market served inefficiently or not at all. NEST receives State aid approved by the European Commission^[1] as a consequence of its Public Service Obligation to admit any employer regardless of the size or profitability of their workforce. The annual contribution limit and restrictions on transfers were cited by the European Commission as important measures in balancing any competitive advantage in their approval of State aid for NEST.

DWP undertook a Call for Evidence during 2012/2013 to assess whether the annual contribution limit and the transfer restrictions prevented NEST from delivering its PSO for its target market during the implementation of automatic enrolment. The evidence showed that these two constraints were not in practice a barrier for low to moderate earners and smaller employers accessing NEST. Evidence showed:

- 70 per cent of SMEs expect to contribute the legal minimum employer contributions^[2] – until October 2016 minimum contribution levels are a total of 2% (including at least 1% from the employer) on a band of qualifying earnings between £5,772 and £41,865 (2014/15)
- 84 per cent of workers in the private sector eligible target group for automatic enrolment earn under £30,000^[3] and based on contributions above the lower limit of the qualifying earnings band, a low to median earner (£15,000 to £26,000) would need contributions of between 48 per cent and 22 per cent to breach NEST’s annual contribution limit
- the majority of intermediaries believed that cost would be the employer’s main consideration when selecting a scheme^[4] for automatic enrolment. There is no evidence to suggest that removing the restrictions on individuals initiating transfers into and out of NEST would have a bearing on an employer’s choice
- analysis^[5] showed that only around 14,000 SMEs currently provide trust-based workplace pension schemes that could be transferred to another pension

[1] http://europa.eu/rapid/press-release_IP-10-899_en.htm

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209865/ad-hoc-supporting-ae-smes.pdf

[3] <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/stb-ashe-statistical-bulletin-2012.html#tab-Annual-earnings>

[4] The Pensions Regulator, August 2012, Intermediaries’ awareness, understanding and activity relating to workplace pension reforms, Spring 2012

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209864/ad-hoc-supporting-ae-further-analysis.pdf

provider and of these DWP estimates^[6] around 5,000 might consider a transfer of their workplace pension provision to NEST, equivalent to less than 1 per cent of all firms

Q1) Why has the NEST roll out has been delayed from 2017 to October 2018 – what factors have led to this?

The timetable for the roll out of automatic enrolment was first set out in The Employers' Duties (Implementation) Regulations 2010. Under the original regulations all employers that existed on 1 April 2012 were due to be subject to the new duties by February 2016 and the duties would apply to all employers by September 2016. Minimum contribution levels would begin at a total of 2% including at least 1% from the employer. From October 2016 minimum contributions were due to increase to a total of 5% including, at least 2% from the employer, and then from October 2017 a total of 8% including at least 3% from the employer.

In November 2011, the Government announced that it would delay the introduction of automatic enrolment for all small employers with fewer than 50 workers until at least June 2015. This was in recognition of the tough economic conditions in which smaller employers were operating and to give them more time to prepare. The changes were also in recognition of the Government's better regulation strategy to mitigate/reduce burdens on smaller businesses.

The 2010 regulations were amended by The Employers' Duties (Implementation) (Amendment) Regulations 2012 that set out that all employers that existed on 1 April 2012 were due to be subject to the new duties by April 2017 and the duties would apply to all employers (including those set up since April 2012) by February 2018. Minimum contribution levels would still begin at a total of 2% including at least 1% from the employer. Minimum contributions will now increase to a total of 5% including at least 2% from the employer from October 2017, and then to a total of 8% including at least 3% from the employer from October 2018.

Employer Size	Automatic Enrolment Staging Date
Large Employers (250 or more workers)	October 2012 to February 2014
Medium employers (50 – 249 workers)	April 2014 to April 2015
Small employers (49 workers or less)	June 2015 to April 2017
New employers (established after April 2012)	May 2017 to February 2018

Q2) Why does the change brought about by this Order only take effect in 2017?

Responses to the Call for Evidence suggested there was a widespread **perception** that the annual contribution limit and transfer restrictions were a barrier to smaller employers using NEST – even though the actual effect of these two constraints

^[6] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209864/ad-hoc-supporting-ae-further-analysis.pdf

would not prevent any employer meeting their automatic enrolment duties or NEST delivering its PSO.

However, the Department determined that removing these two constraints immediately as a result of a perception would not be a proportionate response and could divert NEST's attention away from its key objective to support its target market during roll out of automatic enrolment. Conversely, doing nothing to address the perception creates a risk for the implementation of automatic enrolment. Smaller employers have limited experience of providing pensions for their workforce; they will have a more limited choice of provider than larger employers as the profitability of their workforces and the capacity of providers to meet demand both reduce. As the only scheme that has to admit any employer, if NEST is perceived by smaller employers as not being a suitable scheme for all their workers, this could complicate employer choice, damage confidence in automatic enrolment and undermine the aims of the reforms.

DWP therefore concluded that legislating now to remove these constraints in 2017 was a balanced approach. Smaller employers in NEST's target market will start to automatically enrol their workers from June 2015, legislating now will address any perception that the annual contribution limit and transfer restrictions are now or will be a barrier to them using NEST for automatic enrolment. Leaving them in place beyond 2017 would not be consistent with the Government's broader policy objectives, stopping individuals saving more and preventing consolidation of pension pots. On this basis, DWP sought and received approval from the European Commission that removing these constraints in 2017 remained compatible with the State aid afforded to NEST."

5 January 2015

APPENDIX 5: DRAFT PROTECTION OF FREEDOMS ACT 2012 (CODE OF PRACTICE FOR POWERS OF ENTRY AND DESCRIPTION OF RELEVANT PERSONS) ORDER 2015

Additional information from the Home Office

Q1: The Committee has had a long-standing interest in POFA 2012 and has been expecting to see a range of repeals following the review that was supposed to be completed by May 2014.

The purpose of the review was to identify where there was potential for powers of entry to be repealed or have further safeguards added. It has done this successfully. Each Department's final report on their review of existing powers of entry was laid before both Houses of Parliament on 27 November 2014. A total of 1,237 powers of entry were subject to review. Taken together the reports propose a reduction in the overall number of powers which will, when implemented, leave a total of 912. The number of powers for which it is proposed to add further safeguards is 231.

Q2: The EM states that the review identified 1237 separate powers of entry - what is being done about that? Are there to be any repeals to reduce that number?

A2: It will be for each Department to implement the changes that they have proposed in their reports. I am aware of some early changes that were made before reports were published and of a number that are before Parliament at the moment – in particular the Consumer Rights Bill contains provisions to consolidate more than 100 separate powers of entry relating to trading standards and consumer protection into a generic set of powers.

Q3: This Code reads like a sort of overlay to all powers not devolved or included in a different Code of Practice - is that the intention? What proportion of the 1237 does it cover?

Q3: As you note, the Powers of Entry Code of Practice is intended to apply to all powers of entry that are not devolved or subject to a separate statutory Code of Practice. For example, powers that provide for the investigation of an offence by a police officer or other designated person are subject to PACE Code B and will not be subject to the Powers of Entry Code. As each Department remains responsible for its own stock of powers of entry in statute I do not hold a definitive list of which powers will be subject to the new Code.

Q4: How will the Code work in practice? How will it be enforced?

A4: Paragraph 1.1 of the Code states “Under Section 51 of the Protection of Freedoms Act 2012 a ‘relevant person’ must have regard to the Powers of Entry Code of Practice when exercising any functions to which the Code relates. A failure on the part of any person to act in accordance with any provision of this Code does not of itself make that person liable to criminal or civil proceedings. However, the Code is admissible as evidence in any such proceedings and any failure by a relevant person to have regard to the Code may be taken into account.”

The obligation is for a relevant person to have regard to the Code. A duty to have regard to a Code is not the same as a duty to follow a Code. Rather, it means that the Code is a mandatory relevant consideration that must be taken into account, but there may be other considerations which might, in a given case, outweigh the individual prescriptions in the Code. Ultimately, there is also the possibility of a judicial review being brought for breach of statutory duty where a relevant person has failed to have adequate regard to the Code.

The Secretary of State is under an obligation to keep the Code under review, and may alter or replace the Code and definition of “relevant person”. The Secretary of State may do this if, for example, if the Code is not considered to be working as intended.

Q5: How will it actually change the exercise of powers of entry?

Our objective has always been to ensure greater transparency and a reduction in the burden to business associated with inspection or enforcement powers. The majority of bodies exercising powers of entry have indicated that they generally operate in compliance with the provisions of the Code. However, we expect that the introduction of the Code will see improved attempts to secure consent of an occupier to enter premises including use of advance notification ahead of routine visits and better communication explaining the relevant power of entry and associated powers being exercised.

Viewed alongside the outcomes of the review of existing powers of entry the Code will help ensure that any entry into business or residential premises is necessary and proportionate to the purpose of exercising the power.

APPENDIX 6: DRAFT SOCIAL SECURITY (PENALTY AS ALTERNATIVE TO PROSECUTION) (MAXIMUM AMOUNT) ORDER 2015

Additional information from the Department for Work and Pensions

Q1. What evidence is there that it has been at all effective as a deterrent?

A1: The administrative penalty has been part of the Department's measures to tackle social security fraud since it was introduced in 1998. It is just one of a number of measures used by the Department to both deter and punish benefit fraud. The administrative penalty was increased from 30% to 50% of the fraud overpayment from 8 May 2012 as a result of the measures in the Welfare Reform Act 2012. (There is currently a min value of administrative penalty of £350 and max of £2,000). That increased administrative penalty applies to cases where the fraud overpayment occurred wholly on or after the 8 May 2012.

The Department is unable to quantify the deterrence factor on fraud cases or on potential fraudsters of this individual measure alone. We do know, however, that for those who received an administrative penalty there are low numbers of repeat offenders. The key driver for introducing the change remains, that it is being introduced as part of a range of measures to address and tackle benefit fraud and will in future provide greater flexibility to the Department and allow it to offer tougher financial punishments, without the need to go to court. It is also part of the stronger deterrent message in combatting potential fraudsters.

Q2: What was the gross financial loss to fraud in year ending 2010 and how many cases were identified (ie before the penalty was introduced)?

A2: Fraud losses in the financial year 2009/10 are estimated at **£1.1bn** (source: Nat Stats). In 2009/10, 7,249 DWP fraud investigations and 7,455 Local Authorities' (LAs) investigations resulted in an administrative penalty.

Q3: What was the gross financial loss to fraud in years ending 2013 and 2014 and how many cases were identified? (ie what has been the effect of the £2k penalty)

A3: Fraud losses in financial year 2012/13 and 2013/14 are both estimated at **£1.2bn** (source: Nat Stats). In 2012/13, 3,863 DWP fraud investigations and 5,520 LA fraud investigations resulted in an administrative penalty and in 2013/14, 1,501 DWP fraud investigations and 4,855 LA fraud investigations resulted in an administrative penalty.

Q4: What evidence do you have that makes you think that increasing the penalty will reduce the incidence of fraud and by how much to you estimate it will reduce incidence (ie what further reduction in fraud do you anticipate from this increase in penalty and why?)

A4: As stated in the EM the number of cases where a penalty over £2000 will be considered is likely to be fewer than 250 a year. The main effect of the change is therefore to allow the Department greater flexibility in finding a suitable penalty for each case, without necessarily needing to bring cases to prosecution simply

because the level of administrative penalty available is insufficient. Whilst we cannot estimate the deterrent impact of the measure in terms of the number of frauds committed in the future, the measure still remains an important part of our overall package of measures to ensure an appropriate range of options available to deal with benefit fraud. The number of those who accept an administrative penalty and then reoffend is low. Accordingly it is important to ensure that the use of administrative penalties is not overly restricted by the maximum rate available. Increasing the maximum penalty also fits with the strong deterrent message being given by the Department overall on benefit fraud.

Q5: Will any of the “other measures” mentioned in the Oct 2010/Feb 2012 strategy document directly result in this penalty being imposed, if so what are they?

A5: Any of the fraud measures in the strategy could directly result in a fraud investigation and a penalty being imposed on someone. For example, the introduction of the use of real time information could provide evidence of a fraud previously undetected by the Department and result in a person being investigated for fraud and the subsequent imposition of a penalty.

2 January 2015

APPENDIX 7: MINES REGULATIONS 2014 (SI 2014/3248)

Additional information from the Health and Safety Executive on the view of the NUM and NACODS on the Mines Regulations 2014

1. “The NUM’s and NACODS’ arguments are presented in almost identical terms. They argue that ‘there is already in place a wealth of legislation, whose protection [their] members and others benefit from’. They further argue that if there are no gains to the health and safety of mineworkers [from the introduction of the new Regulations] then we should not embark on changes that have only the potential to increase uncertainty with regard to health and safety.
2. The two trade unions are comfortable and familiar with the existing legislation and see no need for change, taking the view that different types of mines have a different range of hazards, which are dealt with more fully in the existing prescriptive regulations. They presented arguments against all the specific questions posed in HSE’s Consultative Document and, to assuage their concerns, HSE responded in writing and followed up with meetings with both trade unions. There have not been any further meetings nor correspondence since then.
3. HSE has been clear from the outset of the need to modernise the regulatory framework covering deep mining in GB. The reasoning behind this is covered elsewhere in the Explanatory Memorandum (EM), eg paras 4.1 and 7.2.
4. The new Regulations were developed specifically to provide satisfactory regulatory coverage for the major hazards associated with deep mining, where health and safety legislation of general application fell short. Their modern, goal-setting nature is closely aligned to that which has been successful in regulating other major hazard industries.
5. The proportion of mineworkers in the non-coal sector is increasing and is very likely to continue to do so as the deep coal mining sector contracts. Two of the current four large deep coal mines are scheduled to close by the end of 2015 and the planning of a new major potash mine is reaching its final stage. Both the future mine operators and the trade unions representing workers in this sector have recognised the need for the modern, goal-setting nature of the new Regulations.
6. There are many examples of how the current regime is no longer fit for purpose. EM para 7.2 covers perhaps the most obvious example, ie the placing of most of the duties for ensuring safety on an individual employee, ie the mine manager. The central principle in all health and safety law is that the employer is responsible. However, HSE understands the importance of the need for a robust, competent management structure in such a major hazard environment as underground mining. That is why the new Regulations have brought forward from the existing regime the requirement for the mine operator to establish a management structure, where named people or posts carry specific responsibilities for the health and safety of workers.
7. Section 1(2) of the Health and Safety at Work etc Act 1974 provides for the progressive replacement of existing legislation by regulations designed to maintain or improve health and safety standards. Replacement of old

prescriptive provisions with more goal-setting requirements, where the effect of the latter is to require at least the same standards of health and safety protection, is an appropriate way forward in the consolidation and modernisation of mining legislation. The existing deeply prescriptive law is totally out of step with modern health and safety regulation.

8. HSE continues to offer the opportunity for discussions with the two trade unions, and has plans in place to work closely with dutyholders through the transition from the old regime to the new Regulations.”

2 January 2015

APPENDIX 8: 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 13 January 2015 Members declared the following interests:

Draft Smoke-free (Private Vehicles) Regulations 2015

Lord Borwick
British Lung Foundation, Trustee

Civil Procedure (Amendment No. 8) Rules 2014 (SI 2014/3299)

Lord Borwick
Chairman of a company in litigation with another company in which a Part 36 Offer has been made.

As a result of this interest, Lord Borwick withdrew from the Committee's consideration of the Civil Procedure (Amendment No. 8) Rules 2014 (SI 2014/3299).

Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2014 (SI 2014/3308)

Lord Borwick
The Member's wife is a member of the Greater London Authority

Attendance:

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