HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

28th Report of Session 2016–17

Draft Non-Contentious Probate Fees Order 2017

Universal Credit (Housing Costs Element for Claimants Aged 18 to 21) (Amendment) Regulations 2017

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Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016

Includes 5 Information Paragraphs on 5 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)*
Lord Haskel	Baroness O'Loan	

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

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

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

Information and Contacts

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

Twenty Eighth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Non-Contentious Probate Fees Order 2017

Date laid: 24 February 2017

Parliamentary procedure: affirmative

Although the current flat fee structure for probate is achieving full cost recovery, this instrument proposes a radical restructuring of the probate fee scheme based on the value of the estate. On the plus side, by raising the value of estate at which probate fees start to £50,000, over half of all applicants will not be charged at all. However executors for estates worth £300,000 or more will pay £1,000, that is, approximately 400% above the cost of the service, and for estates above £2 million fees will rise to 129 times the actual cost. Both the Explanatory Memorandum and a Written Statement make the Ministry of Justice's policy intention clear: "the new fee structure will generate around £300 million per year in additional fee income, which will all be reinvested back into Her Majesty's Courts and Tribunals Service". ***While section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 permits the levying of enhanced fees, we are surprised to see it used to this extent. To charge a fee so far above the actual cost of the service arguably amounts to a "stealth tax" and, therefore, a misuse of the fee-levying power.***

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

1. This Order has been laid by the Ministry of Justice (MoJ) under the Courts Act 2003 and under section 180(1) of the Anti-social Behaviour, Crime and Policing Act 2014 which permits the levying of enhanced fees. It is accompanied by an Explanatory Memorandum (EM) and an Impact Assessment (IA).

2. A grant of probate is an official document which the executors may need to administer the estate of a deceased person. It is issued by a section of the court known as the probate registry and a fee is charged for this process.

Revised fee structure

3. The EM states that prior to 1999 a sliding scale was used to take account of the value of the estate. Since then a flat fee has been charged but at a comparatively low rate and it was only in 2014 that the fees were raised to cost recovery levels,[1] that is, to £155 for an application by a solicitor and £215 for an application by an individual (because such applications require more checking). These are flat fees which disregarded the value of the estate. They raise £45 million per year which recovers the full cost of providing the service.

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1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300100/cm8845-court-fees-proposals-for-reform.pdf

4. The proposed new fee structure is based on a simple system of bands linked to the value of the estate. The same rate would apply irrespective of whether the applicant is a solicitor or an individual.

Value of estate £ (before inheritance tax)	**Proposed fee £**
0 - 50,000	0
over 50,000 - 300,000	300
over 300,000 - 500,000	1,000
over 500,000 - 1 million	4,000
over 1 million - 1.6 million	8,000
over 1.6 million - 2 million	12,000
over 2 million	20,000

5. This new structure also increases the threshold below which no fee is payable from £5,000 to £50,000. MoJ states that this will take 25,000 estates (58%) out of fees altogether and 92% of estates will pay £1,000 or less for this service.[2]

6. We note, however, that those paying £1,000 will be paying approximately 400% above the actual cost of the service. This is contrary to standard practice. In the guidance to government departments, *Managing Public Money*,[3] paragraph 6.3.6 states: "different groups of customers should not be charged different amounts for a service costing the same, eg charging firms more than individuals. Similarly, cross subsidies are not standard practice, eg charging large businesses more than small ones where the cost of supply is the same".

Additional income for the courts

7. MoJ has confirmed that the operating cost of probate has stayed broadly unchanged and the £45 million raised by the current fee structure still achieves full cost recovery.

8. Any fee-raising income above the levels to recover costs is termed an "enhanced fee". MoJ has an explicit power under section 180(1) of the Anti-social Behaviour, Crime and Policing Act 2014 to "prescribe a fee of an amount which is intended to exceed the cost of anything in respect of which the fee is charged" but we wonder whether the House envisaged that power being used to this degree. Executors of an estate worth more than £2 million will pay 129 times the actual cost of the service in addition to any inheritance tax liability.

9. Both the EM and a Written Statement make MoJ's policy intention clear: "the new fee structure will generate around £300 million per year in additional fee income, which will all be reinvested back into Her Majesty's Courts and Tribunals Service".

2 Written Statement HLWS503
3 Managing Public Money

10. While it is MoJ's stated aim to address the £1.2 billion annual deficit for running the courts, we note that another extract from *Managing Public Money*, paragraph 6.4.3 states: "The Office for National Statistics normally classifies charges higher than the cost of provision, or not clearly related to a service to the charge payer, as taxes".[4] A number of respondents to the consultation also raised this point. MoJ's statement in the IA that the bands are capped at no more than 1% of the value of the estate also gives the fee the appearance of a tax rather than a charge linked to the actual cost of the service provided. **To charge a fee so far above the actual cost of the service arguably amounts to a "stealth tax" and, therefore, a misuse of the fee-levying power.**

Consultation outcome

11. There were 853 responses overall to the consultation[5] with the majority opposing the scale of change. While a number supported the principle of fees charged according to the value of the estate, 810 out of 831 respondents disagreed with the proposed Table of Fees on the grounds that they were excessive, represented too great an increase from current fees, or were unjustified when compared to the actual cost of issuing a grant. Some also argued that fees should not be raised in one part of the court and tribunal service to cross-fund other parts of the system.

12. A number of respondents added that many people would not be able to afford the fee because, while they might be handling a valuable asset, they would not necessarily have the liquid funds to pay the fee. While some banks allow the executor limited access to the funds of the deceased to pay for fees related to the death this is not universal and fees for short-term loans are high. MoJ states that in such circumstances the Probate Service will provide limited access to the assets of the estate for this purpose or the Lord Chancellor will have the power to remit fees in exceptional circumstances. **We feel that this is all adding bureaucracy to the current system and that many, including small firms of solicitors acting as executors, will not have sufficient funds to pay such fees up front.**

4 Managing Public Money
5 https://www.gov.uk/government/consultations/fee-proposals-for-grants-of-probate

Universal Credit (Housing Costs Element for Claimants Aged 18 to 21) (Amendment) Regulations 2017 (SI 2017/252)

Date laid: 3 March 2017

Parliamentary procedure: negative

This instrument removes automatic entitlement to housing costs in Universal Credit for some 18 to 21 year olds. It only applies to those claiming in Full Service areas although the extent of these is expanding. There are a number of exemptions to protect vulnerable claimants such as care leavers or those with children so that they will continue to receive the housing support that they need. However, Shelter has sent us a submission raising some concerns about how the policy will operate in practice, particularly the "Catch 22" situation of those who cannot receive benefit until they have housing and cannot be housed until they have benefit. That letter, with DWP's response to it, is published in full on our website. While DWP's response says much that is helpful, ***we again deplore the fact that guidance that will be key to understanding how the legislation will work in practice is not available to consider alongside the Regulations.***

These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

13. This instrument is laid by the Department for Work and Pensions (DWP) under the Welfare Reform Act 2012. It is accompanied by an Explanatory Memorandum (EM). We have received a submission from Shelter raising questions on how this system will operate in practice. The submission and a response from DWP are published in full on our website.

14. This instrument removes automatic entitlement to housing costs in Universal Credit for some 18 to 21 year olds. It only applies to those claiming in Full Service areas, but the extent of these is expanding. There are a number of exemptions to protect vulnerable claimants such as care leavers or those with children so that they continue to receive the housing support that they need. The Government's intention, however, is to ensure that young people in the benefit system face the same choices as other young people who go out to work and cannot yet afford to leave the parental home.

15. Savings attributable to the measure are estimated to be £105 million over the course of this Parliament. The provision is expected to affect 1,000 young people in the first year, rising to 11,000 in steady state. The Government state that any losses at the individual level will be largely notional because they expect anyone affected will either secure an early return to work or return to the parental home. DWP states that this instrument is intended to encourage young people who can stay at home to do so, rather than move out at the expense of the taxpayer.

"Catch 22"

16. Shelter describe the new arrangement as a "Catch 22" situation, even for those who will benefit from the exemptions set out in the Regulations. This is because to make a claim for housing costs in Universal Credit, a claimant must submit evidence in the form of a tenancy agreement, or in some circumstances a letter from the landlord confirming the rent. However, in order to secure a tenancy in the first place, the landlord is likely to want to know that the young person has a guaranteed exemption from this policy, and is eligible for housing support. The catch is that the potential tenant cannot say for sure that they have an exemption before making a claim and the tenant cannot make a claim before having a liability to pay rent.

The embarrassment factor

17. The Regulations contain exemptions for a number of groups: those who are outside the jobseekers' requirements because of disability or health, those who are working as an apprentice for 16 hours a week, those who are responsible for a child, those exempt from the Shared Accommodation Rate, those in temporary accommodation and those who do not have a parent or their parent(s) do not live in Great Britain.

18. However other exemptions will be more difficult to prove, for example those who claim it is inappropriate for them to live with parents or a partner because there is a serious risk to physical or mental health or of domestic violence. DWP accepts that establishing this will be less straightforward and propose that a young person would gain an exemption by having a "light touch" interview with their work coach which will not require a lot of proof in order to grant an exemption.

19. Shelter points out the embarrassment factor in this, as young people may not want to disclose details about sexual abuse and sexuality. In their response DWP states that "this provision is similar to one that applies with respect to 16 and 17 year olds who are estranged from their parents, so DWP staff are familiar with the issues and the sensitivities involved. In addition, a statement from an appropriate third party (such as a social worker or a homelessness charity) will be sufficient to access this exemption".

20. DWP does state in paragraph 9.1 of the EM and in its response to Shelter that it is its intention to conduct further consultation with key stakeholders on how to frame the guidance correctly. However, this legislation is due to take effect from 1 April so some haste will be needed to put that guidance in place by that date to ensure all claimants are treated appropriately and consistently.

Need for clear publicity

21. Shelter quotes the National Landlords' Association's response to the new Regulations: "Never mind the nuances, all landlords will hear is that 18–21 year olds are no longer entitled to housing benefit. Faced with a young person who may not be able to pay the rent, a landlord won't worry about the details of their life, they just won't consider them as a tenant".[6] DWP states that: "There is no hard evidence that landlords will not let to claimants in this age group as a result of this policy—this is speculation".

6 National Landlords' Association website

22. DWP also notes that these Regulations mirror a number of existing exemptions from other pieces of legislation, for example, people who are exempt from the Shared Accommodation Rate are also exempt from the 18–21s policy. However these are generally expressed by cross-referencing to other pieces of legislation which may be difficult for the average person to follow.

23. For both reasons Shelter suggests that the Government should urgently conduct an information campaign, setting out who is affected and who is not, aimed at both landlords and young people. In their response DWP states that officials are "preparing guidance that we believe will satisfy the concerns of Shelter and other stakeholders. … We are also working with the Department for Communities and Local Government to make sure landlords are properly informed about the changes so they can continue to rent to those who are exempted with confidence".

24. Bearing in mind the youth and inexperience of the claimants in the target group, we take the view that the guidance and publicity needs to be particularly user-friendly and particularly sensitive in how it deals with those who may need to claim exemption on the ground of abuse.

25. DWP's response continues: "The guidance that will be used to determine exemptions is not yet public—this is normal for a digital project where information is deployed as and when it is needed. This measure is coming in gradually, in Universal Credit full service areas only, so we will test, learn and refine the guidance as the first claimants go through this process". While DWP's response says much that is helpful, **we again deplore the fact that guidance that will be key to understanding how the legislation will work in practice is not available to consider alongside the Regulations.** We have written to the Minister about this matter and will publish the correspondence at the earliest opportunity.

CORRESPONDENCE

Draft Immigration Skills Charge Regulations 2017

26. In our 27th Report of the current Session,[7] we brought the draft Immigration Skills Charge Regulations 2017 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 wrote to the Rt Hon. Robert Halfon MP, Minister of State for Apprenticeships and Skills in the Department for Education, to seek further clarification about the implications of the charge for the healthcare sector, and how the Government expect to handle them. Mr Halfon has replied, and we are publishing the correspondence at Appendix 1.

Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016 (SI 2016/1081)

27. The Committee published information about these Regulations in the 15th Report of the current Session.[8] This Report included responses from the Department for Environment, Food and Rural Affairs (Defra) to questions that we had asked. One of the responses stated that "even though the proposed changes do not affect the rights of users, user groups were informally consulted via a rights of way stakeholder working group, as part of work done on a package of rights of way reforms, and they were content with the proposals. User groups who are represented in the stakeholder working group include the Ramblers, Open Spaces Society and the British Horse Society". After the Report was published, the Open Spaces Society contacted us to voice concern that Defra had misrepresented the position of user groups in relation to these Regulations.

28. We subsequently wrote to Lord Gardiner of Kimble, Parliamentary Under-Secretary of State at Defra, to bring the case to his attention and to stress the need for Departments to provide the Committee with accurate information. Lord Gardiner has replied, agreeing that the material provided by his Department may have given the wrong impression and that it must be clearer and more exact in future; but also saying that there was no intention to mislead the Committee. We are publishing the correspondence at Appendix 2.

7 27th Report, Session 2016–17 (HL Paper 126).
8 15th Report, Session 2016–17 (HL Paper 69).

INSTRUMENTS OF INTEREST

Draft Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) (Amendment) Regulations 2017

29. As part of delivering the previous Government's vision to improve the health outcomes of children and young people, responsibility for commissioning 0–5 children's public health services was transferred from NHS England to local authorities on 1 October 2015. The specific objective was to ensure the ongoing provision of a universal health visiting service and prescribe health and child development reviews at five key stages: antenatal, new birth, 6–8 weeks, 1 year and 2–2.5 years. The principal Regulations contain a sunset clause that means the duty on local authorities would cease to have effect after 31 March 2017, and they require the Secretary of State to review the operation of the pilot and publish a report by 30 March 2017. The review by Public Health England[9] found widespread support for the universal health visitor programme remaining in place. There was also a strong view that the services are essential for prevention and early intervention, deliver a positive return on investment and contribute to other government priorities such as reducing childhood obesity, tobacco control, and improving maternal mental health. These Regulations therefore make the arrangement permanent. Funding for the provision of services for the 0–5 public health services was transferred to local authorities from the NHS on 1 October 2015 and is now included within the routine local authority annual allocations.

Universal Credit (Surpluses and Self-Employed Losses)(Change of coming into force) Regulations 2017 (SI 2017/197)

30. The Department for Work and Pensions identified an unintended consequence where certain Universal Credit claimants may be unfairly advantaged or disadvantaged in the amount of Universal Credit award they receive because their earnings fluctuate. The Universal Credit Surpluses and Self-employed Losses Regulations (SI 2015/345), laid on 26 February 2015, inserted new provisions into the Universal Credit system to allow past earnings to be taken into account in the Universal Credit income calculation where a claimant returns to Universal Credit within six months of a previous award ending. Additionally, they would allow self-employed claimants to carry forward a loss from one assessment period into the next, for up to 11 assessment periods. The intention at the time was to implement the policy from 6 April 2016. The implementation of the Regulations was previously delayed until 3 April 2017 (by SI 2016/215). These new Regulations provide for a second delay and a new coming into force date of 2 April 2018 because other essential features of the Universal Credit Digital Service are required more urgently. The Explanatory Memorandum indicates that about 15,000 claimants in 2017–18 will be affected by the delay and the cost to the public sector will be about £10 million. DWP states that this change will not affect the overall delivery timetable for Universal Credit.

9 Review of Mandation for the Universal Health Visitor Service

Homes and Communities Agency (Transfer of Property etc.) Regulations 2017 (SI 2017/199)

31. In 2015, the Government appointed the Homes and Communities Agency (HCA) as its land disposal agency in England, outside of London. The land disposal process involves transferring a significant amount of land from Government Departments and their arm's length bodies to the HCA. These Regulations, laid by the Department for Communities and Local Government (DCLG), specify Network Rail Infrastructure Limited and 26 listed NHS Trusts for this purpose. DCLG says that the land to be transferred from the NHS Trusts and Foundation Trusts has been judged to be surplus to requirements and will have no impact on the provision of patient services.

32. This is the third set of Regulations laid by DCLG specifying bodies from which land may be transferred to the HCA. We have drawn both the previous sets to the special attention of the House,[10] not least because of the National Audit Office report of June 2015[11] on the disposal of public land for new homes, to which DCLG refers in the Explanatory Memorandum to the latest Regulations.

33. We obtained additional information from DCLG about the background to the specification of the bodies listed in the latest Regulations, which we are publishing at Appendix 3. DCLG has highlighted in particular the relevance of the announcement in the 2016 Autumn Statement of £1.7 billion of investment for Accelerated Construction to speed up house-building on surplus public sector land.

Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 (SI 2017/213)

34. In 2013 the Government introduced restrictions on the amount of Housing Benefit, and Universal Credit equivalent, to which a person is entitled dependant on the size and make-up of their household. These size criteria rules apply to claimants living in both the private and social rented sectors and prescribe the number of bedrooms to which a claimant is entitled (described in the media as the "Bedroom Tax"). Since then there have been a number of legal challenges to the policy and the Supreme Court handed down its judgments on 9 November 2016. The Department for Work and Pensions (DWP) received an adverse decision in respect of two cases: the Rutherford case which related to the overnight care of a disabled child by a non-resident carer; and the Carmichael case in which a couple were unable to share a bedroom due to disabilities. To comply with these decisions, DWP is amending the legislation to allow for an extra bedroom in these circumstances, subject to qualifying conditions. DWP estimates that in 2017–18 approximately 45,000 households will benefit from these changes in the Housing Benefit and Universal Credit award calculation, with an average increase of £13 to £14 per week.

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10 The Homes and Communities Agency (Transfer of Property etc.) Regulations 2015 (SI 2015/1471), in our 7th Report, Session 2015–16 (HL Paper 28); and the Homes and Communities Agency (Transfer of Property etc.) (No. 2) Regulations 2016 (SI 2016/515), in our 35th Report, Session 2015–16 (HL Paper 147).

11 https://www.nao.org.uk/report/disposal-of-public-land-for-new-homes/

Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2017 (SI 2017/245)

35. These Regulations, laid by the Department for Education (DfE) with an Explanatory Memorandum (EM), increase the level of certain registration, variation and annual fees payable to the Chief Inspector of Education by 10%. They also amend the frequency of inspections for those registered children's homes judged "good" or "outstanding" by the Chief Inspector, reducing such frequency from twice a year to once a year.

36. In the EM, DfE says that it consulted on these changes from 13 December 2016 to 17 January 2017: 21 responses were received. While most responses opposed an increase in fees, the majority of respondents supported reducing the inspection frequency for good and outstanding children's homes. DfE has published its response to the consultation,[12] in which it says that "the number of respondents to the consultation was very small" and that "the respondent sample may therefore not fully reflect views across all the relevant sectors".

37. We sought further information from the Department about the timing of this exercise and the adequacy of the consultation carried out, which we are publishing at Appendix 4. **In our view, allowing interested parties only five weeks spanning the holiday period of Christmas and New Year is poor practice: we are surprised that the Department considers its handling of the consultation to be satisfactory, since it has itself said that responses received may not reflect the views of all sectors.** The Department has now told us that, while it regards five weeks as a sufficient period to run a consultation of this nature and considers that a longer timeframe would not have increased the response rate, it wants to ensure that all interested parties have an opportunity to express their views if they so wish; and that it will be considering how better to achieve this. **We look forward to hearing from the Department about the steps that it proposes to take to this end, and about the effectiveness of those steps in encouraging a better response to its consultation.**

12 https://www.gov.uk/government/consultations/childrens-social-care-providers-fees-and-inspection-frequency

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Crown Estate Transfer Scheme 2017

Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017

European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2017

Judicial Pensions (Additional Voluntary Contributions) Regulations 2017

Judicial Pensions (Amendment) Regulations 2017

Judicial Pensions (Fee-Paid Judges) Regulations 2017

Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) (Amendment) Regulations 2017

Instruments subject to annulment

SI 2017/195	Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) (Amendment) Regulations 2017
SI 2017/196	Electricity (Applications for Consent) (Amendment) (England and Wales) Regulations 2017
SI 2017/197	Universal Credit (Surpluses and Self-employed Losses) (Change of coming into force) Regulations 2017
SI 2017/199	Homes and Communities Agency (Transfer of Property etc) Regulations 2017
SI 2017/203	Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations 2017
SI 2017/204	Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017
SI 2017/205	Employment and Support Allowance (Exempt Work & Hardship Amounts) (Amendment) Regulations 2017
SI 2017/207	Medical Devices (Fees Amendment) Regulations 2017
SI 2017/208	Judicial Pensions (Additional Voluntary Contributions) Regulations 1995 (Amendment) Regulations 2017
SI 2017/213	Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017
SI 2017/218	Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2017

SI 2017/219	National Health Service (Direct Payments) (Amendment) Regulations 2017
SI 2017/221	Communications (Television Licensing) (Amendment) Regulations 2017
SI 2017/223	High Speed Rail (London–West Midlands) (Fees for Requests for Planning Approval) Regulations 2017
SI 2017/227	High Speed Rail (London–West Midlands) (Planning Appeals) (Written Representations Procedure) (England) Regulations 2017
SI 2017/230	Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2017
SI 2017/234	Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement) (Prescription of Arrangement for Monitoring) (Amendment) Order 2017
SI 2017/238	Health and Safety (Miscellaneous Amendments) Regulations 2017
SI 2017/243	County of Merseyside Act 1980 (Amendment) Regulations 2017
SI 2017/244	Sewerage Services (Exception from Sewerage System Prohibition) (England) Regulations 2017
SI 2017/245	Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2017
SI 2017/246	Water Supply and Sewerage Services (Customer Service Standards) (Amendment) Regulations 2017
SI 2017/249	Childcare Act 2006 (Provision of Information to Parents) (England) (Amendment) Regulations 2017
SI 2017/304	Health and Safety (Miscellaneous Amendments and Revocation) Regulations 2017

APPENDIX 1: CORRESPONDENCE: DRAFT IMMIGRATION SKILLS CHARGE REGULATIONS 2017

The Rt Hon. the Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee to, the Rt Hon. Robert Halfon MP, Minister of State for Apprenticeships and Skills at the Department for Education

I am Chairman of the Secondary Legislation Scrutiny Committee, which considered these draft Regulations at our meeting this week.

We felt that the Explanatory Memorandum to the Regulations did not cover as much of the background to the proposed Immigration Skills Charge, and its implementation, as we would expect of such a document. We have therefore brought the Regulations to the attention of the House on the ground that the explanatory material laid in support provides insufficient information.

The Committee identified one issue to be explored further in ministerial correspondence, namely the implications of the proposed charge for the healthcare sector, and the NHS in particular.

The proposals for the charge follow recommendations made by the Migration Advisory Committee (MAC) in a report published in January 2016. We noted that the MAC's report quoted from the Department of Health (DH) response to its call for evidence, to say that a fixed levy amount (rather than percentage of salary) would be regressive, disadvantaging employers recruiting relatively lower paid skilled employees compared with those on higher salaries. In line with the MAC's recommendation, the charge as now proposed will however be levied as a flat fee, and not as a percentage of salary.

We obtained additional information from your Department to assist our consideration of the Regulations, and we asked about DH's view of the proposals as now presented. We were told that the rate and scope, including exemptions from the charge, as announced in March 2016, were agreed in discussion with other Government Departments, including DH.

We would like to know rather more about the Government's assessment of the implications of the charge for the healthcare sector in general, and the NHS in particular. To what extent will the NHS be affected by the obligation to pay a charge in respect of skilled migrants employed in the sector? What are the cost and resourcing implications for the NHS? How will the introduction of the charge and its impact on the use of skilled migrants interact with other relevant policies, such as the abolition of NHS bursaries for healthcare students later this year?

We would welcome a reply by Monday 13 March. I am copying this letter to Philip Dunne MP, Minister of State at the Department of Health, because of his policy responsibilities for workforce matters including nursing and midwifery, and education and training.

8 March 2017

Robert Halfon MP to Lord Trefgarne

Thank you for your letter of 8 March about the outcome of the Secondary Legislation Scrutiny Committee's consideration of the draft Immigration Skills Charge regulations.

You asked about the implications of the Immigration Skills Charge for the healthcare sector, and the NHS in particular.

The Immigration Skills Charge will be paid by all UK employers who hold a sponsor licence to recruit workers from outside the European Economic Area through the Tier 2 skilled worker route. Exemptions from the charge were announced on 24 March 2016 for sponsors of specified occupations skilled to PhD level, the Tier 2 (Intra-Company Transfer) Graduate Trainee category, and individuals switching from a Tier 4 student visa to Tier 2 (General). All employers, including employers in the healthcare sector, who recruit workers through the Tier 2 skilled worker route will benefit from these exemptions. In addition, employers who are licensed as small or charitable sponsors will be eligible for the reduced rate.

In a briefing for Peers ahead of Lords Third Reading on the Immigration Bill in April 2016, the British Medical Association (BMA) welcomed the exemption for students switching to Tier 2 as it would benefit employers of doctors moving to Tier 2 following completion of their foundation training. The BMA said that this would go some way to lessen the financial burden on the NHS.

The cost to individual employers will depend on their use of the Tier 2 skilled worker route. The cost to the healthcare sector and to the NHS in particular has not been estimated. An impact assessment for this policy has not been prepared as the Immigration Skills Charge is classified as a tax and as such is out of scope of the Better Regulation Framework.

From the latest immigration statistics published on 23 February 2017, we know that the human health and social work activities sector is the fourth[13] largest user of the Tier 2 skilled worker route. In 2016, the sector sponsored 10,400 Tier 2[14] applications. This is an increase of 38% on the 2015 figure of 7,534 (including an increase of 49% in applications from overseas), and is likely to reflect nurses being added to the shortage occupation list in November 2015. Most other sectors saw a decrease in Tier 2 usage over the same period.

The Migration Advisory Committee's analysis in its January 2016 report, following its review of the Tier 2 route, showed that 3,600 Certificates of Sponsorship were used for doctors in the year ending August 2015. Compared to a workforce of over 100,000 doctors, doctors recruited through Tier 2 are only a small proportion of the number working in the NHS.

There is no direct impact on employers of care workers as they do not qualify for entry to the UK under the Tier 2 route. Tier 2 has been reserved for graduate occupations since 2011.

13 Including in-country and out of UK applications.
14 Ibid.

You asked about the interaction of the charge with other Government policies such as the abolition of NHS bursaries for healthcare students. In its July 2016 report on the labour market for nurses, the Migration Advisory Committee advised that the number of student nurses needed close monitoring following the decision to remove the student nurse bursary but noted that it was too early to predict what the effect of the decision would be. The abolition of the cap on the number of student places for nursing, midwifery and allied health subjects with effect from 1 August 2017 was announced at the same time. The Government believes that this will enable universities to provide up to 10,000 additional nursing and other training places during the lifetime of this Parliament.

Other steps are being taken to address the shortage of nurses, including continued investment in training, retention strategies and a Return to Practice campaign to support qualified individuals who have left nursing back into the profession. A new nursing degree apprenticeship was announced in November 2016. The first apprentice nurses could be in training from September 2017 and, once established, up to 1,000 apprentice nurses could join the NHS each year, benefitting staff and patients.

The Government takes recruitment issues seriously and has invested in front-line staff. It is not a sustainable strategy to rely on recruiting overseas staff, and the long term aim is that we train our own health professionals in this country. There are already 30,000 students training to be doctors, and more than 52,000 training to be nurses. We are continuing to invest in the NHS frontline–there are over 34,800 more professionally qualified clinical staff, including over 11,600 more doctors and over 34,800 more professionally qualified clinical staff, including over 11,600 more doctors and over 13,400 more nurses on our wards since May 2010.

I have asked my officials to revise the Explanatory Memorandum to provide more background to the policy and its implementation. This will be re-laid ahead of the Parliamentary debates on the draft regulations.

I am copying this letter to Philip Dunne MP, Minister of State for Health.

13 March 2017

APPENDIX 2: CORRESPONDENCE: COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) AND DEDICATED HIGHWAYS (LANDOWNER STATEMENTS AND DECLARATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2016 (SI 2016/1081)

The Rt Hon. the Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee to, the Lord Gardiner of Kimble, Parliamentary Under Secretary at the Department for Environment, Food and Rural Affairs

My Committee published information about these Regulations in November 2016, in our 15th Report of the current Session.

We had put questions to officials in your Department, not least about consultation in advance of laying the Regulations, and in our Report we also published your Department's response to our questions. One of the responses stated that "*even though the proposed changes do not affect the rights of users, user groups were informally consulted via a rights of way stakeholder working group, as part of work done on a package of rights of way reforms, and they were content with the proposals. User groups who are represented in the stakeholder working group include the Ramblers, Open Spaces Society and the British Horse Society.*"

In January of this year, Mr Hugh Craddock, of the Open Spaces Society, contacted the Committee about our 15th Report. In particular, he voiced concern that, while the Open Spaces Society is indeed a member of the stakeholder working group mentioned by your Department in the information published in the Report, "*we have no recollection of such consultation. Moreover, we have reviewed the minutes of past meetings, and find no record of consultation having taken place. We are inclined to conclude that Defra has misrepresented to you, in response to the committee's direct challenge on the point, both the question of engagement with user groups, and the user groups' position.*"

We have raised this concern with your Department at official level. As regards the point made by the Open Spaces Society quoted above, your Department has told us that "*The Rights of Way Stakeholder Working Group, on which the Open Spaces Society is represented, has also been informed about the Department's work. Discussion about the 2013 regulations and the need for amendment was raised in the margins of discussions about the wider package of reforms to rights of way legislation so was not recorded in the summary of the discussions of the Working Group's meetings.*"

In the light of these exchanges, the response from your Department which we published in our 15th Report does appear misleading, and at variance with the recollection of the Open Spaces Society. I am writing to you now to bring this case to your attention, in the light of my Committee's concern that information provided to us by Departments, to assist in our scrutiny of secondary legislation, should be full and accurate.

We would welcome your comments on this case. It would be helpful to receive your reply by 3 March.

22 February 2017

Lord Gardiner of Kimble to Lord Trefgarne

Thank you for your letter of 22 February about the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016.

I was sorry to learn of the House of Lords Secondary Legislation Scrutiny Committee's concerns which the Open Spaces Society has brought to your Committee's attention on the manner and level of consultation that took place prior to making the above regulations.

May I make it clear that the Department fully recognises its responsibilities to provide your Committee with full and accurate information. I have taken your Committee's letter very seriously and, as such, I have reviewed and discussed with my officials the previous responses which the Department has given your Committee. There was no targeted consultation carried out by the Department with the Open Spaces Society as an individual user organisation. However, my officials have made clear to me that the issue of the proposed amending regulations was raised at meetings of the Rights of Way Review Committee in November 2014 and November 2016, and in meetings of the Rights of Way Stakeholder Working Group which was considering and providing advice on the Department's rights of way reform package. The Open Spaces Society is a member of both of these bodies.

I understand from the official who attended meetings of the Rights of Way Stakeholder Working Group that his recollection is that at one of the meetings of the Working Group, at which the Open Spaces Society was present, one of the members of the Working Group had raised concerns about some aspects of the regulations. There was, however, no discussion about the regulations as they were not within the scope of the rights of way reforms. Unfortunately only a summary of the discussions relating to issues about the rights of way reforms are recorded at meetings of the Working Group.

I have reviewed this situation thoroughly with my officials and I accept that the Department's response to your question Q3, which you published in your Committee's 15th Report of Session 2016–17, may have given the impression that there had been a greater degree of consultation than had taken place.

I also accept that in the future the Department must be clearer and more exact in recording discussions that take place in the Stakeholder Working Group. What I am clear on is that there was absolutely no intention to mislead the Committee.

I hope that my reply answers the issues that your Committee has highlighted.

7 March 2017

APPENDIX 3: HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.) REGULATIONS 2017 (SI 2017/199)

Additional information from the Department for Communities and Local Government

Land transferred to HCA [Homes and Communities Agency] will also be assessed for suitability for the Government's Accelerated Construction programme. The Autumn Statement[15] announced £1.7 billion of investment for Accelerated Construction to speed up house-building on surplus public sector land. This will help diversify the house-building sector and see homes built quickly by partnering with small and medium-sized builders, contractors and others to build out surplus public sector land. This Accelerated Construction approach will allow us to get started on up to 15,000 homes by the end of the Parliament.

The regulations enable transfers; they do not of themselves transfer land to HCA or create any commitment for the bodies concerned to transfer land to HCA. Land may only transfer when the transferring body have confirmed the site is surplus and a process of due diligence has been completed and the body have given their approval to the transfer.

In order to ensure that land can transfer in a timely manner the Department lays these regulations in advance of a final decision being made by the landowner to agree to the transfer of any particular site. The current owner and the Homes and Communities Agency undertake a process of engagement, so that if a transfer is agreed, the relevant transfer schedule can be signed without further delay. The regulations naming bodies must be in place before any transfers take place, irrespective of the number or size of the sites concerned. The Department also seeks to reduce the administrative and Parliamentary burden by grouping several bodies into one set of regulations, rather than laying regulations for each body separately.

There has been a scaling up of the number of [NHS] Trusts that have expressed an interest in working with the Homes and Communities Agency following the launch of the Accelerated Construction programme. Formal due diligence is underway on some sites, with transfers expected to take place once terms have been agreed.

We have listed Network Rail Infrastructure Ltd in these regulations now because they too are working with HCA to identify sites that may be suitable for transfer to support government's ambition to release land with capacity for 160,000 homes by 2020, and also support Accelerated Construction. Regulations SI 2016/515 specified Network Rail Ltd, however some of the sites identified for possible transfer are in the ownership of Network Rail Infrastructure Ltd necessitating its inclusion in the regulations.

10 March 2017

15 https://www.gov.uk/government/publications/autumn-statement-2016-documents/autumn-statement-2016

APPENDIX 4: HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS (FEES AND FREQUENCY OF INSPECTIONS) (CHILDREN'S HOMES ETC.) (AMENDMENT) REGULATIONS 2017

Additional information from the Department for Education

Q: The consultation period was five weeks, spanning the holiday period of Christmas and New Year. Why did the Department not allow longer, to make it easier for interested parties to respond? Given that "the number of respondents to the consultation was very small", does the Department consider that its handling of consultation was satisfactory? Does the Department see any need to sound out opinion further?

A: There was a slight delay to launching the consultation which was unavoidable so the consultation period was slightly shorter than anticipated. However, the Government considers that its handling of the consultation was satisfactory and does not think that an extended consultation period would have resulted in a higher response rate for the following reasons:

- We regard 5 weeks as a sufficient period to consult on fee changes of this nature, even though the consultation period spanned the Christmas and New Year break. All responses submitted during this time were thoroughly considered in the formal analysis of the consultation.
- The sector is aware that the fees are consulted on annually and is already aware of the principle of full cost recovery, as the fees payable by children's social care providers to Ofsted have been set using Ofsted's costs model since 2010–11 and this model is updated each year.
- The consultation period is not significantly different to that allowed for in previous years. Last year the consultation period was 6 weeks and in the previous two years the consultation period was 4 weeks. The response rate of 21 responses this year is higher than in the past 3 years.
- The registered establishments/agencies which the consultation was aimed at are, in the main, not closed during Christmas and New Year.
- The proposal to amend the frequency of inspection of children's homes was recommended by Sir Martin Narey in his independent review of residential care in England. As part of his review he consulted widely with the sector about his recommendations and in considering whether to accept his recommendation, we sounded out key stakeholders, prior to formally consulting. The government's response to Sir Martin Narey's review was published before Christmas which highlighted that the government was currently consulting on the recommendation so that anyone with a view could respond.
- We will continue to work with Ofsted to ensure that the changes made in response to the consultation remain sustainable for the sector and adequately safeguard children and young people.

8 March 2017

APPENDIX 5: 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 14 March 2017, Members declared no interests.

Attendance:

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