

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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4th Report of Session 2015–16

**Correspondence:**  
**Immigration and Nationality (Fees)**  
**Regulations 2015**  
**Universal Credit (Waiting Days)**  
**(Amendment) Regulations 2015**  
**Criminal Legal Aid (Remuneration etc.)**  
**(Amendment) Regulations 2015**

Includes an Information Paragraph on an Instrument

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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, 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 Hodgson of Astley Abbots	Baroness Stern
Lord Bowness	Baroness Humphreys	Rt Hon. Lord Trefgarne ( <i>Chairman</i> )
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Lord Woolmer of Leeds
Lord Haskel	Baroness O’Loan	

*Registered interests*

Information about interests of Committee Members can be found in Appendix 4.

*Publications*

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

*Information and Contacts*

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

# Fourth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

## CORRESPONDENCE

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### **Immigration and Nationality (Fees) Regulations 2015 (SI 2015/768)**

1. Our 1st Report of this session<sup>1</sup> drew attention to these Regulations as an example of poor planning. Insufficient time was allowed for the lead affirmative instrument; as a result, these subsequent Regulations were laid so close to the end of the Parliament that there was no time for scrutiny before they came into effect. The Chairman, on behalf of the Committee, wrote to the Minister to express our concern. The correspondence, including Lord Bates' reply, is set out in Appendix 1 to this Report.
2. The Minister explains that there was a project plan but the progress of the lead instruments was delayed by circumstances "outside the Department's control". This was unfortunate and we expect, in the future, that Departmental plans will allow for such circumstances. It is unwise to assume that any statutory instrument will progress in the minimum possible time.
3. The Minister also states that insufficient time was allowed in preparing the instrument within the Home Office. A policy instruction was not incorporated into the final instrument, with the result that a correcting instrument will be laid shortly. **We are told that the Department is examining the way in which statutory instruments are planned and processed within the Department and we welcome that review.**

### **Universal Credit (Waiting Days) (Amendment) Regulations 2015 (SI 2015/1362)**

4. Our 3rd Report of the session<sup>2</sup> drew the attention of the House to these Regulations on the ground that the explanatory material supplied with the instrument provided insufficient information to gain a clear understanding about the instrument's policy objective and implementation. The Chairman, on behalf of the Committee, wrote to the Minister with some specific questions. The correspondence, including Lord Freud's reply, is set out in Appendix 2 to this Report.
5. Apart from confirming the anticipated savings and the number of claimants likely to be affected, the Minister's reply was disappointing in that it largely repeated material already received by the Committee from the Department. **The House may therefore wish to press the Minister for a better explanation.**

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<sup>1</sup> HL Paper 4.

<sup>2</sup> HL Paper 10.

6. The Committee has also written again to the Minister seeking clarification with regard to the position on the availability of advances (see Appendix 2). A prayer has been tabled in relation to these Regulations. If we receive a reply to our letter in good time, we shall publish it before the prayer is debated.

**Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 (SI 2015/1369)**

7. These Regulations were also drawn to the attention of the House in our 3rd Report. The Chairman, on behalf of the Committee, wrote to the Minister asking for further information on the Ministry of Justice's basis for asserting that, despite the proposed cuts in fees, "providers will deliver the same level and quality of service as at present". The correspondence, including the reply from Shailesh Vara MP, is included at Appendix 3 to this Report.
8. The Minister has provided additional information, some of it derived from analyses of the criminal legal aid market undertaken by KPMG which have been used to inform the policy.<sup>3</sup> Mr Vara's letter also sets out KPMG's projections of how legal firms' revenue will be affected by the interaction of these cuts and other policies: they suggest that between April 2015 and January 2016 the actual loss of revenue will be 7–12%.
9. We are grateful for the further information provided. However, the Committee remains dissatisfied and has asked the Minister further questions about the "sustainability" of the service (see Appendix 3). A prayer has been tabled in relation to these Regulations. If we receive a reply to our letter in good time, we shall publish it before the prayer is debated.

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<sup>3</sup> See <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/results/kpmg-report.pdf> and the later report <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-crime-duty-contracts/results/kpmg-report-review.pdf>

## INSTRUMENTS OF INTEREST

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### Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (SI 2015/1392)

10. The Department for Business, Innovation and Skills (BIS) has laid these Regulations with an Explanatory Memorandum (EM), Impact Assessment and Transposition Note. The Regulations implement the remaining provisions of EU Directive (2013/11/EU) on alternative dispute resolution (ADR) for consumer disputes (“the Directive”),<sup>4</sup> as well as serving other purposes.
11. The core provisions of the Directive were implemented in the Alternative Dispute Resolution for Consumer Disputes Regulations 2015 (SI 2015/542) which were made on 16 March 2015. We published information about SI 2015/542 in our 2nd Report of this session, noting that its provisions included placing obligations on traders to provide information to consumers about accessing ADR. Those obligations were to come into force on 9 July 2015, the deadline for implementing all the provisions in the Directive.
12. One purpose of the latest Regulations is to postpone the coming into force of the trader information requirements to 1 October 2015. In the EM, BIS says that this constitutes late implementation of Article 13 of the Directive, but in its view this is the only viable way of ensuring a smooth implementation of the requirements. **BIS consulted on implementation of the Directive between March and June 2014: it is unfortunate that responses to that consultation appear not to have guided the Department towards setting a realistic timetable for implementation in the Regulations laid before Parliament only three months ago.**

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<sup>4</sup> As well as certain provisions of Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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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**

Consumer Rights Act 2015 (Consequential Amendments)  
Order 2015

Enterprise Act 2002 (Part 8 Domestic Infringements)  
Order 2015

### **Instruments subject to annulment**

Cm 9075 Films – Film Co-Production Agreement between the  
United Kingdom and Brazil

SI 2015/1387 Littlehampton Harbour Revision Order 2015

SI 2015/1390 Poole Harbour (Works) Revision Order 2015

SI 2015/1391 Environmental Damage (Prevention and Remediation)  
(England) (Amendment) Regulations 2015

SI 2015/1392 Alternative Dispute Resolution for Consumer Disputes  
(Amendment) Regulations 2015

SI 2015/1393 Control of Major Accident Hazards (Amendment)  
Regulations 2015

SI 2015/1395 Great Yarmouth Port Authority (Constitution) Harbour  
Revision Order 2015

## **APPENDIX 1: IMMIGRATION AND NATIONALITY (FEES) REGULATIONS 2015 (SI 2015/768)**

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### **Letter from Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Rt Hon. Lord Bates, Minister of State at the Home Office**

The Home Office laid the Regulations in line with the restructuring of the way that immigration fees are being set, which was implemented by the Immigration and Nationality Fees Order 2015 (laid as an instrument subject to the affirmative resolution procedure, made as SI 2015/746). In February, when that lead Order was laid, we were advised by the Home Office that these Regulations would be laid in early March. As you know, however, the instrument was laid only on 19 March and brought into force on 6 April, breaching the 21-day rule.

The Home Office laid the lead Order only on 2 February. It should have been aware that these Regulations, which are dependent on that lead affirmative instrument, would not be able to pass through the normal Parliamentary procedure before the intended implementation date. We are commenting on the Regulations in our report this week, as an example of poor planning which has deprived the House of adequate time to comment on a significant change to policy.

We would hope that the Home Office will make greater, and more effective, efforts to plan its secondary legislation in order to allow the House proper opportunity for scrutiny.

**10 June 2015**

### **Letter from Rt Hon. Lord Bates to Rt Hon. Lord Trefgarne**

Delivery of the Immigration and Nationality Fees Order 2015 was carefully managed by the Home Office through a detailed project plan, with sufficient time allocated for each stage of the process, including Parliamentary scrutiny, to allow for the 21-day scrutiny period for the subsequent Regulations.

Unfortunately some aspects of the project plan which were outside the Department's control were delayed, resulting in the final floor-of-House sign-off not being achieved on the day envisaged and instead being held over until the next sitting day - the following Monday -thereby also delaying the date by which the subsequent Regulations could be laid.

The Home Office gave serious consideration as to whether it should then either breach the 21-day rule, or delay bringing the Regulations into effect. Had it delayed bringing the Regulations into effect beyond 6 April 2015, there would have been a significant impact on its income and operational business. There are several operational dependencies, with contracted partners and IT system changes carefully lined up to implement fees changes on the common commencement date. As a result, the Home Office took the view that it had little option, but to retain the original coming into force date of 6 April.

I would like to assure you that the Home Office does take parliamentary scrutiny very seriously and wherever possible seeks to ensure that House conventions are abided by and compliance with the 21-day rule is achieved. I regret that, in this instance, circumstances outside of the Department's control resulted in delays and a breach of the 21-day rule.

Unfortunately, a further issue has since arisen, which I must explain.

During the final stages of drafting the Regulations, the Home Office was finalising a policy change whereby failed asylum seekers, who had been granted a period of limited leave on non-protection grounds, and who apply for further or indefinite leave to remain in the UK, should be charged a fee. Prior to April, these applications were fee exempt. The Government took the strong view that this exemption could no longer be justified, so a decision was taken to remove it from the Regulations to enable a fee to be charged.

Instructions were given to make the necessary changes on Friday 13 March, prior to the Regulations being signed and laid the following week. Unfortunately, due to an administrative error, the exemption was not removed from the Regulations, although the Explanatory Memorandum clearly explains that the exemption has been removed.

This matter only came to the Home Office's attention last week, when it was contacted by legal representatives on behalf of applicants querying why their clients were being charged a fee. The Department is currently taking steps to manage the applications it has received where the fee was incorrectly taken.

The Home Office wishes to correct this error as soon as possible in order to apply its policy, protect an important source of income and avoid the need to make complex system changes, which would be necessary to extend the period that the exemption applies. As a result, I regret to inform you that we must breach the 21-day rule again.

We are currently examining the way in which Statutory Instruments are planned and processed within the Department, with a view to ensuring that there are sufficient safeguards against such occurrences, thereby improving our performance in this area.

**21 June 2015**

## APPENDIX 2: UNIVERSAL CREDIT (WAITING DAYS) (AMENDMENT) REGULATIONS 2015 (SI 2015/1362)

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### Letter from Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Rt Hon. Lord Freud, Minister of State for Welfare Reform at the Department for Work and Pensions

At its meeting today, the Committee considered the Universal Credit (Waiting Days) (Amendment) Regulations 2015 and has published an initial report. Members of the Committee expressed significant concerns about the lack of information on the likely effects of the instrument. In particular, the Explanatory Memorandum accompanying the instrument provides no figures about either the anticipated savings or the number of claimants likely to be affected.

Members were also surprised that no Impact Assessment had been prepared and would be grateful to know why one was thought unnecessary as the legislation is likely to increase calls on housing charities and foodbanks.

#### *Costs*

We are aware that some information is included in the report of the Social Security Advisory Committee (SSAC). That report, however, covers an extended period of consideration during which the figures quoted change (for example, on page 52 it states £200 million will be saved in year 2016–17, but on page 8 this sum has been reduced to £150 million per annum). To assist the House, we would have expected the Explanatory Memorandum to provide figures correct at the time the Regulations were laid.

We note also that no estimate is given of the number of claimants likely to be affected, which is surely an essential element in the calculation of savings. Although the Equality Impact Assessment assesses the types of claimants to be affected as a proportion of the total number, no reference is made to that base number.

#### *Benefits*

Paragraph 15 on page 6 of the SSAC report describes the instrument as "a save to spend measure" stating that the £150 million per annum savings will be used to fund measures to get people off benefit and into work. No explanation is offered whether this money will be used to fund existing programmes or will be ring-fenced to support entirely new initiatives to combat unemployment.

This Committee is required by the House to consider whether any instrument will achieve its stated policy objective. This instrument is described at paragraph 8 on page 52 of the SSAC report as "primarily a cost saving measure" but we currently have no supporting information to help us gauge whether the sum anticipated is a realistic estimate. We would therefore be grateful if you provide the following supplementary information so that we may complete our consideration of the instrument at our meeting on 30 June:

- The most up to date estimate of savings, and how those savings will be used
- The most up to date estimate of the number of claimants likely to be affected
- Why no Impact Assessment was prepared

- Why the Explanatory Memorandum was incomplete.

The Committee would also be interested to learn why the DWP decided to reject the recommendations in the SSAC report given the unusual strength of their concerns.

**23 June 2015**

**Letter from Rt Hon. Lord Freud to Rt Hon. Lord Trefgarne**

Turning to your first point about the anticipated savings and number of claimants likely to be affected, the anticipated savings were revised to around £150m per annum once Universal Credit is fully rolled out, in line with the analytical work for the March 2015 Budget. This estimate was based on 880,000 claimants serving waiting days (after exceptions). The savings figure of around £150m was quoted in the Secretary of State's response to the Social Security Advisory Committee's (SSAC) report on page 6, paragraph 15, which I have copied below for ease. With the benefit of hindsight, I recognise that it may have been helpful to have restated this figure in the Explanatory Memorandum to assist the Committee.

*“15. This change is a save to spend measure: it will generate estimated savings of around £150m per annum once Universal Credit has been rolled out. These savings will fund measures to get people off benefit and into work and will particularly help those who are likely to be long term benefit recipients.”<sup>5</sup>*

As explained in the Secretary of State's response (in the same excerpt above; page 6, paragraph 15 of the DWP's response to SSAC's report), the savings from this measure will provide resources to fund measures to get people off benefit and into work. I can confirm that all of the savings from Universal Credit waiting days in 2015–2016 will be reinvested in existing programmes by delivering additional support for claimants in Jobcentre Plus. This includes weekly work search for 50% of benefit claimants, quarterly work search interviews for all claimants, English Language training for those with language barriers to moving to work and additional voluntary support for lone parents with children aged 3–4.

An Impact Assessment was not separately prepared for these regulations as the legislation does not directly impose any regulatory, administrative or other obligations on any public or private bodies.

As the Secretary of State's response makes clear there are measures in place to provide support through advances of benefit to those claimants who are in hardship. A full Equality Assessment on the impact of the regulations was carried out and shared with the Social Security Advisory Committee along with the draft regulations.

The Government's decision and its reasons for not accepting the SSAC recommendation were fully explained in the Secretary of State's response to the SSAC report.

**29 June 2015**

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<sup>5</sup> Statement by the Secretary of State for Work and Pensions; The Universal Credit (Waiting Days) (Amendment) Regulations 2015; p6.

**Further letter from Rt Hon. Lord Trefgarne to Rt Hon. Lord Freud**

Thank you for your letter of 29 June which was considered by the Secondary Legislation Scrutiny Committee at its meeting yesterday. I have been asked by the Committee to write again to you to express its disappointment about the content of your letter which largely repeats material that we had already received from your Department and which we published in our 3rd Report.

The Committee also asked me to raise one particularly important matter: namely, the availability of advances of benefit during the initial six weeks. You say in your letter that, “as the Secretary of State’s response [to the SSAC report] makes clear there are measures in place to provide support through advances of benefit to those claimants who are in hardship”. In our 3rd Report, we noted that paragraph 32 of the Secretary of State’s response says: “Advances will not be paid to ... those who will not be able to afford the repayment”. Please could you:

- clarify the circumstances under which a claimant might be refused an advance; and
- state what other resources are available to a claimant who is refused an advance on the grounds that he or she will not be able to afford the repayment.

**1 July 2015**

**APPENDIX 3: CRIMINAL LEGAL AID (REMUNERATION ETC.)  
(AMENDMENT) REGULATIONS 2015 (SI 2015/1369)**

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**Letter from Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Shailesh Vara MP, Parliamentary Under Secretary of State, Minister for the Courts and Legal Aid at the Ministry of Justice**

The Committee considered the Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 at its meeting today and will publish an initial report. In discussion, members expressed concern about gaps in the information provided to support the Regulations, in particular information about the likely effects of the legislation.

This measure implements the second stage of the Ministry of Justice's policy statement of February 2014 which announced the intention to cut 17.5% from Criminal Legal Aid fees in two tranches. The first 8.75% reduction was implemented by SI 2014/415 which came into effect on 20 March 2014. Contrary to the Committee's normal expectation, no information is given about the effects so far of the stage one cuts, even though the Explanatory Memorandum to that instrument said that there would be continual monitoring and a review within a year of service commencement. We would be grateful if you could provide evidence of the results of the first stage cuts so as to enable the Committee to consider whether the second cut is appropriate and whether it is correctly pitched at 8.75%.

We note also that the scope of the Impact Assessment accompanying this instrument is limited. Although it provides information on the anticipated savings to the taxpayer and offers the opinion that clients are unlikely to be affected, no information is given about the impact of these changes on the Criminal Legal Aid providers. Indeed, paragraph 13 of the Impact Assessment states that the assessment is based on the assumption that "providers will deliver the same level and quality of service as at present". We would be grateful if you could provide the evidence on which this assertion is based.

We have also received a letter from the Law Society expressing concern that the timetable for the reduction in fees and consolidation has changed from the programme outlined by the Ministry of Justice in November 2014. It states the change has exacerbated the position for firms during the transition period by extending it to six months. We would be grateful for an explanation of the reason for changing from the published programme and ask for information about whether an analysis was done prior to making the Regulations to assess what impact deviating from the published plan would have on firms.

**23 June 2015**

## Letter from Shailesh Vara MP to Rt Hon. Lord Trefgarne

The Committee will appreciate that there has been a very considerable amount of consultation, analysis and background information underpinning the Regulations. It was challenging to reflect that in the explanatory memorandum without the memorandum becoming excessively long. Can I invite the Committee, in considering the Regulations, also to consider the Written Ministerial Statement that I made to the House of Commons on 10 June on criminal legal aid? (A similar statement was made to the Lords by Lord Faulks.)<sup>6</sup> This addresses a number of the points raised by the Committee. I enclose a copy of my statement.

As I explained in my Statement, the Government decided to proceed with the second 8.75% reduction to litigators' fees announced by the Coalition government in February 2014, having considered the findings of Sir Brian Leveson's report into the efficiency of the criminal courts, the impact of broader criminal justice reforms, and the impact of changes already introduced. Before reaching this conclusion, we examined changes to our forecast legal aid expenditure, changes to the existing market, provider withdrawal rates and reasons, contract extension acceptance and early information from the duty provider contract tender. This analysis reassured us that legal aid reforms so far, including the first fee reduction provided for by S.I. 2014/415, have not had any substantial negative impact on the sustainability of the service.

The reforms to the provision of criminal legal aid litigation services (which include both the fee reduction provided for by the Regulations and reforms to the manner in which the Legal Aid Agency contracts with providers) have been informed by advice from a number of sources, including KPMG. The number of duty provider contracts to be offered by the Legal Aid Agency to providers was based on what we, on advice from KPMG, thought would deliver a sustainable legal aid system that provided a high quality service, on the basis of a full 17.5% fee cut and the introduction of a set of new fixed fees. The KPMG analysis (unlike the analysis referred to by The Law Society carried out by Otterburn and PA Consulting) was based on consideration of the market as it would operate once the new contracting regime had resulted in a consolidation of the market. As a result of concerns raised in consultation, the Government has selected the highest number of Duty Provider contracts recommended by the KPMG analysis.

In relation to the timing of the second fee reduction, the Government announced in November 2014 that the second fee reduction would take place in July 2015. The Government has not departed from that timetable. The Committee is correct in observing that the Government announced in November 2014 that the new system of contracts for the provision of criminal legal aid services was to commence after that date, in October 2015. The Government announced in March 2015 that these contracts would not now come into force until 11 January 2016. The only reason that the Government has not been able to commence the new contracts in line with the timetable announced in November is because The Law Society (with two other representative bodies) brought a judicial review of the decision of the Government on the number of duty provider contracts to offer. The Law Society obtained an interim injunction to prevent the tender exercise continuing which delayed the tender process and the commencement date for the contracts which are awarded at the end of that process. The judicial review was unsuccessful both at first instance and on appeal.

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<sup>6</sup> HC Deb, 10 June 2015, cols 32–34WS

As there is now a gap of six months between the second fee reduction and commencement of the new contracts, we undertook some further analysis to measure the likely impact on providers given the time-lag as to when fee reductions affect providers' income. The analysis included the potential offsetting impact of interim payments, which provide some payment at an earlier stage for trials (introduced with effect from 2 October 2014 by S.I. 2014/2422), which are available to give a boost to the revenue of providers over the transitional period. The analysis showed that, assuming providers took advantage of interim payments as expected, the total impact of the overall 17.5% fee cut for the average firm by January 2016 is a 12% reduction in revenue. This 12% reduction is a result of both the impact of interim payments and the speed at which ongoing cases are completed and billed for (some cases will still be being paid at rates prior to the fee cuts). This indicated that providers will have not felt the full 17.5% reduction in fees prior to contract start dates. The reduction builds up over time, so the average overall reduction in fee income between April 2015 and January 2016 is 7% (assuming interim payments are taken up as expected), but in the worst case scenario where providers do not take full advantage of interim payments the average reduction over the same period is 11%. The legal aid market has shown itself to be resilient to previous fee reductions.

After the new contracts commence successful bidders will benefit from a greater volume of work, which will mitigate the impact of the full fee reduction once they have achieved the planned economies of scale to accommodate lower fees.

While we are confident both the fee reduction and the new fee scheme structure being introduced in January will not create localised gaps in criminal legal aid litigation services, we have developed robust monitoring systems to assess whether any difficulties are arising in one or more areas. The LAA will regularly monitor providers through their contract management and auditing procedures and ensure early identification of sustainability concerns. The LAA also has robust and practical contingency plans to ensure effective representation is maintained.

In summary, the number of bids made (1,099 for 527 contracts) knowing the price might fall by a further 8.75%; the fact that bidders were aware of the extent of the gap between the second fee cut and new contracts when they bid; the economies of scale delivered through the duty provider work tender and the analysis of the impact of the earlier remuneration changes, when taken together, suggest that the further fee reduction of 8.75% is sustainable.

**26 June 2015**

**Further letter from Rt Hon. Lord Trefgarne to Shailesh Vara MP**

Members of the Committee were grateful for the additional information but have asked for clarification of two points raised in your letter:

- First, you state that the KMPG analysis reassured you that the first fee reduction had not had any substantial negative impact on the sustainability of the service. The Committee felt that this was only one measure against which the Regulations should be tested and that the quality, promptness and reliability of the service available to those in need of advice were also important. What evidence can you provide to show that these aspects have also been considered, and how will you ensure that they are maintained and monitored?
- Secondly, you state that “after the new contracts commence successful bidders will benefit from a greater volume of work” and you mention that there have been 1,099 bids for 527 contracts. What do you anticipate will happen to the unsuccessful applicants? Do you envisage any risk that the market may be distorted to give a significant advantage to a minority of firms? Have you considered whether firms who do not succeed in their bid will close, making the service less sustainable by reducing the size of the potential pool of bidders when the contracts come up for renegotiation?

Finally, you explain that a great deal of information could have been provided about these Regulations but that you were concerned that the Explanatory Memorandum should not be “excessively long”. Whilst the Committee appreciates that intention, our guidance to departments that an Explanatory Memorandum should not exceed four pages is indicative only and should never prevent a department including evidence to support its view that the legislation will achieve the stated policy objective.

**1 July 2015**

#### **APPENDIX 4: INTERESTS AND ATTENDANCE**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://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 30 June 2015 Members declared no interests.

##### **Attendance:**

The meeting was attended by Baroness Andrews, Lord Bowness, Lord Goddard of Stockport, Lord Haskel, Baroness Humphreys, Baroness O'Loan, Baroness Stern, Lord Trefgarne and Lord Woolmer of Leeds.