HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

23rd Report of Session 2014–15

Draft Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015

Draft Single Use Carrier Bags Charges (England) Order 2015

Deduction from Wages (Limitations) Regulations 2014

Includes 7 Information Paragraphs on 10 Instruments

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

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

The Committee has the following terms of reference:

(1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
  (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
  (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

  with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).

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

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

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

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

Members

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

Registered interests
Information about interests of Committee Members can be found in Appendix 6.

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 Third Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

A. Draft Human Fertilisation and Embryology (Mitochondrial Donation) Regulations 2015

Date laid: 17 December

Parliamentary Procedure: affirmative

Summary: This instrument would enable mitochondrial donation techniques to be used, under licence, as part of in-vitro fertilisation (IVF) treatment to prevent the transmission of serious mitochondrial disease from a mother to her child. The legislation would, in due course, permit the use, initially in about 10 subjects a year, of two techniques that use a third person's mitochondria to replace the defective material from the mother. The techniques are in an advanced stage of testing and the use of the procedure in humans is expected to begin within the next two years. Use of the procedure would to be closely monitored by the Human Fertilisation and Embryology Authority (HFEA) under a specific licence issued only in relation to women with a significant risk of passing on serious mitochondrial disease. Because, according to the Department of Health, mitochondrial DNA does not create any of the physical characteristics or personality traits of a child, these Regulations include provision that the mitochondrial donor would have no rights in relation to a child born using these techniques. The Committee has received a number of submissions on the issue expressing a wide range of views. The submissions are published on our website.

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.

1. This instrument would enable the Human Fertilisation and Embryology Authority (HFEA) to license the use of two mitochondrial donation techniques as part of in-vitro fertilisation (IVF) treatment to prevent the transmission of serious mitochondrial disease from a mother to her child. It is laid by the Department of Health (DH) under the Human Fertilisation and Embryology Act 1990 as amended ("the 1990 Act") and is accompanied by an Explanatory Memorandum (EM) and an Impact Assessment.

2. The Committee received a number of submissions about these Regulations. They are described in paragraphs 22 to 36 below and published in full on the Committee's webpage.[1] A list of those who made submissions is set out in Appendix 1 to this report. The first part of this report explains the background to the Regulations from material supplied by HFEA and DH.

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[1] www.parliament.uk/seclegpublications

The second part summarises the views in the submissions that either support or dispute the information from DH.

Background

3. Mitochondria are present in almost all human cells and provide the power that cells need to function (like a battery). Mothers can carry abnormal mitochondria and be at risk of passing on serious disease to their children, even if they themselves show no symptoms. Mitochondrial disease affects each sufferer differently with a wide range of potential symptoms at varying levels of severity, including muscle weakness, visual and hearing problems, learning disabilities, heart, liver and kidney disease. A child born with the most severe form of the condition is likely to die at an early age. HFEA estimates that around 1 in 6,500 children is born with a serious disorder due to faults in mitochondrial DNA. The Department states that there is no cure for mitochondrial disease and only very limited means of alleviating a patient's symptoms.

4. The Department explains that:

- DNA in the nucleus of cells carries almost all our genes and shapes our physical characteristics, including our appearance, and contributes to our personality (along with our upbringing and environment). These genes are inherited from both our parents. The nuclear DNA also carries many genes required for mitochondrial function.
- Mitochondria have their own separate DNA, which carries just a few genes. All of these genes are involved in energy production but determine no other characteristics. They are only inherited from the mother.

Development of the techniques

5. In the UK, the Wellcome Trust Centre for Mitochondrial Research at Newcastle University has been working on techniques for some time and asked DH to make the Regulations because it felt its research had progressed to a point where the treatment could be introduced on an experimental basis.

6. Two techniques are proposed. Both involve replacing unhealthy mitochondria with healthy donated mitochondria: neither involves alteration of the nuclear DNA of the patient's egg or embryo:

- **Maternal spindle transfer (MST)**. The "maternal spindle" is the group of maternal chromosomes within an egg, which contain nuclear DNA and are shaped in a spindle. MST involves removing the spindle from the mother's egg before it is fertilised by the father's sperm. The spindle is then placed into a donor egg with healthy mitochondria (from which the donor's spindle, and therefore her nuclear material, has been removed).
- **Pro-nuclear transfer (PNT)**. The pro-nucleus is the nucleus of a sperm or an egg cell during the process of fertilisation after the sperm enters the egg, but before they fuse. PNT involves removing the two pronuclei (nuclear DNA material from the male and the female partners) from a newly fertilised egg that has unhealthy mitochondria. The pro-nuclei are then transferred into a donated embryo, with healthy mitochondria, that has had its own, original pro-nuclei removed. PNT uses very early stage embryos, usually when they are still a single cell (known as a "zygote").

7. DH explains that the instrument refers to both "eggs" and "embryos" because the 1990 Act includes in its definition of "embryo" an "egg that is in the process of fertilisation". This definition is there to help avoid uncertainty, for the purposes of the Act, about the point at which an embryo begins to exist. The MST technique involves non-fertilised eggs whereas the PNT technique involves fertilised eggs (that is, embryos according to the 1990 Act).

Oversight

8. Since 2011, an Expert Panel convened by HFEA has been reviewing the science in this area and assessing the safety and efficacy of the two techniques. The Panel reported in April 2011, March 2013 and June 2014. It found that both techniques would be effective in preventing the transmission of serious mitochondrial disorders and that there was no evidence to indicate that either technique would be unsafe in humans. In October 2014, HFEA published an introductory briefing note,[2] a lay summary of the Expert Panel's reports and recommendations.

9. Although the research carried out in this area – in macaque monkeys in the United States and in human embryo research in the UK and USA – has had reassuring results, the Expert Panel has recommended further experiments. The main area of research thought to be needed was to observe cells derived from embryos created by MST and PNT in order to see how mitochondria behave. It is the Expert Panel's understanding that the relevant research teams are making good progress in these experiments although their research is not yet published.

What are the scientific concerns?

10. Just as we all have different blood groups, we also have different types of mitochondria, called haplotypes. Some scientists have suggested that if the patient and the mitochondria donor have different mitochondrial haplotypes, there is a theoretical risk that the donor's mitochondria will not be able to link properly to the patient's nuclear DNA, which could cause problems in the embryo and, later, in the child. The Expert Panel has considered this issue and, although it concluded that the data submitted was not relevant enough to raise safety concerns, as a precautionary step it recommended that consideration be given to mitochondria haplotype matching in the process of selecting donors.

11. Another potential concern is that a small amount of unhealthy mitochondrial DNA may be transferred into the donor's egg along with the mother's nuclear DNA. Studies carried out on MST and PNT show that some so-called mitochondrial "carry-over" occurs. However, the Expert Panel noted that carry-over is lower than 2% of the mitochondria in the resulting embryo, an amount which is very unlikely to be problematic for the children born. In addition, this means that the benefit is likely to carry forward to future generations. So a girl child born by mitochondrial donation should be able to

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[2] http://www.hfea.gov.uk/docs/2014–10–01_Mitochondrial_donation__an_introductory_briefing_note_-_final.pdf

have a child in the normal way (that is without need for either procedure) without the risk of mitochondrial disease being passed on.

Conditions on mitochondrial donation and licensing

12. Part 2 of the Regulations sets out certain conditions that will apply to the process. To enable eggs and embryos to be created using either of the two techniques, HFEA must have given a determination that there is a particular risk that the eggs or embryos of the woman seeking treatment may have mitochondrial abnormalities caused by mitochondrial DNA. HFEA must also be satisfied that there is a significant risk that a child with those abnormalities would have or develop serious mitochondrial disease (regulations 5 and 8).

13. Regulation 9 ensures that clinics holding existing IVF treatment licences cannot carry out mitochondrial donation without specific approval from the HFEA. Specific permission will be given on a case-by-case basis. There are likely to be very few applications for licences at present: only one research team in the UK, at Newcastle University, is likely to be in a position to offer the procedure to patients in the near future.

14. The Regulations are not intended to come into effect until 29 October 2015. This is to allow HFEA, the regulatory body, time to determine its licensing process (for example, what information it will require from an applicant seeking a licence to provide this treatment for a named patient and how this information will be assessed). HFEA will also need to determine how the provision of this treatment will be monitored. It will publish its criteria for licensing and monitoring in advance of the date when applications can be made.

Two parents

15. Part 3 of the Regulations modifies the legislation on access to donor information. DH states that unlike "normal IVF", with full gamete and embryo donation, a child born following mitochondrial donation inherits no nuclear DNA from the donor. The general scientific understanding is that mitochondrial DNA is limited to the production of energy and does not have any impact on the physical characteristics and personality traits of a child. For this reason DH has decided that identifying information about donors, which is available to those born as a result of normal IVF, should not be available to children resulting from mitochondrial donation beyond limited, non-identifying information.

16. Provision is also made for a mitochondrial donor to access limited, non-identifying, information about children born as a result of their donation. The Regulations modify the 1990 Act to clarify that mitochondrial donors are not related to any children born following treatment services using their donation (because the amount of DNA potentially transferred is minute). Regulation 17 ensures that, for the purposes of the consent provisions in the 1990 Act, the mitochondrial donor has no rights over any resulting egg or embryo and that control over the egg or embryo will be with the people who provided the nuclear material for it.

Impact

17. The initial estimate is that that 10–20 families per year might be helped by mitochondrial donation treatment, rising to around 80 families once the techniques are well established. The Impact Assessment estimates significant quality of life benefits for both the individuals born using mitochondrial donation techniques and their families. It also indicates significant financial savings to the public purse if the high levels of care and support needed by an individual with severe mitochondrial disease are avoided.

Consultation Outcome

18. HFEA has conducted extensive public consultation on this issue to ascertain the views of stakeholders and the wider public on the acceptability of allowing mitochondrial donation techniques in clinical practice in the UK. DH consulted on these Regulations in draft form from 27 February to 21 May 2014. The Department received 1,857 responses, but 83% of the responses did not comment on the consultation questions, they simply expressed a view for or against allowing the use of mitochondrial donation and the majority were part of organised campaigns.

19. Of the 316 responses which did address the consultation questions (17% of the total response), DH assessed that 148 were in overall support of the principle of mitochondrial donation, 166 were opposed and two expressed no view. When these responses were analysed in respect of the individual questions posed in the consultation document, DH states that the majority of responses agreed with the Government's proposals as set out in the Regulations. The only point where this was not the case was in respect of question 5 which asked if the reader agreed with the proposal that mitochondrial donors should be treated in the same way as organ donors and not as donors of sperm and eggs for fertility treatment purposes, so that *identifying* information about the donor would not be disclosed. The 289 responses to that particular question were fairly evenly divided in their views with 143 agreeing with the proposal and 146 opposed.

Legal considerations

20. A number of submissions made to the Committee present the arguments set out in a legal opinion by Lord Brennan QC on the validity of the draft Regulations.[3] Drafting issues and those relating to the correct interpretation of the powers under the 1990 Act are matters for the Joint Committee on Statutory Instruments. We note that that Committee has considered the Regulations and has raised no legal issues in respect of them.[4]

21. DH has however provided for information a response to Lord Brennan's opinion (this is published in Appendix 2). It states that section 3ZA(5), inserted into the 1990 Act by the 2008 Act of the same name, was passed by Parliament after extensive debate in the full knowledge of what the legislation

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[3] Published at www.parliament.uk/seclegpublications, see for example the submissions from Dr Elizabeth Allan and CARE.

[4] JCSI 17th Report, Session 2014–15, HL Paper 85 http://www.publications.parliament.uk/pa/jt201415/jtselect/jtstatin/85/8504.htm

was intended for.[5] Section 3ZA(5) specifically allows an egg or embryo to be "permitted" even though the egg or embryo "has had applied to it in prescribed circumstances a prescribed process designed to prevent the transmission of serious mitochondrial disease" and these Regulations would prescribe two such processes. It also states that this procedure would not fall within the scope of the Clinical Trials Directive, in part because this is not a "medicinal product" and in part because the Regulations will enable the HFEA to licence, on a case-by-case basis, mitochondrial donation as a treatment.

Views expressed in submissions

The ethics of interference

22. A number of submissions object to the proposal in principle and state that it crosses an ethical line. CARE for example describe it as amounting to "the creation of a designer baby [and] although designing a child without human mitochondrial disease is not trivial it does not make it any less an act of design" which therefore sets a precedent for future less defensible manipulations. In contrast, Professor Bobbie Farsides, Professor in Clinical and Biomedical Ethics at the University of Sussex, commented that "many people conducting cutting edge work in biomedical sciences and medicine are alert to and concerned to address the ethical issues raised by the techniques they strive to develop."

Other countries do not allow these techniques

23. Several submissions, including those from Anscombe Bioethics, CARE and the Christian Institute, object to the proposal on the ground that the transfer of nuclear material between gametes or embryos constitutes "germline genetic manipulation" of a kind forbidden by Article 24 of the UNECO Universal Declaration of the Human Genome and Human Rights and suggest that it was equivalent to eugenics. The Scottish Council on Human Bioethics makes similar points and also objects to the proposal on devolution grounds.

24. Others, however, for example the British Medical Association, take the view that the UK is in a privileged position of having an effective, expert Regulator to make the decision about when and whether a new technique was ready to proceed. The BMA said:"If the Regulations are passed by Parliament this does not mean that the work can go ahead; it gives the HFEA the power to approve the procedure as and when it deems it appropriate … it would be giving the HFEA the tools it needs to carry out the job it has been set up to do". Lord Walton of Detchant told us: "I have no hesitation in saying that the research which has been conducted in Newcastle has in effect led the world, and offers the only hope of effective prevention of devastating mitochondrial disease yet to have emerged."

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[5] See, for example, para 30 of the Explanatory Notes for section 3 of the 2008 Act http://www.legislation.gov.uk/ukpga/2008/22/notes/division/6/1/3 and Baroness Royall's comments on the regulation-making power at Lords Committee stage on the Bill for the 2008 Act, HL Deb, 3 December 2007, col 1514 http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/71203–0005.htm

Two parents or three?

25. Some of those who oppose mitochondrial donation, such as Anscombe Bioethics, advocate "normal IVF" as an alternative, with a mitochondrial disease-free donor egg fertilised by the affected woman's partner's sperm. This would produce a healthy child with a genetic link to the male but no genetic connection to the affected woman. DH state that infertile women are often willing to accept this as the price of having a child but most women needing mitochondrial donation are not infertile and the idea of having a child to whom they are not genetically linked is far more difficult to accept.

26. Anscombe Bioethics further objects to the proposal because of the wastage of donated eggs which the two techniques involve as a result of eggs being used for "spare parts". They argue that this would have an adverse psychological effect on the donor. Dr Trevor Stammers, Programme Director for Bioethics and Medical Law at St Mary's University, Twickenham, makes a similar point. On the other hand, the Muscular Dystrophy campaign comments on the wastage generated by the current state of regulation which only allows researchers to keep the embryos alive long enough to test whether the technique has worked. The next logical step, they argue, is to allow the techniques to progress towards further trials and the embryos being born.

27. CARE and the Christian Medical Fellowship, both of which object to the proposal, dispute the DH's scientific position. They describe the techniques as "genetic modification" and refer to new research which they argue demonstrates that mitochondrial DNA is not just concerned with energy provision but also impacts the traits of the resulting child. They refer, in particular, to a *New Scientist* article from September 2014.[6] Professor Julian Savulescu, Uehiro Professor in Practical Ethics at the University of Oxford, however, suggests that the techniques should be thought of as more like organ transplant. A defective part of the egg is removed and replaced with a part donated from a healthy individual: "Just as nothing of importance changes about a person when he receives a heart transplant, nothing of moral importance changes when a cell receives a mitochondria transplant. They are processes which differ merely in scale."

28. Some of those who are against the proposal, such as Anscombe Bioethics, also argue that the risk of incest will be increased if a child cannot identify all of his or her genetic forebears. Lord Walton explains that "all of the human characteristics … are effectively controlled by genes located in the nucleus of every human cell, of which approximately 23,000 have been identified. By contrast the 37 genes which are located in the mitochondria … are concerned solely with converting food and its products into energy."

29. Anscombe Bioethics also express concern that there will be emotional and psychological risks for the child if he or she is prohibited from identifying the mitochondrial donor. Professor Susan Golombok, Professor of Family Research at the University of Cambridge, however, commenting from a basis of research into the psychology of children born though "normal IVF" and surrogacy, says that she finds that risk unlikely.

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6 http://www.newscientist.com/article/mg22329871.600-threeparent-babies-its-more-messy-than-we-thought.html

30. A number of submissions, including those from the Christian Institute and Dr Stammers, suggest that the proposal will do nothing to cure the thousands of people in the UK with mitochondrial disease, which also occurs randomly within the population, and would prefer the resources to be focused on finding a cure.

Risks

31. Due to the novelty of the process some submissions argue that the mitochondrial donation techniques may create new risks for the resulting child from the accidental deletion of material during the transfer process or from a mismatching of the material from the affected woman and the donor. CARE point to the unsuccessful Zhang study in China and the fact that authorities in the USA have not sanctioned these techniques. The Christian Medical Fellowship says that the Government gave an undertaking that the power to make these Regulations would only be considered "once it was clear that the scientific procedures involved were effective and safe". They contend that the HFEA statement that "there is no evidence was found to suggest that techniques would be unsafe in humans" is not enough and that it would be premature to proceed.

32. Professor Lovell–Badge, member of the HFEA Expert Panel, points out that the Panel has not only considered the research of those proposing the use of these techniques but has also reviewed a wide range of published and, so far, unpublished research. The Panel has also paid particular attention to the arguments of those with reservations about how the science should be interpreted.

33. A group submission from the bioscience sector[7] takes the view that it is never possible to answer every question on safety before new procedures are used on people for the first time. If medicine is to progress, they argue, clinicians must be permitted to use new techniques with the informed consent of the patient when there is sufficient evidence of effectiveness and of potential benefits outweighing the risks. The Regulations will only enable the procedure to be performed in specific cases with direct oversight by HFEA which will include ethical as well as scientific scrutiny of the risks on a case by-case-basis. This, the group submission says, is how a number of techniques which are now regarded as routine also started.

34. James Lawford Davies, a lawyer specialising in this area of law, makes a clear statement in his submission about the limited scope of the Regulations: "the draft Regulations do not permit PNT or MST, and do not allow these techniques to be used, the draft Regulations permit the HFEA to consider applications for licences permitting the use of these techniques in treatment. … that is a very important distinction … It is not in anyone's interests – least of all the HFEA or the researchers – to permit or proceed with an unsafe treatment".

35. The Lily Foundation takes the point further, arguing that the procedures will not be conducted on unknowing "lab rats" by scientists – it is for the families

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7 The Academy of Medical Sciences, Genetic Alliance UK, the Lily Foundation, the Medical Research Council, Muscular Dystrophy Campaign, the Progress Educational Trust, the Royal Society and the Wellcome Trust.

to make the decision whether they wish to apply for the process. The Foundation, which is run by parents who have lost children as a result of mitochondrial disease, told us: "unaffected opponents talk about safety issues and ethical dilemmas as a matter of course, however when you have lost an child and you compare "*a potential unknown risk of the child developing a problem in later life"* with the very real risk that your child will be born with a condition that will take their life in childhood, then there is no comparison. This is a risk that many of our families would jump at the chance to take … it is not a risk at all, it is hope." The Muscular Dystrophy submission makes similar points, giving examples of the suffering of those with mitochondrial diseases and adding: "for some families this technique may have the potential to halt the suffering that these brutal diseases have inflicted across generations."

Conclusion

36. The Committee has received a number of submissions expressing strong views both for and against permitting the two mitochondrial donation techniques that are the subject of these Regulations. The purpose of this report is to explain briefly some of the technical aspects of the techniques and to describe what the Regulations will and will not allow. The report also sets out some of the arguments on both sides of the debate that have been made in submissions to us.

B. Draft Single Use Carrier Bags Charges (England) Order 2015

Date laid: 17 December

Parliamentary Procedure: affirmative

Summary: This Order provides that, from October 2015, retailers with 250 or more employees must charge a minimum amount, set at 5p, for unused single use (lightweight) plastic bags used for taking goods out of shops or for delivering them. In 2013, the seven major supermarkets in England gave out 7.4 billion single-use carrier bags; experience in Wales has shown that charging for bags has brought about a significant reduction in their use.

We draw this Order to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

37. The Department for Environment, Food and Rural Affairs (Defra) has laid this Order with an Explanatory Memorandum (EM) and impact assessment. In the EM, Defra says that the policy aim is to reduce the amount of single use plastic bags used and the litter associated with them, and to encourage the reuse of bags.

38. Defra states that, in 2006, 12.2 billion single-use carrier bags were distributed across the UK. Since 2006, the grocery retail industry has tried to reduce the huge amount of plastic bags used, including marketing Bags for Life more clearly: industry initiatives were able to reduce carrier bag distribution by 41% between 2006 and 2009. However, between 2009 and 2013, single-use carrier bag distribution rose in England by 18%: in 2013, the seven major supermarkets in England gave out 7.4 billion single-use carrier bags. By contrast, between 2009 and 2013, the charge applicable in Wales produced a decrease of 81%.

39. The Department says that the requirement to charge will apply to any person who employs 250 or more full-time-equivalent employees ("FTEs");[8] and that this will capture companies with 250 or more FTEs (e.g., Tesco or Marks and Spencer) but exclude companies with fewer than 250 FTEs, including those granted a franchise or sharing a brand and products with others.

40. Defra explains that the Government do not have the legal power to take the proceeds of the charge, nor to determine where the proceeds of the charge go. There is, however, what it calls an expectation that (as in Wales) after deducting reasonable costs retailers will donate the rest to good causes. The Department is working with retailers on this. The charge will be enforced by local authority trading standards officers. Defra says that it expects the enforcement to be light-touch, pragmatic and complaints-led.

41. In the EM, Defra states that the charge was announced by the Deputy Prime Minister in September 2013,[9] and that it did not consult industry on the scope of the policy (namely, a focus on plastic bags and only businesses with over 250 employees) because this had already been specified in the announcement. However, in November and December 2013, the Department invited further evidence on several issues, including what bags used for specific purposes (such as to carrying food or medicines) should be exempt from the charge, and how to make sure that organisations applied the charge and donated their resulting profits to good causes.

42. Defra received 185 responses: 10 from industry groups; 11 NGOs; 12 local authorities; 4 academics; 94 private individuals; and 12 others. The majority of the respondents supported the introduction of a charge on plastic bags, and over 80% of respondents thought that organisations should have to publish data on their bag usage. In parallel, Defra received over 2,000 emails on the broader shape of the charge, mainly as part of campaigns by the Campaign to Protect Rural England, the Marine Conservation Society and partners, and Surfers Against Sewage. The concerns raised in these campaigns centred on the focussed nature of the Department's call for evidence and the lack of opportunity to comment on some of the main elements of the scheme (paper bags exclusion, small business exemption and the biodegradable bag exemption).

43. It is clear from the summary of responses which Defra published in July 2014[10] that a number of respondents were concerned about how best to ensure that organisations donated the profits from the charge to good causes, and about what those causes should be. It will be important that the Department settles these issues quickly, and that there is effective publicity for the use to which the profits are put.

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8 Defra explains that FTEs are calculated on the basis that the total number of hours per week for which all the employees of the person are contracted to work divided by 37.5.

9 See: https://www.gov.uk/government/news/plastic-bag-charge-set-to-benefit-the-environment

10 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321521/plastic-bag-charge-sum-resp.pdf

C. Deduction from Wages (Limitations) Regulations 2014 (SI 2014/3322)

Date laid: 18 December

Parliamentary Procedure: negative

Summary: These Regulations establish a two-year limitation on how far back in time workers' employment tribunal claims for deduction from wages can go. The Business Department (BIS) held no public consultation on the proposals, and justifies its decision not to do so by the need to act swiftly to limit potential costs to business, given recent developments in case law. BIS has acknowledged that it would have been possible to allow time for consultation and still retain the July 2015 date for implementation by cutting the transition period for workers. We suggest that this might well have been a better option.

We draw these Regulations to the special attention of the House on the ground that there appear to be inadequacies in the consultation process which relates to the instrument.

44. The Department for Business, Innovation and Skills (BIS) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. BIS says that the Regulations establish a two-year limitation on how far back in time workers' employment tribunal claims for deduction from wages can go. The changes will apply to those claims presented to an employment tribunal on or after 1 July 2015, following a transitional period. The instrument also makes an amendment to the Working Time Regulations 1998 (SI 1998/1833) to make it clear that those Regulations do not provide any additional rights under the worker's contract; they are separate.

45. The Regulations were laid on 18 December 2014, at the start of the Parliamentary recess, and brought into force on 8 January 2015, three days after the end of the recess. No Ministerial Statement was made to Parliament about the Regulations.

46. In the EM, BIS states that the reason for introducing the limitation is that the Government are concerned about the significant costs for employers resulting from recent UK and European court cases. A number of commentators have suggested that the judgment of the Employment Appeal Tribunal (EAT) that holiday pay should reflect non-guaranteed overtime may lead to an increase in claims for holiday pay.[11] The Government believe that substantial backdated pay claims could have a serious financial impact on many key UK businesses. BIS says that, if it had taken no action, it estimates that business would have faced extra costs of around £750m; and that its actions will reduce this bill by an estimated £400m.

47. BIS says in the EM that, although the Government would usually consult before making changes to employment legislation, there is no statutory requirement for consultation on these Regulations; and, in this instance, since the Government considered it essential to act swiftly to limit potential costs to business, a formal consultation was not conducted. BIS adds, however, that Government Ministers and officials discussed the proposals in

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[11] BIS refers to the combined appeals of Bear Scotland Ltd v Fulton and another UKEATS/0047/13, Hertel (UK) Ltd v Woods and others UKEAT/0160/14 and AMEC Group Ltd v Law and others UKEAT/0161/14.

detail with a number of representative organisations; and that, as part of this process, a business taskforce was established and met several times.

48. We obtained further information from BIS about its handling of the process which led to the finalisation of the Regulations, and we are publishing this information as Appendix 3. We have several concerns, including the fact that the period between the laying and bringing into force largely coincided with the Parliamentary recess, that there was no public consultation on the proposals, and that such preliminary discussions as took place appear to have been heavily weighted towards one group of stakeholders, namely, employer organisations.

49. BIS' explanation of its approach stresses the need to make legislative changes as quickly as possible in order to mitigate the impact of recent developments in case law, notably the EAT judgment handed down on 4 November 2014. The Department says that delaying the legislation until after the recess would have meant that the change would have had to be pushed back further into 2015 or the transition period for workers would have had to be cut. It states that to have held a consultation lasting, for example, only six weeks might have been criticised as too short and not meaningful, but would also have required a longer period of time to prepare and review.

50. **We are not persuaded by these arguments. In our view, effective consultation leads to better policy-making by allowing interested parties to make their views known in good time to assist Government in fully understanding the impact of proposed changes.** While it is true that Departments need to take time to prepare and review consultation exercises, this is a sensible investment that should produce better policy as a dividend. Moreover, holding a public consultation helps to spread knowledge among stakeholders of imminent policy changes. **BIS acknowledges that it would have been possible to allow time for consultation and still retain the July 2015 date for implementation by cutting the transition period for workers. We suggest that this might well have been a better option.**

INSTRUMENTS OF INTEREST

Draft Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015
Draft Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015
Draft Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015

51. Part 4 of the Immigration Act 2014 establishes a scheme for the referral of certain proposed marriages and civil partnerships in England and Wales to the Secretary of State to consider whether the marriage is a sham designed to circumvent the Immigration Rules. In particular the scheme will consider notifications of marriages or civil partnerships where one (or both) of the parties is not a British citizen, EEA national or Swiss national. (Further information about the number of such marriages and enforcement action taken is given in Appendix 4.) The two "Referral Orders" extend these provisions to Scotland and Northern Ireland. The "Conduct of Investigations" Regulations make provision for how such an investigation will be conducted and, for example, can require the applicants to attend an interview. Where the Home Office has reasonable grounds to suspect a sham, the notice period can be extended to 70 days to allow for investigation. As a consequence of this change, a 28-day notice period will apply to all marriages and civil partnerships, including those involving two British citizens, where notice is given on or after 2 March 2015.

Draft Representation of the People (England and Wales) (Amendment) Regulations 2015
Draft Representation of the People (Scotland) (Amendment) Regulations 2015

52. As part of the introduction of Individual Electoral Registration (IER) these Regulations make amendments to address applicants registered to vote who have changed their name within the last 12 months. The Regulations also include amendments to the process for registered electors to change their name on the published register, and amendments to how information in the Household Enquiry Form may be returned to Electoral Registration Officers. The instruments were originally laid on 10 December 2014 but were withdrawn and re-laid on 7 and 8 January 2015 with one regulation relating previous names removed as a result of feedback from, amongst others, the transgender community. **This is a problem that could presumably have been avoided by wider consultation before the original draft was laid and we regard it as another example of poor practice.**

Social Fund Winter Fuel Payment (Amendment) Regulations 2014 (SI 2014/3270)

53. Following a judgement in the European Court of Justice in 2011,[12] the Department for Work and Pensions (DWP) can no longer restrict Winter Fuel Payments to those resident in the UK where the claimant is subject to the EU social security co-ordination legislation (Regulations EC 1408/71 or EC 883/04) and has a genuine and sufficient link with the UK. To deliver the original policy intention, that is a payment to assist pensioners with seasonal increases in their fuel bills, these Regulations propose to target the payments on people who live in EEA countries with a cold climate. These are defined as countries with an average winter temperature of 5.6°C or lower and are listed in a schedule to the Regulations. The commencement date is set so that the revised scheme takes effect from the start of next winter. The Committee has received a submission questioning technical aspects of the policy,[13] the DWP's explanation of the data used in defining the list of countries is set out in Appendix 5.

Fire and Rescue Authorities (National Framework) (England) (Revision) Order 2014 (SI 2014/3317)

54. The Department for Communities and Local Government (DCLG) has laid this Order, with an Explanatory Memorandum (EM). The Order gives effect to the Fire and Rescue National Framework Addendum prepared by the Secretary of State for Communities and Local Government and published on 15 December 2014. There was a Ministerial Written Statement about the Order on that date.[14]

55. In the EM, by way of background, DCLG says that in 2013 it had consulted on a set of fitness principles which at that time were considered to provide the possible basis of dealing with fitness and capability issues, which had emerged during the Fire Brigades Union's pension dispute. Between 28 October and 9 December 2014, it consulted on incorporating fitness principles in the National Framework for Fire and Rescue in England; 36 responses were received. DCLG says that, while responses were supportive of the general principles regarding firefighter fitness, the need to include the principles within the National Framework was questioned. In response to our request for further information, DCLG provided these details:

56. "The majority of responses were in favour of the principles of fitness, though there were some specific concerns, and they questioned why the principles needed to be placed in the National Framework. The majority of respondents were less favourable to the consideration of a local authority initiated pension for a firefighter aged 55 or over, who fails a fitness test through no fault of their own, and for whom there are no redeployment opportunities. Fire authorities felt that the inclusion of the consideration of a local authority initiated pension fettered their discretion to consider

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12 In the case of Stewart C-503/09.

13 From Mr Boaden, published on the Committee's webpage: http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Boaden_to_Goodlad_Winter_Fuel_Allowance.pdf.

14 http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141215-wms0001.htm#14121520000080

capability dismissal for firefighters who appear to be making no effort of maintain their fitness. The concerns were that this may create a culture similar to that of ill-health retirements before the reforms, where some employees angled to leave early; that there may be an expectation of a pension age 55 or over; that it would create additional costs; and that it provides no guarantee for individual firefighters.

57. "Despite these concerns Ministers concluded they should include the provision on an unreduced pension. They concluded that the inclusion of the final paragraph of the addendum it reflected the best balance between the views of the employers on discretion and the Fire Brigades Union on the need for a 'cast iron' guarantee."

Building Societies (Bail-in) Order 2014 (SI 2014/3344)

58. HM Treasury (HMT) has laid this Order, with an Explanatory Memorandum and impact assessment. HMT says that the Financial Services (Banking Reform) Act 2013 introduced the bail-in stabilisation tool to the Special Resolution Regime ("SRR") in Part 1 of the Banking Act 2009. The bail-in tool allows the Bank of England (BoE) to write down the liabilities of a failing bank and convert debt into equity in order to recapitalise a failing bank.

59. This Order adapts the bail-in tool as it applies to building societies. It enables the BoE to cancel members' rights and shares in the building society, in line with a basic principle of bail-in that the "owners" of the firm should lose this interest as part of bail-in. HMT says that building society members are not directly analogous to shareholders in a bank, but are the most direct comparison. In order to apply the bail-in tool effectively to building societies, the BoE may either convert the society into a company, or transfer all of its business to a company; the bail-in tool would then be applied to the successor company, or to the successor company and its parent undertaking.

60. HMT held a consultation on this issue, along with other elements of the bail-in regime, from 13 March to 7 May 2014: 16 responses were received. Respondents generally disagreed with the proposal for a building society to be transferred to or converted into a public limited company, and hence demutualised. They argued that alternative approaches could be taken that would maintain the building society's mutual status, such as building societies issuing specific types of debt instruments. HMT says that the Government still consider that demutualisation would most likely be needed for a building society bail-in to be successful, but that there may be circumstances where an alternative method is more appropriate.

School and Early Years Finance (England) Regulations 2014 (SI 2014/3352)

61. The Department for Education (DfE) has laid these Regulations, with an Explanatory Memorandum (EM). The Regulations determine how local authorities should set their education budgets (the non-schools education budget, the schools budget, the central expenditure and the individual schools budget) and how they should allocate funding from the individual schools budget to maintained schools and private, voluntary and independent providers of free early years provision in their area.

62. DfE lays school finance regulations every year. In section 7 of the EM, DfE sets out the main changes compared with the 2013 Regulations. Of particular interest is that, unlike the 2013 Regulations, the latest instrument provides that early years expenditure held centrally cannot relate to an excluded provider, defined as: (a) an independent school that does not meet the requirements regarding the spiritual, moral, social and cultural development of pupils set out in the Independent School Standards; or (b) any school which, in the reasonable belief of the relevant local authority, does not actively promote fundamental British values or promotes, as evidence-based, views and theories which are contrary to established scientific or historical evidence and explanations.

63. In section 8 of the EM, DfE has given a commendably thorough account of the consultation which it held between 8 August and 17 October 2014. There were 865 responses. These included 755 responses in relation to the definition of excluded early years providers. In December 2014, DfE published a Government response to the consultation. This makes it clear that respondents were concerned about the source of the definition of British values, and the extent to which the definition of excluded provider might prevent the teaching of religion generally, and creationism in particular. DfE states that the values definition is drawn from the government's Prevent Strategy of 2011 (already given expression in the Independent School Standards), and that the Regulations also ensure that early years settings in independent schools which attract Government funding do not teach creationism as evidence-based scientific fact.

Costs in Criminal Cases (General) (Amendment) Regulations 2015 (SI 2015/12)

64. The remaining un-commenced provisions in the Offender Rehabilitation Act 2014 are to be brought into force on 1 February 2015. This will include a provision that will create a new post-sentence supervision period for certain offenders released from custody. Sanctions can be imposed for breach of the supervision period. This instrument adds court proceedings for breach of this supervision period to the list of proceedings for which costs can be ordered against defendants, that is in addition to whatever sanction the court deems appropriate for the breach which can include a fine or custody. The award of costs will be discretionary, there is no requirement for the National Probation Service (NPS) to seek them in all cases. Guidance is to be provided to NPS staff to consider the matter on a case-by-case basis. However, that guidance is not yet complete or published. The Ministry of Justice admit that, until it is, NPS staff in different parts of England and Wales may have slightly different approaches to the circumstances in which they decide whether applying for costs is appropriate. **We regard this as bad practice and urge the Ministry of Justice to rectify the situation quickly.**

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

Armed Forces Pension (Consequential Provisions) Regulations 2015

Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015

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

European Parliamentary Elections (Amendment) Regulations 2015

European Parliamentary Elections (Forms) (Northern Ireland) Regulations 2015

Firefighters' Pension Scheme (England) (Consequential Provisions) Regulations 2015

Local Elections (Forms) (Northern Ireland) Order 2015

National Health Service Pension Scheme (Consequential Provisions) Regulations 2015

Northern Ireland Assembly (Elections) (Forms) Order 2015

Parliamentary Elections (Forms) (Northern Ireland) Regulations 2015

Passenger and Goods Vehicles (Recording Equipment) (Downloading of Data) Regulations 2015

Police Pensions (Consequential Provisions) Regulations 2015

Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015

Public Service (Civil Servants and Others) Pensions (Consequential and Amendment) Regulations 2015

Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015

Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2015

Representation of the People (Ballot Paper) Regulations 2015

Representation of the People (England and Wales) (Amendment) Regulations 2015

Representation of the People (Scotland) (Amendment) Regulations 2015

Teachers' Pension Scheme (Consequential Provisions) Regulations 2015

Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2015

Instruments subject to affirmative approval

SI 2014/3363 Fishing Boats (Satellite-Tracking Devices and Electronic Reporting) (England) (Amendment) Scheme 2014

Instruments subject to annulment

SI 2014/3270 Social Fund Winter Fuel Payment (Amendment) Regulations 2014

SI 2014/3314 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2014

SI 2014/3317 Fire and Rescue Authorities (National Framework) (England) (Revision) Order 2014

SI 2014/3318 Clean Air (Miscellaneous Provisions) (England) Regulations 2014

SI 2014/3293 Payments to Governments and Miscellaneous Provisions Regulations 2014

SI 2014/3332 Electricity and Gas (Internal Markets) Regulations 2014

SI 2014/3333 Electricity and Gas (Ownership Unbundling) Regulations 2014

SI 2014/3342 Prohibition of Keeping or Release of Live Fish (Specified Species) (England) (Amendment) Order 2014

SI 2014/3344 Building Societies (Bail-in) Order 2014

SI 2014/3345 Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

SI 2014/3347 Police (Conduct) (Amendment) Regulations 2014

SI 2014/3348 Bank Recovery and Resolution (No. 2) Order 2014

SI 2014/3349 Yemen (European Union Financial Sanctions) Regulations 2014

SI 2014/3352 School and Early Years Finance (England) Regulations 2014

SI 2015/1 Landlord and Tenant (Notices) (Revocations) (England) Regulations 2015

SI 2015/3 Aircraft Operators (Accounts and Records) (Amendment) Regulations 2015

SI 2015/5	Local Government (Electronic Communications) (England) Order 2015
SI 2015/7	Public Lending Right Scheme 1982 (Commencement of Variation) Order 2015
SI 2015/9	Criminal Justice (Specified Class B Drugs) Order 2015
SI 2015/11	Money Laundering (Amendment) Regulations 2015
SI 2015/12	Costs in Criminal Cases (General) (Amendment) Regulations 2015

APPENDIX 1: DRAFT HUMAN FERTILISATION AND EMBRYOLOGY (MITOCHONDRIAL DONATION) REGULATIONS 2015

List of submissions to the Committee

- Lord Walton of Detchant
- Dr Elizabeth Allan
- Anscombe Bioethics
- The bioscience sector: the Academy of Medical Sciences, Genetic Alliance UK, the Lily Foundation, the Medical Research Council, Muscular Dystrophy Campaign, the Progress Educational Trust, the Royal Society and the Wellcome Trust
- The British Medical Association
- CARE
- The Christian Institute
- Christian Medical Fellowship
- Professor Bobbie Farsides, University of Sussex
- Professor Golombok, Cambridge University
- James Lawford Davies, Lawford Davies Denoon Solicitors
- The Lily Foundation
- MRC: National Institute for Medical Research *(confidential material removed)*
- Edward Morrow, University of Sussex
- Muscular Dystrophy Campaign
- Professor Savulescu, University of Oxford *(confidential material removed)*
- Scottish Council on Human Bioethics
- Dr Trevor Stammer, St Mary's University, Twickenham

APPENDIX 2: DRAFT HUMAN FERTILISATION AND EMBRYOLOGY (MITOCHONDRIAL DONATION) REGULATIONS 2015

Department of Health response to the Legal Opinion by Lord Brennan QC

Powers in the Human Fertilisation & Embryology Act 1990

The Department is confident that the Regulations are lawful. Section 3ZA(5) of the Human Fertilisation and Embryology Act 1990 (1990 Act) clearly provides that an egg can be a "permitted egg" and an embryo be a "permitted embryo, even though the egg or embryo has had applied to it in prescribed circumstances a prescribed process designed to prevent the transmission of serious mitochondrial disease". The Act therefore provides that Regulations may provide for an exception to the general position that a permitted egg is one "whose nuclear or mitochondrial DNA has not been altered" and that an embryo may be a permitted embryo if "no nuclear or mitochondrial DNA of any cell of the embryo has been altered". If this were not so then section 3ZA(5) of the 1990 Act would have no effect – if the power only permitted processes which did not alter the mitochondrial DNA then it would be unnecessary as such processes would not otherwise be prohibited. It was the clear intention of Parliament that this provision would enable mitochondrial donation.

Clinical trials

The Department does not accept that if these Regulations are approved then the provision of treatment services, if licensed by the Human Fertilisation and Embryology Authority (HFEA) Licence Committee, will amount to a clinical trial as the primary objective of providing the treatment will be to prevent the transmission of serious mitochondrial disease rather than to assess the safety and/or efficacy of the techniques.

Clinical trials are currently governed by the Medicines for Human Use (Clinical Trials) Regulations 2004 (SI 2004/1031), which implemented the Clinical Trials Directive (Directive 2001/83/EC). The Directive will be repealed and replaced by Regulation (EU) 536/2014 in due course, but this is not likely to be before May 2017. The definitions of clinical trials are similar in each instrument but the key point remains that a clinical trial is one which is conducted "with the objective of ascertaining the safety and/or efficacy of….medicinal products". If the Regulations are passed by Parliament they will enable the HFEA to licence, on a case-by-case basis, mitochondrial donation as a treatment. It will not be licensed "with the objective of ascertaining the safety and/or efficacy" of the treatment. The primary objective will be to prevent the transmission of serious mitochondrial disease. As with any medical treatment, continuing evidence of safety and efficacy will be kept under review.

15 January 2015

APPENDIX 3: DEDUCTION FROM WAGES (LIMITATIONS) REGULATIONS 2014 (SI 2014/3322)

Additional information from the Department for Business, Innovation and Skills

Q1: These Regulations were laid on 18 December 2014 and come into force on 8 January 2015. The 21 days between laying and coming into force coincide almost exactly with the Parliamentary recess. Was it a conscious decision to reduce the risk of Parliamentary intervention? Has there been a Ministerial Statement about the Regulations?

A1: We had no intention deliberately to reduce the opportunity for Parliamentary Scrutiny of these regulations and very much welcome the chance to engage with the Committee. The timing of the Regulations was a direct result of the need to make legislative changes as quickly as possible in order to mitigate the impact of recent developments in case law.

The Employment Appeal Tribunal (EAT) handed down its judgment in the case of *Bear Scotland v Fulton & Baxter* on 4 November 2014. The EAT's key finding was that holiday pay must reflect the remuneration a worker receives for non-guaranteed overtime. Prior to the EAT judgment, the generally understood position was that overtime did not have to be included in holiday pay unless employers were bound to offer it and workers to accept it. The decision therefore has very significant ramifications for businesses who thought they were complying with the law. The Government was concerned about the extra costs that would be incurred by business as a result of the ruling and particularly the possibility of backdated claims for underpaid holiday pay (according to some commentators, such claims could date back to 1998). BIS have received many reports that businesses have had to reduce future investment, and contemplate job losses and even closure as a direct result of the court case and subsequent uncertainty.

As a result, the Government felt that it needed to take action and it was important that any solution provided legal certainty about how far back claims could go and limited business liabilities, but also respected the right of employees to submit claims for periods of employment when they believe they were not paid the holiday pay which they were entitled to. The Regulations therefore introduce a backstop of 2 years for such claims, with a substantial transition period during which time workers could make claims under the existing arrangements. This means that the backstop will not take effect until 1 July 2015.

In order for the changes to be effective in mitigating the impact on businesses, they needed to be made as quickly as possible. Delaying the legislation until after the recess would have meant that the change would have had to be pushed back further into 2015 or the transition period for workers would have had to be cut. This would have resulted in further costs for business and continuing lack of certainty for both workers and employers.

Although we did not issue a Written Ministerial Statement, we did take appropriate steps to inform interested parties of the Regulations. BIS Ministers wrote to their Opposition counterparts to inform them of the changes included in the Regulations on 18 December 2014 and we continue to engage the trade unions and business representative bodies to ensure that legislation is widely publicised to those who would be affected by it.

Q2: Section 8 of the EM indicates that, contrary to normal practice, the Department conducted no formal consultation about these Regulations. Why could the Department not have acted sooner to allow time for consultation; which representative organisations did the Department discuss the proposals with, and what were their views of the proposals; who were the members of the business taskforce and what views did they express?

A2: The need for urgency also influenced our decision about whether to issue a formal consultation. As we stated in the EM, we normally issue consultations on employment legislation even though (as in this case) there is not always a statutory requirement for us to consult. However, the need for us to move exceptionally quickly prevented us from consulting formally.

We did however discuss the proposals on a confidential basis with the members of the Business Task Force and the TUC. The Taskforce is comprised of representatives from the CBI, Institute of Directors, British Chambers of Commerce, Federation of Small Businesses, the Engineering Employers Federation, the Construction Engineering Contractors Association, the British Retail Consortium and GC100. As far as we are aware, none of these organisations has made a public comment on the regulations. The TUC's view of the proposals is set out in their press release http://www.tuc.org.uk/workplace-issues/basic-rights-work/employment-rights/working-time-holidays/government-attempting

Q3: BIS discussed its intentions with the members of the Business Task Force – made up of 8 employer organisations – and the TUC. It appears that the only non-employer organisation that BIS contacted was the TUC. Why did BIS not spread the net wider, for example to employment lawyers or possibly ACAS?

A3: We discussed the plans with the Taskforce because that was set up to try to address the costs and uncertainty business (and employers generally) faced arising from the EAT judgment. We sought to discuss our plans with a wider range of Unions, but none other than TUC took up our offer of a meeting. We did discuss the plans on an operational basis with ACAS before the regulations were laid.

Q4. You say that delaying the legislation until after the recess would have meant that the change would have had to be pushed back further into 2015 or the transition period for workers would have had to be cut. Would it not have been better – in the interests of ensuring that all affected parties had the chance to make their views known, and hence ensuring that BIS' policy decision was more fully informed – to have allowed at least six weeks for consultation, and to reduce the transition period accordingly?

A4. As we explained in our response, to have the intended effect, we felt that the change had to be made quickly. We took the view that the approach adopted minimised the period of uncertainty while providing sufficient time for workers to reach agreement with their employer or put in a claim under the current rules if necessary. Consulting for six weeks, might have been criticised as too short and not meaningful, but would also have in practice demanded a longer period of time to both prepare and review, hence prolonging uncertainty for employers and individuals.

7 January 2015

APPENDIX 4: DRAFT PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS REGULATIONS (CONDUCT OF INVESTIGATIONS, ETC.) 2015

Additional information from the Home Office on the Proposed Marriages and Civil Partnerships (Conduct of Investigations, Etc.) Regulations 2015

Q1: What is the basis of the estimate of the number of applications based on sham marriages and civil partnerships?

In order to estimate the scale of applications involving a sham marriage or civil partnership, we have made assumptions based on statistics relating to marriage and civil partnership registration, the volume of section 24/24A reports from registrars of suspected shams and feedback from immigration caseworkers dealing with applications made on the basis of marriage or civil partnership. This has resulted in an estimate that around 4,000 applications a year to stay in the UK are made on the basis of a sham marriage or civil partnership. This broad estimate should be approached with caution, but it does provide an indication of the potential scale of abuse.

Q2: What action is taken to annul sham marriages and arrest those involved?

There is no provision to annul or void a sham marriage under the Marriage Act 1949. However, under the current regulations and rules, applications made on the basis of a sham marriage or civil partnership can be refused if we can evidence the non-genuineness of the couple's relationship to the required standard of proof.

In 2013–14 we carried out 1,335 interventions in suspected sham marriages, resulting in 840 arrests and 294 removals.

Q3: *Would this system apply to marriages between a UK citizen and a non-EEA passport holder taking place overseas? The Committee want to satisfy themselves that these provisions could not be evaded by marrying overseas.*

A3: The new referral and investigation scheme would apply to marriages taking place in the UK. It would not apply to marriages conducted outside the UK. The genuineness of the relationship on which an overseas marriage is based is assessed as part of the scrutiny of any subsequent spouse visa application.

Q4: If a UK resident and passport holder wants to marry an Indian wife who is still in India, for example, where would the interview of the prospective wife take place?

A4: A non-EEA national wishing to marry in the UK must obtain a marriage visit visa or a fiancé(e) visa. The entry clearance officer considering the visa application will need to be satisfied as to the genuineness of the relationship on which the application is based. This may involve interviewing the applicant or couple. An interview may be conducted at an embassy/consulate/high commission abroad or by telephone, video-link or skype. A non-EEA national issued with a marriage visit visa or a fiancé(e) visa and their UK partner would not then be referred to the Home Office under the new scheme.

APPENDIX 5: SOCIAL FUND WINTER FUEL PAYMENT (AMENDMENT) REGULATIONS 2014 (SI 2014/3270)

Department for Work and Pensions response to questions posed in a submission by Mr Roger Boaden[15]

*Q1: "*The memorandum states at 7.4: *'…. Temperatures covering the winter months (November-March).'* Meteorologists and climatologists the World over accept winter in the Northern Hemisphere as being December-February (DJF), the UK Met Office agrees. The DWP has decided to extend the 90 days to 151 days. Why?"

A1: The period 1 November to 31 March is used for Cold Weather Payment purposes. Therefore, there is a consistency with existing policies.

*Q2: "*The Memorandum states at 7.6: '*Therefore, people living in countries with an average winter temperature of 5.6°C or lower, or an average winter temperature that is close enough to that to be statistically equivalent, will be eligible for Winter Fuel Payments.'*…[but] the Met Office Report to the DWP of December 2012, on which the DWP based its assessments, stated: France 4.9°C, Ireland 5.5°C, and Italy 5.7°C - So why have Ireland and Italy been declared 'cold' and OK, but France has been declared 'hot' and is proscribed accordingly?"

A2: The table on page 4 of the Met Office Report – "Country averages" – gives two figures for France: one with overseas territories (7.0°C); and one without overseas territories (4.9°C).

The French Government defines itself as the mainland départements and its outermost départements, and as such are included in the EU social security co-ordination regulations, used and applied by all member states in the co-ordination and payment of benefits. It is because of this that the Overseas Departments are treated in the same way as mainland France with regard to Winter Fuel Payments, which are currently available to those who are entitled and live there. Therefore, the hotter French Overseas Departments have to be included in the calculation of the average temperature of France. It is not for the UK Government to redefine the territory of another EEA Member State.

The difference in the average winter temperatures for Italy and Ireland compared with the average winter temperature for South West England (5.6°C) is within the margin of error of the methodology, taking account of the differences in recording practices.

Q3: "The Memorandum states at 7.7*: 'However, we would have to implement the scheme on a regional basis throughout the EEA in order to make a Winter Fuel Payment for even some of these people. DWP considered this very carefully but concluded that it would introduce disproportionate complexity and administrative costs.'* It is very difficult to see how the DWP can justify this statement. Everyone in receipt of the WFP had to complete a standard DWP claim form, which is laid out with a distinct field for the postcode… Anyone with knowledge of database management knows one of

[15] Published on our website www.parliament.uk/seclegpublications

the most important sort parameters is the postcode…There is no complexity at all, since the Met Office broke every country into regions in their analysis of temperatures."

A3: The reasons for the approach taken with regards to this change are as set out in the Explanatory Memorandum. The Department has a fiduciary duty to protect the public purse and so the decision taken was made after close consideration of what offered the best solution on behalf of tax-payers.

Q4: "The Memorandum states at 8.4: *'The decision on which countries should be included or excluded has been based on the only comprehensive and comparable dataset available.'* That dataset was published in the 2003 by the Climatic Research Unit (CRU) of the University of East Anglia. The dataset results from a Global research project conducted in the Tyndall Centre for the CRU, and the Head of the Centre, Dr Tim Mitchell had this to say: *'Where a country includes a number of different climatic regions (i.e. regions in which climate varies coherently), it is possible that the models may represent the changes accurately in each region, but that the average change over the country as a whole may not be physically meaningful.'*"

A4: The Met Office was commissioned to produce a report to inform Winter Fuel Payment policy – the DWP then used this information to introduce the legislation that amended the Winter Fuel Payment eligibility arrangements, taking into account for example, the need to comply with EU social security co-ordination regulations.

We note the tempered comment from Dr Mitchell. To clarify, a gridded data set of the monthly mean air temperature (for the reference period 1961-1990) for land areas of the globe is available through the Climatic Research Unit of the University of East Anglia (UEA). This dataset has been extensively studied by climate scientists internationally. The dataset is a globally recognised resource for climate studies. It is the only dataset available that can give a consistent, uniform pan-European view at a useable grid-length. It is not known when or if UEA will revise this dataset.

Gridded data sets are used widely to provide a consistent series of climate data, enabling comparisons to be made in time and space. Interpolation is used to generate values on a regular grid from irregular observing station networks, taking into account factors such as latitude and longitude, altitude and terrain shape, coastal influence, and urban land use.

Q5: "There is no reference whatsoever to the way in which the DWP 'converted' the average winter temperature of France to make it 'hot'. No Government; no recognised meteorological agency such as the Met Office or Météo-France, does what the DWP did - add average winter temperatures from tropical islands in the Caribbean and the Indian Ocean to that of France to edge it above the 5.6°C yardstick.

A5 Please see the response to 2. In addition, the EU social security co-ordination legislation is referenced in paragraphs 4.1, 7.2 and 7.3 of the Explanatory Memorandum. The information contained in an Explanatory Memorandum is expected to be proportionate, however, we provide contact details to enable more complex questions to be asked.

15 January 2015

APPENDIX 6: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 20 January 2015 Members declared the following interests:

Teachers' Pension Scheme (Consequential Provisions) Regulations 2015

Lord Borwick

Trustee, Ewing Foundation for deaf children (registered charity)

Baroness Humphreys

Former teacher

Occasional tutor in Welsh language for adults, Bangor University, North Wales

Police (Conduct) (Amendment) Regulations 2014 (SI 2014/3347)

Lord Bowness

Close relation to a serving Police Officer

Local Government (Electronic Communications) (England) Order 2015 (SI 2015/5)

Lord Borwick

The Member's wife is a member of the Greater London Authority, one of the Statutory Deputy Mayors of London and an elected Councillor for the Royal Borough of Kensington and Chelsea

Attendance:

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