HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

35th Report of Session 2015–16

West Midlands Combined Authority Order 2016

Homes and Communities Agency (Transfer of Property etc.) (No. 2) Regulations 2016

Work of the Committee in Session 2015ð16

Includes 3 Information Paragraphs on 3 Instruments

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Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to 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 these specified grounds:
>
> (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.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation 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 *(Chairman)*
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 the last Appendix to this report.

Publications

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

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at http://www.legislation.gov.uk/uksi

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Thirty Fifth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

West Midlands Combined Authority Order 2016

Date laid: 28 April 2016

Parliamentary procedure: affirmative

The Order is a striking example of the use of secondary legislation to bring about major policy change. It proposes the establishment of the West Midlands Combined Authority (WMCA) to exercise specified local authority functions across the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton (òthe constituent councilsó). Subject to the approval of further legislation, there will be a directly elected Mayor for the WMCA from May 2017, and the elected Mayor will become the Chair of the Combined Authority.

In January and February of this year, the constituent councils carried out a three-week on-line consultation on the proposal to set up the WMCA. In our view, allowing only three weeks for responses is too short a period; and we are concerned that on-line only consultation exercises may disadvantage sections of the community who either do not have access to computers or find them difficult to use, or who would not expect such an exercise to be conducted solely on-line.

In their summary of the consultation, the constituent councils have stated that setting up a Combined Authority had no bearing on whether in future there was to be a Mayoral Combined Authority. We fail to understand how the Department for Communities and Local Government can describe this statement as òwholly accurateó. In our view, the councilsõ assertion is ambiguous and raises questions about how well the proposals will have been understood by respondents.

Given comments from Coventry respondents that Coventry does not belong or need to be associated with Birmingham and the Midlands, and given as well that the consultation summary makes it clear that Coventry respondents were the least supportive of the pro-WMCA statements posed in the consultation, we do not share the Secretary of Stateõs confidence that the proposed combined authority will prove sufficiently united and robust.

We draw this Order to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House and that there appear to be inadequacies in the consultation process which relates to the instrument.

1. The Department for Communities and Local Government (DCLG) has laid this draft Order with an Explanatory Memorandum (EM). The Order proposes the establishment of the West Midlands Combined Authority (WMCA) to exercise specified local authority functions across the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton ("the constituent councils").

2. In the EM, DCLG says that the Government are reaching "bespoke devolution deals" with areas, which are agreements in principle for a

devolution of funding, powers and responsibilities for such matters as employment and skills, transport, planning and investment. On 17 November 2015, the Government and the WMCA Shadow Board leaders (the leaders of the constituent councils) announced the WMCA Devolution Deal, which paves the way for further devolution over time and for the reform of public services to be led by the WMCA. DCLG says that, subject to the approval of further legislation, there will be a directly elected Mayor for the WMCA from May 2017, and that the elected Mayor will become the Chair of the Combined Authority. The WMCA will work with the three Local Enterprise Partnerships (LEPs) for the area (Black County LEP, Coventry and Warwickshire LEP and the Greater Birmingham and Solihull LEP), and each LEP will appoint one of its board members to be a member of the Combined Authority.[1]

3. In the EM, DCLG explains that the WMCA will also involve non-constituent councils outside the area of the WMCA, because of their economic interdependence with that area. The non-constituent councils are Cannock Chase, Nuneaton and Bedworth, Redditch, Tamworth and Telford and Wrekin: each of these councils will appoint one of its elected members to be a member of the WMCA.

4. We note that the National Audit Office (NAO) published a report on "English devolution deals" on 20 April 2006[2] which included (at Part Three) a section on the key issues to take forward in such deals. One such issue is local administrative geography. The NAO report pointed to the Greater Manchester devolution deal as exemplifying the fact that "accountability arrangements are clearer where political, administrative and economic geography is coterminous" (para. 3.17). By contrast, the report referred to the West Midlands devolution deal as an example of where "in other areas, devolution deals are increasingly being negotiated and agreed with more complex and untested geographies" (para. 3.19). **We would also comment that the apparent òcombination creepó of the West Midlands arrangements to involve non-constituent councils must add to the complexity, and highlights even further the far-reaching impact of the changes to local government structures which are being taken forward through secondary legislation.**

Consultation

5. In the EM, DCLG states that one of the tests which the Secretary of State must consider before laying such an Order is whether sufficient public consultation has been carried out on the proposal for a Combined Authority. DCLG states that the constituent councils held a consultation from 18 January to 8 February 2016, and that the Shadow WMCA has produced a summary of responses.[3] The consultation consisted of an online survey which was completed by 1,907 respondents: 55% were local residents, 33% employees of local authorities in the West Midlands, and 8% businesses. DCLG says that 65% of respondents strongly agreed that a WMCA would

1 We have brought other Orders relating to the establishment or strengthening of Combined Authorities to the special attention of the House in this Session. In our 25th Report, Session 2015–16 (HL Paper 101) we highlighted the Draft Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016. In our 27th Report, Session 2015–16 (HL Paper 107) we drew to the House's attention the draft Tees Valley Combined Authority Order 2016.

2 HC 948.

3 See: https://westmidlandscombinedauthority.org.uk/media/1110/combined-authority-consultation-analysis-summary-150216.pdf.

be better placed to deliver improved outcomes in relation to economic development, regeneration and transport; the strongest response was the 84% "strong agreement" to the statement that the WMCA should not be a "super council" and that the democratic sovereignty of individual councils must be retained. DCLG says that "the local consultation indicated strong and widespread support in the West Midlands."

6. We obtained additional information from DCLG about the consultation process, which we are publishing at Appendix 1. We asked whether the Department was content that the exercise conducted by the constituent councils in early 2016 was held over only three weeks, and solely on-line. DCLG has said:

> " … the Secretary of State considered all the relevant factors including the earlier local engagement, how this had shaped the scheme proposals, and the efforts made in the three-week consultation to alert the public to that consultation and allow comments on the proposals. On this basis he was satisfied that the consultation was sufficient. He recognised that this consultation was conducted on-line, and was aware of the range of media measures used to signpost people to the consultation … "

7. We would comment that, while the constituent councils clearly took steps in 2015 to raise local awareness of the proposed establishment of the WMCA, it was only in January 2016 that interested parties were invited to express their views in a formal public consultation exercise. **In our view, allowing only three weeks for responses is too short a period (we have made it clear that we see six weeks as the minimum period for a consultation);**[4] **and we are concerned that on-line only consultation exercises may disadvantage those sections of the community who either do not have access to computers or find them difficult to use, or who would not expect such an exercise to be conducted solely on-line.** In this regard, we note that the consultation principles published by the Cabinet Office in January of this year stress the need to tailor consultation to the needs of particular groups, such as older people or those with disabilities.[5]

8. The summary published by the Shadow WMCA said that 91 responses referred to Coventry's decision to become a constituent member of the WMCA: "the pattern throughout these comments being Coventry does not belong or need to be associated with Birmingham and the Midlands, in particular because of the already close associations/ geographical proximity to Warwickshire". We asked DCLG whether it was content that there was adequate local support for Coventry's participation, and that the WMCA would prove sufficiently united and robust; and we asked why the EM did not mention the concerns expressed by Coventry residents. DCLG's response, at Appendix 1, includes the following:

> "As to the matters raised by the 91 respondents the Secretary of State had considered these as part of his consideration of the summary of consultation responses. He considered these along with all the other matters raised in the summary of consultation responses and in the councils' analysis of their local engagement. He considered in particular the views of the councils' themselves, being the democratically elected

4 See, for example, our 23rd Report, Session 2015–16 (HL Paper 89) para. 19.

5 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf.

> representatives of the area, and to which in the traditions of our representative democracy considerable weight should be attached. It is on this basis that the Secretary of State is confident that the combined authority as now envisaged will prove sufficiently united and robust."

9. We note the statement that the Secretary of State considered in particular the views of the councils' themselves, and that considerable weight should be attached to them. We would not dissent from this, but we would comment that, if the weight given to councils' views is so preponderant that it drives out consideration of any other opinions, consultation of other interested parties becomes pointless; and, conversely, if a consultation process is genuine, then proper consideration should be given to other opinions even if they differ from those of the councils concerned. **Given the comments from Coventry respondents quoted above, and given as well that the summary published by the Shadow WMCA makes it clear that Coventry respondents were the least supportive of the pro-WMCA statements in the 2016 consultation, we do not share the Secretary of Stateõs confidence that the proposed combined authority will prove sufficiently united and robust.**

10. We also note that, in the consultation summary, the constituent councils said that setting up a Combined Authority had no bearing on whether in future there was to be a Mayoral Combined Authority. DCLG has described this as "a wholly accurate statement". However, in response to our question whether this meant that the Government were content that the WMCA should be established and no elected mayor later installed, DCLG has said that this is not the case. It states that the Government are committed to the devolution deal signed with the West Midlands in November 2015, "which envisages, subject to the appropriate statutory processes being undertaken and the necessary legislation put in place, a mayoral combined authority—that is a combined authority with a directly elected Mayor for the West Midlands acting as Chair to the Combined Authority and exercising certain powers". **In our view, the line taken by the constituent councils in the summary is ambiguous and raises questions about how well the proposals will have been understood by respondents, and we fail to understand how the Department can describe as accurate the councilsõ assertion that there is no connection between setting up the Combined Authority and the installation of an elected Mayor as its Chair.**

Homes and Communities Agency (Transfer of Property etc.) (No. 2) Regulations 2016 (SI 2016/515)

Date laid: 22 April 2016

Parliamentary procedure: negative

The Regulations specify three public bodies that are expected to transfer surplus land to the Homes and Communities Agency (HCA) in the next year as part of the public land for housing programme. One of these bodies is High Speed Two (HS2) Limited. The House may be interested to see that these Regulations make such provision at this early stage of the progress of the High Speed Rail (London - West Midlands) Bill through the House.

We draw these Regulations 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.

11. The Department for Communities and Local Government (DCLG) has laid these Regulations, with an Explanatory Memorandum (EM), specifying three public bodies that are expected to transfer surplus land to the Homes and Communities Agency (HCA) in the next year as part of the public land for housing programme.

12. We drew the Homes and Communities Agency (Transfer of Property etc.) Regulations 2015 (SI 2015/1471) to the attention of the House in our 7th Report of the current Session, on the ground that the explanatory material laid in support of the instrument provided insufficient information.[6] That material made no mention of a National Audit Office (NAO) report of June 2015, on the disposal of public land for new homes. We are glad to see that the latest EM refers to that NAO report in some detail.

13. One of the bodies specified in the latest Regulations is High Speed Two (HS2) Limited. We asked DCLG whether HS2 had already acquired land, whether HS2 was expected to acquire more land than required to build the HS2 track, and when HS2 was expected to hand over surplus public sector land to the HCA. DCLG has replied as follows:

> "There was no reason for us to exclude HS2 from the list of Department for Transport (DfT) arm's-length bodies to which these passive powers could potentially be applied. DfT has made clear that when the Secretary of State exercises powers of compulsion to acquire land for HS2, no more land will be acquired than is needed. Nevertheless, it is inevitable that there will be some surplus land. This may result, for example, from cases where taking part of a landholding for the railway results in material detriment to the value of the rest of the holding, in which case they may be obliged to buy the whole holding. Moreover, 381 blighted properties (to end March 2016) have already been acquired through the discretionary compensation schemes and the statutory blight provisions. Most of these are not needed for the railway and, at some point in the future, can be disposed of. There are currently no plans or timescales for this. All properties are currently being acquired in the name of the Secretary of State but it is possible that at some point in the future some or all of this property may be transferred to the name of HS2 Ltd, or that HS2 Ltd might acquire property in its own name."

6 7th Report, Session 2015–16 (HL Paper 28).

14. The House may be interested to see that these Regulations make provision for surplus land to be transferred from HS2, as part of the public land for housing programme, at this early stage of the progress of the High Speed Rail (London - West Midlands) Bill through this House. Any disposals of such land at some future date, while falling within the regime mentioned in section 7 of the EM, seem likely to raise issues of value for money and efficiency which will attract considerable interest.

INSTRUMENTS OF INTEREST

Draft Modifications to the Standard Conditions of Electricity and Gas Supply Licences, the Smart Meter Communication Licences and the Smart Energy Code (Smart Meters No. 4 of 2016)

15. These draft modifications have been laid by the Department for Energy and Climate Change (DECC) with an Explanatory Memorandum (EM), in which DECC says that the modifications further develop the regulatory framework to support the roll-out of smart meters in Great Britain, in line with the Government's policy aim for every GB home and smaller business to be equipped with a smart meter by the end of 2020. In the EM, DECC states that the roll-out of smart meters will give people better information about, and control over, their energy consumption and deliver other benefits to consumers. Given that preparations for the smart meter programme have been underway for some time, we asked DECC to set out more fully what those benefits are expected to be. We are publishing the response as Appendix 2.

16. In the light of that response, we asked DECC to break down the figure of £17 billion of total benefits between the result of changes in consumers' behaviour, and efficiency savings made by the energy industry. DECC has told us that:

> "in terms of what proportion of the benefits of smart metering are as a result of behaviour change … around £6bn of the total £17bn in gross benefits are expected to arise from consumers reducing their energy consumption. Of the remaining £11bn around £10bn arise as efficiency savings to the energy industry, which are expected to be passed on to consumers through competitive pressures. The remaining benefits accrue across the entire society, for example in the form of reduced carbon emissions or improvement in air quality."

Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2016

17. The Department for Culture, Media and Sport (DCMS) has laid these Regulations, with an Explanatory Memorandum (EM). In amending an earlier instrument ("the 2003 Regulations" which implemented an EU Directive),[7] the Regulations require that persons making calls for direct marketing purposes do not prevent presentation of calling line identity ("CLI") on the called line. We note with interest that the Regulations apply to direct marketing calls made for political, as well as other, purposes.

18. In the EM, DCMS says that the increasing level of consumer frustration caused by nuisance phone calls is a serious concern to the Government. It quotes Ofcom's estimate that each year UK consumers receive around 4.8 billion nuisance calls: 1.7 billion live sales calls, 1.5 billion silent calls, 940 million recorded sales messages, and 200 million abandoned calls. It explains that, in April 2015, the Government lowered the legal threshold at which the Information Commissioner (ICO) may impose a civil monetary penalty on organisations for a serious breach of the 2003 Regulations, and

7 The Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), which implemented the provisions of Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

that since then the ICO has issued a number of substantial fines amounting to £895,000. However, despite increased enforcement action, organisations continue to breach the law, and the failure to provide CLI makes it more difficult for the ICO and Ofcom to pursue enforcement action. Between 12 January and 16 February 2016, DCMS held a consultation on the issue: 159 of the total of 170 respondents agreed that it should become a requirement that direct marketing caller should provide CLI.[8]

19. We put questions to DCMS about the relationship between these Regulations and the requirements of the EU Directive, and about the possibility that UK businesses might use overseas companies to make direct marketing calls to UK households. We are publishing DCMS' answers as Appendix 3.

Tobacco and Related Products Regulations 2016 (SI 2016/507)

20. These Regulations implement the majority of provisions of the revised Tobacco Products Directive 2014/40/EC ("the Directive") which update existing legislation to reflect changes in the market and in technology. In particular the legislation—

- increases the size of combined health warnings (consisting of a text and photograph) to cover 65% of front and back of the pack;
- prohibits misleading descriptors, such as "natural" or "organic", on tobacco and electronic cigarette labelling; prohibits misleading descriptors, such as "natural" or "organic" on tobacco and electronic cigarette labelling;
- prohibits characterising flavours such as menthol in tobacco products;
- provides for notification prior to the placement of novel tobacco products on the market;
- regulates the production and marketing of electronic cigarettes and associated refill cartridges in particular by banning advertising of them in the press or internet; and
- regulates herbal cigarettes.

21. The Government estimate that in the UK the reduction in smoking prevalence attributed to the Directive will be in the range of 1.7% - 2.1% from the current level of 18.3% (UK 2015). This equates to around 200,000 fewer smokers and lifetime health benefits of £13.7 billion. The legislation is due to take effect from 20 May 2016, but the UK has adopted a derogation which allows 12 months for existing stocks to be used up.

22. The Government want to go further and introduce tobacco packs with plain packaging. That legislation was due to come into effect later this month, but could be delayed as a result of a legal challenge by the tobacco industry. The High Court is expected to make a ruling on 18 May.

8 DCMS published a summary of consultation responses in April 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518819/CLI_consultation_GR__version__PDF.pdf.

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

Representation of the People (England and Wales) (Amendment) Regulations 2016

Draft instruments subject to annulment

Modifications to the Standard Conditions of Electricity and Gas Supply Licences, the Smart Meter Communication Licences and the Smart Energy Code (Smart Meters No. 4 of 2016)

Statutory Guidance on the meaning of "significant influence or control" over Limited Liability Partnerships in the context of the Register of People with Significant Control

Instruments subject to annulment

SI 2016/498	Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) (No. 2) Order 2016
SI 2016/502	Jobseeker's Allowance (Extended Period of Sickness) Amendment Regulations 2016
SI 2016/505	Approval of Code of Management Practice (Private Retirement Housing) (England) Order 2016
SI 2016/507	Tobacco and Related Products Regulations 2016
SI 2016/516	Civil Legal Aid (Procedure) (Amendment) Regulations
SI 2016/517	Patents (Amendment) Rules 2016
SI 2016/519	Social Security Administration Act 1992 (Local Authority Investigations) Regulations 2016
SI 2016/521	Electronic Cigarettes etc. (Fees) Regulations 2016
SI 2016/524	Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2016
SI 2016/529	Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2016
SI 2016/530	Consumer Credit (Disclosure of Information) (Amendment) Regulations 2016
SI 2016/539	Posted Workers (Enforcement of Employment Rights) Regulations 2016

WORK OF THE COMMITTEE IN SESSION 2015ð16

Number of instruments received

23. This report sets out, in paragraphs 45-47 and the graphs below, a statistical summary of the Committee's activity in the current session (2015–16). The steady rise in the number of statutory instruments (SIs) laid during the last Parliament has reversed, and we have considered only 712 instruments in this session. This is, however, typical of a post-election period: in the first session of the last Parliament, the Committee considered 721 instruments but the number then increased progressively over the four following sessions, rising to 1153 in the final session (see Chart 1). The proportion of affirmative instruments within the total for the current session has also returned to more normal levels (17%). Our assumption that last year's peak of 27% was mainly attributable to the significant number of corrections received seems to have been confirmed.

24. As usual, the Ministry of Justice (12.5%), the Department for Business, Innovation and Skills (11%) and the Home Office (10%) have been the major producers of SIs this session (see Chart 3). Legal aid, immigration and justice matters are also the subjects on which we received most correspondence from the public, although changes to the NHS have also attracted attention. As ever, we are grateful for the additional insight that such submissions give us and they appear on our publications webpage for the benefit of the House.

Corrections

25. In 2014, we recommenced counting the number of correcting instruments. We did this because, at just under 10% of the SIs considered, we took the view that the error rate was unacceptable, represented a significant waste of time and resources and increased the risk of confusion amongst those required to comply with the law. In January 2015, we published a report on our findings for 2014.[9] The Government responded positively to our report by requiring each Department to take action and by setting up a specialist team within the Cabinet Office, the Statutory Instruments Hub, to improve the drafting of secondary legislation. **In the current session, the error rate has reduced to just under 5% (see Chart 4 below). We welcome this improvement but would like to see the error rate further reduced.**

Analysis of grounds for report

26. In 2014–15, we reported on 89 SIs or 7.7% out of a total of 1153. This figure was somewhat distorted by a single report on a group of 17 instruments laid under the Care Act 2014. If adjusted to treat that group as one item, the reporting rate was 6.3%, very close to the level for the previous session. In this session, we have reported on 67 SIs or 9.4% out of 712. This increase in proportion is directly attributable to the number of SIs identified as having deficient Explanatory Memoranda (EMs). As expected, now our grounds for reporting distinguish between administrative defects and specific policy concerns, fewer instruments, only three, have been reported on the ground that they may imperfectly achieve their objective. **We remind Members of the House and government Departments that we regard this as our strongest level of criticism.**

9 Number of Corrections to Statutory Instruments in 2014, 20th Report, Session 2014–15 (HL Paper 93).

Consultation

27. We have taken a close interest over several sessions in how the Government approach consultation on secondary legislation. In January 2015, we published the report of our 2014 inquiry into the application in practice of the Government's *Consultation Principles*.[10] This was followed by correspondence with the Rt Hon. Oliver Letwin MP, Chancellor of the Duchy of Lancaster, in March and November 2015, and by oral evidence from Mr Letwin on 19 January 2016.

28. On 14 January 2016, the Government published a revision of the *Consultation Principles*. In our 23rd Report of the current session,[11] we published correspondence exchanged with Mr Letwin after the evidence session on 19 January, including the further revision of the *Consultation Principles* to meet points which we had raised. We welcomed Mr Letwin's commitment to publish in January 2017 the first in a series of annual reports on consultations carried out by Departments.

29. Despite the Cabinet Office's cooperation, during this session, we have drawn several instruments to the attention of the House on the ground of "inadequacies in the consultation process":

- We received letters from the National Union of Students and Study UK in relation to the Statement of Changes in Immigration Rules (HC 297) listing a number of unintended consequences which, the organisations told us, they would have pointed out had they been consulted. We found the Home Office's failure to consult the broad range of relevant bodies affected by the change particularly regrettable in the light of the critical yet constructive tone of the correspondence.[12]

- In regard to the Feed-in Tariffs (Amendment) (No. 2) Order 2015 (SI 2015/1659), we noted comments from the public that the short consultation period from 22 July to 19 August 2015 and the lack of a draft Impact Assessment had adversely affected their ability to respond. We added that the Department of Energy and Climate Change's (DECC) dismissal of these criticisms gave the impression of a Department more concerned about its own needs than about those of affected parties.[13]

- The Department for Communities and Local Government (DCLG) carried out no consultation on the amendments to earlier legislation made by the Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015 (SI 2015/1681) and we received representations from the Chartered Trading Standards Institute which challenged DCLG's statements. [14]

- The EM to the draft Renewables Obligation Closure Etc. (Amendment) Order 2016 gave an account of consultation responses which failed to indicate the level of opposition to, and paucity of support for, the proposed changes and also failed to acknowledge the concerns

10 22nd Report, Session 2014–15 (HL Paper 98).
11 23rd Report, Session 2015–16 (HL Paper 89).
12 7th Report, Session 2015–16 (HL Paper 28).
13 9th Report, Session 2015–16 (HL Paper 38).
14 11th Report, Session 2015–16 (HL Paper 44).

expressed by large numbers of respondents about the methodology used by DECC to justify its proposals.[15]

- More recently, we noted that only a minority of respondents to the Department for the Environment, Food and Rural Affairs (Defra) consultation on the draft Code of Recommendations for the Welfare of Livestock: Meat Chickens and Breeding Chickens (Revocation) (England) Order 2016 supported the proposed move to non-statutory welfare codes. We said that the responses to consultation showed only limited expectations of higher standards of animal welfare, and we were concerned that the Order might lead to the imperfect achievement of the Department's animal welfare objectives. Defra subsequently withdrew the Order.[16]

30. **Consultation processes do not need to be protracted, but, in deciding the length and timing of a consultation period, Departments do need to consider the ability of the consultees to respond.** Consultations are also particularly useful in applying "quality control" to proposed policy decisions to ensure that Departments have not overlooked some practical aspect of the proposal, and should therefore be seen by Departments as an aid rather than a chore.

Impact assessment

31. In last session's *Work of the Committee* report, we commented that the summary of the impact of the legislation that is supposed to appear in section 10 of the EM was frequently being skimped and that, even where clearly required, full Impact Assessments (IAs) were not always available at the time an instrument was laid. We regret that this problem has continued. As a result, in July 2015, we wrote to the Rt Hon. Lord Bates, Minister of State at the Home Office, asking for improvements in the material provided by his Department.[17] We also took oral evidence from the Rt Hon. Lord Freud, Minister of State for Welfare Reform at the Department for Work and Pensions (DWP), about why a series of DWP instruments had failed to mention simple facts like the number of persons likely to be affected by a proposed change and the estimated sum to be saved as a result.[18] We are assured that DWP is now taking action to improve the quality of the information accompanying SIs.[19] We have also issued very critical reports on this basis in relation to instruments laid by Defra[20] and DECC.[21]

32. There is ample evidence to show that our frustration over inadequate explanatory material for SIs is shared widely in the House–a particularly notable example being the debate on the draft Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 ("the Tax Credits Regulations).[22] That instrument was laid on 7 September 2015. It was accompanied by an EM, which we described in our report

15 24th Report, Session 2015–16 (HL Paper 94).
16 29th Report, Session 2015–16(HL Paper 114).
17 8th Report, Session 2015–16 (HL Paper 34).
18 21st Report, Session 2015–16 (HL Paper 84).
19 30th Report, Session 2015–16 (HL Paper 121).
20 In particular, see our report on the Large Combustion Plants (Transitional National Plan) Regulations 2015 (SI 2015/1973), 19th Report, Session 2015–16 (HL Paper 76).
21 In particular, see our report on the draft Infrastructure Planning (Onshore Wind Generating Stations) Order 2016, 23rd Report, Session 2015–16 (HL Paper 89).
22 9th Report, Session 2015–15 (HL Paper 38).

on the instrument as containing only "minimal information", and no IA. Following pressure from this Committee, a somewhat slender IA was later provided by the Chancellor of the Exchequer. Given its lack of substance, we suggested in our report that the House would wish "to reach a view on the adequacy of [the IA]". The debate on the instrument included several motions that requested a more detailed analysis of the potential effects of the legislation.[23] Following that debate and Government defeats on two of the motions, the Government commissioned a review, to be undertaken by the Rt Hon. Lord Strathclyde, of secondary legislation procedure in the Lords ("the Strathclyde Review"). We return to this in paragraphs 40-44 below.

33. Given our complaints about the quality of the explanatory material accompanying the Tax Credits Regulations, it was all the more disappointing that the EM for their successor, laid in January 2016, which brought into effect one element of the previous regulations, was similarly deficient. Once again we had to seek further information from the Treasury.[24]

34. In the light of our broad concern on the provision of supporting figures, we asked the Cabinet Office for a statement of the Government's policy on when an IA is required. The Rt Hon. Matt Hancock MP, Minister for the Cabinet Office, explained that an IA is mandatory where business or voluntary organisations are affected but, in all other cases, it is a matter for Departmental discretion—although, in exercising that discretion, account should be taken of the needs of Parliament.[25] We have reminded all Departments that Parliament's needs include the needs of this Committee in its task of assessing the significance of an instrument and whether it will achieve its policy objective.

35. **We agree that the principle of proportionality should be applied when considering whether a formal IA is required. However, whether or not a formal IA is produced, it is important that all EMs should provide the House with basic information such as the number of people who might be affected by an instrument, to what degree, and what costs or savings will result. We therefore expect those basic details to be in every EM.**

Quality of EMs in general

36. As a result of the number of deficient EMs, a new ground for reporting an instrument was introduced at the beginning of session 2014–15. In that session, we drew nine instruments, about 10% of the total reported, to the attention of the House on the ground that "the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation". This session, we have reported 13, 19% of SIs reported, on that ground. As noted above in relation to IAs (in paragraph 31), we took action with various Departments in an attempt to address the problem; and by the end of the session there was a degree of improvement.[26] There are, however, still far

23 HL Deb, 26 October 2015, cols 976-1042.
24 23rd Report, Session 2015–16 (HL Paper 89).
25 11th Report, Session 2015–16 (HL Paper 44), Appendix 3.
26 See for example the EMs to: Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement) (Prescription Of Arrangement For Monitoring) (Amendment) Order 2015 (SI 2015/1482); Train Driving Licences and Certificates (Amendment) Regulations 2015 (SI 2015/1798); draft Access To Justice Act 1999 (Destination Of Appeals) (Family Proceedings) (Amendment) Order 2016.

too many EMs that use obscure jargon or tell us what the instrument does without giving us sufficient context to judge whether the change is significant or appropriate. The Home Office, Defra, DWP and the Ministry of Justice have been particular offenders in this session.

37. Where an EM is deficient, we may also ask a Department to publish a revised version. In this session, we have asked for 39 EMs, 5.5%, to be replaced. This is disappointing given that there is guidance published on our website about the sort of information that needs to be provided.[27] However, we suspect that the problems identified during our oral evidence session with Lord Freud might exist more widely–namely that "some EMs were … provided by experts who appeared to lack sufficient overview of the wider context" and that although "the senior civil servant giving clearance should be able to provide that wider view, … the process had evidently not worked as intended".[28]

Consolidation

38. **This year has also been remarkable for the number of consolidating instruments, often simplifying the legislation in the review process. We welcome this development.** Most recently we have seen items on traffic signs and medicine approvals, both of which reduced costs as a result.[29] There are still areas of legislation in need of review, the Immigration Rules being a prime example as the list of amending instruments on any Statement of Changes to Immigration Rules now extends to a second page[30]–implying that there has been no formal consolidation of the law since May 1994. We are aware that there is an informal compilation of the Rules available on line but we think the corpus of legislation would benefit greatly from a thorough review, particularly if that review could also address simplifications. DECC legislation, although newer, would also benefit from similar attention.

Public Bodies Orders

39. No Public Bodies Orders (PBOs) were laid in this session under the Public Bodies Act 2011 ("the 2011 Act"). The Government response to our last annual review of PBOs indicated that it was doubtful whether any more PBOs would be laid before the 2011 Act ceases to have effect in February 2017. [31] If so, that would mean that only 31 (53%) of the 58 orders originally proposed have been laid. Although the Government argued in their response that *ò*the Public Bodies Act provided one option for reform to public bodies, but was never intended to preclude the use of other means, if more appropriate", we cannot agree with their assertion that the 2011 Act has *ò*proved highly effective." We therefore reiterate our concern that a significant amount of parliamentary time was wasted arguing over the inclusion in the Bill that became the 2011 Act of organisations which have since been handled another way.

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27 http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/SLSC_Guidance_for_Departments_submittingJuly15.pdf.

28 21st Report , Session 2015–16 (HL Paper 84).

29 See for example, the Medicines (Products for Human Use) (Fees) Regulations 2016 (SI 2016/190) and the Traffic Signs Regulations and General Directions 2016 (SI 2016/362).

30 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512690/54729_HC_877_Web_Accessible_v.2.pdf.

31 32nd Report, Session 2014–15 (HL Paper 148).

Response to the Strathclyde Review

40. After the publication of the report of the Strathclyde Review in December 2015,[32] this Committee, as the committee most closely involved in the handling of secondary legislation, conducted an inquiry into the Strathclyde Review proposals. We took evidence from a range of witnesses and, on 14 April, published a report entitled *Response to the Strathclyde Review: Effective parliamentary scrutiny of secondary legislation*.[33] Reports were also published by the Constitution Committee and the Delegated Powers and Regulatory Reform Committee (DPRRC).[34] It is too soon to expect a formal response from the Government but we will await developments with a keen interest.

41. As well as the question of what powers this House should have to support its scrutiny of statutory instruments, our report considered issues relating to the boundary between primary and secondary legislation. We endorsed the approach of the DPRRC in calling on the Government to promote measures to ensure that the appropriate boundary was drawn. We also noted that, according to *Erskine May*, secondary legislation should be "essentially subsidiary or procedural in character",[35] and commented that, given that even the Government described the Tax Credits Regulations as being of very substantial significance, the issue arose whether "it would have been more appropriate for the legislative material contained in the Tax Credits Regulations to have been put into primary legislation".[36]

42. We have seen other examples in the current session of statutory instruments which have implemented policy changes that stand out in the wider landscape of secondary legislation. In our 7th Report, for example, we drew to the special attention of the House the draft Hunting Act 2004 (Exempt Hunting) (Amendment) Order 2015 which proposed to amend the existing exemptions from the ban on hunting wild mammals with dogs, as set out in the Hunting Act 2004, so as to increase the number of dogs that could be used.[37] Whilst Defra had carried out no consultation before laying the draft Regulations, public comments made at the time included the view that the proposed widening of the exemptions had the potential to nullify the effect of the original Act. No debate has yet been scheduled on these draft Regulations.

43. A similar issue arose in relation to the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (SI 2016/390).[38] While the Welfare Reform and Work Bill was still before Parliament, provisions of which would require registered providers of social housing in England to reduce social housing rents by 1% a year from April 2016 for four years, from a 2015–16 baseline, SI 2016/390 was laid to put in place a one-year exception from the rent reduction. We found it surprising that the Government had used secondary legislation to implement a major, if temporary, change in policy, while the Bill was still in progress.

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32 *Strathclyde review: secondary legislation and the primacy of the House of Commons*, Cm 9177.
33 32nd Report, Session 15–16 (HL Paper 128).
34 Constitution Committee, 9th Report, Delegated Legislation and Parliament: A response to the Strathclyde Review (HL Paper 116); DPRRC, 25th Report, Special Report: Response to the Strathclyde Review, Session 2015–16 (HL Paper 119).
35 Response to the Strathclyde Review: Effective parliamentary scrutiny of secondary legislation, 32nd Report, Session 15–16 (HL Paper 128), para 70.
36 Ibid., para 71.
37 7th Report, Session 2015–16 (HL Paper 28).
38 31st Report, Session 2015–16 (HL Paper 126).

44. Members have also raised this issue in relation to instruments in previous sessions–for example, on secondary legislation relating to Mitochondrial IVF, to reforms to fees for legal aid and to fracking.[39] **Given this track record, we await the Governmentõs response to the recommendations of the DPRRC with particular interest.**

Statistical Analysis

45. We met 37 times in session 2015–16 and published 35 reports on a total of 712 instruments (119 affirmatives and 593 negatives). We drew 25 affirmatives and 42 negatives (67 in total) to the special attention of the House: a reporting rate of 21% for affirmatives and 7.1 for negative instruments (and, overall, 9.4% of the total considered). Apart from our inquiry into the Strathclyde Review, we held two oral evidence sessions, and have published a number of written submissions from members of the public and organisations which have greatly broadened our understanding of the impact of the SIs.

46. The grounds on which we drew the 67 instruments to the special attention of the House in this session were as follows:

- 49 instruments (70%) on the ground of political importance or public policy interest;
- 13 (19%) on the ground that the explanatory material laid in support provides insufficient information;
- 3 (4%) on the grounds of imperfectly achieving its policy objective;
- 5 (7%) on the ground that there appear to be inadequacies in the consultation process.[40]

47. In deciding which instruments to draw to the special attention of the House, we have continued to limit our reports to those on which we believe the House may wish to take action. In order to alert Members to other instruments which appear to be of interest, are topical or follow an unusual process, we have continued to include in our reports short information paragraphs on those instruments. In this session, we included 97 such paragraphs (covering 110 (15.4%) of the total instruments, compared to 149 last session (covering 206 (17.9%) of the total instruments). See Chart 5.

39 See for example: 23rd Report Session 2014–15 (HL Paper 99); 40th Report Session 2013–14 (HL Paper 176); 28th Report, Session 2013–14 (HL Paper 124).

40 Three instruments were reported on more than one ground.

Chart 1: Total number of instruments considered each calendar year since 2006

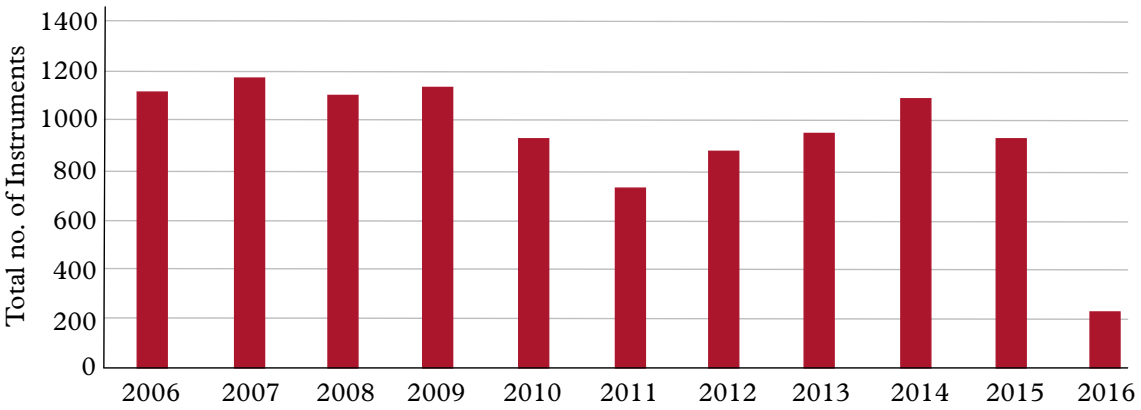


Chart 2: Flow of instruments considered in Session 2015-16 by month laid

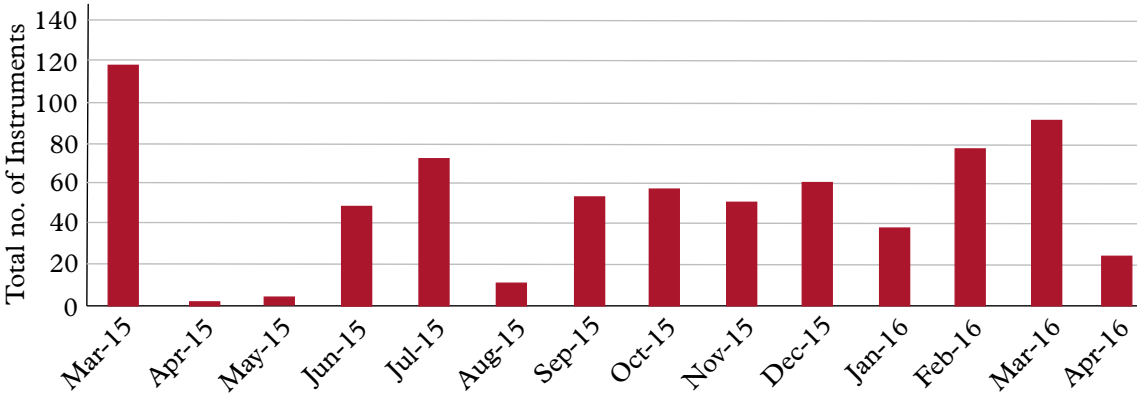


Chart 3: Breakdown of instruments laid by Department and grounds for report

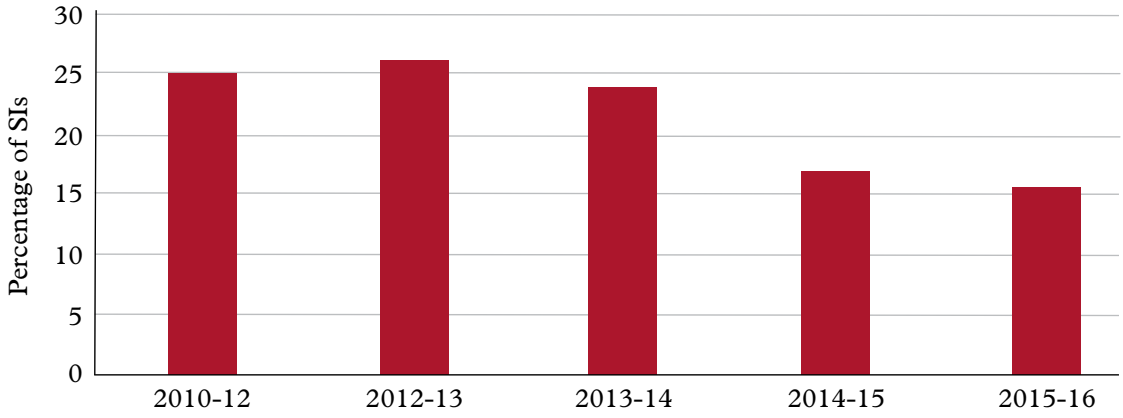
Departments	Total laid	Percentage of total	Reported Negative	Reported Affirmative	Ground for report†					
					a	b	c	d	e	f
Cabinet Office	24	3.4	0	2	2	0	0	0	0	0
DCLG	55	7.7	8	4	10	0	0	0	1	2
DCMS	11	1.5	0	0	0	0	0	0	0	0
DEFRA	57	8.0	3	2	4	0	0	1	1	1
BIS	78	11	3	4	7	0	0	0	0	0
DECC	40	5.6	6	3	4	0	0	0	4	1
DWP*	61	8.6	5	1	3	0	0	0	3	0
Education	31	4.4	1	0	1	0	0	0	0	0
FCO/DflD	20	2.8	0	1	1	0	0	0	0	0
Health**	50	7	3	1	3	0	0	1	0	0
Home Office	70	9.8	6	4	7	0	0	0	2	1
Defence	13	1.8	0	0	0	0	0	0	0	0
Justice	89	12.5	6	1	4	0	0	1	2	0
Privy Council	5	0.7	0	0	0	0	0	0	0	0
Scotland	4	0.6	0	0	0	0	0	0	0	0
Transport	39	5.5	0	0	0	0	0	0	0	0
HMRC	6	0.8	0	0	0	0	0	0	0	0
Treasury	52	7.3	1	2	3	0	0	0	0	0
Wales	5	0.7	0	0	0	0	0	0	0	0
Attorney General	2	0.3	0	0	0	0	0	0	0	0
TOTAL	712	100.00	42	25	49	0	0	3	13	5

*Includes instruments from the Health and Safety Executive
**Includes instruments from the Food Standards Agency
†See SLSC's terms of reference

Chart 4: Correction rates for Session 2015ð16

SIs	Number considered	Number of SIs replaced by correcting SI	Percentage
Affirmative	119	11	9.2
Negative	593	24	4.0
Total	712	35	4.9

Chart 5: Percentage of instruments that were the subject of short paragraphs compared with the last four sessions



APPENDIX 1: DRAFT WEST MIDLANDS COMBINED AUTHORITY ORDER 2016

Additional information from the Department for Communities and Local Government

Q1: In the summary published by the Shadow WMCA, they acknowledge that ò28 comments were around wanting an actual vote on the establishment of a Combined Authority, the devolution proposal and the mayorðsome of these comments suggested that the consultation process has been undemocratic.ó Is DCLG content with the manner in which the Constituent Councils carried out this consultation process, in particular with the short period of time allowed (3 weeks), and with the fact that it was solely conducted on-line?

A1: The three-week public consultation built on extensive prior local engagement on the proposals to form a combined authority, which was carried out by the seven constituent councils of the proposed West Midlands Combined Authority (WMCA) between July and September 2015. A summary of this engagement exercise[41] was published alongside the scheme on 26 October. It involved writing to 465 stakeholders, attendance of the three Local Enterprise Partnerships (LEP) in the area at shadow combined authority meetings, establishment of a "query" box on the WMCA website to which local areas responded to the queries directly and a number of formal and informal briefings with the public, business and third sector communities. The combined authority's proposals were shaped as a direct result of this period of local engagement, leading to the addition of the non-constituent members.

As statute provides, the Secretary of State or the constituent councils must carry out a public consultation on the proposals in the scheme; in this case the WMCA carried out the consultation and submitted a summary of the responses to the Secretary of State. The Secretary of State must then consider that no further consultation is necessary or carry out a consultation himself. In this case he decided that no further consultation was necessary. In making this decision the Secretary of State considered all the relevant factors including the earlier local engagement, how this had shaped the scheme proposals, and the efforts made in the three-week consultation to alert the public to that consultation and allow comments on the proposals. On this basis he was satisfied that the consultation was sufficient. He recognised that this consultation was conducted on-line, and was aware of the range of media measures used to signpost people to the consultation, including news releases on council websites, regular Tweets and use of other social media platforms, as well as newsletters and digital media of other partners such as the LEPs, local universities and Centro (the Integrated Transport Authority). He also noted that there was coverage in local print media and broadcasts.

Q2: Given that, even after six months of òthe programme of engagement and consultation since July 2015ó, 91 respondents voiced unhappiness with Coventryõs participation in West Midlands Combined Authority, is DCLG content that there is adequate local support for Coventryõs participation, and that the CA as now envisaged will prove sufficiently united and robust? Why did the Explanatory Memorandum not mention the concerns expressed by Coventry residents?

41 See: https://westmidlandscombinedauthority.org.uk/media/1048/26-october-2015-appendix-2-combined-authority-engagement-analysis.pdf.

A2: As required by statute the Secretary of State has made the decision that he considers that the establishment of the WMCA is likely to improve the exercise of statutory functions in the area, while having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government. He has also taken the view that where local councils–the democratically elected representatives of the area - come forward with proposals for a combined authority, where these proposals meet the statutory tests and where the councils themselves have consented to the necessary Order establishing the combined authority he will seek Parliamentary approval to that secondary legislation. These are the circumstance of the Order which he has now laid before Parliament.

The question refers to 91 respondents which the councils' summary of consultation responses records as part of the 214 responses received on the theme of identity. The Explanatory Memorandum not only highlighted the broad headlines of the consultation responses, but also included a link to the summary of responses and the councils' own local engagement analysis so that this further detail would be available to all who wished to study it. The broad headlines that were highlighted included issues of concern which were that the WMCA should not be a "supercouncil" and the democratic sovereignty of individual councils must be retained.

As to the matters raised by the 91 respondents the Secretary of State had considered these as part of his consideration of the summary of consultation responses. He considered these along with all the other matters raised in the summary of consultation responses and in the councils' analysis of their local engagement. He considered in particular the views of the councils' themselves, being the democratically elected representatives of the area, and to which in the traditions of our representative democracy considerable weight should be attached. It is on this basis that the Secretary of State is confident that the combined authority as now envisaged will prove sufficiently united and robust.

Q3: As regards the consultation carried out by the WMCA constituent councils in January of this year, was there explicit reference to the proposal for an elected mayor to head up the WMCA in the consultation document which was the basis for the January consultation?

A3: The only explicit reference to a proposal for an elected mayor to head up the WMCA was the statement that "setting up a basic Combined Authority has no bearing on whether in future there is to be a Mayoral Combined Authority"–a wholly accurate statement. The consultation explained that it was a consultation about the proposals for a combined authority set out in a scheme document which was published on 26 October–a proposal in short for a basic combined authority. The consultation also referred to the fact that "as stakeholders may be aware" a "proposed devolution deal was signed by the Leaders of the seven constituent councils and the three Local Enterprise Partnership Chairs in November" and stated that the proposed devolution deal "is dependent on approval by each constituent authority."

Q4: On p. 20 of the summary, the councils say:

> *òProposals on which views are sought in the consultation were regarding the Scheme and the establishment of the Combined Authority, however within them many of the responses were wider than the Scheme and the establishment of the Combined Authority. These proposals are separate from what is in the proposed devolution deal and though a Combined Authority is a pre-requisite*

> *for delivering devolution, setting up a Combined Authority has no bearing on whether in future there is to be a Mayoral Combined Authority. Though recognised as important views, such responses will be considered as part of on-going and future engagement on devolution.ó*

Do the underlined words mean that the Government are content that the WMCA should be established and no elected mayor later installed?

A4: No. The Government is fully committed to the devolution deal signed with the West Midlands in November 2015, which envisages, subject to the appropriate statutory processes being undertaken and the necessary legislation put in place, a mayoral combined authority–that is a combined authority with a directly elected Mayor for the West Midlands acting as Chair to the Combined Authority and exercising certain powers. The underlined words mean that establishing the combined authority as proposed does not of itself have any bearing on whether, and if so how, the councils concerned and the Secretary of State may in future exercise their statutory powers to establish a mayor for that combined authority.

May 2016

APPENDIX 2 : DRAFT MODIFICATIONS TO THE STANDARD CONDITIONS OF ELECTRICITY AND GAS SUPPLY LICENCES, THE SMART METER COMMUNICATION LICENCES AND THE SMART ENERGY CODE (SMART METERS NO. 4 OF 2016)

Information from the Department for Energy and Climate Change

1. The Government has a manifesto commitment to ensure that every home and business in the country has a smart meter by 2020, delivered as cost effectively as possible. The roll-out of smart meters is an important national modernisation programme that will bring major benefits to consumers and the nation as a whole.

2. In terms of the benefits, domestic customers will be offered an In-Home Display (IHD) enabling them to see what energy they are using and how much it is costing. Facilitated by the near real time feedback on consumption, energy users are expected to change their behaviour and realise a reduction in energy consumption and the associated expenditure. This will play a significant role in driving nearly £6 billion of direct consumer benefits (out of £17 billion total benefits). Smart meters will bring an end to estimated billing - consumers will only be billed for the energy they actually use, helping them to better manage their budget and avoiding the hassle to consumers from bill disputes (currently the most common reason for customers having to call their energy supplier). Smart metering will also transform the prepay experience; topping up a smart meter in prepay mode should become as easy as topping up a mobile phone and consumers will no longer have to rely on shops or have to physically access the meter in order to upload credit.

3. In the longer term, smart meters will make the process of switching supplier easier for the consumer. Consumers will have accurate information on which to make decisions about the best energy tariff for them and the savings they could realise from switching suppliers, and be able to share that data with third parties, such as switching sites, should they choose to. The smart metering infrastructure is also a platform for achieving the Government's ambition of moving towards next-day switching. The roll-out is also recognised by the Competition and Markets Authority as being at the heart of making the energy market work better for bill payers.

4. Finally, smart meters will provide a platform for smarter grids and will also create unprecedented new opportunities for innovation in products and services that can utilise smart metering data, with consumers' consent.

5. In terms of costs, energy suppliers will be responsible for purchasing and installing smart meters (total projected costs of the rollout are around £11 billion, the largest element of which is the cost of purchasing and installing smart metering equipment). Smart metering regulations prohibit an upfront charge to the consumer for having a smart meter. We expect the energy industry to realise a number of efficiency savings (suppliers are expected to make around £8 billion of efficiency savings, with the wider system/grids projected to save approximately £2 billion). As is the case in the current market (where the cost of traditional metering is already included in the standing charge), suppliers are expected to pass any net benefits or net costs through to their customers. We expect competitive pressures to result in suppliers' efficiency savings being passed through to consumers. Taking

all these factors into account, we expect the average dual fuel household to realise an annual bill saving of around £26 by 2020, rising to a saving of £43 by 2030, taking into account all the costs and benefits. Overall the smart meter rollout generates a very good rate of return for UK Plc., with over £1.5 in benefits for every £1 spent (around £17 billion of benefits, leveraged by around £11 billion of investment).

6. Further information on the costs and benefits of the rollout can be found in the Smart Metering Impact Assessment, published January 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276656/smart_meter_roll_out_for_the_domestic_and_small_and_medium_and_non_domestic_sectors.pdf. A high-level breakdown of where the costs and benefits are derived is on page 2.

4 May 2016

APPENDIX 3 : PRIVACY AND ELECTRONIC COMMUNICATIONS (EC DIRECTIVE) (AMENDMENT) REGULATIONS 2016 (SI 2016/524)

Additional Information from the Department for Culture, Media and Sport

Q1: In the Explanatory Memorandum to the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2015 (SI 2015/355), DCMS stated:

> *òIn lowering the threshold legal threshold [at which the Information Commissioner (ICO) may impose a civil monetary penalty] é the UK is seeking to ensure that the penalty regime is ôeffective, proportionate and dissuasiveõ as required by Article 15a of the Directive, as amended by Directive 2009/136/EC.ó In the EM to the latest Regulations, you say: òOfcom estimates that each year UK consumers receive around 4.8 billion nuisance calls: 1.7 billion live sales calls, 1.5 billion silent calls, 940 million recorded sales messages, and 200 million abandoned calls.ó*

On the face of it, the changes introduced a year ago have not led to the penalty regime being òeffective, proportionate and dissuasiveó. Does this mean that implementation in this country of the EU Directive is unsatisfactory? Has the European Commission expressed a view on the UKõs implementation?

A1: The Government consider the Privacy and Electronic Communications Regulations 2003 (PECR) to be compliant with the E-Privacy Directive 2002. The European Commission has not expressed a view on the UK's implementation of the Directive or any legislative changes to stop nuisance calls.

The issue of nuisance calls is a complex problem, for which there is not one simple solution. The Government are working with the Information Commissioner's Office (ICO), Ofcom, consumer groups, industry and others to develop a range of legislative, technical and other solutions to reduce the volume of nuisance calls and the associated harm to consumers. Recent actions include:

- making it easier for the ICO to more effectively share information with Ofcom in relation to nuisance calls through an amendment to the Communications Act 2003
- publication of the updated Ofcom/ICO joint nuisance calls action plan in December 2015
- a £3.5m package announced by the Chancellor in the March 2015 budget to tackle nuisance calls

The Government continue to work closely with the ICO to ensure that it has a range of enforcement powers to tackle nuisance calls and that the penalty regime is effective. A significant step forward was the amendment made to PECR in 2015 that removed the threshold of substantial damage or substantial distress, therefore making it easier for the ICO to take enforcement action against organisations breaking the law. This came into effect on 6 April 2015.

Although this is a relatively recent change, the ICO has already issued a total of £1,406,000 of fines against organisations that have breached PECR under the new threshold, sending a clear message to organisations that this type of behaviour will not be tolerated. This includes a record fine of £350,000 issued in February 2016 to Prodial Ltd, a lead generation firm responsible for over 46 million automated

nuisance calls. This is the largest penalty ever issued for nuisance calls. The ICO is continuing to take strong action in this area and more fines are in the pipeline.

A link to enforcement action taken by the ICO can be found at:

https://ico.org.uk/action-weve-taken/enforcement/?facet_type=Monetary+penalties&facet_sector=&facet_date=&date_from=&date_to=

The requirement to provide CLI builds on these changes by making it easier for the ICO to investigate and take action against organisations that breach PECR, therefore enhancing the effectiveness of the enforcement regime. The CLI changes will also promote consumer choice (an important tool in tackling this issue) and make it easier for individuals to report nuisance calls. The Government will continue to assess the effectiveness of these measures on the problem of nuisance calls.

The legal basis for the Government measure, requiring direct marketing organisations to provider Calling Line Identification (CLI), derives from Article 15 of Directive 95/46/EC.

> "Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union."

The Directive does not provide a right not to receive unsolicited direct marketing calls. However, Article 13(3) requires that:

> "unsolicited communications for the purposes of direct marketing, in cases other than those referred to in paragraphs 1 and 2, are not allowed either without the consent of the subscribers or users concerned or in respect of subscribers or users who do not wish to receive these communications, the choice between these options to be determined by national legislation, taking into account that both options must be free of charge for the subscriber or user".

In the UK, consumers have the option to "opt-out" from receiving unsolicited direct marketing calls by registering with the Telephone Preference Service (TPS). Companies making calls from within the UK, or from outside the UK on behalf of UK companies are legally required not to call a number that is TPS registered. However, despite consumers registering with TPS, some organisations break the rules by calling people registered on TPS or are relying on out-dated third party consent to make these calls.

Q2: Will UK companies be able to circumvent the rules by setting up new companies overseas to make direct marketing calls to UK households? What concrete steps are the Government taking to protect UK households from calls made from overseas?

A2: The Government's position is that such UK companies would be instigating those direct marketing calls and could therefore be held liable for breaches of the 2003 Regulations.

The Government recognise that increasing number of calls are coming from beyond our jurisdiction. Both the ICO and Ofcom engage with the Do Not Call Forum of the London Action Plan, which includes overseas regulators with responsibility for tackling nuisance calls. The ICO is joint secretariat and works with other members, including the US Federal Trade Commission (FTC) and the Canadian Radio-television and Telecommunications Commission, to target organisations, share investigation methods and drive forward coordinated actions. The group are drafting an operational plan to strengthen cooperation at international level; this will go a long way at bringing to account organisations overseas that make nuisance calls to the UK.

4 May 2016

APPENDIX 4: 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 10 May 2016 Peers declared no interests.

Attendance:

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