

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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31st Report of Session 2016–17

**Correspondence:**

**Social Security (Restrictions on Amounts  
for Children and Qualifying Young Persons)  
Amendment Regulations 2017**

**The provision of relevant guidance alongside  
regulations**

Includes 4 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 ( <i>Chairman</i> )
Lord Haskel	Baroness O'Loan	

### *Registered interests*

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

### *Publications*

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

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

### *Information and Contacts*

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

# Thirty First Report

## CORRESPONDENCE

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### **Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (SI 2017/376)**

1. In our 30th Report of the current Session,<sup>1</sup> we drew these Regulations to the attention of the House on the ground that they may imperfectly achieve their policy objective because of doubts over their implementation. In particular we were concerned about the arrangements being set up to decide whether an applicant's third child was the result of non-consensual conception: were they feasible and would they be operative by the time these Regulations came into effect on 6 April? We wrote to the Minister, Damian Hinds MP, with several specific questions (see Appendix 1). We have received a clear answer about the numbers likely to be affected and where the burden of proof will lie, but the responses to our other questions are simply stock phrases. We are not reassured about the availability and training of the third party assessors. We are disappointed by the Government's insistence that their "high-level messaging" following the Budget in 2015 was sufficient to alert claimants to the change of law when the submissions we received indicated that this was clearly not the case. As a general rule we find that publishing claimant guidance only on the day that the policy comes into effect unhelpful: in this case, we think it particularly inappropriate.

### **The provision of relevant guidance alongside regulations**

2. In our 28th Report of the current Session,<sup>2</sup> in relation to the Universal Credit (Housing Costs Element for Claimants Aged 18 to 21) (Amendment) Regulations 2017 (SI 2017/252), we noted that the Department for Work and Pensions (DWP) had stated its intention to conduct further consultation with key stakeholders on how to frame the guidance correctly, only a matter of days before the legislation took effect. That Report also expressed our difficulty in understanding just how the exceptions to those Regulations would operate because the guidance on how those decisions would be made was not available. This case is not dissimilar to the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (SI 2017/376) on which there is correspondence in Appendix 2 of this Report. We are concerned that putting material essential to the operation of legislation, material that affects how decisions affecting a person's career, benefits or even eligibility to stay in this country, into guidance may be becoming a trend. We see this as an extension of the concern raised in Lord Strathclyde's Review in which he said: "I believe it would be appropriate for the Government to take steps to ensure that Bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument".<sup>3</sup>
3. We have observed, on a number of occasions, operational matters that should have been included in secondary legislation being relegated to guidance that is not subject to, or available for, Parliamentary scrutiny. We therefore

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1 [30th Report](#), Session 2016–17 (HL Paper 148).

2 [28th Report](#), Session 2016–17 (HL Paper 131).

3 [Secondary Legislation and the primacy of the House of Commons](#), page 6, Cm 9177, December 2015.

wrote to the Rt Hon. Ben Gummer MP, Minister for the Cabinet Office, drawing attention to a number of our recent reports on this problem. His letter is published in Appendix 2 and reassures us that this will be addressed in training given to civil servants. He says that a reduction in reporting on this aspect of an Explanatory Memorandum will be looked at as a success measure. We also believe it will be a success if the distinction between what should be in law and what should be in guidance is properly maintained.

## **INSTRUMENTS OF INTEREST**

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### **Greater Manchester Combined Authority (Functions and Amendment) Order 2017**

4. We have brought a number of Orders relating to the Greater Manchester Combined Authority (GMCA) to the special attention of the House. Most recently, in our 17th Report of the current Session,<sup>4</sup> we commented on the draft Greater Manchester Combined Authority (Functions and Amendment) Order 2016, noting that, while the GMCA had made efforts to seek views on the proposals for devolution of functions, the response from the public had been limited, and suggested little popular enthusiasm for the devolution process.
5. This Order, laid by the Department for Communities and Local Government (DCLG), confers further powers on the GMCA relating to mayoral development corporations (“MDC”: DCLG says that this is a first step, and that a further Order would be needed to create an MDC), grants, waste disposal authority functions, and the ability to share data. In the accompanying Explanatory Memorandum (EM), DCLG says that the GMCA has undertaken two consultations,<sup>5</sup> which between them included proposals on all matters within this Order. It says that the outcomes of consultations were generally favourable, and itemises the levels of support for the different proposals now being taken forward. As we noted in our 17th Report, however, consultation responses on the proposal for the Mayor’s duties showed more opposition than support,<sup>6</sup> and we asked DCLG to explain why this finding was not mentioned in the latest EM. We are publishing the Department’s response as Appendix 3.

### **Town and Country Planning (Permission in Principle) Order 2017 (SI 2017/402)**

### **Town and Country Planning (Brownfield Land Register) Regulations 2017 (SI 2017/403)**

6. The Department for Communities and Local Government (DCLG) has laid these two instruments with a joint Explanatory Memorandum (EM). DCLG says that the Regulations place a duty on those local planning authorities which have responsibility for housing development in their area to prepare, publish and maintain a register of previously developed land (“brownfield land”) which is suitable for residential development. The Order makes provision in relation to permission in principle granted when land is allocated in a “brownfield land register”.
7. In the EM, DCLG says that the Regulations “fulfil the objective set out in the Government’s manifesto to ensure that brownfield land is used as much as possible for housing and to require local authorities to have registers of brownfield land suitable for housing”. We raised questions about this, and about other aspects of the Regulations, and we are publishing DCLG’s answers at Appendix 4. We asked in particular about the intention to publish

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4 [17th Report](#), Session 2016–17 (HL Paper 75).

5 The first consultation ran for eight weeks from 21 March to 18 May 2016, and the second for six weeks from 4 July to 15 August 2016.

6 See p 36 of the GMCA’s summary of responses to the first consultation: [https://www.greatermanchester-ca.gov.uk/download/meetings/id/999/16\\_gmca\\_consultation\\_-\\_governance\\_review\\_and\\_scheme\\_phase\\_1](https://www.greatermanchester-ca.gov.uk/download/meetings/id/999/16_gmca_consultation_-_governance_review_and_scheme_phase_1)

relevant guidance only by June 2017, at least six weeks after the instruments come into force. DCLG has said that, in the interim, it is providing a package of support for local authorities, including writing to authorities to alert them to the measures and otherwise engaging actively with authorities to support the implementation of these measures. **In our view, while these actions may well be useful, good practice would be to publish guidance no later than the date the instruments come into effect.**

### Universal Credit (Tenant Incentive Scheme) Amendment Regulations 2017 (SI 2017/427)

8. The East Lothian Housing Association wanted to reward its tenants by reducing their rent by £10 a month if they paid by direct debit or standing order and by £20 a month where, additionally, the tenant had no arrears of rent. Under the current Universal Credit legislation that discount would be automatically clawed back by the Department for Work and Pensions (DWP). Two of the DWP's underlying principles when designing Universal Credit were to encourage claimants to take responsibility for managing their own finances and to use electronic means wherever appropriate. The current instrument achieves this by making a change to allow a reduction in the claimant's rent or service charges under an incentive scheme approved by the Secretary of State without the housing costs element of their benefit being altered. The East Lothian scheme will operate in a limited geographic area and will affect fewer than two hundred people. This instrument is intended to accommodate that scheme initially and any subsequent social housing incentive schemes approved by the Secretary of State which support these wider objectives.

### National Health Service (Mandate Requirements) Regulations 2017 (SI 2017/445)

9. To allow better long-term planning, the NHS Mandate 2016–17 set out objectives to 2020 and the NHS England's budget for five years. The Mandate for 2017–18,<sup>7</sup> which this instrument brings into effect from 10 April 2017 to 31 March 2018, continues in the direction set last year. The Annex to the document refreshes the seven high-level objectives but also identifies a number of priority targets to be delivered in this financial year. These include specific targets for mental health care, cancer diagnosis and treatments, action on diabetes, dementia and obesity. The Mandate also requires the aggregate standard for people attending Accident and Emergency centres being seen within four hours to be 90% by September 2017 and 95% for the majority of trusts by March 2018. By the end of the financial year the new Mandate requires that 40% of the population should have access to GP services in the evening and at weekends. Particular efforts are to be made to implement the Better Care Fund and, under Objective 6.2, £3.582 billion is to be ring-fenced for the better integration of health and social care. Detail on how this money is to be spent was not available for scrutiny purposes as the Better Care Fund document was not published until 15 days after the instrument was laid before the House. **We once again draw attention to the need for all relevant documentation to be available with the instrument when it is laid; without this effective scrutiny is not possible.**

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7 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/601188/NHS\\_Mandate\\_2017-18\\_A.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/601188/NHS_Mandate_2017-18_A.pdf)

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

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

Electricity Capacity (Amendment) Regulations 2017  
Greater Manchester Combined Authority (Functions and  
Amendment) Order 2017

### **Instruments subject to annulment**

- SI 2017/402 Town and Country Planning (Permission in Principle) Order 2017
- SI 2017/403 Town and Country Planning (Brownfield Land Register) Regulations 2017
- SI 2017/427 Universal Credit (Tenant Incentive Scheme) Amendment Regulations 2017
- SI 2017/441 Postal Administration (Scotland) (Amendment) Rules 2017
- SI 2017/444 Scotland Act 2016 (Transitional) Regulations 2017
- SI 2017/445 National Health Service (Mandate Requirements) Regulations 2017
- SI 2017/456 Financial Services and Markets Act 2000 and the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) (Amendment) Regulations 2017
- SI 2017/457 National Health Service (Charges for Drugs and Appliances) (Amendment) (No. 2) Regulations 2017
- SI 2017/461 Childcare (Provision of Information About Young Children) (England) (Amendment) Regulations 2017
- SI 2017/471 Non-Domestic Rating (Designated Areas etc.) (Amendment) Regulations 2017
- SI 2017/474 European Political Parties and European Political Foundations Regulations 2017
- SI 2017/478 United Nations and European Union Financial Sanctions (Linking) Regulations 2017

**APPENDIX 1: SOCIAL SECURITY (RESTRICTIONS ON AMOUNTS FOR CHILDREN AND QUALIFYING YOUNG PERSONS) AMENDMENT REGULATIONS 2017 (SI 2017/376)**

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**The Rt Hon. the Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Damian Hinds MP, Minister for Employment at the Department for Work and Pensions**

I am writing as Chairman of the Secondary Legislation Scrutiny Committee. The Committee will be publishing a report on this instrument tomorrow. Although we have benefited from extensive additional material from your officials, the Committee has asked me to raise certain issues with you. This correspondence will be published in a later report.

*Non-consensual conception*

Our 30th Report identifies a number of practical difficulties with the implementation of this provision in particular the financial and ethical concerns of both the local authorities and the charities who DWP expect to be conducting the third party assessments. The point on which we would like amplification is, in the absence of a conviction, where the burden of proof will lie in such assessments. We are concerned that if persuaded to accept a weak case, the assessor might be deemed party to benefit fraud.

We also asked what appeal process there is for someone who is denied a rape exemption on the grounds that the third party assessor did not believe them. Your officials replied that the appeal decision, like the decision regarding entitlement to the exception would be for DWP. We do not see how DWP could reconsider a case without asking intimate details of the applicant and would be grateful if you could explain how this appeal process would work.

*Child poverty*

We received many submissions on this instrument, one cited that 34% of children in poverty in 2014–15 were in families of three or more children, and a number felt that by reducing the income of larger families these Regulations will act against the Government's wider policy on reducing child poverty. Could you please explain how these Regulations align with the overarching policy objective to reduce child poverty.

*Northern Ireland*

One submission pointed out that in Northern Ireland it is a criminal offence, subject to a prison sentence, for an organisation or support service to fail to declare a crime to the police if they become aware of it. This either removes the element of privacy for applicants in claiming the non-consensual conception exception or puts the assessor at risk of imprisonment. How do DWP intend to approach such assessments in the equivalent Northern Ireland regulations or will a different regime apply?

*Equality*

We accept that the requirement to consider their means before deciding to have another child will apply to all families on benefits but this does not allow for cultural or religious views which do not allow for contraception. Nor are we convinced on the equality point, as we do not foresee any men being subject to

distressing interviews in order to obtain benefits. Could you please explain how these Regulations are compliant with anti-discrimination legislation?

### *Numbers involved*

In additional material DWP officials said that they expect claims for the kinship exception to be very low. The Committee notes however that these changes are estimated to increase public sector payments by £170 million, which would seem to cover a substantial amount of benefit. Could you therefore give us the figure used in that estimation for how many claimants are likely to be apply for each of these exceptions?

### *The provision of information*

We have raised this same issue with DWP recently: where operational guidance informs decisions about a person's benefit it should be available at the time the Regulations are before Parliament for scrutiny. We are even more concerned that no easily accessible information has been available on the Gov.UK website so that benefit claimants contemplating a child to be born after 6 April 2017 were fully informed about the consequential effects. We would be interested to hear why DWP has decided not put any information about the change on the Gov.UK website prior to the change taking effect.

We would be grateful to receive your response by 11am on Monday 3 April so that it can be considered at the Committee's next meeting and published in our report.

**29 March 2017**

### **Damian Hinds MP to Lord Trefgarne**

Thank you for your letter dated 29 March concerning the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (SI 2017/376). I have addressed your specific points below:

### *Non-consensual conception*

We recognise the sensitivities around this exception and that is why we took the decision not to rely solely on the criminal justice system and to use a third party model where a claimant may report their circumstances to an approved third party professional to support their request for the exception. We believe that this strikes the right balance between ensuring claimants in these circumstances get the support they need in a not overly intrusive manner whilst at the same time providing the right assurance to Government that the additional support is going to those for whom it is intended.

Your letter raises a concern around the burden of proof in this matter. The third party model will not place any new legal duties upon the third party professionals. Through this model we are asking third party professionals to only confirm that the circumstances reported to them are consistent with the criteria for the exception using a pro-forma document. Under the Regulations, this confirmation alone suffices as evidence of entitlement to the exception.

The decision regarding entitlement to the exception will be made by DWP and will be subject to the normal mandatory reconsideration and appeal process, as with most other award decisions. We will use procedures that are mindful of the sensitivities involved and DWP staff will not question the claimant about the incident other than to take the claim and receive the supporting documents. If

the completed pro-forma document shows that, according to the circumstances reported to the third party, the legal requirements for the exception have not been met, DWP will decide not to award the exception. In this case, the claimant could approach another approved professional third party.

### *Child Poverty*

As you are aware, the overall policy to restrict entitlement to the child element of Universal Credit to two children or qualifying young persons was introduced in the Welfare Reform and Work Act 2016. The measure, which comes into force on 6 April, was fully debated during the passage of that legislation and an Impact Assessment published at that time.

We believe it right that families on benefits should have to make the same sorts of financial decisions as families supporting themselves solely through work and that all households should think carefully about whether they are financially prepared to maintain a new child. The current benefits structure, adjusting automatically to family size, is unsustainable and is not fair to the tax payer, particularly those families who do support themselves solely through work.

We do recognise however that there are certain circumstances where some claimants are not able to make a choice about the number of children in their family. We have always been very clear that there will be exceptions for certain groups and the Act includes regulation making powers to allow for this. The regulations to which this letter refers introduce exceptions, transitional arrangements and savings with regard to the restriction. The regulations will ensure that claimants who are not able to make a choice about the number of children in their family continue to receive additional support.

### *Northern Ireland*

The Regulations, to which this letter refers, extend only to Great Britain. Equivalent legislation will be laid in Northern Ireland in due course.

### *Equality*

As I set out earlier in this letter, the overall policy to restrict the child element of Universal Credit to two children or qualifying young persons was introduced by the Welfare Reform and Work Act 2016. The Government assessed the impact on equality of the policies introduced by that Act at the time, thus meeting its obligations under the Public Sector Equality Duty. We have also taken account of that duty during the formulation of the exceptions introduced by the regulations to which this letter refers.

All families, regardless of their background and beliefs, need to think carefully and ensure that they can afford to provide for a new child in their household. It is fair that families on benefits have to make the same sorts of financial decisions as those families supporting themselves solely through work.

### *Numbers involved*

The impact of the Regulations will be to increase Universal Credit expenditure by around £170m, once Universal Credit is fully rolled out and the policies are applied to all households (which could take up to 20 years). This figure represents the cost of all the exceptions, not just that of the exception for children living long term with friends or family and who would otherwise be at risk of entering the

care system (non-parental caring arrangements). It can be broken down into costs for each exception as set out in the following table.

<b>Exception</b>	<b>Annual steady state Cost (£m)</b>	<b>Families (1000s)</b>
Multiple births	115	30
Non-parental caring arrangements	25	5
Adopted from Local Authority care	30	5
Non-consensual conception	5	<5
<b>Total</b>	170	45

*Note that figures may not sum due to rounding*

Administrative data is not available for benefit recipients who have children as a result of non-parental care arrangements, adoption or non-consensual conception, which means that there is a greater degree of uncertainty around these values. My department will be monitoring the caseload and revising its forecasts as the exceptions are implemented and such data becomes available.

#### *The provision of information*

We recognise the need for families to be made aware of the new restriction in order to understand how they may be affected and to make informed decisions. Claimants were alerted to the Universal Credit policy changes at the time they were announced in the Summer Budget 2015 by high level messaging on gov.uk. In implementing the policy from 6 April 2017 the Government has given people sufficient notice to be able to plan for the changes. More details were published as part of the formal consultation in October 2016 and the response to that consultation in January 2017.

In order to further support claimants when the policy comes into effect on 6 April, we will publish detailed UC claimant guidance. This will be accompanied by detailed guidance for stakeholders, in order to support them to advise their customers about the changes.

I am copying this letter to the Chief Secretary to the Treasury.

**3 April 2017**

## **APPENDIX 2: THE PROVISION OF RELEVANT GUIDANCE ALONGSIDE REGULATIONS**

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

I am copying to you a letter from the Secondary Legislation Scrutiny Committee to the Department for Work and Pensions about an instrument that we considered at our meeting yesterday.

It is our long-standing view that that if guidance is intended to direct users on how specific terms should be interpreted or how decisions should be made, it should be laid with the Statutory Instrument and be available to Parliament throughout the scrutiny process. We are concerned not only by DWP's failure to produce such guidance on this occasion, but also the stated intention to only do so to meet their own operational needs.

This is a point we have had to make to a number of departments recently, in particular the Department of Health (Draft Nursing and Midwifery (Amendment) Order 2017, 22nd Report of this session) and the Home Office (Immigration (European Economic Area) Regulations 2016, 14th Report of this session). We would be grateful if you could offer an assurance that guidance relevant to the interpretation of the legislation, particularly where it governs how decisions will be made, is made available to Parliament when the instrument is laid. Where it is not available, we would expect a clear explanation for this omission to be provided in the Explanatory Memorandum.

We would be grateful for your response to these concerns and would welcome a response by 11 am on Monday 20 March so that we may consider it at the Committee's next meeting.

**15 March 2017**

### **Ben Gummer MP to Lord Trefgarne**

Thank you for the letter dated 15 March. I apologise for the delay in responding.

I am sorry that you have had to raise the concern about guidance again.

The government is committed to improving explanatory memoranda. Part of the seven point action plan, outlined to the committee in September, is to improve training of civil servants. Your letter has reiterated the need for operational guidance to be submitted when the statutory instrument is laid. I can assure you that this is part of the training programme and reduction in reporting on this aspect of an EM will be looked at as a success measure.

Colleagues in Civil Service Learning will support DWP to increase awareness of their learning needs and promote the training available.

A letter will be sent to you shortly outlining the progress of the seven point action plan and the success measures which have been put in place.

**4 April 2017**

## **APPENDIX 3: GREATER MANCHESTER COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) ORDER 2017**

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### **Additional information from the Department for Communities and Local Government**

*Q: The Explanatory Memorandum to this Order says: “The outcomes of consultations on the GMCA’s proposals were generally favourable”. The GMCA’s report on the first consultation indicates that the majority of respondents disagreed with the proposals for the Mayor’s duties. Please explain why this finding was not mentioned.*

A; As explained in paragraph 7.5 of the Explanatory Memorandum, the draft Order currently before Parliament is the second Greater Manchester Combined Authority Functions and Amendment Order—the first such order being the Greater Manchester Combined Authority (Functions and Amendment) Order 2016, made in December 2016 (the 2016 Order).

The 2016 Order made provision for the conferral of certain functions and for certain constitutional changes arising as a result of the establishment of the office of elected mayor which was provided for by the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016, made in March 2016.

Notwithstanding that the Greater Manchester Combined Authority (Functions and Amendment) Order 2016 did not involve the creation of the office of elected mayor, a number of respondents to the consultation about the provisions in that order commented on the case for having an elected Mayor for Greater Manchester. The results of that consultation on this issue are set out in paragraph 8.8 of the EM to the 2016 Order which reads as follows:

“Of the 55 that responded to proposed constitutional arrangements for the mayoral combined authority, 21 were supportive whilst 34 were not. Many unsupportive respondents commented on the need for a mayor - for example, 13 respondents thought there was no need for a mayor; and other comments were made in support of the principle of devolution and transfer of powers from central Government to Greater Manchester, and concerns over local capacity and transparency. In its summary of responses to the consultation, the Combined Authority restated its previous agreement that the “role of the Mayor will be a valuable addition to the political leadership of GM, working alongside the 10 Leaders of the GMCA constituent authorities”.

In the Explanatory Memorandum to the current draft Order we have set out the consultation responses which focus on the principal matters for which the Order makes provision and which are in response to consultation questions relating to matters covered by the Order.

**30 March 2017**

## APPENDIX 4: TOWN AND COUNTRY PLANNING (BROWNFIELD LAND REGISTER) REGULATIONS 2017 (SI 2017/403)

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### Additional Information from the Department for Communities and Local Government

*Q1: In the Explanatory Memorandum (EM) you say: “The Regulations fulfil the objective set out in the Government’s manifesto to ensure that brownfield land is used as much as possible for housing and to require local authorities to have registers of brownfield land suitable for housing”. While the Regulations may meet the objective of requiring local authorities to have registers of brownfield land suitable for housing, it is not obvious that they fulfil the objective to ensure that brownfield land is used as much as possible for housing. Is the Department taking other measures to ensure the fulfilment of that objective?*

A1: The compilation of Registers of Brownfield Land by local authorities will ensure that information on brownfield sites that are suitable for housing is kept up to date and made publicly available. This will help to promote suitable sites and encourage their development for housing. The Government Response to the 2016 technical consultation makes clear that we will measure progress in getting planning permissions in place on suitable brownfield sites annually. It states that a flow of planning permissions on suitable brownfield sites will play an important role in helping to deliver much needed housing. We are therefore keen to ensure that local planning authorities make good progress in preparing and keeping their brownfield land registers up to date with a positive approach to permission in principle being granted for suitable sites. The Response also makes clear that we will consider possible measures to drive progress, including incentives and sanctions.

*Q2: In the EM you also say: “8.1 A technical consultation on the implementation of planning changes was undertaken between 18 February and 25 April 2016. Over 800 responses were received”. How many of these responses related to the issue of brownfield land; how many were from local authorities / developers / others; and were views divided as between these three main groups?*

A2: 818 responses were received to the consultation overall. A breakdown of the types of respondent is shown below:

<b>Response by type of respondent</b>	<b>% breakdown</b>
Local planning authorities	43%
House builders/developers/housing associations (development sector)	5%
Businesses	3%
Public Sector Organisations	5%
Professional institutions/associations	8%
Industry representatives/bodies and trade organisations	4%
Individual/voluntary/charity/community/research organisations	32%
<b>Total</b>	<b>100%</b>

The breakdown of the number and type of respondents for the questions about brownfield registers and permission in principle varied but is similar to the number

and type of respondent for the overall consultation exercise. Responses across the board were broadly in favour of the proposals with caveats which reflected the interests of the differing type of organisation, for example statutory consultees were concerned about how impacts (such as on heritage assets) would be assessed and local authorities about how onerous the new requirements would be. The Government response will cover this in more detail.

*Q3: The Regulations come into force on 16 April 2017. At 9.1 in the EM you say: “We will publish guidance to support the introduction of brownfield land registers and permission in principle. It is our intention to publish it by June 2017”. If the statutory instruments come into force in mid-April, does it not make matters difficult for local authorities if guidance is published only two months later?*

A3: We have already commenced work on guidance and will be working closely with key stakeholders to develop it. It is our intention to publish guidance by June. Guidance will emphasise the important role of the Strategic Housing Land Availability Assessment process, with which authorities are already familiar, in identifying brownfield sites that are suitable for housing and included on registers.

In the interim we are providing a package of support for local authorities. We will be writing to authorities to alert them to the measures attaching Q&A which will also be available on DCLG’s website.

We will also be engaging actively with authorities to support the implementation of these measures. This builds on our previous engagement with authorities, including work with 73 authorities piloting the preparation of brownfield land registers in 2016. Leading up to the summer our engagement will include participation in training events convened by the Planning Officers’ Society. Additional support for authorities may also be provided by the Planning Advisory Service.

*Q4: Finally, at 10.1 of the EM, you say: “The preparation of registers will have impacts on local authorities. These costs will be funded by the Government and kept under review”. What will be the impacts on local authorities? Has an estimate of these impacts been agreed with local authorities? Will local authorities be fully compensated for the extra burdens resulting?*

A4: The preparation and publication of brownfield land registers is a new requirement. Our estimate of costs was drawn from evidence that included a project in 2016 in which 73 local planning authorities piloted the preparation of brownfield land registers and from our consultation and wider engagement with the sector.

Permission in principle is a new route available to authorities for granting planning permission for housing led development. Data from an industry sponsored benchmarking exercise about the costs of processing planning applications was used to inform our assessment of the costs incurred by local planning authorities in meeting the requirements that must be met for sites to be granted permission in principle through brownfield land registers.

Local authorities will receive grant funding by 31 March 2017 to cover their new responsibilities in relation to brownfield registers and permission in principle and we will be writing to authorities to inform them of this. We have discussed the level of funding with the Local Government Association.

We will keep costs and funding needed from 2017/18 under active review. We propose to do this quarterly throughout 2017 working with a selection of local authorities.

**28 March 2017**

## APPENDIX 5: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 4 April 2017, Members declared no interests.

### **Financial Services and Markets Act 2000 and the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) (Amendment) Regulations 2017 (SI 2017/456)**

Lord Janvrin

*Senior Adviser, HSBC Private Bank (UK) Ltd.*

### **Attendance:**

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