

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

25th Report of Session 2016–17

Civil Procedure (Amendment) Rules 2017

**Correspondence: Draft Cambridgeshire
and Peterborough Combined Authority
Order 2017**

Includes 2 Information Paragraphs on 2 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	Lord Rowlands
Lord Bowness	Baroness Humphreys	Baroness Stern
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne (<i>Chairman</i>)
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 hseclegscrutiny@parliament.uk.

Twenty Fifth Report

INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Civil Procedure (Amendment) Rules 2017 (SI 2017/95)

Date laid: 3 February 2017

Parliamentary procedure: negative

The Aarhus Convention (implemented in EU law by a series of Directives) requires Contracting States to make sure that the costs of taking certain environmental challenges through the courts are not prohibitively expensive. This instrument, among other things, introduces a revised costs protection regime for Aarhus Convention claims, that provides more discretion for the court to put cost caps up or down according to the claimant's resources. The very negative response to the consultation exercise raised a number of concerns including how the claimant's resources were to be assessed and the risk of satellite litigation to settle disputes over ancillary matters. Respondents' key concerns were that the changes were likely to increase the claimants' uncapped legal costs and would deter claimants from pursuing genuine claims. A submission from Client Earth, Friends of the Earth and the RSPB, published on our website, further illustrates these concerns. The Explanatory Memorandum that the Ministry of Justice has provided gives no evidence-based justification for the proposed changes or for the effect that they are assumed to produce, in consequence, our Report suggests a number of questions that the House may wish to pursue. We have also written to the Minister to express our concerns over the way that this policy change was presented.

This instrument is 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.

Background

1. These Rules have been laid by the Ministry of Justice (MoJ) under the Civil Procedure Act 1997 and are accompanied by an Explanatory Memorandum (EM). This instrument makes a variety of amendments that include administrative changes to rules governing the payment and refund of hearing fees, costs budgeting procedures, clarification of the application of a fixed costs regime in low value personal injury claims, introduction of a revised costs protection regime for Aarhus Convention claims, streamlining procedures for shipping collision cases, minor amendments to provide for an appeal route in Patents, and a change to how European references are made. We have received a submission from Client Earth, Friends of the Earth and the RSPB which relates specifically to the revised costs protection regime. Their submission is published in full on our website with further material from the MoJ.
2. Sections 88 and 89 of the Criminal Justice and Courts Act 2015 ("the 2015 Act") codify the powers of the courts to make protective costs orders in judicial review proceedings ("costs capping orders"). Costs capping orders limit or extinguish an applicant's liability to pay another party's costs irrespective of the outcome of the case. The court will consider the financial resources of each party when determining whether to make a costs capping order and, if one is appropriate, will specify what the terms of that order should be. These provisions came into force on 8 August 2016.

3. Another instrument made under section 90 of the 2015 Act,¹ also laid on 3 February 2017, excludes claims under the Aarhus Convention from the general system of costs capping orders in judicial review proceedings on the ground that there is a separate regime for Aarhus Convention claims. The amendments to the Rules made by the current instrument amend the terms of that regime.

Aarhus Convention claims

4. The Aarhus Convention (implemented in EU law by a series of Directives) requires Contracting States to make sure that the costs of taking certain environmental challenges through the courts are not prohibitively expensive. The Government took steps to address this issue for England and Wales in April 2013 by introducing an Environmental Costs Protection Regime (ECPR), which capped the costs that a court could order an unsuccessful claimant to pay to other parties at £5,000 for individuals and £10,000 for organisations. Defendants' liability for claimants' costs were similarly capped, at £35,000. All of these amounts were fixed and did not allow for variation in individual cases.
5. The European Court of Justice (CJEU) gave its judgment in a 2014 case² that the costs regime that had existed in 2010 (before the new ECPR had been put in place) was insufficient to comply with EU law. These new provisions have been drafted in response to that ruling and other judgments by the CJEU.
6. The new provisions, like those they replace, default to a cap on the liability of an unsuccessful claimant in such a case to pay the defendant's costs of £5,000 or £10,000 (depending on whether the claimant is an individual or an organisation), and cross-cap an unsuccessful defendant's liability to pay the claimant's costs at £35,000, but differ in certain respects. They
- (a) extend beyond judicial reviews to include statutory reviews (in particular planning challenges);
 - (b) allow the court to vary the cap and cross-cap either up or down, provided that any change does not render the cost of proceedings prohibitively expensive for the claimant;
 - (c) require the court, when assessing whether proceedings would be prohibitively expensive if the change is or is not made, to take into account a list of factors which mirrors those set out by the CJEU in the Edwards case;³ and
 - (d) make specific provision for appeals requiring the court to apply the same principles on appeal as at first instance (as required by the Commission v. United Kingdom case).

1 Criminal Justice and Courts Act 2015 (Disapplication of Sections 88 and 89) Regulations 2017 (SI 2017/100).

2 Case C-530/11 European Commission v. UK [2014] 3 WLR 853.

3 Case C-260/11 Edwards v. Environment Agency [2013] 1 W.L.R. 2914, parts of which were reiterated by the Supreme Court in the same case: R (Edwards) v. Environment Agency (No.2) [2014] 1 W.L.R. 55.

7. Rule 45.44 in the instrument sets out the criteria for deciding whether the proceedings are to be considered prohibitively expensive for the claimant (based on the “Edwards principles”) as:
- (a) whether they exceed the financial resources of the claimant and
 - (b) are objectively reasonable having regard to
 - (i) the situation of the parties;
 - (ii) whether the claimant has a reasonable prospect of success;
 - (iii) the importance of what is at stake for the claimant;
 - (iv) the importance of what is at stake for the environment;
 - (v) the complexity of the relevant law and the procedure; and
 - (vi) whether the claim is frivolous.

We note that the EM states that no specific guidance is considered necessary on how these rules will operate.

8. In regards to the assessment of a claimant’s resources the:

“Government is proposing a similar approach to that which it adopted when implementing the recent Judicial Review Cost Capping Order reform, whilst recognising that there are different requirements in the context of the ECPR, where a key consideration is that the costs of challenges should not be prohibitively expensive. Unless the court ordered otherwise, the claimant would provide information on significant assets, income, liabilities and expenditure. This information would take account of any third-party funding which the claimant had received. It is anticipated that this approach would limit the burden and intrusion on the claimant and, alongside the possibility that hearings could be held in private, means the approach would not deter claims. It is not intended that charities should provide details of individual donors or individual donations.”⁴

Concerns expressed by Client Earth, Friends of the Earth and the RSPB

9. The submission from this group states that their main concern is that the revised regime removes the advance certainty of financial liability from claimants if they lose the case and that this will deter all but the rich from pursuing such cases. The submission also highlights the difficulties that the requirement for financial disclosure would impose on claimants in particular for non-governmental organisations (NGOs) and charities which have complex funding bases.
10. The group is also concerned that “satellite litigation” around the issue of costs will detract from the substantive issues and cause delays. They also point out that the costs cap relates only to the claimant’s liability to pay the defendant’s costs, the claimant’s own legal costs are not included. **The Government’s stated intention of “introducing more of a level playing field so that defendants are not unduly discouraged from challenging a claimant’s**

4 Para 39 of the [Government response to the consultation](#).

entitlement to costs protection”⁵ may escalate the claimant’s legal costs and act against the intention of the Aarhus Convention that the costs of environmental litigation should not be prohibitive.

11. As one of the MoJ’s stated aims in the consultation paper was that the new arrangements should provide “greater certainty within the regime” the submission contends that the opposite has been achieved and cites the example of the Norwich Northern Distributor Road case to illustrate that view.
12. The policy aim as stated on the front of the draft Impact Assessment, and repeated in the Government Response document,⁶ is that:

“the policy should ensure the right balance between ensuring ‘the public can bring challenges which are not prohibitively expensive to relevant decisions falling within the scope of the relevant EU Directives, while discouraging unmeritorious claims which cause unreasonable costs and delays to development projects.”
13. The submission calls attention to the MoJ’s failure to provide evidence that the number of “unmeritorious claims” is a problem. It provides data which shows that the number of Aarhus cases in 2014–15 was 153 which is on a par with the established average. They also comment that between April 2013 and March 2015, nearly half (an average of 48%) of environmental cases were granted permission to proceed in contrast with 16% of ordinary Judicial Review cases. Over the same period 24% of the environmental cases were successful for the claimant in contrast with 2% for all cases in 2014. All of which indicates, according to the submission, that environmental cases represent good value for money in comparison with mainstream judicial review cases.

Consultation

14. The analysis in the EM simply states that the consultation exercise received 289 responses. It does not explain, as it should, that for most of the questions the number supporting the government’s proposal was less than ten: the vast majority of the responses received were against the proposed changes.⁷
15. In assessing the responses it should be noted that 103 individuals used a template response prepared by Friends of the Earth. The remaining respondents represented a wide range of interests including 82 responses from businesses, campaign groups, professional bodies, public organisations, non-governmental organisations, academic institutions, parish councils, law firms and representative bodies. All largely disagreed with the package of proposals, although for mixed reasons.
16. We note with particular concern that 216 of the 221 respondents considered that the criteria set out at proposed rule 45.44(4) did not properly reflect the “Edwards principles” (nearly 98%). **As this is a key factor in how the claim will be assessed the Government should have more fully explained their interpretation in the EM and any changes they have made to the proposal since the consultation.**

5 Para 5 of the [Government response to the consultation](#).

6 For example at [para 10](#).

7 <https://consult.justice.gov.uk/digital-communications/costs-protection-in-environmental-claims/>

Monitoring and review

17. The consultation document states that “The Government intends to review the impact and application of these changes, and to consider whether, in the light of experience, any other changes to the procedure for such cases should be made. This is expected to be within 24 months of implementation when sufficient data should be available”.⁸ **We note that this undertaking is not mentioned in the EM, contrary to accepted best practice. The Government should clarify whether that is still their intention.**

Conclusion

18. The requirement of Article 9 of the Aarhus Convention is that, in relation to environmental matters, contracting parties “*shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive*”. The MoJ has not provided a convincing case for changing from the previous standardised system of cost capping, which was well understood, to this more complex system which appears to have significant potential to increase both the costs for public administration and the uncapped litigation costs of the claimant.
19. While asserting that the changes are to “discourage unmeritorious claims” no figures are presented that illustrate the proportion of Aarhus claims that fall into that category. We are told that the financial impact on the public sector is minimal, so there does not appear to be a significant saving to the tax payer from these changes. Although the MoJ states that its policy intention is to introduce greater certainty into the regime, the strongly negative response to consultation and the submission received indicate the reverse outcome and that, as a result of the increased uncertainty introduced by these changes, people with a genuine complaint will be discouraged from pursuing it in the courts. **The Ministry of Justice has not addressed any of these concerns in its paperwork and we therefore draw the matter 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. We have also written to the Minister to express our concerns over the way that this policy change was presented.**

8 Para 53 of the [Government response to the consultation](#).

CORRESPONDENCE

Draft Cambridgeshire and Peterborough Combined Authority Order 2017

20. In our 24th Report of this Session,⁹ we brought this draft Order to the special attention of the House, on the ground that the explanatory material laid in support provided insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation. We commented that the picture of local views painted by the Department for Communities and Local Government (DCLG) in the Explanatory Memorandum (EM) to the Order was incomplete and at times self-serving.
21. We wrote to Mr Andrew Percy MP, Parliamentary Under-Secretary of State in DCLG, to underline our concern that EMs should present a full and accurate account of the background to any statutory instruments laid before Parliament. We have now received a reply from Mr Percy, and we are publishing the correspondence as Appendix 1.

9 [24th Report](#), Session 2016–17 (HL Paper 110).

INSTRUMENTS OF INTEREST

Draft Electricity Supplier Payments (Amendment) Regulations 2017

22. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment. BEIS explains that an earlier instrument—the “ESO Regulations”¹⁰—established a mechanism, the “supplier obligation”, to allow the Contracts for Difference (CfD) Counterparty¹¹ to raise funds from all licensed electricity suppliers in Great Britain to pay for the liabilities that it has to make payments to electricity generators under CfDs and to return money to suppliers where appropriate. The ESO Regulations also imposed an obligation on electricity suppliers to pay a levy that funds the operational costs of the CfD Counterparty. These Regulations make a number of amendments to the ESO Regulations which are mostly of a technical nature, but they include setting a new rate for the operational costs levy for the CfD Counterparty.
23. BEIS says that the 2017–18 operational costs levy for the CfD Counterparty were subject to a four-week consultation which closed on 25 November 2016: a four-week period was considered appropriate due to the limited nature of the material to be reviewed. While some 500 stakeholders were alerted to the consultation launch, in total, two responses were received. BEIS says that one respondent noted the increase in professional and legal fees and emphasised the importance of a strong approach to contracting and outsourcing processes to ensure value for money, when procuring highly skilled external resources. The Department comments in the EM that the increase in professional and legal fees is necessary to support the CfD Counterparty’s management of the Hinkley Point C nuclear CfD and renewables CfD activities; the CfD Counterparty’s approach to procuring external technical and professional advice, instead of having more in-house resources, allows it to access the required support only when it is needed. The total operational costs budget for the CfD Counterparty in 2017–18 will be £14.788 million. We obtained additional information from BEIS, published at Appendix 2. This shows that, in 2017–18, budgeted costs for (external) professional and legal fees will be set at £3.623 million, an increase of £0.591 million (some 20%) on the corresponding figure of £3.032 million in 2016–17.

Social Housing Rents (Exceptions and Miscellaneous Provisions) (Amendment) Regulations 2017 (SI 2017/91)

24. The Department for Communities and Local Government (DCLG) has laid these Regulations with an Explanatory Memorandum (EM), in order to amend the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 (SI 2016/390: “the 2016 Regulations”) which, amongst other things, created certain exceptions from the social rent requirements imposed by the Welfare Reform and Work Act 2016 and made provision for the maximum rent that may be charged for certain of the excepted categories. We brought the 2016 Regulations to the special attention of the House, on the ground of public policy interest, in our 31st Report of the

10 The Contracts for Difference (Electricity Supplier Obligations) Regulations (SI 2014/2014).

11 The CfD Counterparty is a private company limited by shares and wholly owned by the Secretary of State. Its main roles are to act as counterparty to Contracts for Difference (CfDs) and to manage the collection of monies under the supplier obligation to pay for CfDs.

2015–16 Session,¹² and published additional information from DCLG about a review of supported housing, for which initial findings were expected to be available in spring 2016.

25. In considering the latest Regulations, we received additional information from DCLG about the review, as well as about the support expressed by domestic abuse refuge representative bodies for flexibility to set initial rents at a higher level. We are publishing the information at Appendix 3.

12 [31st Report](#), Session 2015–16 (HL Paper 126).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2017

Electricity Supplier Payments (Amendment) Regulations 2017

Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017

National Minimum Wage (Amendment) Regulations 2017

Reporting on Payment Practices and Performance Regulations 2017

Water Act 2014 (Consequential Amendments etc.) Order 2017

Water Industry Designated Codes (Appeals to the Competition and Markets Authority) Regulations 2017

Water Supply Licence and Sewerage Licence (Modification of Standard Conditions) Order 2017

Draft instruments subject to annulment

Chichester (Electoral Changes) Order 2017

Harrogate (Electoral Changes) Order 2017

Huntingdonshire (Electoral Changes) Order 2017

Instruments subject to annulment

SI 2017/50 Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2017

SI 2017/62 Food for Specific Groups (Information and Compositional Requirements) (England) (Amendment) Regulations 2017

SI 2017/74 Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2017

SI 2017/77 M5 Motorway (Junctions 4a to 6) (Variable Speed Limits) Regulations 2017

SI 2017/79 Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2017

SI 2017/83 Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017

SI 2017/84 Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017

SI 2017/85 Export Control (Amendment) Order 2017

SI 2017/91 Social Housing Rents (Exceptions and Miscellaneous Provisions) (Amendment) Regulations 2017

SI 2017/100 Criminal Justice and Courts Act 2015 (Disapplication of Sections 88 and 89) Regulations 2017

APPENDIX 1: DRAFT CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY ORDER 2017

Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee to Andrew Percy MP, Minister for Local Growth and the Northern Powerhouse at the Department for Communities and Local Government.

I am writing to you as Chairman of the Lords Secondary Legislation Scrutiny Committee.

At our meeting on 7 February, we decided to bring this draft Order 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.

We comment in our report on the draft Order that the picture of local views painted by your Department in the Explanatory Memorandum is incomplete and at times self-serving.

While the Explanatory Memorandum refers to two surveys of local views about the proposed Cambridgeshire and Peterborough Combined Authority (CPCA)—a telephone poll by Ipsos MORI, and an online exercise conducted by the local authorities—it says that, in the MORI survey, 61% of respondents supported a mayoral CPCA, while 23% were opposed; and that, in the online survey, 44% supported the transfer of powers and funding to the CPCA, while 47% were opposed. What is not mentioned in the Explanatory Memorandum is the fact that 59% of online respondents opposed having an elected Mayor for the CPCA, while only 31% of online respondents supported the proposal. In our report, we voice our disappointment at such a selective approach to reporting the results of the online survey.

We also comment on the fact that your Department quotes from the local authorities' analysis of the online survey to the effect the numbers in that survey "aren't representative of the population as a whole", and "the results represent a 'self-selecting' sample"; and that it states that the more negative responses to the Mayoral Combined Authority model from the online survey are outweighed by the more positive responses to the model by the MORI poll. Given that in the case of other draft Orders proposing to establish Combined Authorities, such as the draft West of England Combined Authority Order 2017, your Department has not voiced such reservations about information produced by online consultation exercises, we question whether it is taking a consistent view of different approaches to consultation.

We look to Government Departments to present a full and accurate account of the background to any statutory instruments that they lay before Parliament. In the case of the devolution Orders which your Department is laying, it is clearly the case that local support for functions to be devolved is often significantly greater than support for the introduction of an elected mayor as a concomitant of such devolution.

I would be grateful if you could confirm whether your Department is open to devolution of functions to local government without requiring the introduction of an elected mayor. I would also ask you to confirm that your Department will ensure that the information that it includes in Explanatory Memoranda to statutory

instruments provides a full and objective account of the policy background, in particular the results of relevant consultations.

I would welcome a reply by Monday 20 February.

8 February 2017

Letter from Andrew Percy MP to Lord Trefgarne.

Thank you for your letter of 8 February 2017. Let me say straightaway that our firm intention has consistently been, and remains, to ensure that the information provided in our Explanatory Memorandums is both sufficient to gain a clear understanding about an instrument's policy objective and intended implementation and fairly presents any description of the consultation undertaken.

As to the draft Cambridgeshire and Peterborough Combined Authority Order 2017, I do not believe from the information provided in the Explanatory Memorandum that there can be any doubt about the policy objective and intended implementation of that Order. Section 7 of the Memorandum makes clear that the Instrument carries forward the manifesto commitment to devolve powers to large cities that choose to have an elected mayor, explains the importance of having a mayor to provide strong accountability, and that all seven councils in the area consented to the making of the Order. The Memorandum sets out how the Instrument establishes a Mayoral Combined Authority for the area, how powers then are being devolved, how they are to be exercised as the Order is implemented, and explains that a mayor is essential where wide ranging powers are devolved. In your letter you asked if a mayor is required for devolution; whilst we have agreed a devolution deal with the unitary Cornwall Council, we have consistently made clear that any ambitious deal, such as Cambridgeshire and Peterborough's, requires an elected mayor to ensure there is adequate accountability for the extensive powers and budgets being devolved.

As to the consultation, the Explanatory Memorandum seeks to provide a balanced description of the consultations which the councils have undertaken. It expressly recognises that the online survey responses were more negative to a Mayoral Combined Authority model than those for the Ipsos MORI independent survey. The Explanatory Memorandum quoted that under the online poll 47% were opposed to the transfer of powers and funding to a Combined Authority. I accept that it did not record that 59% were opposed to a mayor; our intention had been to include this but due to an error whilst the drafting was being refined, this was omitted from the final text, for which I apologise.

However, I believe it is right to refer to the comment made by the councils that the online survey results "aren't representative of the population as a whole" and represent a "self-selecting sample". This is supported by the analysis of the online poll which shows an imbalance between gender, age and geographic spread of respondents: 35% of respondents were female, just 10% under the age of 34, and 2.6 respondents per 1000 in Huntingdonshire compared with 1.3 per 1000 from the Fenland council area. This contrasts with the methodology employed by Ipsos MORI to ensure a proportionally representative sample.

In conclusion I would simply reiterate our commitment to provide Explanatory Memoranda with all the information necessary to understand an Instrument's policy objectives and intended implementation. You can be assured that we will do our utmost to deliver on this.

16 February 2017

APPENDIX 2: DRAFT ELECTRICITY SUPPLIER PAYMENTS (AMENDMENT) REGULATIONS 2017

Additional information from the Department for Business, Energy and Industrial Strategy (BEIS)

Q1: In 2017–18, what is the amount of the increase in professional and legal fees?

A1: The budgeted costs for professional and legal fees have increased by £0.591m from £3.032m in 2016–17 to £3.623m in 2017–18.

Q2: In 2017–18, what is the extent of the activity required for the Contracts for Difference (CfD) Counterparty’s management of the Hinkley Point C nuclear CfD and renewables CfD activities?

A2: Management of CFDs requires entering into contracts, verification of compliance with contractual requirements, consideration of requests for contractual changes, periodic adjustments to contract prices, regular engagement with contract holders, reporting to Government on contract management issues and information requirements, assessment of the need to terminate a contract for failure to comply and defending contract decisions in Court, through arbitration or in expert determination. Each annual budget is developed on the basis of the contracts currently in operation and reasonable assumptions of numbers of new contracts to be signed. For the 2017–18 budget, the estimated costs of managing information requirements under the Hinkley Point C contract and of defending contract decisions under renewables CfDs represented key pressures on funding requirements.

Q3: Given the statement that “the CfD Counterparty’s approach to procuring external technical and professional advice, instead of having more of its own in-house resources, allows it to access the required support only when it is needed”, what would be the cost of employing in-house professional and legal staff to assist the CfD Counterparty in these activities? Has BEIS seen a comparison of the estimated costs of in-house resources with those of the external resources to be used?

A3: The CfD Counterparty is responsible for carrying out its activities in such a way as to maintain confidence in the policies and protect the interests of consumers. It considers that it has the appropriate human resources to manage the contracts and undertake the expected core activities throughout a typical year, including lawyers, accountants and contract managers. The CfD Counterparty has decided that it would not be appropriate to recruit further legal, financial or technical employees on a permanent or contract basis on the off-chance of their services being needed, especially to support litigation or arbitration that may or may not arise. Furthermore, where specialised legal, financial or technical expertise is required to resolve issues that arise from time to time, the CfD Counterparty has taken the view that it would not be efficient for that expertise to be provided in-house if the nature of expertise required were to vary on a case by case basis. Therefore, currently, the CfD Counterparty judges that the most efficient approach is to procure such external technical and professional advice. It will, however, continue to review its needs in this area to assess whether at some point in the future it is cost-effective to recruit more of this expertise in-house.

The CfD Counterparty formulates its annual budget and presents it for scrutiny and approval to its Board and to BEIS as the sponsoring department and sole shareholder. BEIS challenges the budget and the underlying assumptions and

seeks and receives evidence on significant items. Advice is presented to Ministers on the budget and Ministerial decisions are relayed to the CfD Counterparty. Revised budget is then presented for approval to the Board and to BEIS. BEIS then undertakes a public consultation on the budget and the corresponding levy and publishes a Government Response prior to laying the relevant regulations.

8 February 2017

APPENDIX 3: SOCIAL HOUSING RENTS (EXCEPTIONS AND MISCELLANEOUS PROVISIONS) (AMENDMENT) REGULATIONS 2017 (SI 2017/91)

Additional Information from the Department for Communities and Local Government

Q1: Did the evidence review report in spring 2016? Were its findings relevant to the latest Regulations (1% rent reduction policy to exempt refugees, but to apply the policy to the rest of the sector)?

A1: The Supported Accommodation Evidence Review was published on 21 November alongside the joint Department for Communities and Local Government and Department for Work and Pensions consultation on funding for supported housing.

The review was carried out by IPSOS MORI, Imogen Blood Associates and the Housing & Support Partnership and provided evidence on the scope scale and cost of the supported housing sector and early findings informed the Government's Written Ministerial Statement, wider announcement on 15 September, regarding future funding for the sector.

Findings from the evidence review were not directly relevant to the decision to extend the existing exception from the rent reduction policy for fully mutual/cooperatives housing associations, almshouses, Community Land Trusts and domestic violence refugees.

Although beyond the original scope of the research, the evidence review provided some anecdotal views from the supported housing sector specifically on the potential implications of both the rent reduction and Local Housing Allowance rates policy on the whole of the supported housing sector (page 85 of the review). These findings suggested that the rent reduction policy and the proposed introduction of the Local Housing Allowance rates policy were both of concern across the supported housing sector, but that the Local Housing Allowance rates policy in particular, potentially risked the viability of some supported housing. In the 15 September policy announcement, the Government confirmed that the Local Housing Allowance rates policy would be deferred for the whole of the supported housing sector until 2019/20 at which point a new funding model will be introduced which will ensure the sector continues to be funded at the same level it would have otherwise been in 2019/20, taking into account the effect of Government policy on social sector rents, which as planned, would apply to the supported housing sector, but with the exception of domestic violence refugees.

Supported Accommodation Review (21/11/16)

<https://www.gov.uk/government/publications/supported-accommodation-review>

Funding for supported housing consultation (21/11/16)

<https://www.gov.uk/government/consultations/funding-for-supported-housing>

Written Ministerial Statement - Supported Housing (15/09/16)

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-09-15/HCWS154/>

Q2: Could you explain why domestic abuse refuge representative bodies support the flexibility to set initial rents at a higher level and to increase rents by CPI + 1% per annum?

A2: Domestic Abuse Refuge representative bodies such as Women Aid support the flexibility to set initial rents at a higher level and to increase rent by CPI + 1% per year to ensure that refuges remain financially sustainable. Refuges work to very tight margins, with uncertain funding resources and rely on housing benefit to cover, on average, 89% of their weekly housing costs—the money needed to fund buildings, maintenance and essential services. Without this flexibility, Women's Aid warned that two thirds of refuges would be forced to close, and 87% would not have been able to provide the same level of service provision to protect women and children survivors of domestic abuse.

15 February 2017

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 21 February 2017, Members declared no interests.

Attendance:

The meeting was attended by Lord Bowness, Lord Goddard of Stockport, Baroness Humphreys, Lord Janvrin, Baroness O'Loan, Lord Rowlands, Baroness Stern and Lord Trefgarne.