Secondary Legislation Scrutiny Committee

26th Report of Session 2016–17

Draft Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) (Amendment) Order 2017

Draft Tees Valley Combined Authority (Functions and Amendment) Order 2017

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Includes 3 Information Paragraphs on 4 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 (Chairman)
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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 hlseclgscrutiny@parliament.uk.
INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) (Amendment) Order 2017

Date laid: 6 February 2017

Parliamentary procedure: affirmative

An earlier Order provided for the first election of the mayor of the Sheffield City Region Combined Authority (SCRCA) to take place on 4 May 2017. This draft Order proposes to delay the date of the first mayoral election for the SCRCA to 3 May 2018. In July 2016, the SCRCA launched a consultation on proposals including a geographical extension to the SCRCA area to include two new local areas, Chesterfield Borough and Bassetlaw District. In August 2016 Derbyshire County Council, which opposed the inclusion of Chesterfield in the SCRCA’s area, challenged the SCRCA’s consultation by judicial review. In December 2016, the High Court found that the consultation was insufficient. The Department for Communities and Local Government states that, without further consultation such as that which the SCRCA is planning to undertake, the Secretary of State is unable to proceed with an order conferring powers on the CA and the mayor. It is therefore proposing a year’s delay in the date of the first mayoral election.

We draw this instrument to the special attention of the House on the ground that it may imperfectly achieve its policy objectives.

1. In June 2016, the Department for Communities and Local Government (DCLG) laid the draft Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016 which provided for the first election of the mayor of the Sheffield City Region Combined Authority (SCRCA) to take place on 4 May 2017.¹ We drew that Order to the special attention of the House in our 5th Report of the current Session.² We referred in our Report to comments which we had previously made on the process of “combination creep”, through the involvement in Combined Authorities (CAs) of non-constituent councils; and we said that this process was further exemplified by the potential extension of the SCRCA to include the districts of Bassetlaw (located in Nottinghamshire) and Chesterfield (in Derbyshire). We commented that the process raised a number of serious questions about the interaction between established local government structures and the new institutional arrangements being introduced by devolution orders.

2. The purpose of the latest draft Order, which has been laid by DCLG with an Explanatory Memorandum (EM), is to delay the date of the first mayoral election for the SCRCA to 3 May 2018, with elections every four years thereafter. DCLG says in the EM that, in July 2016, the SCRCA published a scheme with proposals both to confer powers on the mayor and the CA, and also to provide for a geographical extension to the SCRCA area to include

¹ The Order was subsequently made as SI 2016/800, see http://www.legislation.gov.uk/uksi/2016/800/contents/made
two new local areas, Chesterfield Borough and Bassetlaw District. Once the scheme was published on 1 July the SCRCA launched a consultation on the proposals, which ended on 12 August.

3. DCLG explains that in August 2016 Derbyshire County Council (CC) challenged the SCRCA’s consultation by judicial review. In parallel, Derbyshire CC had submitted a response to the consultation which included the following:

“Having considered all of the information, Derbyshire County Council (the Council) objects to the proposals set out in the Sheffield City Region Combined Authority (SCRCA) Governance Review, Scheme and Economic and Spatial Argument (ESA) which propose to include Chesterfield Borough Council in its expanded geography. It does not believe that there is any compelling evidence to suggest the statutory tests have been met and that the proposals are in the best interests of Derbyshire residents or businesses. The Council firmly believes that the proposals will undermine the ambition for, and delivery of, long term economic growth in Derbyshire and Nottinghamshire, whilst also seriously damaging long standing partnerships and the delivery of statutory services.”

4. In December 2016, the High Court found that the SCRCA consultation was insufficient; while not quashing the consultation, the High Court gave a declaration that the consultation as it stood did not achieve its statutory purpose because it did not include a specific question seeking views about Chesterfield becoming part of the SCRCA.

5. In the EM, DCLG says that on 12 January 2017 the SCRCA leaders issued a public statement that they wished to consult again, and before doing so would take the time needed to ensure that any further consultation was robust. The Department states that, without further consultation such as that which the SCRCA is currently planning to undertake, the Secretary of State is unable to proceed with an order conferring powers on the CA and the mayor. If the May 2017 election is not postponed, there would thus be an election, with the associated costs, for a mayor who would only be the Chair of the SCRCA, without any powers. DCLG comments that with such an election there would be considerable risk that there would be no credible candidates, and the whole exercise could weaken the public’s confidence in the country’s local democracy.

6. The Government are seeking to achieve a number of aims in implementing a programme of devolution of powers and functions to local government. DCLG’s comment in the EM to this draft Order suggests that one of these objectives is to maintain or strengthen the public’s confidence in the country’s local democracy. In our view, however, such confidence may well have been undermined by the disagreement between the constituent councils of the SCRCA on the one hand, and Derbyshire CC on the other, on the merits of including Chesterfield Borough Council in the CA’s area. If delaying the date of the mayoral election until 2018 results from an intention that the SCRCA should consult again on proposals which would include Chesterfield within the area of the CA, the result could well be the imperfect achievement of this key objective.

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Draft Tees Valley Combined Authority (Functions and Amendment) Order 2017

Date laid: 6 February 2017

Parliamentary procedure: affirmative

This draft Order proposes to confer further powers on the Tees Valley Combined Authority (TVCA) and the Mayor to be elected later this year. A consultation carried out by the TVCA in the summer of 2016 showed significant local opposition to the proposal for an elected Mayor.

We draw this instrument 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. In January of this year, the Department for Communities and Local Government (DCLG) laid the draft Tees Valley Combined Authority (Functions) Order 2017 before Parliament, which proposed to confer on the Tees Valley Combined Authority (TVCA) functions relating to the establishment of mayoral development corporations (MDCs) in its area. We published information about that Order in our 24th Report of the current Session.5

8. DCLG has now laid this draft Order. In the accompanying Explanatory Memorandum (EM), DCLG explains that the Order makes further provisions about how certain functions are to be exercised by the TVCA and by its Mayor, and about certain governance arrangements of the TVCA. The functions concerned are in the area of transport, housing, and the functional power of competence. DCLG says that proposals to confer these powers were made by the TVCA in a statutory scheme; and that the TVCA has undertaken a consultation on the proposals and, with its five constituent councils, has consented to the making of the Order.

9. DCLG says that the TVCA led the consultation, which was delivered in conjunction with the five constituent authorities, and ran for six weeks from 11 July to 22 August 2016. 1,160 responses were received, with 92% from local residents and 3% from businesses (the remaining 5% included 5 responses from representative organisations). It states that, of those who gave views on the consultation question on the powers and responsibilities being proposed to be conferred on the mayoral Combined Authority (220), a majority overall (160) were generally in support. However, 67 respondents used the question to give their view on the elected Mayor, and over 90% of these opposed an elected Mayor for Tees Valley. Moreover, around 200 respondents referred to wider governance issues such as the risk of unnecessary bureaucracy, opposition to the former Cleveland County Council and whether Tees Valley was an appropriate geo-political area.

10. The TVCA has published its own summary of responses, as submitted to the Secretary of State.6 By way of background, this summary says that “Within the Tees Valley there have been several recent relevant events in the consideration of a mayoral model. Middlesbrough Council have had a mayoral model since 2003. Hartlepool BC held a referendum and changed their form

of administration away from the mayoral model in 2013. Darlington BC had a referendum on a mayoral model in 2013 and rejected it. Stockton BC held consultation and Redcar and Cleveland Council held a referendum in 2010 and the mayoral model was rejected.” (para 21).

11. As echoed in DCLG’s EM to the Order, the TVCA summary explains that the consultation contained questions about the powers in the scheme and governance review, and about how the Mayor should work with the Combined Authority. It says that responses to these questions were varied, but there were some key themes:

“(1) many people have in effect answered a question, “Do you want an elected Mayor for the Tees Valley?”, with the vast majority opposing it;

“(2) others have expressed views about governance more generally, commenting on the strengths and weaknesses of individual councils, (largely negative) views on the former Cleveland County Council, whether councils should merge in future, concerns about potential unequal division of resources and what they see as “additional layers of bureaucracy”;

“(3) of those who directly answered the question some favoured greater control over mayoral powers; a smaller number favoured less control and the largest number generally in support of the level of control proposed” (paras. 22 and 23).

12. We welcome the candour shown by the TVCA, and by the Department, in acknowledging the high levels of opposition expressed locally to the proposal that there should be an elected Mayor to chair the TVCA. While the Government have made their view clear that an “ambitious devolution deal … requires an elected mayor to ensure that there is adequate accountability for the extensive powers and budgets being devolved”,7 there is widespread disagreement with this view among local electors both in the TVCA’s area and elsewhere.

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The Government’s decision to replace grants for healthcare students by loans is a significant policy change, which has attracted much comment since it was announced at the end of 2015. While these Regulations do not themselves abolish the NHS bursaries that have been available hitherto, they put in place the arrangements to allow healthcare students to draw on the wider, largely loan-based student support system, once bursaries have been withdrawn by the Department of Health. The Regulations also make changes to the amount of support for tuition, living and other costs for students taking designated higher education courses.

We have received comments on the Regulations from UNISON and from the Royal College of Nursing, which we are publishing with a Government response in each case. We are struck by the divergence of views about the impact of these reforms between the Government and those representing the professions affected. The Government have given a commitment to monitor and evaluate the effects of the reforms on student nurses, midwives and allied health professionals: we have no doubt that this will be essential given the importance of the groups concerned to our healthcare system.

We draw this instrument 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.

13. The Education (Student Support) Regulations 2011 (“the 2011 Regulations”)\(^8\) prescribe the amount of support for tuition, living and other costs for students taking designated higher education (HE) courses. The 2011 Regulations have been amended at least once a year since their introduction. SI 2017/114 is the latest instrument to amend them. As regards students undertaking HE courses at publicly funded institutions who qualify for fee loans to meet the full costs of their tuition fees, for example, the latest Regulations provide for an increase in the maximum fee loan of 2.8% (forecast inflation) to £9,250 for full-time courses and to £6,935 for part-time courses in 2017–18 (for all new students and eligible continuing students who started their courses on or after 1 September 2012). The Department for Education (DfE) has laid the latest instrument with an Explanatory Memorandum (EM) which sets out the changes being made in considerable detail. This report focuses on changes in support for health students.

Changes in support for students undertaking courses in nursing, nursing and social work etc.

14. In the Autumn Statement 2015, the Government announced that grants for health students would be replaced by loans.\(^9\) At paragraphs 7.24 to 7.32 of the EM to these Regulations, DfE describes the resulting changes to support for students undertaking courses in nursing, nursing and social work, midwifery, operating department practice and the allied health professions. It explains that currently tuition fees for students undertaking

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\(^8\) SI 2011/1986.
pre-registration courses in these professions are paid directly to universities by the Government via Health Education England (HEE); and that these students can apply for support for living costs in the form of a bursary from the NHS Business Services Authority (NHSBSA). However, in amending the 2011 Regulations, the latest Regulations provide that full-time students starting preregistration courses in nursing, nursing and social work, midwifery, operating department practice and the allied health professions (excluding courses in dental hygiene and dental therapy) from 1 August 2017 onwards will qualify for the same fee loan and living costs support as other undergraduate students starting full-time HE courses in 2017–18.

**Department of Health Equality Analysis**

15. As noted in the EM, in April 2016 the Department of Health (DH) published an Equality Analysis (EA) of the changes to support for new nursing, nursing and social work, midwifery and allied health profession (AHP) students in 2017–18. In the EA summary (on p. 30), DH says that such students are much more likely to be female, over 25 years of age, have dependants and are slightly more likely to have non-white ethnicity. It goes on to say that:

“[p]lacing new nursing, midwifery and AHP students on the student support system will, in general, provide up to 25% more living cost support for students during their studies, as the student support system is substantially more than the combination of means-tested and non-means-tested bursaries. However, these new arrangements would increase the time period of student loan repayments students have upon graduation. This could, in theory, deter applications from those who are averse to taking out increased borrowing (e.g. those from lower socio-economic groups).”

16. DH stresses, however, that the policy will place such students on the same support system as the general student population; that there is a built-in protection for the lowest earners whereby loan repayments cease where earnings drop below £21,000; and that evidence shows that increases in fees in the wider HE system have not had a detrimental impact on the numbers of students applying to university. As regards the overall impact, DH says that, rather than limiting nursing places to approximately one-third of applicants, the changes “will ensure that the profession is opened up and anyone who wants to become a nurse, midwife or AHP will have the opportunity to do so”.

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Comments from UNISON

17. We have received a submission of comments on the Regulations from UNISON, which, because of its length, we are publishing in full on our website. UNISON has summarised its concerns as follows:

- the Regulations will introduce tuition fees and loans for student nurses, midwives and allied health professionals, effectively ending NHS bursaries in England from August 2017;
- the Government do not have a mandate to make this change and it is contrary to public opinion. The consultation was inadequate and a second response on much of the detail has not yet been published, creating considerable uncertainty;
- the increase in student debt has already deterred many potential healthcare students from applying for courses, with UCAS reporting a 23% decline in nursing degree applications in England;
- the decision to remove NHS bursaries was taken before the EU referendum vote and no impact assessment has been undertaken since despite a 92% drop in the number of EU nurses registering with the Nursing and Midwifery Council;
- following the drop in UCAS applications and EU nurses and the inadequate clinical placement capacity, it is unlikely that the removal of NHS bursaries will deliver on its policy objective of increasing training places by 10,000 by 2020;
- fewer nurses qualifying will exacerbate the current recruitment shortage in the NHS and put patient safety at risk;
- Wales are continuing to provide NHS bursaries in 2017/18 and will undertake a full review to determine future methods of funding healthcare education. UNISON thinks that this is a sensible approach and recommends the same for England.

In conclusion, UNISON has stated its view that “NHS bursaries should be reintroduced for another year in England, along the lines proposed in Scotland and Wales. This breathing space should then be used to allow the government to conduct a proper review into the different funding models that would help the NHS develop a sustainable workforce.”

Comments from the Royal College of Nursing

18. We are also publishing on our website the comments from the Royal College of Nursing (RCN), which are summarised as follows:

- the RCN has consistently warned against the negative impact of student funding reforms in England and there is potential to compromise the supply of the future nursing workforce. As a result of these reforms, the number of applicants to nursing degrees is down by 23% since last year, with the actual number of training places still unknown;

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11 UNISON explains that it is the largest union in the health service, representing more than 450,000 healthcare staff employed in the NHS and by private contractors, the voluntary sector and GPs.

the consultation on the change from the NHS bursary to fees and loans for nursing and allied health professional students was inadequate and a second response on much of the detail has not yet been published, creating considerable uncertainty;

the policy is being implemented on the basis of an extremely limited equality analysis and fails to consider the potential impact on the diversity of applicants to nursing, for example by age and socio demographic groups. No consideration has been made of the unique profile of nursing students as demographically very different from the rest of the student population in relation to age, gender and previous education;

the reforms represent a shift in the ability to plan for the future nursing workforce, and are being implemented at a time of sweeping changes to nurse education and training in England. The RCN believes that the Government has failed to adequately evaluate the impact of this policy. It is an untested gamble;

these reforms are high risk and further clarity is needed around how the Government intends to mitigate the risks to overall student numbers, equality and diversity and workforce planning. Thorough evaluation, monitoring and impact assessment is required before these reforms are implemented.

Response from Department for Education

19. We asked DfE to respond to the points raised by UNISON and the RCN, and we are publishing those responses as Appendix 1 to this report. In line with points made in the EM to the Regulations, DfE has said in particular that the reforms are intended to address a number of issues inherent in the current system; and that the reformed student support system:

“will enable a significant increase, typically around 25% or more, in the living cost support available for full-time students; a significant increase in the available supply of trained nurses, midwives and allied health professionals to the NHS and social care sectors; and a sustainable funding system for universities—enabling them to invest in infrastructure to increase the number of places available for nursing, midwifery and allied health professional students, and improve teaching quality through that investment.”

Conclusion

20. The Government’s decision to replace grants for healthcare students by loans is a significant policy change, which has attracted much comment since it was announced at the end of 2015. While these Regulations do not themselves abolish the NHS bursaries that have been available hitherto, they put in place the arrangements to allow healthcare students to draw on the wider, largely loan-based student support system, once bursaries have been withdrawn by the Department of Health. We are struck by the divergence of views about the impact of these reforms between the Government and those representing the professions affected. The Government have given a commitment to monitor and evaluate the effects of the reforms on student nurses, midwives and allied health professionals: we have no doubt that this will be essential given the importance of the groups concerned to our healthcare system.
CORRESPONDENCE

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

21. In our 25th Report of this session\textsuperscript{13} we drew attention to the section of the Civil Procedure (Amendment) Rules 2017 which amended the cost assessment regime for public interest cases taken to court on environmental grounds. We found that the Explanatory Memorandum provided by the Ministry of Justice lacked any evidence-based justification for the proposed changes or for the effect that they are assumed to produce. We therefore wrote to the Minister to express concern over the way that this policy change was presented, in particular how the outcome of the consultation was described. The Minister has responded agreeing that the explanation could have been clearer and providing a revised Explanatory Memorandum. He also noted our concern that it was not appropriate for controversial matters to be included in an instrument dealing with miscellaneous administrative amendments. The correspondence is published in Appendix 2.
GOVERNMENT CONSULTATION PRACTICE

Letter of 15 February 2017 from Cabinet Office Minister and “Report on consultation practice”

22. The Committee has taken a close interest in the Government’s Consultation Principles and their application in practice since July 2012, when they were first promulgated. In an oral evidence session on 19 January 2016, Sir Oliver Letwin, then Cabinet Office Minister, agreed to make further changes to the Principles to meet points raised by the Committee. In our 23rd Report of Session 2015–16, we published post-evidence correspondence with the Minister, and drew attention in particular to his response on strengthening the role of the Cabinet Office. On 21 January 2016, the Minister wrote:

“I have asked the Economic and Domestic Affairs Secretariat (EDS) here in Cabinet Office to undertake the monitoring and improvement of consultations on an ongoing and case-by-case basis. EDS will be supported in this by colleagues from the Number 10 Policy Unit. In January 2017, EDS will produce a report; I will ensure that you are sent a copy. This report will illustrate how government departments have conducted consultations throughout the year and also, if necessary, make recommendations for improvements.”

23. Mr Ben Gummer, MP, now Cabinet Office Minister, wrote to us on 15 February of this year to provide a copy of the promised report on consultation practice: the letter and report are enclosed at Appendix 3. While the report contains details of initiatives taken by the Cabinet Office, we note with disappointment that its purpose does not match the prospectus held out for it by Mr Gummer’s predecessor in his letter of January 2016. The latest report states that “… the Cabinet Office does not intend to introduce an additional monitoring role in the light of the very clear accountability departments have for their own consultation decisions, or regularly report on consultations across government.” Our own scrutiny of secondary legislation and the related consultation exercises has shown inconsistencies in the application of the Government’s Consultation Principles by different Departments; we consider that it would be appropriate for the Cabinet Office to undertake more pro-active monitoring of consultation practice, in line with the commitment given by Sir Oliver Letwin in 2016.

INSTRUMENTS OF INTEREST

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017

24. HM Treasury (HMT) has laid this draft Order with an Explanatory Memorandum, Transposition Note and Impact Assessment. HMT explains that the Order proposes to amend an earlier instrument15 in order to transpose parts of an EU Directive16 (“MiFID II”). The amendments include the creation of a new specified activity of operating an organised trading facility, and the addition of certain derivatives relating to currencies, binary contracts and emission allowances as specified investments. The Order proposes to bring the regulation of binary options and other fixed outcomes derivatives within the scope of financial services legislation; the effect is to transfer regulation of those derivatives from the Gambling Commission to the Financial Conduct Authority (FCA). HMT has told us that, since the UK’s transposition of the MiFID Directive, the European Commission has expressed the view that binary options, where they have characteristics similar to other derivative contracts, should be classified as financial instruments for the purposes of MiFID and that Member States should regulate them as such. After consultation, HMT now proposes that the FCA should regulate such binary options as financial instruments, ensuring that where binary options present similar risks to other derivative products, consumers receive equivalent protections, including the range of consumer protection measures under MiFID II.

Draft Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017

Draft Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017

25. These instruments will transfer responsibility for certain emergency services to the new directly-elected Mayor of Greater Manchester from 8 May 2017. One Order transfers the functions of the Greater Manchester Fire and Rescue Authority to the Greater Manchester Combined Authority, including the responsibilities set out by the Fire and Rescue Services Act 2004 and the Civil Contingencies Act 2004. That instrument identifies several fire and rescue functions which are considered of strategic importance and may only be exercised by the Mayor. Provisions also restrict the number of members that may form a fire committee to assist the Mayor in delivering these functions to a total of 15, with one member being nominated by each of the constituent councils, and up to five additional members being appointed by the Mayor. Both the constituent councils and the Mayor must have regard to the political balance when nominating and appointing members to the committee.

26. The other Order sets out the transitional arrangements to allow the Mayor to take up the responsibilities of the Police and Crime Commissioner (PCC). Like all PCCs, the Mayor must personally exercise certain strategic functions set out in the Police Reform and Social Responsibility Act 2011: issuing a Police and Crime Plan, appointing, suspending or calling on a chief constable to resign, and setting the council tax requirement in relation to policing. Other functions can be delegated to the deputy mayor for policing and crime or to other individual members or staff of the Combined Authority. These Orders are intended to promote a more joined-up approach to these public services, and provide direct accountability for their performance. The first election for Mayor will take place on 4 May 2017.

Draft Public Guardian (Fees, etc.) (Amendment) Regulations 2017

27. This instrument will reduce from 1 April 2017 the fees charged by the Public Guardian for the registration of lasting powers of attorney and enduring powers of attorney. The proposed new fees will be £82 for a power of attorney (a reduction from the current fee of £110) and £41 for re-submission (down from £55). The reduction is possible due to the reduction in overheads as a result of unexpectedly high volumes of registrations over the last two years. As well as covering the full costs of the registration scheme, including the fee remissions (available to those who are unable to pay the full fee), these fees still remain above unit cost to cross-subsidise a range of other Office of the Public Guardian services. Although enhanced fees are expressly permitted by section 180 of the Anti-social Behaviour Crime and Policing Act 2014, and the policy intention is set out in the Explanatory Memorandum, we did not receive the Impact Assessment which sets out the analysis of the proposed fee structure until more than two weeks after the instrument had been laid. We regard this as poor practice and remind the Government that, to allow proper scrutiny, all relevant supporting documents should be laid at the same time as the instrument.
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

- Air Weapons and Licensing (Scotland) Act 2015 (Consequential Provisions) Order 2017
- Collection of Fines etc. (Northern Ireland Consequential Amendments) Order 2017
- Electricity and Gas (Energy Company Obligation) (Amendment) Order 2017
- Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017
- Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017
- Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017
- Liverpool City Region Combined Authority (Functions and Amendment) Order 2017
- Public Guardian (Fees, etc.) (Amendment) Regulations 2017
- Tax Credits and Guardian’s Allowance Up-rating etc. Regulations 2017

Draft instrument subject to annulment

- Modifications to the Standard Conditions of Electricity Supply Licenses 2017

Instruments subject to annulment

- SI 2017/66 Fixed Penalty (Amendment) Order 2017
- SI 2017/89 Port of Teignmouth (Transfer of Undertaking) Harbour Revision Order 2017
- SI 2017/99 Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) (Amendment) Regulations 2017
- SI 2017/101 Cattle Identification (Amendment) Regulations 2017
- SI 2017/102 Non-Domestic Rating (Reliefs, Thresholds and Amendment) (England) Order 2017
- SI 2017/105 Infrastructure Planning (Compulsory Acquisition) (Amendment) Regulations 2017
- SI 2017/106 Electricity (Connection Charges) Regulations 2017
| SI 2017/112 | Contracts for Difference (Standard Terms) (Amendment) Regulations 2017 |
| SI 2017/115 | Great Place (England) Joint Scheme (Authorisation) Order 2017 |
| SI 2017/121 | Qualifications Wales Act 2015 (Consequential Provision) Order 2017 |
| SI 2017/125 | Plant Health (Fees) (England) (Amendment) Regulations 2017 |
| SI 2017/131 | Feed-in Tariffs (Amendment) Order 2017 |
| SI 2017/144 | Criminal Procedure (Amendment) Rules 2017 |
| SI 2017/148 | Defence Science and Technology Laboratory Trading Fund (Revocation) Order 2017 |
| SI 2017/149 | Personal Injuries (Civilians) Scheme (Amendment) Order 2017 |
| SI 2017/153 | Railway Pensions (Substitution) (Amendment) Order 2017 |
APPENDIX 1: EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT) REGULATIONS 2017 (SI 2017/114)

Response from the Department for Education to UNISON submission

The Education (Student Fees, Awards and Support) (Amendment) Regulations 2017 allow eligible healthcare students to access the standard student support system, once bursaries have been withdrawn by the Department of Health. These Regulations do not themselves abolish bursaries.

UNISON points:

- The Government does not have a mandate to make this change and it is contrary to public opinion. The consultation was inadequate and a second response on much of the detail has not yet been published, creating considerable uncertainty.

The Government announced in the 2015 Spending Review that from 1 August 2017, all new nursing, midwifery and allied health professional students will receive their funding and financial support through the standard student support system, rather than through the current NHS Bursary Scheme.

These reforms are intended to address a number of issues inherent in the current system. It will enable a significant increase, typically around 25% or more, in the living cost support available for full-time students; a significant increase in the available supply of trained nurses, midwives and allied health professionals to the NHS and social care sectors; and a sustainable funding system for universities—enabling them to invest in infrastructure to increase the number of places available for nursing, midwifery and allied health professional students, and improve teaching quality through that investment.

A full-length public consultation on how the proposed reforms on funding and financial support for nursing, midwifery and allied health professionals could be successfully implemented was launched on the 7 April 2016 and closed on 30 June. In total 1,743 responses were received from both individuals and organisations. Part one of the Government response to the consultation was published in July 2016. This provided information to students and higher education institutions about amended Government proposals for replacing bursaries. The proposals included a number of changes, building on consultation responses, to improve support for students whilst studying and when attending the mandatory clinical placement element of their courses.

A preliminary equality assessment and an economic impact assessment were published alongside the consultation on 7 April, with a final impact assessment published following the close of the consultation.

The Department of Health (DH) and the Department for Education (DfE) continue to work with delivery, partner organisations and providers on successful implementation of the reforms, including on arrangements for postgraduate students, and the future clinical placement commissioning system. A further Government response on the postgraduate student offer and the system architecture will be published later this year.

- The increase in student debt has already deterred many potential healthcare students from applying for courses, with UCAS reporting a 23% decline in nursing degree applications in England.
This year, the January UCAS data on applications and expected direct applications (around 10%) for nursing, indicate that there were likely to be nearly 40,000\textsuperscript{17} applicants (from the UK, EU and rest of the world) for around 20,000 places in English universities. At a ratio of nearly 2:1 applicants to places, this shows that there is a strong market for students who want to study high-quality nursing degree programmes at English universities, which, for the vast majority of students, will lead to a nursing career in the NHS.

At a national level, these figures will allow the NHS in England to fill the approximate 20,000 student nursing training places, assuming that students meet the entry requirements of their offer from their course provider. The reforms also remove the artificial ‘cap’ on nursing, midwifery and allied health profession training places which will allow Higher Education Institutions to recruit more students than they are currently able to do.

We are working with the university sector on their ongoing recruitment of students for 2017/18 courses to see how we can most effectively attract older students into nursing degrees. We have already agreed that students who have been through the university system once can access loans for a second healthcare degree. We are also offering additional childcare and hardship funding as well as placement travel and dual accommodation expenses. This funding will be non-repayable and is in addition to the standard student support package.

- \textit{The decision to remove NHS bursaries was taken before the EU referendum vote and no impact assessment has been undertaken since despite a 92% drop in the number of EU nurses registering with the Nursing and Midwifery Council.}

The Department of Health is working closely with the Department for Exiting the EU to ensure that the needs of health and social care providers and those in need of health and social care services are taken into account as we exit from the EU.

Future arrangements for student support after the UK leaves the EU will need to be considered as part of wider discussions about the UK’s relationship with the EU. However, the Government has confirmed that EU students starting their courses in 17/18 or before will continue to be eligible for student loans and home fee status for the duration of their course. Applications for 18/19 open in September 2017, and we will ensure that students applying have information in advance of this date.

Revisions to the Mutual Recognition of Professional Qualifications have allowed more in-depth language testing for nurses qualifying in the EU. The Nursing and Midwifery Council (NMC) has announced that since these changes were introduced there has been a drop in the number of EU nurses registering but that this drop followed an increase in nurses requesting information on applying to register prior to the introduction of these new language controls.

\textsuperscript{17} The UCAS data shows the applicant pool from England, Northern Ireland, Scotland, Wales, the EU and rest of World total 37,380 applicant numbers for English places. Applications are ongoing and universities receive direct applications of around 10 percent of totals - figure rounded to 40,000 as an estimate.
As the EU referendum and the introduction of the more in-depth language testing happened at the same time, it is not possible to conclusively say whether this drop is attributable to the new language controls or the referendum.

- Following the drop in UCAS applications and EU nurses and the inadequate clinical placement capacity, it is unlikely that the removal of NHS bursaries will deliver on its policy objective of increasing training places by 10,000 by 2020.

The cost of training nurses, midwives and allied health professionals has been largely borne by the NHS until now. This means that in effect there has been an artificial cap on the numbers in training, limited to only those numbers needed as a minimum to meet NHS workforce requirements in line with Health Education England’s annual workforce plan.

For healthcare students, universities have therefore needed to limit the number of available training places. This is due to the way in which places under the bursary system were limited in line with NHS workforce planning requirements, and the necessary financial constraints on the system which follow from it. This has resulted in a situation whereby two out of three nursing applicants are turned down.

Rather than denying thousands of UK applicants a place to study nursing at university and then being forced to hire new nurses from overseas and others from expensive agencies, we will be boosting participation and securing the future supply of nurses to the NHS by moving students onto the standard student loan system. This places healthcare students on the same system as all other students, including teachers, who earn a similar amount to nurses and midwives, and means more applicants with the aptitude and desire to train for non-medical degrees will now be able to do so.

- Fewer nurses qualifying will exacerbate the current recruitment shortage in the NHS and put patient safety at risk.

Health Education England has been established to plan the future healthcare workforce. It aims to ensure that the NHS has a future workforce with the right numbers, skills, values and behaviours to meet patients’ needs.

The Department of Health is working with HEE and other stakeholders to address the shortage of nurses through a combination of increased training places, improving retention of experienced nurses in the workforce, and encouraging nurses to return to practice. For example, HEE have invested almost £5million to support a Return to Practice scheme, aimed at encouraging and supporting experienced nurses who have left the profession to return and which, importantly, is being expanded to include roles in the care sector.

Developing new routes into nursing for those already working in the NHS or those for whom full-time university study is not a realistic option is also a priority for the Government. That is why we have developed the new Nursing Associate role and the Nursing Degree Apprenticeship, which we announced in November 2016. Once established, up to 1,000 apprentice nurses could join the NHS each year.
Wales are continuing to provide NHS bursaries in 2017/18 and will undertake a full review to determine future methods of funding healthcare education. UNISON thinks that this is a sensible approach and recommends the same for England.

Devolution means that there are a range of policies and approaches to higher education which differ between the four administrations who deal with higher education policy in the United Kingdom. It is for each administration to decide how they deploy their resources and develop their higher education system.

Putting more funding into the existing English bursary system and tuition funding was not a viable option for the Government, if we are simultaneously to increase the supply of places to potential students, live within our budget, and ensure that the NHS can use the extra £10bn worth of additional investment for front line care by the end of this Parliament.

**ADDITIONAL POINT: UNISON’s use of the London Economics report**

The Government does not agree with the findings of this report funded by the NUS and UNISON or recognise the figures quoted.

The report argues that healthcare students will be worse off in future compared to the current system because of the increased debt they will incur from loans for fees and maintenance. However, under the standard student support system, health students will typically see around a 25% increase in the financial resource they receive whilst they study. Loan repayment terms will be the same as all other graduates who have taken out a student loan when at university. At present, repayment starts once a graduate is earning £21,000, and the repayments are set at 9% of income earned over and above £21,000. This means that a newly qualified nurse earning £21,700 will pay back around £5.25 a month.

The report projects a 6.2% fall in student numbers but has not included the fact that there were 3 applications for every place in 2014/15 - there were 57,000 applicants for approximately 20,000 places on nursing degree courses. A drop in applications is not expected to seriously undermine student numbers.

The report argues HEIs will be worse off because of the fall in student numbers and because of the requirement to contribute to the Office of Fair Access, leading to a funding shortfall of £57-77m. The report ignores the fact that HEIs will receive additional HEFCE high-cost teaching grant funding of £80m. HEIs have also complained that the fluctuations and sudden drops in the number of students they are allowed to take has been the main issue with respect to the financial viability of their healthcare courses.

22 February 2017
Response from Department for Education to the Royal College of Nursing’s (RCN) submission

The Education (Student Fees, Awards and Support) (Amendment) Regulations 2017 amend the Education (Student Support) Regulations 2011 to allow eligible healthcare students to access the standard student support system, once bursaries have been withdrawn by the Department of Health. These Regulations do not themselves abolish bursaries.

RCN points:

• We have consistently warned against the negative impact of student funding reforms in England and there is potential to compromise the supply of the future nursing workforce. As a result of these reforms, the number of applicants to nursing degrees is down by 23% since last year, with the actual number of training places still unknown.

This year, the January UCAS data on applications and expected direct applications (around 10%) for nursing, indicate that there are likely to be nearly 40,000 applicants (from the UK, EU and rest of the world) for around 20,000 places in English universities. At a ratio of nearly 2:1 applicants to places, this shows that there is a strong market for students who want to study high-quality nursing degree programmes at English universities, which, for the vast majority of students, will lead to a nursing career in the NHS.

At a national level, these figures will allow the NHS in England to fill the approximate 20,000 student nursing training places, assuming that students meet the entry requirements of their offer from their course provider. The reforms also remove the current artificial ‘cap’ on nursing, midwifery and allied health profession training places which will allow Higher Education Institutions to recruit more students than they are currently able to do.

We are working with the university sector on their ongoing recruitment of students for 2017/18 courses to see how we can most effectively attract older students into nursing degrees. We have already agreed that students who have been through the university system once can access loans for a second healthcare degree. We are also offering additional childcare and hardship funding as well as placement travel and dual accommodation expenses. This funding will be non-repayable and is in addition to the standard student support package.

• The consultation on the change from the NHS bursary to fees and loans for nursing and allied health professional students was inadequate and a second response on much of the detail has not yet been published, creating considerable uncertainty.

The full length public consultation launched on 7 April 2016 set out how the proposed reforms on funding and financial support for nursing, midwifery and allied health professionals could be successfully implemented. It closed on 30 June and in total 1,743 responses were received from both individuals and organisations. A response to the consultation was published in July 2016 and this provided information to students and higher education institutions about amended Government proposals for replacing bursaries. The proposals included a number of changes, building on consultation responses, to improve support for students whilst studying and when attending the mandatory clinical placement element of their courses.

18 The UCAS data shows the applicant pool from England, Northern Ireland, Scotland, Wales, the EU and rest of World total 37,380 applicant numbers for English places. Applications are ongoing and universities receive direct applications of around 10 per cent of totals - figure rounded to 40,000 as an estimate.
A preliminary equality assessment and an impact assessment were published alongside the consultation on 7 April, with further assessments published following the close of the consultation.

The Department of Health (DH) and the Department for Education (DfE) continue to work with delivery, partner organisations and providers on successful implementation of the reforms, including on arrangements for postgraduate students, and the future clinical placement commissioning system. A further Government response on the postgraduate student offer and the system architecture will be published later this year.

- The policy is being implemented on the basis of an extremely limited equality analysis and fails to consider the potential impact on the diversity of applicants to nursing, for example by age and socio demographic groups. No consideration has been made of the unique profile of nursing students as demographically very different from the rest of the student population in relation to age, gender and previous education.

The Equality Analysis was published alongside the public consultation document on the 7 April 2016, and a further version was published alongside the first government response to the consultation in July 2016. It analysed the potential effects on equalities of the replacement of NHS bursaries by student loans for all the protected characteristics of the Public Sector Equality Duty (Section 149 of the Equality Act 2010). The Secretary of State’s Public Sector Equality Duty is on-going and will continue to be met under the reformed system.

- The reforms represent a shift in the ability to plan for the future nursing workforce, and are being implemented at a time of sweeping changes to nurse education and training in England. We believe the Government has failed to adequately evaluate the impact of this policy. It is an untested gamble, and we call on the Committee to refer this Statutory Instrument back to the House for additional scrutiny.

NHS workforce supply is a key priority for this Government. The Government will retain its current statutory responsibility for ensuring that there is an effective system for the planning and delivery of education and training for the current and future NHS workforce, so that NHS workforce planning requirements are successfully met. It will be for Health Education England (HEE) to continue to work with NHS Trusts to plan for future workforce needs and ensure adequate numbers of quality placements are secured. HEE will also ensure their work with the higher education sector on the quality of nursing, midwifery and allied health profession education continues as part of these reforms.

The reforms present an opportunity to expand the market for nursing, midwifery and allied health profession education and open up opportunities to train more students over the course of this parliament, which is expected to have wider benefits for longer-term NHS workforce supply needs.

The Care Act 201419 sets out HEE’s remit and range of roles and responsibilities in detail, including HEE’s duty to ensure that our future workforce is available in the right numbers and has the necessary skills and training to meet patients’ needs and deliver high quality care.

- These reforms are high risk and further clarity is needed around how the Government intends to mitigate the risks to overall student numbers, equality and diversity and workforce planning. Thorough evaluation, monitoring and impact assessment is required before these reforms are implemented.

These reforms will enable access to nursing, midwifery and the allied health professions for more students. The Government has taken on board the consultation responses and amended its proposals to improve support for students whilst studying and when attending the mandatory clinical placement element of their courses.

The Government is committed to monitoring and evaluating the effects of the reforms on student nurses, midwives and allied health professionals.

The Government will assess progress made against anticipated policy outcomes whilst putting in place a range of mechanisms to help us be aware of any emerging risks. Through this work, we will use local and national intelligence gained from universities and health sector bodies to target tailored support where it may be needed.

27 February 2017
APPENDIX 2: CORRESPONDENCE: CIVIL PROCEDURE (AMENDMENT) RULES (SI 2017/95)

Letter from the Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee to, the Rt Hon. Sir Oliver Heald QC MP, Minister of State for Justice

Quality of Explanatory Memorandum

At its meeting this week the Secondary Legislation Scrutiny Committee (SLSC) considered the Civil Procedure (Amendment) Rules (SI 2017/95) and has drawn the instrument to the special attention of the House on the ground that the part of the instrument relating to the changes for environmental claims under the Aarhus Convention is very poorly explained. The Committee felt that it was such a bad example that I should write to alert you to our concerns.

First, the SLSC has a long-standing view, set out in our guidance, that this sort of “miscellaneous amendments” instrument should only be used for tidying up the statute book and not include any major new policy developments. The Committee felt strongly that such a controversial change should have been in a dedicated instrument that made clear the rationale for the changes being proposed.

Second, we are concerned that the degree of controversy was concealed. The Explanatory Memorandum (EM) simply states that there were 289 responses to the consultation exercise. It does not mention that about 98% of those respondents strongly objected to the proposal. The government’s Statutory Instrument Practice manual (SIP, 2006 edition) states that in the EM “there should be some analysis of the outcome and the Department’s policy response to the opinions expressed (e.g. ‘60% supported the proposal, of the rest, the main objections were on the proposed fee structure and the Department has responded to this by agreeing to phase in the increase over 3 years’)”. A strongly negative response, such as this, is not a bar to legislation going forward but will inevitably prompt questions about how it is expected to be implemented successfully.

The EM simply presents this as an administrative change and did not give any evidence or policy argument as to why the change is thought necessary and what its effect is expected to be. The responses to our supplementary questions to officials were oblique or dismissive: for example, in response to our question about the likelihood of people being discouraged from pursuing claims as a result of these changes we were told that there is no evidence to suggest this. However in the published Government response to the consultation document we are told there were 171 responses to Question 15 (on this point) of which the majority “considered there would be a negative effect on individuals, particularly the poorest members of society with access to limited funds. This could mean that they were unable or were reluctant to challenge developments or non-compliance with legal obligations that could be harmful to their environment”. A similar response was made to Question 4.

The Committee felt that the explanatory material relating to this change fell way short of what Parliament and the public expect in terms of transparency and evidence-based policy making. Long established guidance makes clear that “The purpose of the Explanatory Memorandum is to provide the lay reader with a plain English, stand alone, explanation of the effect of the legislation and why it is necessary” (SIP, page 156).
We would be grateful for your comments on this matter, a revised EM for this instrument, and for your assurances that future EMs from your Department will better conform with established standards. A response by 11am on Monday 27 February would be appreciated so that it can be considered at the Committee’s next meeting.

22 February 2017

Letter from Sir Oliver Heald to Lord Trefgarne

Thank you for your letter of 22 February regarding the quality of part of the explanatory memorandum (EM) for the Civil Procedure (Amendment) Rules (SI 2017/95), which was laid before Parliament on 3 February. Your Committee is concerned about the explanation of the changes made to those parts of the Civil Procedure Rules which make special provision for costs protection in cases under the Aarhus Convention.

I take very seriously the observations of the Secondary Legislation Scrutiny Committee and I am grateful to you for drawing this matter to my attention.

In light of the Committee’s concerns, the EM has been revised to provide a fuller explanation relating to changes for environmental claims under the Aarhus Convention. I have enclosed a copy of the EM with this letter.

I can see that the EM could have been fuller in terms of the consultation responses, and how the Government addressed them, and I trust that this revised EM makes the position clearer.

I note your concerns in relation to why these changes were not made via a separate instrument. The practice of the Civil Procedure Rule Committee over the years has been to make amending instruments when amendments are required, and not to make separate instruments depending on the possible degree of controversy of the subject matter. I will consider whether this practice needs to be reconsidered in exceptional cases, and certainly will address the need for attention to be drawn more clearly to any elements of an amending instrument that might be more contentious.

It is, of course, true that respondents to the consultation were largely opposed to the measures proposed, as set out in the consultation response. While various reasons were given for opposing some of the measures, little evidence was provided to support those reasons. I can understand that claimants would prefer not to give details of their means, but no evidence was given—for example by reference to experience elsewhere—that the proposals would materially affect access to justice. We noted the concerns about the poorest members of society, and I would like to reassure the Committee that legal aid remains available for these cases for those who qualify and legally aided claimants will be unaffected by the new regime.

23 February 2017
APPENDIX 3: GOVERNMENT CONSULTATION PRACTICE

Letter from the Rt Hon. Ben Gummer MP, Minister for the Cabinet Office and Paymaster General to, the Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee

Government Consultation Practice - report to the Secondary Legislation Scrutiny Committee

As you know Sir Oliver Letwin as Chancellor of the Duchy of Lancaster committed to send a report to your Committee on government consultation practice.

The Consultation principles published by Sir Oliver set out a clear ambition for how government departments should consult, but it was clear that in practice departments had further to go in meeting these principles.

Since then there have been a number of actions taken by teams in the Cabinet Office, which have been designed to support departments to improve consultation practice, set out in the attached report. While there will always be more that can be done to improve, and we will continue to actively raise capability in this area, I am satisfied that capability is improving and that government as a whole is engaging with the public in a timely, effective and open way.

I hope that the Committee therefore find this report useful in understanding the steps we are taking.

15 February 2017

Report on consultation practice

Introduction

In January 2015 Oliver Letwin published the cross-government consultation principles. These continue to apply to all government departments, and set out the approach to which all consultations should adhere.

This report aims to summarise how government departments are supported when conducting consultations, and the further work the Cabinet Office in particular is doing to ensure government is adhering to the consultations principles, making effective use of government resource, and improving capability.

Whilst the decision to consult and how to go about it is the responsibility of departments and their legal teams, we recognise the important role the centre of government has in ensuring departments are aware of best practice, and building the skills and confidence to engage with the public and stakeholders in the best way possible. Nonetheless, the Cabinet Office does not intend to introduce an additional monitoring role in light of the very clear accountability departments have for their own consultation decisions, or regularly report on consultations across government.
Cabinet Office fulfils this duty to support departments in a number of ways:

- the **Government Digital Service (GDS)** provides advice on the digital tools available to departments to aid consultation. All Government consultations have now been brought together on GOV.UK, and GDS is also exploring a wider set of digital tools;

- the **Policy Lab** in Cabinet Office provides bespoke, specialist advice to departmental teams running consultations. They have expertise that ensures public engagement takes the right people into account, and experience of establishing alternative methods of engagement;

- the **Policy Profession** and **Civil Service Learning (CSL)** has a role in improving the capability of policy-makers in government, including specific skills unique to the Civil Service. CSL supports Chris Wormald (Permanent Secretary at Department of Health) as the head of the Policy Profession, and the organisation as a whole reports into the Cabinet Office’s Chief People Officer; and

- the **Economic and Domestic Affairs Secretariat (EDS)** in Cabinet Office, reviews the majority of consultations prepared by departments, as part of the collective agreement process.

This report draws together a number of pieces of work that are helping to support the active implementation of the consultation principles in government.

**Government Digital Service (GDS)**

GOV.UK continues to improve how Government conducts consultations and is currently home to 3,600 consultations, with more being added everyday. We have already made progress over the course of the last parliament to make consultations easier to find and more consistent:

- we brought all government consultations in one place for the first time in 2013, with filters to view them by their state, published date, subject matter and by which organisation published them;

- users can subscribe to be notified by email when consultations are added, based on their interests;

- there is a dedicated format for consultations, with custom-built features, which reflect the lifecycle of a consultation as it moves from being open, to closed, to conclusion; and

- GOV.UK also supports the use of varied tools government organisations can choose to build or buy, to host discussion or collect feedback online, by linking out to separate platforms (like Delib’s CitizenSpace for example).

GDS is continuing to explore how digital tools can support more effective consultation practice. GDS worked with The Democratic Society and Snook to carry out a 6-week discovery into digital consultations. This work concluded in July 2016. The discovery aimed to show how digital tools, including **GOV.UK**, could improve the creation and displaying of consultations.

Over 60 groups were interviewed to help understand the user needs of digital consultations. This included a range of users from government departments, non-departmental public bodies, expert respondents and the general public.
The discovery confirmed that there is a wide range of user needs and, as such, there is not single best practice approach for running a consultation. Therefore, GDS do not intend to build its own consultation platform but, instead, to focus on helping third parties to deliver varied digital tools for consultations with a focus on their audience.

**Cabinet Office Open Policy Making and Policy Lab Teams**

The Open Policy Making Team undertook a review of consultations in 2014 at the request of the Minister for the Cabinet Office.

The team also took an active role in supporting departments to look at how to widen participation in consultation. This included supporting the Government Equality Office on the Gender Pay Gap consultation and DfE on the additional 15 hours free childcare offer. As well as running workshops using some of the Policy Lab’s co-design techniques, the team also explored how social media might be used to widen participation, and how scraping might help better understand where conversations are already happening and go out to find people.

The Open Policy Making toolkit, published on GOV.UK, provides a wealth of information on the tools and techniques policy-makers can use to create more open and user led policy. For example, the toolkit describes how the use of social media analysis can be used alongside consultations and open engagement to support the creative stages of policy design.

While the Open Policy Making ceased to exist as a separate team following Spending Review 2015, some of their work continues in the Policy Lab, in particular the responsibility for the Open Policy Making Blog, which continues to ensure that the Open Policy Making toolkit stays relevant to departments.

**Policy Lab**

The Policy Lab was set up to bring innovative techniques into government policy-making: putting people at the centre, and working with them to co-design and test new solutions. The team is frequently approached by departments keen to reach stakeholders who they do not hear from or would not normally respond to consultations.

Currently, the team is supporting DWP in the consultation on the Health and Work Green Paper, helping them to engage with small and medium-sized companies through Local Enterprise Partnerships.

The team has experimented with a number of methods of engaging people, including using ‘open ideas days’ with people who might not otherwise work directly with government. These include:

- **Northern Futures** - eight simultaneous ‘open ideas days’ in towns across the north of England in advance of the DPM’s Northern Futures summit. The aim of these sessions was to generate ideas to present to the summit. This work in the last parliament has helped to inform more recent work by the Policy Lab, for example stakeholder engagement on childcare, where the team’s work to better consult businesses won a Cabinet Office award in 2016; and

- **Export Jam with UKTI (DIT)** - nine simultaneous events involving over 250 business people in coming up with ideas on how to dramatically increase exports.
Civil Service Policy Profession and Civil Service Learning

A comprehensive skills framework has been developed to guide career development for policy professionals. This sets out capability standards at three levels, in three core themes for policy professionals (Politics & Democracy, Analysis & Use of Evidence and Policy Delivery). This work brought together the volunteer efforts of over 500 people across Government and beyond (including academics, think tanks and other administrations) over the last 18 months, and the Career Pathway developed is a tremendous step forward in the development of the Policy Profession. This work is on-going.

The Policy Profession Standards, endorsed by the Policy Profession Board (chaired by Chris Wormald, Head of the Policy Profession), describe 18 areas of skill and knowledge relevant to policy makers and will allow them to assess their own level of understanding and identify their learning and development needs.

Two of these standards are ‘consultation’ and ‘communicating with influence’. The consultation standards describe the skills required to effectively engage with the public and other stakeholders and highlights the Government guidance on consultation. The Policy Profession Standards are attached as an annex to the report.

A comprehensive learning offer is being developed alongside the skills framework to ensure policy advisors across Government are supported in their professional development. As part of this, Civil Service Learning (CSL) has developed a new core curriculum, including learning opportunities to help civil servants develop and improve their communication, negotiation and consultation skills. CSL will be building on this learning offer under the next phase of the curriculum development throughout 2017, including training focused on the higher capability levels set out in the Standards framework.

The Economic and Domestic Affairs Secretariat (EDS)

EDS is responsible for ensuring the collective agreement of all Government policy, and therefore has visibility of the main policy development work of domestic departments.

Ministers in departments are required to seek clearance from one of the Cabinet Committees (Parliamentary Business and Legislation) or a sub-Committee (Home Affairs, European Affairs, Economic Affairs, Reducing Regulation) for new policies. This includes clearance of an associated consultation document where this is part of the new policy.

The large volume of consultation documents means that EDS is generally well-placed to advise on what a consultation should achieve. However, the decision, based on legal advice, on whether or not to consult, and how, rests with departments and not EDS. EDS continues to take steps to ensure it has a broad range of policy skills to support this work, and ‘understanding your departments and their policy areas’ is one of the main focuses of EDS learning and development. As part of this focus on key skills, EDS are making sure that all those in EDS are aware of both the consultation principles, and the support available to departments in consultation.
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 28 February 2017, Members declared the following interests:

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017

Lord Janvrin

Senior Adviser, HSBC Private Bank (UK) Ltd

Great Place (England) Joint Scheme (Authorisation) Order 2017 (SI 2017/115)

Baroness Andrews

Deputy Chair of the National Heritage Memorial Fund and the Heritage Lottery Fund.

Attendance:

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