

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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20th Report of Session 2015–16

**Draft Civil Proceedings, Family  
Proceedings and Upper  
Tribunal Fees (Amendment)  
Order 2016**

**Feed-in Tariffs (Amendment)  
(No. 3) Order 2015**

Includes 2 Information Paragraph on 2 Instruments

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

*Historical Note*

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

The Committee has the following terms of reference:

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

*Members*

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

*Registered interests*

Information about interests of Committee Members can be found in Appendix 1.

*Publications*

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

*Information and Contacts*

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

*Statutory instruments*

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

# Twentieth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016

*Date laid: 17 December 2015*

*Parliamentary procedure: affirmative*

*Summary: The Order increases the fees currently charged in connection with certain civil and family proceedings in the courts of England and Wales. These are all “enhanced fees”: that is, the sum charged exceeds the cost of providing the service. The Ministry of Justice estimates that the fee increases will generate £64 million per year to offset the £1 billion cost to the taxpayer of running the courts. Among other changes the Order includes increasing the fee for issuing divorce proceedings from £410 to £550 (an increase of 35%). Given the strength of the concern expressed that setting an enhanced fee for divorce discriminates against women, it is very disappointing that the Explanatory Memorandum accompanying the Order gives no justification for the policy other than the Ministry of Justice’s desire to generate income.*

**This Order 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.**

1. This instrument is laid by the Ministry of Justice (MoJ) under section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) and is accompanied by an Explanatory Memorandum (EM) and an Impact Assessment (IA).
2. The Order increases the fees currently charged in connection with certain civil and family proceedings in the courts of England and Wales. These are all “enhanced fees”: that is, they have been introduced using powers under section 180 of the 2014 Act which allow the Lord Chancellor, with the consent of the Treasury, to “prescribe a fee of an amount which is intended to exceed the cost of anything in respect of which the fee is charged”. The MOJ estimates that these fee increases will generate £64 million per year to offset the £1 billion cost to the taxpayer of running the courts. The Order increases the fees for—
  - possession of goods or land in the county court by £75, from £280 to £355 (from £250 to £325 for claims initiated online);
  - uncontested general applications in civil proceedings made by consent by £50, from £50 to £100;
  - contested general application in civil proceedings made on notice by £100, from £155 to £255;
  - uncontested general applications in immigration judicial review proceedings in the Upper Tribunal by £55, from £45 to £100;

- contested general applications in immigration judicial review proceedings in the Upper Tribunal by £175, from £80 to £255;
- copy documents (first ten pages or on disk) in immigration judicial review proceedings in the Upper Tribunal by £5, from £5 to £10; and
- issuing divorce proceedings from £410 to £550.

*Enhanced fee for an uncontested divorce*

3. The increased fee payable to issue divorce proceedings has proved controversial. In December 2013, the Coalition Government consulted on increasing the fee from £410 to £750 but, following strong opposition, decided not to amend the amount. However, the Government have now reconsidered their position due to the “financial imperative” and the new Order proposes to raise the fee to £550, an increase of around 35% compared with the current fee of £410.
4. In supplementary information the MoJ informed us that they estimate that the average cost of dealing with an uncontested application for a divorce is £270, the increased fee therefore represents a little over 200% of the actual cost for an uncontested divorce.
5. Paragraph 8.5 of the EM states that, in accordance with section 92(5) and (6) of the Courts Act 2003, the Lord Chancellor has consulted the Lord Chief Justice, the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division, the Chancellor of the High Court, the Deputy Head of Civil Justice and the Civil Justice Council about this change. They are against the increased divorce fee on the grounds that it will act as a disincentive to divorce and will be particularly detrimental for victims of domestic violence who are usually women.
6. There was also strong opposition from the public consultation exercise: of 65 responses, eight respondents (12%) agreed with the proposal, 58 disagreed (87%) and one responded neither agreeing nor disagreeing. Most who disagreed pointed out that no persuasive rationale for charging above cost for a divorce had been advanced in the consultation paper. Some argued that that the current fee was already too high and that the proposed fee was excessive; that the fee would have to be paid at a time when the parties were often in financial difficulties and would struggle to pay the fee; and that recent reforms to the remissions scheme meant less support was available than before.
7. Many respondents also argued that those who wished to dissolve their marriage had no choice but to apply to the court for a divorce and the fee was discriminatory as more women than men initiated divorces. Data from the Office of National Statistics confirms this view in 2012, for example, of the 118,140 divorce applications, 41,601 were by men and 76,490 were by women. Also, women were granted 65% of all divorces that year.
8. Given the strength of the concern expressed, it is very disappointing that the EM gives no justification for the policy other than the MoJ’s desire to generate income. The House may wish to ask further questions in the debate.

## Feed-in Tariffs (Amendment) (No. 3) Order 2015 (SI 2015/2045)

*Date laid: 18 December 2015*

*Parliamentary procedure: negative*

*Summary: This Order, together with the draft Modifications to the Standard Conditions of Electricity Supply Licences 2015 (No 3), makes a number of changes to the Feed-in Tariffs scheme (“FIT scheme”) in order to control costs by reducing financial support for the deployment of small-scale low-carbon electricity generation. Responses to the consultation which the Department for Energy and Climate Change (DECC) carried out on its proposals showed high levels of opposition to these changes, as well as concern at their negative impact on the renewables sector. Information set out by DECC in the Impact Assessment (IA) indicates what this impact might be: for example, the changes being introduced could mean between 4,500 and 8,700 fewer jobs in the solar sector (out of some 15,100) on a full-time equivalent basis by the end of 2018–19.*

*DECC acknowledges the points made by respondents but remains clear on the need to control spending under the FIT scheme, while restating its commitment to cost-effective decarbonisation of the electricity supply. It is of course for Government to decide on policy development after consideration of views expressed. We commend DECC for publishing its summary of consultation responses, and the IA, at the same time as the Order was laid before Parliament.*

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

9. The Department for Energy and Climate Change (DECC) has laid this Order with an Explanatory Memorandum (EM) and Impact Assessment (IA). In parallel, it has also laid the draft Modifications to the Standard Conditions of Electricity Supply Licences 2015.
10. DECC states in the EM 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, implemented since 2012. The latest Order and draft Modifications amend existing provisions<sup>1</sup> in order to introduce a cost control mechanism and to set out a revised level of generation tariffs to be paid under the scheme.<sup>2</sup>
11. In the IA, DECC says that the FIT Scheme has contributed significantly towards increased spending under the Levy Control Framework (LCF), which caps expenditure of renewable subsidies levied from consumer bills: expected spending under the LCF has increased significantly above the £7.6 billion limit (which was set in 2013). The primary objectives of the measures now proposed are to improve value for money and to control spending under the FIT scheme. The intention is that a maximum of £100 million is spent on new-build deployment per year over the period from early 2016 to the end of 2018–19.

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<sup>1</sup> The Feed-in Tariffs Order 2012 (SI 2012/2782, as amended); and Conditions 33 and 34 of the standard conditions of electricity supply licences.

<sup>2</sup> In our 9th Report of Session 2015–16 (HL Paper 38), we drew the Feed-in Tariffs (Amendment) (No. 2) Order 2015 (SI 2015/1659) to the special attention of the House, on the ground that there appeared to be inadequacies in the consultation process.

12. DECC sets out the changes made by the latest Order at paragraphs 7.9 to 7.15 of the EM. These include: a temporary pause in the scheme between 15 January and 7 February 2016, when applications for subsidy will not be accredited; introduction of “deployment caps” – a cost control mechanism, in the form of a limit on the aggregate total installed capacity of installations that can be applied for in any quarter; and removal of the ability to claim the generation tariff for extensions in capacity. The changes made by the draft Modifications are set out at paragraphs 7.6 to 7.8: in particular, they reduce the level of the tariffs to be paid by electricity suppliers to generators of accredited installations under the FIT scheme.
13. DECC says that the Government are committed to cost-effective decarbonisation of the electricity supply and to protecting consumer bills by controlling costs under the LCF; and that these measures seek to maintain a viable solar industry which, in the medium term, can continue to reduce its costs and move towards subsidy-free deployment. On 17 December 2015, a Written Statement about renewable energy cost control measures was repeated in this House by Lord Bourne of Aberystwyth.<sup>3</sup>

#### *Consultation*

14. The Department carried out consultation over eight weeks from 27 August to 23 October 2015; this included meetings with a number of trade associations and stakeholder events across the country. A total of 54,630 written responses were received: DECC says that this included 2,634 unique responses and 51,996 as part of e-mail campaigns run by Greenpeace and 10:10. It has published a summary of consultation responses.<sup>4</sup>
15. The account which DECC gives in section 8 of the EM, and in the summary, of the main issues raised in consultation shows that most respondents were opposed to the proposed measures:
- the “vast majority” said that a pause would be detrimental to either their business or the renewables sector more widely;
  - most (52%) objected to the proposed deployment caps;
  - there was some limited support (10% agreed, 46% disagreed) for the proposed removal of the ability to claim the generation tariff for extensions in capacity; and
  - the majority (some 90% of responses) disagreed with the proposed generation tariffs, mainly on the ground that they were too low to bring forward investment.

In each case, DECC explains why it has decided to go ahead with its proposals, and places particular emphasis on the need to control costs.

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<sup>3</sup> HL WS 403: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2015-12-17/HLWS403/>.

<sup>4</sup> See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/487300/FITs\\_Review\\_Govt\\_response\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487300/FITs_Review_Govt_response_Final.pdf).

16. The summary of responses deals with the issues raised in more detail. As regards de-carbonisation of electricity supply, DECC says that the UK is making good progress towards the EU target of 15% final energy demand from renewables by 2020; and that the provisional figure for 2013-14 (released in June 2015) showed that 6.3% of final energy consumption came from renewable sources, against a target level of 5.4%.

*Impact on employment*

17. In the summary, DECC acknowledges that many respondents argued that the changes would lead to reduced deployment across all sectors, with significant job losses and adverse consequences for the growth of industry: it says that it is difficult to quantify the impacts on employment, but points to more information in the IA. The relevant section of the latter is Annex C on “employment impacts”, which (at paragraph 15) offers an assumption that the changes being introduced could mean between 4,500 and 8,700 fewer jobs in the solar sector (out of some 15,100) on a full-time equivalent basis by the end of 2018-19; and between 100 and 300 fewer jobs in the wind sector (out of some 1,900). DECC stresses the imprecise nature of these estimates. Elsewhere in the IA (Table 12 at paragraph 6.9), DECC gives a forecast for the cumulative number of solar, wind and other renewable installations over the years to 2020-21, which indicates that the changes proposed could mean that there would be at least 800,000 fewer installations by the end of that period.

*Conclusion*

18. The Order and draft Modifications make a number of changes to the Feed-in Tariffs scheme in order to control costs by reducing financial support for the deployment of small-scale low-carbon electricity generation. **Responses to the consultation which DECC carried out on its proposals showed high levels of opposition to these changes and concern at their negative impact on the renewables sector.** Information set out by DECC in the IA indicates what this impact might be. **DECC acknowledges the points made by consultation respondents, but remains clear on the need to control spending under the FIT scheme, while restating its commitment to cost-effective decarbonisation of the electricity supply. It is of course for Government to decide on policy development after consideration of views expressed. We commend DECC for publishing its summary of consultation responses, and the IA, at the same time as the Order was laid before Parliament.**

## **INSTRUMENTS OF INTEREST**

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### **Draft Recall of MPs Act 2015 (Recall Petition) Regulations 2016**

19. This instrument puts in place the practical arrangements for constituents to petition to re-call their MP and trigger a by-election. It also sets out the circumstances in which the process may be initiated. This instrument was subject to a report on the ground of interest in our 14th Report of this session.<sup>5</sup> Due to a number of errors in the text and the translations the instrument has had to be withdrawn and re-laid but the Cabinet Office inform us that the content is the same as in the previous version. The Welsh translation was so poor that we suggest the Cabinet Office might wish to review its current arrangements for drafting bilingual legislation.

### **School and Early Years Finance (England) Regulations 2015 (SI 2015/2033)**

20. These Regulations specify how local authorities set their education budgets for the 2016-17 financial year, and make some changes from the previous Regulations. In the accompanying Explanatory Memorandum (EM), the Department for Education (DfE) makes it clear that there was good support for almost all the changes, with the exception of the change to the basis for funding two-year olds eligible for the early years entitlement. The Regulations provide that, in future, local authorities must fund all such two-year olds eligible using participation-based funding (that is, based on actual numbers of two-year olds taking up early years provision), rather than place-based funding (based on potential numbers of eligible children).
21. In the EM, DfE says that in its autumn 2015 consultation 46% of respondents agreed with this change, 23% disagreed and 31% were not sure. In response to our queries, the Department has told us that the reason cited by those disagreeing was a concern about capacity: some settings were still building up the capacity to fill places, in particular those settings that were just starting to offer provision, and they might have sustainability concerns. It has however also pointed out that local authorities have had two to three years to build capacity for the programme and were provided with additional funding to build capacity from start of the programme. Since DfE is now funding local authorities on a participation basis, it needs to restrict the flexibility; local authorities could not afford to fund providers for all eligible two-year-olds on a place basis in future years.
22. As regards the funding previously received by local authorities, the summary of consultation responses explains that the Government provided local authorities with £525 million in 2013-14 and £755 million in 2014-15. DfE has now said that, in 2015-16, local authorities have received an initial allocation of £428 million based on their actual take-up (though the final allocation for 2015-16 will be updated in June 2016 following updated data from the January 2016 census on the number of two-year old places taken up).

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<sup>5</sup> 14th Report, Session 2015-16 (HL Paper 54).

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

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The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

### **Draft instruments subject to affirmative approval**

*The following two SIs are linked:*

National Assembly for Wales (Representation of the People) (Amendment) Order 2016

Police and Crime Commissioner Elections (Amendment) Order 2016

Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) (England and Wales and Northern Ireland) Order 2016

Producer Responsibility Obligations (Packaging Waste) (Miscellaneous Amendments) Regulations 2016

Recall of MPs Act 2015 (Recall Petition) Regulations 2016

### **Draft instruments subject to annulment**

Modifications to Standard Conditions of Electricity and Gas Supply Licenses, the Smart Meter Communication Licenses and the Smart Energy Code (Smart Meters No. 1 of 2016)

### **Instruments subject to annulment**

SI 2015/2013 Transfer of Functions (Pensions Guidance) Order 2015

SI 2015/2022 Railways (Interoperability) (Amendment) Regulations 2015

SI 2015/2025 National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2015

SI 2015/2032 Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2015

SI 2015/2033 School and Early Years Finance (England) Regulations 2015

SI 2015/2040 Electricity (Exemption from the Requirement for a Generation Licence) (Galawhistle) Order 2015

SI 2015/2048 Blood Tests (Evidence of Paternity) (Amendment) (Review) Regulations 2015

SI 2015/2050 Alcoholic Liquor Duties (Alcoholic Ingredients Relief) Regulations 2015

- SI 2015/2054 Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2015
- SI 2015/2057 Police Pensions and Police (Injury Benefit) (Amendment) Regulations 2015
- SI 2015/2061 Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2015
- SI 2015/2062 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2015

## **APPENDIX 1: Interests and attendance**

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

For the business taken at the meeting on 12 January 2016 Peers declared no interests.

### **Attendance:**

The meeting was attended by Baroness Andrews, Lord Bowness, Lord Goddard of Stockport, Lord Hodgson of Astley Abbotts, Baroness Humphreys, Lord Janvrin, and Lord Trefgarne.