HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

9th Report of Session 2015–16

Draft Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015

Prison and Young Offender Institution (Amendment) Rules 2015

Social Security (Housing Costs Amendments) Regulations 2015

Feed-in Tariffs (Amendment) (No. 2) Order 2015

Includes 6 Information Paragraphs on 8 Instruments

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Historical Note

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

The Committee has the following terms of reference:

(1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

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

(2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

(3) The exceptions are—

(a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;

(b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;

(c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

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

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

Members

Baroness Andrews
Lord Bowness
Lord Goddard of Stockport
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Rt Hon. Lord Janvrin
Baroness O'Loan
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Lord Woolmer of Leeds

Registered interests

Information about interests of Committee Members can be found in Appendix 2.

Publications

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

Information and Contacts

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

Statutory instruments

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

Ninth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015

Date laid: 7 September 2015

Parliamentary procedure: affirmative

Summary: These Regulations propose that, from April 2016, the income threshold for Working Tax Credit (WTC) should be reduced to £3,850; and the income threshold for Child Tax Credit (CTC) to £12,125. They also propose that the income rise disregard should be reduced to £2,500; and that the taper rate should be increased to 48%.

In response to questions which we raised about the Explanatory Memorandum laid in September, we have received a letter, of 12 October 2015, from the Chancellor of the Exchequer enclosing an Impact Assessment: this sheds more light on the effects of the proposed changes than was provided by the Explanatory Memorandum. When it considers the draft Regulations, the House will wish to reach a view on the adequacy of the information about their impact with which we have been provided.

We draw these Regulations to the special attention of the House on the ground that they are politically important and give rise to issues of public policy likely to be of interest.

1. HM Revenue and Customs (HMRC) laid these draft Regulations with an Explanatory Memorandum (EM) on 7 September 2015. The instrument proposes that, from April 2016, the income threshold for Working Tax Credit (WTC) should be reduced from £6,420 to £3,850; and that the income threshold for Child Tax Credit (CTC) should be reduced from £16,105 to £12,125. It also proposes that the income rise disregard should be reduced from £5,000 to £2,500; and that the taper rate should be increased from 41% to 48%. HMRC states that this means that, once a household's earnings reach the new income threshold of £3,850, its tax credit award will be gradually removed at a faster rate than before, namely, 48p for each pound of income above the threshold.

2. In the EM as laid, HMRC offered little explanation of the policy background, save to state that the Regulations changed certain income thresholds, the income rise disregard and taper rate of tax credits that the Chancellor of the Exchequer announced in the Summer Budget on 8 July 2015 and were in the package of welfare reforms that were part of the Government's election manifesto. In announcing that Budget, the Chancellor said that "the whole working-age benefit system has to be put on a more sustainable footing. In 1980, working-age welfare accounted for 8% of all public spending. Today it is 13%". In referring to the changes proposed in these draft Regulations, he said: "We also need to focus tax credits and universal credit on those on lower incomes, if we are to keep the whole

system affordable and support those most in need."[1] HMRC also stated in the EM that an impact assessment had not been prepared for the instrument.

3. The proposed changes have attracted a good deal of interest. The Social Security Advisory Committee (SSAC) has published on its website a letter of 9 September 2015 to the Financial Secretary to the Treasury, which, in referring to its consideration of the Regulations, expressed disappointment at the lack of information about the effects of the changes.[2] On 14 September, Lord Dubs asked a question about what assessment the Government had made of the impact of the proposed reductions in tax credits, and sought confirmation that they would mean that "three million of the poorest families will be worse off."[3] In replying to the question, Lord Ashton said that, if the welfare changes in the Budget were considered together with increases in the income tax personal allowance and the introduction of the national living wage, "eight out of ten working households will be better off in 2017–18".[4]

4. In our view, the EM laid in September by HMRC contained minimal information, given our general expectation that an EM should provide members of Parliament and the public with an adequate explanation of the effect of the instrument which it accompanies, and why it is necessary. Soon after the draft Regulations were laid, we requested additional information from HMRC, about why the Government had not published an impact assessment, and whether the Government had prepared some other assessment of the effect of the changes proposed.

5. On 12 October, the Chancellor of the Exchequer wrote in response to our request, enclosing an Impact Assessment (IA) for the Regulations. We are publishing the correspondence as Appendix 1 to this report, and placing the IA on the Committee's website.[5] In his letter, Mr Osborne makes the point that, alongside the changes to tax credits, the Government are introducing the National Living Wage and increasing the personal tax allowance: "Taking tax and benefit changes into account, it means a renting family with two children where both parents work 35 hours a week on the minimum wage will see their income increase in cash terms by more than £5,500".

6. **The Chancellor's letter of 12 October 2015 and the enclosed Impact Assessment shed more light on the effects of the proposed changes than was provided by the Explanatory Memorandum laid on 7 September. When it considers the draft Regulations, the House will wish to reach a view on the adequacy of the information about their impact with which we have been provided.**

1 HC Deb, 8 July 2015, col 333.

2 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/459498/ssac-letter-to_david-gauke-re-tax-credits-and-work-allowance.pdf

3 The Institute for Fiscal Studies (IFS), in commenting on the Summer Budget, said that three million families would be £1,000 a year worse off as a result of tax credit reductions. See: http://www.ft.com/cms/s/0/87b00b52-264e-11e5-9c4e-a775d2b173ca.html#axzz3m055nxJz

4 HL Deb, 14 September 2015, col 1640.

5 See: http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/DraftTaxCreditsRegs2015-ImpactAssessment.pdf

Prison and Young Offender Institution (Amendment) Rules 2015 (SI 2015/1638)

Date laid: 3 September 2015

Parliamentary procedure: negative

Summary: The Prison Rules are being amended following the Supreme Court judgment in the case of Bourgass which held that arrangements that allowed Prison Governors within a prison to authorise segregation for periods longer than 72 hours were unlawful because Rule 45(2) of the Prison Rules required such decisions to be taken under the authority of the Secretary of State (in practice by officials from outside the prison). The instrument revises the Rule to allow the Governor to authorise segregation for repeated periods of up to 14 days subject to additional safeguards, for example, an external review must take place after 42 days for an adult.

This instrument is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

7. This instrument was laid by the Ministry of Justice (MoJ) under section 47(1) of the Prison Act 1952 along with an Explanatory Memorandum (EM). It amends Prison Rules with immediate effect from 4 September. It responds to the findings of the Supreme Court, on 29 July 2015, in the case of *Bourgass*[6] on arrangements for segregating prisoners. The Howard League for Penal Reform has written to the Committee with objections to the instrument and their letter is published on our website.[7]

Background

8. The long-established Prison Rule 45(2) required segregation beyond 72 hours to be authorised by the Secretary of State. In practice, this authority has for some time been provided by the Prison Governor, subject to the advice of a Segregation Review Board. The National Offender Management Service ("NOMS") took the view that the Governor could act on behalf of the Secretary of State in granting this authority by virtue of the legal principle of *Carltona*, which allows a senior official within a department, where authorised to do so, to take decisions on behalf of the Secretary of State.

9. Segregation is the removal of a prisoner from normal association with his or her peers. Under Rule 45 segregation can be authorised for two reasons: first, where prisoners are at risk from others in the prison and alternative accommodation, possibly in another prison, has yet to be found; and, secondly, where the prisoner presents a risk to others or to the order and control of an establishment. The MoJ states that segregation is not the same as solitary confinement which is never used in prisons in England and Wales. Prisoners located on the segregation wing are usually able to associate with other prisoners on that wing providing it is safe for them to do so. In addition, prisoners are visited daily by Healthcare, Segregation Unit staff and Chaplaincy and at regular intervals by the Independent Monitoring Board,

6 R (on the application of Bourgass and another) (Appellants) v Secretary of State for Justice (Respondent) [2015] UKSC 54.

7 See: http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Submission_from_the_Howard_League_for_Penal_Reform.pdf

the Governor and a doctor. Segregated prisoners also continue to have social and legal visits in line with prison visits policy.

The response to Judicial Review

10. A judicial review was brought by Kamal Bourgass and Tanvir Hussain, high profile Category A prisoners serving life sentences for offences related to terrorism, who had been placed in segregation at their respective prisons following concerns about their involvement in serious assaults on other prisoners. They both remained in segregation for lengthy periods (10 months and 6 months respectively) during which they claimed they had not been given sufficient information to enable them to appeal. The Secretary of State was successful in the High Court and in the Court of Appeal. The argument that a Governor could not authorise segregation beyond 72 hours emerged in the Supreme Court judgment.

11. The Supreme Court held that as a matter of statutory interpretation the words "the Secretary of State" in Rule 45 of the Prison Rules 1999 (and equivalent provisions in the Young Offender Institution Rules) could not have been intended to include the Governor or someone within the prison and must have meant an official located outside the prison establishment. The effect of the judgment was that from the date of the judgement Governors could not lawfully authorise removal from association (known as segregation) for more than 72 hours and the lawfulness of decisions taken prior to that date were called into question.

12. In response the Secretary of State considered a range of options (described in the EM) and decided to amend the terms of the Rules to allow the Governor to authorise segregation for longer periods but, in parallel with this change, to introduce additional safeguards, including greater independent oversight of the process.

13. Under the revised system introduced by this instrument:

- from 4 September 2015 segregation for a period of more than 72 hours can be authorised by the Governor for a period of up to 14 days (authority for which may be renewed for subsequent periods of up to 14 days). Revised guidance, "*Reviewing and Authorising Continuing Segregation & Temporary Confinement in Special Accommodation: Amendment to Policy set out in PSO 1700*", was also issued; and
- from 16 October 2015 the Governor must obtain leave in writing from the Secretary of State to authorise segregation for a period of more than 42 days and written leave must also be given at each subsequent 42 day interval. These reviews will be carried out by a Deputy Director of Custody ("DDC"), who is in charge of a group of prisons. At the six month point a further review will be carried out by the Director.

14. The Ministry of Justice states that at the 42 day point the prisoner will have had his or her segregation authorised by the Segregation Review Board at least twice and there will be a body of evidence about the prisoner's behaviour and any impact that segregation may be having on him or her to inform the DDC's review. DDCs are senior officials in NOMS based outside the prison, usually in a regional office. DDCs can decide to review cases earlier in the course of their regular visits to prisons or where there are

particular circumstances that might indicate an earlier review is beneficial. DDCs have been carrying out reviews on the nearly 800 current cases with the aim that by 16 October none will be outstanding. MoJ state that in August 2015 only 27 prisoners had been held in segregation for more than six months.

15. Similar changes are made to Rule 49 of the Young Offender Institution Rules by regulation 3. MoJ states that the 42 day rule will apply to Young Adults (age 18–21 years old) in detention. Decisions in respect of Young Offenders (under 18s) in segregation will be made and reviewed in a similar manner but will be reviewed by the relevant DDC at the 21 day point and by the Director at three months (MoJ state that at present no young offender has been in segregation for that long). It is felt that a shorter time is more appropriate to his vulnerable age group. The NOMS policy document *Reviewing and Authorising Continuing Segregation and Temporary Confinement in Special Accommodation* sets out specific procedures for the segregation of Young Adults in section 3 and for the under 18s in section 4.

The Howard League

16. We have received a submission from the Howard League for Penal Reform who were involved in bringing the judicial review. The letter is published in full on our website. It expresses concern that by changing the legislation to fit the process, rather than changing the process to fit the law, the Government is acting contrary to the spirit of the Supreme Court judgment. The Howard League cites a number of studies about the irreversible risks to the health and mental health of prisoners from extended segregation and note the number of prisoners who commit suicide when held in segregation. The Howard League is particularly concerned by the delay in the requirement for external review of a segregation decision from 72 hours to 42 days, suggesting that 14 days is the maximum acceptable.

Continuing consultation

17. The Ministry of Justice states that no external consultation was carried out prior to the introduction of this new system because of the need to react quickly to the judgment. However, NOMS began wider consultation immediately following introduction of the new legislation and policy and plans a review of the impact and success of the amended procedures early next year. As part of this review, a consultation document was sent to a range of interested parties, including the Howard League. Recipients have been asked to submit comments by the end of October.

18. The new policy will be reviewed on conclusion of the consultation in November and the Ministry of Justice intends to publish a consolidated policy document in the New Year.

Social Security (Housing Costs Amendments) Regulations 2015 (SI 2015/1647)

Date laid: 10 September 2015

Parliamentary procedure: negative

Summary: From the start of the next financial year these Regulations will increase the waiting period before full housing costs (including help with mortgage interest) are met from benefits. The waiting period will change to 39 weeks (from 13 weeks) for certain benefits such as Jobseekers' Allowance, or nine assessment periods in Universal Credit (from three assessment periods). Six years ago, when considering the Regulations which this instrument amends, we asked for clear and specific evidence to be provided when the 39 week waiting period was reinstated and the DWP has failed to produce an Explanatory Memorandum (EM) that does that. We publish some additional material provided by the DWP in response to our questions but the House may wish to enquire why, if the DWP has relevant information, they did not see fit to provide it in the EM to assist the House in its scrutiny. A number of issues, for example the effect on claimants in the more expensive areas of the country and the potential impact on charities and local authorities, have not been satisfactorily explained.

These Regulations are drawn to the special 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.

19. These Regulations were laid by the Department for Work and Pensions (DWP) under provisions of several Acts including the Welfare Reform Acts 2007 and 2012. They are laid with an Explanatory Memorandum (EM) and a Keeling Schedule.

20. From the start of the next financial year, these Regulations will increase the waiting period before full housing costs (including help with mortgage interest) are met from benefits. The waiting period will change from 13 to 39 weeks for certain benefits such as Jobseekers' Allowance, or nine assessment periods in Universal Credit (from three assessment periods). The maximum amount of the qualifying loan is £200,000 on the basis that, according to Nationwide Building Society figures, the average home in the UK costs £194,000.

A temporary measure

21. The DWP states that this legislation reverts to the position prior to the temporary change introduced by the Social Security (Housing Costs Special Arrangement) (Amendment and Modification) Regulations 2008 (S.I.2008/3195).[8] Those Regulations were put in place at the start of the economic downturn and were intended as a temporary measure.

22. When those Regulations were considered by the Committee in 2009, we were extremely critical of the lack of evidence provided by DWP to support its proposals, to the extent that we asked the Minister to give oral evidence. Our 5th Report of Session 2008–09 said:

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8 As amended by the Social Security (Housing Costs Special Arrangement) (Amendment) Regulations 2009 (SI 2009/3257).

> "We have concluded that these Regulations are, for the most part, beneficial and likely to achieve their intended policy objective, but only after we initiated a wide range of supplementary enquiries and pieced together data from a range of sources. The Department could not provide us with certain basic cost/benefit figures when we asked for them, and we are concerned that they were not available when the policy was being formulated. **Their estimates of likely cost and effectiveness, however, are very approximate and the Department should devote thought to refining these estimates and how they will use them to decide when it is appropriate to bring the extension of [Support for Mortgage Interest] to an end."**

23. We are disappointed that, in respect of the current Regulations, the EM again lacks adequate supporting evidence.

Policy objective?

24. The EM provides no clear statement of the policy objective of the Regulations. We think that it is likely that the policy objective is saving money but there is no indication in the EM of the sum likely to be saved. In supplementary material DWP told us rather elliptically:

> "There are no savings from returning the waiting period to the baseline level of 39 weeks. However if the waiting period was held at 13 weeks, it would come at a cost of approximately £65m a year."

Impact?

25. Furthermore, no impact assessment is provided to indicate the costs and benefits of the change in practice. We note that the EM states that "based on the housing costs in respect of mortgage interest for working age claimants of £165 monthly, a claimant who made no mortgage payments whilst serving a waiting period would accrue around £1000 in mortgage arrears over a six month period. This level of arrears is similar to the arrears position in around 150,000 cases in the wider mortgage market." (paragraph 7.2). But no explanation is given of why those figures have been chosen: why, for example, is £165 a month relevant? And why does the statement refer to six months arrears when the new 39 week waiting period is closer to nine months?

26. Paragraph 7.2 of the EM also includes the statement: "The Government believes that the 39 week waiting period will not have an impact on repossessions because it expects mortgage lenders to continue to exercise forbearance in the knowledge that housing costs will become payable." This is a strong assertion but no supporting evidence is set out in the EM. We therefore requested supplementary evidence. In response to this, DWP provided a published statement from the Council of Mortgage Lenders:

> "The summer Budget announced that, from April 2016, the waiting period for new claimants of Support for Mortgage Interest (SMI) would revert to 39 weeks and that future SMI payments would eventually be paid as a loan. The first of these changes will adversely affect new claimants at the margin, but the overall impact on possessions over the 2015–16 forecast period should be negligible.

> Our current judgment continues to be that the vast majority of households will cope with gentle and protracted interest rate rises. This has led us to materially revise down our arrears and possessions numbers for 2015 and 2016."[9]

27. We asked DWP about the basis for stating that there will be no impact on business or charities from this change. DWP replied:

> "There is no evidence to suggest that any significant proportion of the 12,000 repossessions *[expected in 2015 on the basis of current figures]* are benefit claimants/SMI recipients. There may be a very small number of SMI claimants who are repossessed but this is likely to be because their mortgage account was in a perilous position before they made a claim for benefit. We have not been made aware of any SMI claimants being repossessed by MPs, Welfare Rights organisations or operational colleagues in the last 7 years.

> Some claimants will have mortgage payment protection insurance which will pay their mortgage during the waiting period while other claimants will make arrangements with their lenders for payment holidays during a waiting period.

> Therefore, we do not consider that the impact of a 39 week waiting period on lenders and charities will be significantly different from that under a 13 week waiting period."

Regional variation

28. For the most part, DWP has been able to provide additional material where requested but the Department's response to the question what is being done to address the inequalities arising from the effect of this change on claimants in different parts of the country seems to us to be wholly unsatisfactory.

29. Paragraph 8.2 of the EM states that the average home in the UK now costs £194,000. That is quite close to the £200,000 maximum set on loans, but, reasonably, assumes that a mortgage will not be for the full value of the house. However, this instrument makes no allowance for regional variation. The average price of a three-bedroom house in Durham or Birmingham will differ radically from the average price of a similar house in Surrey or central London. Figures from the Office of National Statistics, provided by DWP, clearly illustrate this variation.

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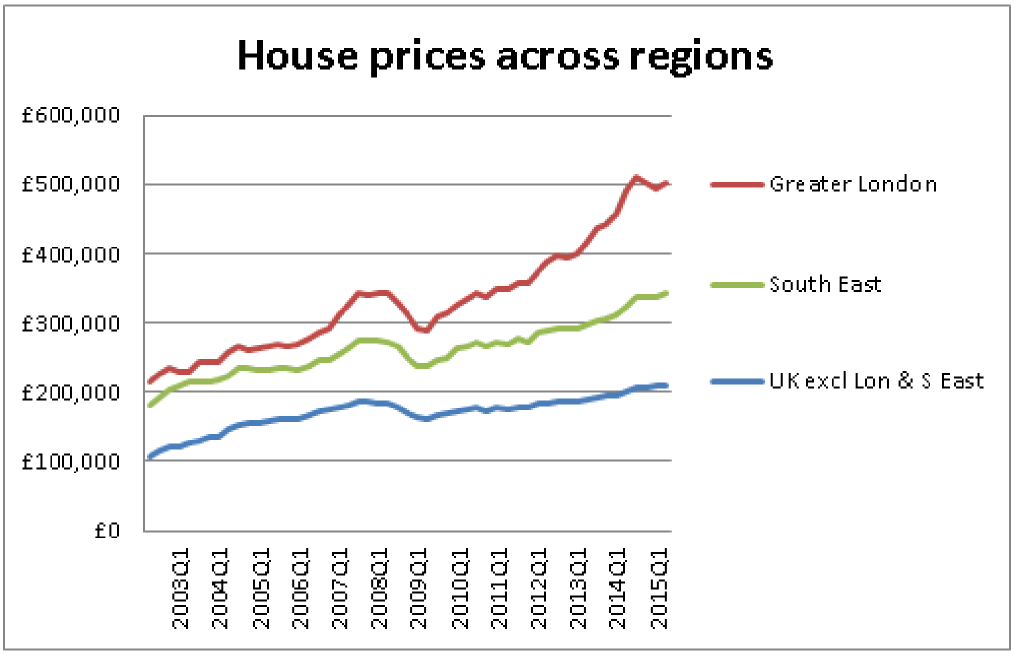
9 CML market commentary July 2015



30. In response to supplementary questions, DWP told us that data from the Council of Mortgage Lenders show that less than 3% of SMI claimants have outstanding loans of over £200,000. That is reassuring to a degree. However, the response continued: "Mortgages of more than £200,000 are concentrated in London and the South East, but the Government does not consider it fair that people have all the interest paid on a mortgage that is over 6 times larger than the median household income for the UK." This appears not to address the practicalities of those who are living in the South East and have a larger mortgage simply because of the difference in regional house prices. **The House may wish to press the Minister further on what the effect of the changes on these people will be**.

No consultation

31. We note that there has been no consultation on the issue since 2012. Given the significant changes in the economy and housing market since then, many of the comments made in 2012 will be out of date. The Department's assertions about the lack of impact on charities and claimants, particularly in the South East, would have been far more convincing had some more recent consultation taken place with charities, local authorities and representative groups.

Conclusion

32. When the Committee considered the regulations that this instrument amends, we were very critical of the absence of supporting evidence, and in our report on those earlier regulations we asked for clear and specific evidence to be provided when the 39 week waiting period was reinstated. Regrettably, DWP has not produced an EM to meet that expectation.

33. Once again, not only have we had to jigsaw together the evidence from material provided in response to our supplementary questions, but a number of issues (for example, the effect on claimants living in the more expensive areas of the country and the potential impact on charities and local authorities) remain inadequately explained. **The House may wish to ask the Minister why the Explanatory Memorandum accompanying this instrument failed to fulfil its purpose by neglecting to provide an adequate account of the changes made by these new Regulations.**

(See also the paragraph on the Universal Credit (Work Allowance) Amendment Regulations (SI 2015/1649) later in this Report)

Feed-in Tariffs (Amendment) (No. 2) Order 2015 (SI 2015/1659)

Date laid: 9 September 2015

Parliamentary procedure: negative

Summary: This Order removes pre-accreditation from the Feed-in Tariffs scheme, which, as described by the Department for Energy and Climate Change (DECC), is the Government's main policy measure to encourage the deployment of small-scale low-carbon electricity generation. DECC says that the change is being made to control costs and limit the impact on electricity bill-payers of surges in applications for pre-accreditation adding to deployment at current tariff rates.

DECC carried out consultation on this proposed change from 22 July to 19 August 2015, a period of four weeks. A significant number of respondents stated that the four-week period allowed for consultation, and the lack of an Impact Assessment to accompany the consultation document, adversely affected their ability to respond. DECC's dismissal of these criticisms gives the impression of a Department more concerned about its own needs than about those of interested parties.

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

34. The Department for Energy and Climate Change (DECC) has laid this Order with an Explanatory Memorandum (EM). DECC explains that the Feed-in Tariffs scheme ("FIT scheme") is the Government's main policy measure to encourage the deployment of small-scale low-carbon electricity generation in Great Britain. It says that pre-accreditation (introduced under the FIT scheme as part of a 2011–12 review) gives generators a guaranteed tariff level in advance of commissioning their installation, provided a project is commissioned and full accreditation applied for within a specified period.

35. The purpose of this Order is to remove pre-accreditation from the FIT scheme, in order, as DECC says, to control costs and limit the impact on electricity bill-payers of surges in applications for pre-accreditation adding to deployment at current tariff rates under the scheme, in particular those applications made in response to the tariff changes set out in the full FIT review. The Department states that the effect of this will be that new participants in the scheme will only receive the tariff rate as at the date they apply for full accreditation (i.e., after their installation is commissioned).

36. By way of background, DECC says that both deployment and spending under the FIT scheme have outstripped expectations: original projections were for 750,000 installations by 2020, but by June 2015 over 700,000 installations had applied for accreditation. The FIT scheme has contributed to a projected overspend of around £1.5bn on the Levy Control Framework (LCF), which has a corresponding impact on electricity consumer bills. On 27 August the Government published a further consultation–the full FIT Review 2015 - which proposes more cost control measures-caps on entrants, reduced tariff levels and steeper degression of tariffs, to achieve better control of costs under the LCF and limit the resulting impact on consumer bills.

Consultation

37. In the EM, DECC says that it carried out consultation on removing pre-accreditation from 22 July to 19 August 2015 (four weeks).[10] In total it received 2,370 responses, of which some 1987 were template letters organised by campaigning groups, and 383 unique responses. It published a Government response to the consultation in September 2015.[11]

38. DECC acknowledges that its proposals were opposed by the majority of respondents. In the EM, it says that the main theme of responses was that removing pre-accreditation would undermine confidence in renewable energy, leading to a significant number of projects not deploying in the short term, as well as harming wider investor confidence in the long term. The majority of respondents also stated that the consultation had understated the impact of the proposed change, and had failed sufficiently to reflect the effects across different sectors and technologies, as well as on small and medium-sized businesses. The community energy sector was the most commonly cited area where the proposed change would have a disproportionate impact.

39. In the September 2015 response, DECC states that, while it recognises that removing pre-accreditation will introduce considerable uncertainty in the short term, it considers it necessary to safeguard spending under the scheme while it carries out the FIT Review (on which consultation was launched on 27 August). It also states that, subject to the outcome of the FIT Review, if generation tariffs for new applicants remain available under the FIT scheme, it will consider reintroducing pre-accreditation either for all groups or on a more limited basis. It comments that pre-accreditation would be an appropriate means of enabling deployment under an effectively cost-controlled scheme.

40. We note that, in the EM, DECC acknowledges that a large number of responses criticised the length of the consultation process and the lack of a separate accompanying Impact Assessment, and stated that these factors had adversely affected their ability to respond in full to the consultation. DECC says that, while Cabinet Office guidance advises against holding consultations over the August holiday period, this consultation proposed only one change to an established policy; the urgency of implementing these

10 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447314/FITs_pre-accreditation.pdf

11 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/459286/Government_response_to_FIT_pre-accreditation_consultation.pdf

proposals to protect against rising costs justified holding the consultation over August.

41. As for the absence of an accompanying Impact Assessment, DECC states in the EM that it judged that the information provided in the consultation document, and in particular the statement of impact in paragraphs 1.16-1.21, was adequate. We note, however, that these paragraphs, entitled "Impact of measures proposed", included the following: "Owing to this uncertainty around the exact effect this change would have on the rates of return required by developers, DECC has not attempted to estimate the likely impact of this change on deployment and therefore on potential savings".

Conclusion

42. DECC makes it clear in the EM that it considers it necessary to remove pre-accreditation from the FIT scheme at this point, in order to prevent a surge in applications on to the current tariff before any cost control measures be implemented. It is clear that the Department held this view at the start of the consultation process this summer, and that its intention has not been swayed by the large number of consultation responses that opposed the change.

43. We accept that Departments must ultimately make their own decisions on policy changes. However, we are equally clear that, if Departments seek views on their proposals for change before they are implemented, they should carry out consultation in a manner which respects the needs of potential respondents to formulate their own views. **A four-week consultation period which takes place substantively in the holiday period of August seems likely to fall short, and the shortcoming is only exacerbated by a dismissal of complaints about lack of time. By the same token, we see it as incumbent upon Departments to include in any consultation paper sufficient detail for respondents. DECC made little effort to offer an assessment of the impacts of the proposed change in its July document, and in this respect as well its statement that it judged the information adequate gives the impression of a Department more concerned about its own needs than about those of interested parties.**

INSTRUMENTS OF INTEREST

Draft Small and Medium Sized Business (Credit Information) Regulations 2015
Draft Small and Medium Sized Business (Finance Platforms) Regulations 2015

44. HM Treasury (HMT) has laid both these sets of draft Regulations, which are complementary to each other. By way of background, HMT states that at present the largest four banks account for over 80% of the main banking relationships for UK small and medium-sized enterprises (SMEs); and that, believing that such high concentration levels are bad for consumers and business, the Government are determined to see a step-change in competition in the UK banking market.

45. In the Explanatory Memorandum (EM) to the *draft Small and Medium Sized Business (Credit Information) Regulations 2015*, HMT says that the problem of a lack of available credit information is a considerable barrier to entry into the market for lending to businesses. The Regulations are intended to open up access to data on SMEs to other finance providers, by requiring designated banks to share information on their SME customers with designated Credit Reference Agencies (CRAs): the obligation is dependent on agreement by the SME customer to the provision of data. Those designated CRAs will also be required to provide equal access to that data to finance providers. HMT will have power to designate banks and CRAs under the Regulations.

46. In the EM to the *draft Small and Medium Sized Business (Finance Platforms) Regulations 2015*, HMT says that evidence suggests that the majority of SMEs only approach their main bank for finance, with around 40% giving up their search if they are unsuccessful; and that a proportion of the SMEs that are rejected by the largest UK lenders are viable businesses, and are rejected simply because they do not meet the risk profiles of the largest banks. HMT adds that, although the largest banks sometimes refer SMEs on to other providers or strategic partners on a bilateral basis, this is not happening systematically. The Regulations place an obligation on designated banks to refer SME customers that they reject for finance, with the SME's permission, to finance platforms that can match the SME with alternative finance providers. In this case as well, HMT will have the power to designate the banks and platforms to which the Regulations apply.

47. In each EM, HMT gives details of the consultations which it carried out in relation to the proposals now embodied in these instruments.[12] Responses to both showed widespread support for the proposals.

12 Between 20 December 2013 and 21 February 2014 on "Improving access to SME credit data"; between 28 March 2014 and 25 April 2014 on "SME Finance: help to match SMEs rejected for finance with alternative lenders".

Articles of Agreement of the Asian Infrastructure Investment Bank (Cm 9126)

48. The Asian Infrastructure Investment Bank ("AIIB") is a new multilateral investment bank which is being set up "to foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia[13] by investing in infrastructure and other productive sectors[14]." (Article 1 of the AIIB's Articles of Agreement). It has 57 prospective members (37 from Asia and 20 non-regional members) with China as the largest shareholder. Neither Japan or the USA are members. The AIIB will begin operations with $100 billion total authorised capital financed by members' contributions proportionate to their economic size. The UK will make a capital contribution of around £2 billion–20% paid in five equal annual instalments of around £80 million with the first due in 2015–16. The remaining 80% of the UK's contribution will be in the form of capital only subject to call when required by the AIIB to meet its liabilities. The Government state that they see membership as a way to build a closer economic relationship with the region and to maximise opportunities for British business. The AIIB requires a number of member states to ratify the treaty before it can become operational but sufficient members are expected to do so by the end of 2015.

Protocol of accession of Russia to the Convention of 16 December 1988 Concerning the Construction and Operation of the European Synchrotron Radiation Facility (Cm 9134)

49. The European Synchrotron Radiation Facility (ESRF)[15] is based in Grenoble, France, and operates the most powerful high energy synchrotron light source in Europe. The facility produces very intense X-rays capable of penetrating material and revealing the inner structure of matter down to the level of atoms and molecules, a tool which has a wide range of scientific and commercial applications. The ESRF has been in operation for over 20 years and is funded and managed by 13 Member countries with additional smaller financial contributions being made by another eight Associate countries. This amendment to the Convention on its use reduces the UK's shareholding from 14% to 10.5%, which also reduces our financial contribution to 9.5 million Euros a year and our access to the machine to 10% of the available time. Belgium and Germany have also recently adjusted their shareholdings and the balance has been picked up by Russia.

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[13] The definition used is the UN definition of Asia and Oceania, for relevant countries see: http://millenniumindicators.un.org/unsd/methods/m49/m49regin.htm

[14] Infrastructure needs in the area have been identified in the transport and energy sectors and, to a lesser extent, in telecommunications (such as telephone and internet systems) but this is a non-exhaustive list. Under Article 26 the AIIB's Board of Directors will be responsible for the overall direction and operations of the bank, including the interpretation of the "other productive sectors" to which it lends.

[15] http://www.esrf.eu/

Rail Vehicle Accessibility (B2007 Vehicles) Exemption Order 2015 (SI 2015/1631)

50. This instrument exempts 27 stations on the Docklands Light Railway ("DLR") from the need to deploy a boarding ramp for disabled passengers where the gap between the floor of the rail vehicle and the platform is either more than 75mm horizontally or 50mm vertically.

51. We note that the DLR operators have tried to find solutions to address the problem but have found that reduction of the horizontal gap to less than 85mm raised the risk of the carriage hitting the platform to levels that would jeopardise the safety of all passengers. We also note that the DLR operators supported their application for this exemption with evidence from trials by wheelchair users that indicated that an 85mm gap, although not compliant with the letter of the law, did not present them with practical problems. Given this, the House may take the view that the staggered exemptions for up to 10 years, set out in this instrument, are reasonable. We have, however, concerns about two aspects of the instrument: first that the DLR initially applied for an open-ended exemption and, although reduced to 10 years in the instrument, long exemptions can reduce the stimulus to pursue solutions, and, secondly, that the new exemption only came into effect nine months after the previous one had lapsed, which suggests to us that the exemption system needs to be more stringently monitored and enforced.

52. Following the passage of the Deregulation Act 2015, this is the last such exemption order to be subject to parliamentary procedure. From 1 October 2015, such exemptions may be granted by the Minister and Parliament will only be informed about their use in an annual report. **Given that future exemption orders will fall outside the scope of this Committee's scrutiny, Members of the House with a particular interest in the issues raised by these orders may wish to pay close regard to the Minister's reports setting out their use.**

Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 (SI 2015/1646)
Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015 (SI 2015/1725)

53. The principal Regulations (SI 2015/1646) introduce a new prescribed form for a notice under section 21 of the Housing Act 1988 ("the 1988 Act") informing a tenant that the landlord intends to seek recovery of possession of a property let on an assured shorthold tenancy ("a section 21 notice"). In the Explanatory Memorandum, the Department for Communities and Local Government (DCLG) says that the Government are concerned about the unnecessary expenditure for landlords and the burden on the courts that has in the past arisen from the lack of a standard section 21 notice. Lack of certainty over notice periods has led to a large number of notices being deemed to defective and treated as invalid by the courts; landlords have to spend additional time and resources serving new notices and seeking legal advice. The principal Regulations were laid on 9 September to come into force on 1 October.

54. On 29 September, DCLG laid the amending Regulations (SI 2015/1725) to come into force the following day. The Department says that SI 2015/1725 substitutes a new form to correct an error in the form contained in the Schedule to the principal Regulations - making it clear that where landlords wish to use section 21 of the 1988 Act to seek possession against tenants occupying properties under periodic tenancies under which more than two months' notice is required, the form is valid for four months from the date after which possession could be required, and not four months from the date of issue of the form as was stated in the original form. DCLG says that, given the relatively minor nature of the correction and the urgent need to rectify the principal Regulations, it considered it appropriate to breach the 21-day rule in order to provide immediate certainty to all users of the form.

55. **It is unfortunate that the error in the original form was spotted and corrected so late in the day. It is important that the Department makes every effort to ensure that all interested parties know which form to use.**

Universal Credit (Work Allowance) Amendment Regulations 2015 (SI 2015/1649)

56. These Regulations amend, from April 2016, the amount of earned income that a claimant can receive before their Universal Credit award is reduced (known as a "work allowance"). Once a household earns more than their work allowance, their Universal Credit payment is reduced by 65% of the amount of earnings which exceed the work allowance. As announced in the Summer Budget 2015,[16] these changes simplify the system by reducing the range of work allowances available to Universal Credit claimants from seven to two, reducing the rates of work allowances for some claimants and removing work allowances for claimants who either do not have responsibility for a child or do not have limited capability for work. The two new rates of work allowance will be set at £192 per month for those with housing costs and £397 per month for those without housing costs. The Explanatory Memorandum accompanying the instrument states that "the intention is that Universal Credit will continue to ensure that claimants are better off in work, and better off working more, but will not target support at those with above median earnings." This measure, in combination with the instrument reducing the income threshold in Tax Credits to £3,850 per year,[17] is expected to save the Exchequer £2.8 billion in 2015–16 rising to £3.4 billion by 2020–21. **We are again disappointed that no impact assessment or similar statement has been provided showing how many people are likely to be affected by these changes and to what degree.**

(See also the Report on the Social Security Housing Cost Amendment Regulations (SI 2015/1647) at the front of this Report)

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16 The Summer Budget 2015: the relevant paragraph is 1.144 on page 37: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443300/50325_HMT_Red_Book_Complete.pdf

17 See also the item earlier in this Report on the Draft Tax Credits (Income Thresholds and Determinations of Rates) (Amendment) Regulations 2015.

INFORMATION

Department for Energy and Climate Change
Overview of major schemes and relevant secondary legislation

57. In July 2014, the Committee drew nine statutory instruments laid by the Department for Energy and Climate Change (DECC), which all related to Electricity Market Reform (EMR), to the special attention of the House, in the 6th report of Session 2014–15 (HL Paper 27). The Committee included as an appendix to that report a note from DECC giving an overview of the primary and secondary legislation agreed, or to come forward, covering EMR. DECC has updated and expanded its overview note, to cover secondary legislation relating to other major areas of energy policy as well:

- Renewables Obligation
- Feed-in Tariffs Scheme
- Renewable Heat Incentive Scheme
- Warm Home Discount Scheme
- Home Energy and Energy Companies Obligation
- Smart Metering Programme
- Electricity Market Reform

We are publishing DECC's overview note on our website.[18]

[18] See: http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/DECCoverview2015.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

	Maximum Number of Judges Order 2015
	Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015
	Small and Medium Sized Business (Credit Information) Regulations 2015
	Small and Medium Sized Business (Finance Platforms) Regulations 2015

Instruments subject to annulment

Cm 9126	Articles of Agreement of the Asian Infrastructure Investment Bank
Cm 9130	Agreement between the United Kingdom and Spain concerning the Protection of Classified Information
Cm 9134	Protocol of accession of Russia to the Convention of 16 December 1988 Concerning the Construction and Operation of the European Synchrotron Radiation Facility
SI 2015/1631	Rail Vehicle Accessibility (B2007 Vehicles) Exemption Order 2015
SI 2015/1637	Deregulation Act 2015 (Health and Safety at Work) (General Duties of Self-Employed Persons) (Consequential Amendments) Order 2015
SI 2015/1639	Education (School Inspection) (England) (Amendment) (No. 2) Regulations 2015
SI 2015/1640	Packaging (Essential Requirements) Regulations 2015
SI 2015/1641	Deregulation Act 2015 (Insolvency) (Consequential Amendments and Transitional and Savings Provisions) Order 2015
SI 2015/1643	Section 16 Enterprise Act 2002 Regulations 2015
SI 2015/1644	Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) Regulations 2015
SI 2015/1646	Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015
SI 2015/1648	Competition Appeal Tribunal Rules 2015

SI 2015/1649	Universal Credit (Work Allowance) Amendment Regulations 2015
SI 2015/1650	Revenue Traders (Accounts and Records) (Amendment) Regulations 2015
SI 2015/1651	Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Insolvency and Company Directors Disqualification) Regulations 2015
SI 2015/1653	Motor Vehicles (Variation of Speed Limits for Naval, Military and Air Force Vehicles) (England and Wales) Regulations 2015
SI 2015/1655	Whole of Government Accounts (Designation of Bodies) Order 2015
SI 2015/1656	Harbour Directions (Designation of Harbour Authorities) (No. 2) Order 2015
SI 2015/1657	Road Vehicles (Registration and Licensing) (Amendment) (No. 2) Regulations 2015
SI 2015/1658	823–832 MHz and 1785–1805 MHz etc. Frequency Bands (Management) Regulations 2015
SI 2015/1660	Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) (Amendment) Order 2015
SI 2015/1661	Oil and Gas Authority (Levy) Regulations 2015
SI 2015/1662	Social Fund Cold Weather Payments (General) Amendment (No.2) Regulations 2015
SI 2015/1669	Organic Products (Amendment) Regulations 2015
SI 2015/1672	Companies, Partnerships and Groups (Accounts and Reports) (No. 2) Regulations 2015
SI 2015/1674	Marine Licensing (Delegation of Functions) (Amendment) Order 2015
SI 2015/1678	Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015
SI 2015/1725	Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015

APPENDIX 1: DRAFT TAX CREDITS (INCOME THRESHOLDS AND DETERMINATION OF RATES) (AMENDMENT) REGULATIONS 2015

Letter from Rt Hon. George Osborne MP, Chancellor of the Exchequer, to Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee

Your Committee has asked for more information on the Tax Credits (Income Threshold and Determination of Rates) (Amendment) Regulations 2015, which have been approved by the House of Commons.

As I know you will be aware, for Statutory Instruments of this kind the Government does not usually publish an impact assessment, hence the delay in responding to your Committee. However, I am happy in this instance to provide you with new information on the impact of our reforms to inform your role in scrutinising secondary legislation as it passes through your House.

I attach an impact assessment[19] which includes a decile breakdown of how losses from the changes are spread across the tax credit income distribution. I trust it will inform your deliberations, and I am content for your Committee to publish it, as you see fit.

The changes to tax credits included in this Statutory Instrument are an integral part of the new deal this Government offers to working people. It means Britain moving from a high-welfare, high-tax, low-wage economy to a lower-welfare, lower-tax and higher-wage one. This Government was elected with a clear mandate to bring about this change.

Tax credit expenditure more than trebled in real terms between 1999 and 2010; and increased by £9.6 billion a year in real terms between 2004/05 and 2014/15. In 2010 nine in ten families with children were eligible for tax credits, reduced to six in ten following the coalition's reforms in the last Parliament. The reforms we now make will reduce this to five in ten, and wind tax credit spending back only to what it was in 2008.

Alongside the changes to tax credits, we are introducing the National Living Wage, which will be worth over £9 an hour by 2020, and increasing the personal tax allowance, as part of a single, thought-through coherent plan.

Taking tax and benefit changes into account, it means a renting family with two children where both parents work 35 hours a week on the minimum wage will see their income increase in cash terms by more than £5,500.

The Office for Budget Responsibility also predicts a wider ripple effect of the National Living Wage, as it pushes wages up across the income scale, benefiting six million people. Already we see over 200 companies agreeing to pay at or above the National Living Wage early, helping to fuel wage growth of 4.4 per cent in the private sector, according to the latest figures.

I trust this information will be of use to your Committee.

12 October 2015

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19 See: http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/DraftTaxCreditsRegs2015-ImpactAssessment.pdf

Letter from Rt Hon. Lord Trefgarne to Rt Hon. George Osborne MP

Thank you for your letter of 12 October, with which you enclosed an impact assessment in relation to these draft Regulations.

The Committee considered the instrument at its meeting yesterday, alongside your letter and enclosure. We agreed to bring the Regulations to the special attention of the House, on the ground that they are politically important and give rise to issues of public policy likely to be of interest. Our report will appear on 16 October, and we shall publish your letter and the enclosure.

We noted your explanation that the Government do not usually publish an impact assessment for statutory instruments of this kind. You will appreciate, I am sure, that in our scrutiny of secondary legislation we look to Government Departments to provide adequate information alongside statutory instruments which will allow the House to understand the effect of changes proposed on those individuals and organisations affected. A well-crafted impact assessment is very helpful in this respect; if a Department is not formally required to prepare one, we nonetheless look to the Explanatory Memorandum for solid information in this regard.

The impact assessment which you sent us in this case shed more light on the effects of the proposed changes than was provided by the Explanatory Memorandum laid in September. However, the Committee was concerned that the assessment could have done more to set out the short-term impact on household incomes; and also that the presentation of some of the material, notably on distribution, was difficult to understand, even for those used to economic analyses.

We are making your letter and the enclosure available to the House, which will no doubt refer to it when the debate on the Regulations is held. As the Committee carries forward the scrutiny of secondary legislation, we shall continue to reflect on the adequacy of impact assessments or, in their absence, of relevant material in Explanatory Memoranda in enabling the House to consider the statutory instruments laid before it.

14 October 2015

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 13 October 2015 Peers declared the following interests:

Draft Small and Medium Sized Business (Credit Information) Regulations 2015
Draft Small and Medium Sized Business (Finance Platforms) Regulations 2015

Lord Janvrin
Deputy Chairman, HSBC Private Bank (UK) Ltd

Attendance:

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