HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

7th Report of Session 2016–17

Draft Consumer Rights (Rail Passenger Service Exemption, Enforcement and Amendments) Order 2016

Draft Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority (Election of Mayor) Order 2016

Draft Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016

Oral Evidence: The quality of information provided in support of secondary legislation

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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.

Seventh Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Consumer Rights (Rail Passenger Service Exemption, Enforcement and Amendments) Order 2016

Date laid: 7 July 2016

Parliamentary procedure: affirmative

Section 57 of the Consumer Rights Act 2015 ("the 2015 Act") provides that where traders provide a service to consumers, they cannot refund less than the full price paid where they breach any of the statutory rights set out in sections 49–52 of the 2015 Act. These statutory rights include that the trader must perform the service "with reasonable care and skill". The bulk of the 2015 Act was brought into force on 1 October 2015. However, the Government have decided that mainline train operators should have an exemption from section 57(3) of the 2015 Act, which relates to the level of compensation to be paid, until 30 September 2017. We have received submissions from Which? and Transport Focus which raise issues on how compensation schemes might work under the 2015 Act. **We find the Government's approach inconsistent in exempting rail passengers from the compensation provisions of the 2015 Act which will apply to passengers taking all other forms of transport from 1 October 2016.**

This Committee has been concerned about delays to the reform of rail passenger compensation schemes since the Department for Transport laid regulations in 2009 providing a blanket acceptance of all possible derogations from EU Regulation 1371/2007 on Rail Passengers' Rights and Obligations. Our 12th Report of Session 2014–15 concluded that "we are not convinced that the Department has given the interests of passengers sufficient priority" and this exemption from consumer rights law further supports that view. **The Consumer Rights Act 2015 is intended to protect the rights of the consumer. An instrument that has the effect of deferring those rights for rail passengers for one year after they are applied to other forms of transport and for two years beyond their application to all other forms of goods and services appears contrary to the broader policy objective of the 2015 Act.**

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 draft Order has been laid under the Consumer Rights Act 2015 ("the 2015 Act") by the (then) Business Innovation and Skills Department (BIS) as it has overall responsibility for consumer affairs. An Explanatory Memorandum (EM) and an Impact Assessment (IA) have also been provided. It should be noted that the overall policy on passenger rights is the province of the Department for Transport (DfT) and relevant correspondence is included in Appendix 1 of this report. We have also received submissions

from Which? and Transport Focus expressing concerns about the policy proposal. These are referred to below and published in full on our website.[1]

Background

2. Section 57 of the 2015 Act provides that where traders provide a service to consumers, they cannot refund less than the full price paid where they breach any of the statutory rights set out in sections 49–52 of the 2015 Act. These statutory rights include that the trader must perform the service "with reasonable care and skill".

3. The bulk of the 2015 Act was brought into force on 1 October 2015. Commencement of these rights for aviation, maritime and EU-licensed passenger services (mainline trains) was deferred until 6 April 2016 and then further delayed until 1 October 2016.[2]

4. DfT conducted a public consultation in November 2015 which proposed that aviation, maritime and mainline train passenger services should be permanently exempted from the requirements of the 2015 Act because the Government "believed that the existing compensation schemes in each mode provided an established, equitable and commensurate package of remedies for consumers and that there could be some risk of complexity and duplication if consumers had rights under both the 2015 Act and the sectoral transport schemes." The Government were also concerned that this could result in additional cost to transport operators.[3]

5. In the light of the significant concerns raised in response to that consultation by regulators and consumer groups about defects in the implementation and effectiveness of some of the transport sector schemes, the Government concluded that consumer interests were best served if the 2015 Act were applied in full to the maritime and aviation sectors from 1 October 2016. This means that air and sea passengers who fail to obtain appropriate compensation from the transport company will be able to fall back on their full rights under the 2015 Act. For mainline train passengers, however, DfT decided that mainline train operators should have an additional one year exemption from section 57(3) of the 2015 Act which relates to the level of compensation to be paid. This Order therefore exempts mainline train operators from that provision until 30 September 2017. Proposals also to exclude them from another section of the 2015 Act have been dropped.

Current rail passenger compensation schemes

National Rail Conditions of Carriage (NRCoC)*:*

6. Where delays, cancellations or poor service arise for reasons within the control of a Train Operating Company (TOC) passengers are entitled to compensation in accordance with the arrangements set out in that company's Passenger's Charter which varies from company to company. However, as a minimum, under the National Rail Conditions of Carriage (NRCoC), if passengers arrive more than 60 minutes late at their destination station they are entitled to 50% of the fare paid for a single ticket or return ticket if there

1 http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/.

2 Consumer Rights Act 2015 (Commencement No 3 Transitional Provisions, Savings and Consequential Amendments) (Amendment) Order 2016 (SI 2016/484).

3 See Government response to the consultation: https://www.gov.uk/government/consultations/rail-aviation-and-maritime-applying-the-consumer-rights-act paragraph 1.5.

are delays on both the outward and return journey or 50% of the price for the relevant portion of the journey where only one part of a return journey is delayed. Compensation arrangements for season tickets vary widely: from 20% of the daily fare rate paid to discounts on new tickets which are paid only if the company's overall performance sinks below a set figure (for example, if 5% of the TOC's trains are late over a 12 month period).

7. There is no entitlement under the NRCoC for compensation for delays caused by events outside rail industry control (for example due to adverse weather, suicides or vandalism).

Delay Repay:

8. Under this scheme all passengers are entitled to claim compensation for each delay regardless of the cause. The entitlement is 50% of the single fare for delays of 30-59 minutes and 100% for delays between 60-119 minutes. For delays of two hours or more the entitlement is 100% of the return fare.

9. The majority of TOCs use the Delay Repay scheme where compensation is paid in accordance with each TOC's Passenger's Charter. Only four out of a total of 15 DfT-franchised train operators (South West Trains, Great Western Railway, Arriva Trains Wales and Chiltern) continue to operate a default compensation scheme under NRCoC.

Submissions

10. The Committee has received two submissions on this Order: from Which? and from Transport Focus.

Which?

11. Which?, the consumer rights organisation, recently made a super-complaint about the complexity of these compensation schemes and how poorly they are advertised. Which? states that one effect of the Order would be to enable TOCs, as at present, to restrict the cases where compensation is payable and the rate, thus allowing the compensation rate effectively to be set at zero for the first 30 or 60 minutes depending on the scheme. DfT has confirmed that this is correct.

12. Which?, particularly in the light of the regulator's findings as a result of their super-complaint, say that they see no justification for delaying rail passengers' rights under the 2015 Act for a further year. The Government responded:

> "We agree that it is vital that customers who suffer delays understand their rights to compensation and have access to it in a timely way. The Department is already working closely with the Office of Road and Rail (ORR) and the Association of Train Operating Companies to bring about improvements to passenger compensation arrangements. The Department will respond to the ORR's report into the Which? super-complaint in due course.
>
> We will be extending Delay Repay to the minority of TOCs which do not operate it. We do not see the additional cost for promotion and communication when compensation regimes change as being significant, particularly where this is done electronically via websites and Apps etc. Documents such as the National Rail Conditions of Carriage and each

TOC's Passenger's Charter can be updated to reflect changes without significant cost. TOCs will on an ongoing basis want to ensure that they are making their passengers aware of their entitlements.

We consider that in most cases, particularly after improvements have been made, compensation under Delay Repay will be the usual means with which consumers will want to seek compensation for delays and cancellations. This will continue to be more straightforward for them than seeking to pursue rights directly under the Consumer Rights Act where they would need to demonstrate, potentially to the satisfaction of a court, both that the TOC had been at "fault" in breaching the standard of reasonable skill and care and also that the compensation payable under Delay Repay would be inadequate compensation in the specific circumstances."

Transport Focus

13. Transport Focus saw some advantages to the current compensation schemes but also some flaws. In particular they asked:

Whether the exemption period is to be used to design an improved model for compensation schemes or will the TOCs be left to their own devices and simply expected to produce something individually by October 2017.

DfT replied: "The exemption period is to allow the minority of train operating companies ("TOCs") operating compensation arrangements based on the NRCoC time to move to the more generous Delay Repay compensation scheme and to allow time for TOCs to consider how existing compensation arrangements can be improved to better reflect the rights granted by the Consumer Rights Act 2015. Whilst the exemption is in force the Department will be working with the industry to improve the claim process and access to compensation."

Whether, under the 2015 Act, passengers will be required to go to court to get full compensation as this could be a time consuming process and cause costs out of proportion with the ticket price.

DfT replied: "We think the most straightforward way for passengers to receive compensation is through the Delay Repay system which provides a much simpler route to compensation rather than passengers having to go to court, which would otherwise be the usual route to obtaining a price reduction under the Consumer Rights Act 2015 if the rights granted by Chapter 4 of the Act have been breached."

What "performing a service with reasonable care and skill" means in this context– would a full refund only apply to matters in the control of the TOC? So for example would a full refund be available if a passenger experienced long delays due to Network Rail works overrunning or due to weather problems such as flooding or lightning strike?

DfT replied: "The definition of what "performing a service with reasonable care and skill" might mean (whether this is in the transport context or in the context of another service) is ultimately a matter for the Courts to determine. The right to a price reduction under the Consumer Rights Act only arises where the trader has breached one of the statutory rights in Chapter 4 of the Act. If the TOC has performed

> its service with reasonable skill and care, the passenger is not entitled to a price reduction even if they have suffered a delay. However, the existing industry compensation schemes will still remain in place once the proposed one year temporary exemption period has ended. And under the Delay Repay scheme, if a passenger were delayed by 60 minutes or more, compensation of 100% of the single fare (50% of the return fare) would be claimable *whatever the cause of the delay* and so without the passenger having to establish (if necessary to the satisfaction of a court) that the TOC has failed to provide the service with reasonable skill and care. The entitlement is the same whether the delay to the service as scheduled in the timetable is due to Network Rail or a weather related event, or any other cause."

Impact

14. In supplementary evidence DfT said that the Government consider:

> "that there will be minimal cost to TOCs from these changes and that in most cases, particularly after improvements have been made, compensation under Delay Repay will be the usual means with which consumers will want to seek compensation for delays and cancellations. This will continue to be more straightforward for them than seeking to pursue rights directly under the Consumer Rights Act where they would need to demonstrate, potentially to the satisfaction of a court, both that the TOC had been at "fault" in breaching the standard of reasonable skill and care and also that the compensation payable under Delay Repay would be inadequate compensation in the specific circumstances."

15. We note that paragraph 2.7 of the Government response to the consultation exercise notes that the 2015 Act has been in force in full for bus, light rail and metro operators since October 2015 and there is no evidence that operators in those sectors have experienced an increase in litigation or new costs as a result.

Inconsistent policy

16. It seems reasonable that a buffer should be built into the rail compensation requirements so that passengers cannot claim a full refund if the train does not arrive exactly on time. This would set a standard interpretation of what "operating a service with reasonable care and skill" would mean for this sector. Similar arrangements are already in place in the air and maritime sectors: for aviation, compensation is payable when a flight is delayed for more than three hours or cancelled; for maritime, the minimum delay for which compensation is payable is one hour. In both cases the amount payable is also linked to the scheduled length of the journey.

17. The Government's intention to exempt the rail sector for a further year seems inconsistent in the light of the evidence from the consultation exercise. The regulators of both rail and aviation sectors expressed similar concerns over the operation of current compensation schemes. It is not clear, therefore, why the two sectors are being treated differently under the 2015 Act.

18. In relation to the aviation sector, paragraph 2.6 of the Government response to the consultation exersise, says:

> "We accepted that, in the light of wider concerns raised by consumer groups about the current operation of industry compensation schemes in the rail and aviation sectors, restricting consumer' access to the full remedies available under the 2015 Act in these sectors might affect the steps that are being taken to address these concerns. For example, in aviation the Civil Aviation Authority has recently taken enforcement action against several airlines that were not compliant with the EU Regulations, and they are in the process of reforming the way consumer complaints are being handled in the sector".

19. In relation to the rail sector, in response to the super-complaint by Which? (see paragraph 11 above), the Office of the Rail Regulator published a report[4] on 18 March 2016 which found in their favour and recommended that there should be a coordinated national campaign by the train companies to increase passenger awareness of the compensation available, to simplify forms and the claim-making process and to provide more staff training so that better information is provided when an incident happens. The Office of Rail and Road, the transport sector regulator, also saw a need for closer monitoring of train companies' performance to make sure that these improvements are delivered and then sustained.

20. Both sectors have been found to have inadequate compensation schemes: whereas, however, for the aviation sector the Government accept that an exemption to consumer rights under the 2015 Act might inhibit improvements being made, for the rail sector the exemption is being preserved for a further 12 months. **The House may wish to ask the Minister to explain this inconsistent approach.**

Conclusion

21. This Committee has been concerned about delays to the reform of rail passenger compensation schemes since DfT laid regulations providing a blanket acceptance of all possible derogations from EU Regulation 1371/2007 in 2009 on Rail Passengers' Rights and Obligations. Those derogations included rights to compensation for delayed rail passengers. DfT argued in 2009 that they had insufficient information to make a decision about which derogations to lift. We reiterated those concerns when all the derogations were renewed for a further five years in 2014 and DfT still stated it had insufficient information to proceed.[5] That Report concluded that "we are not convinced that the Department has given the interests of passengers sufficient priority and maintain the view set out in our report on the 2009 Regulations that the Department's approach to managing the implementation of this EU legislation appears to have been far from ideal."

22. The Minister's letter of 21 June 2016 (published in Appendix 1 of this report) mentions that DfT's "work on these other pieces of consumer rights work is now at an advanced stage"–this further delay to passengers' ability to obtain appropriate compensation for poor service was not the outcome we were expecting.

23. With respect to each instrument or response from DfT on passenger rights that this Committee has received over the last seven years, the Department

4 http://orr.gov.uk/info-for-passengers/complaints/rail-compensation-super-complaint.

5 Rail Passengers' Rights and Obligations (Exemptions) Regulations (SI 2014/2793) See our 12th Report of Session 2014–15 (HL Paper 60).

has still been seeking further information to inform their decision or still negotiating with the TOCs about compensation levels. It is therefore astonishing that they are not yet in a position to allow passengers the same level of consumer protection that applies to all other goods and services and most other forms of transport.

24. **The Consumer Rights Act 2015 is intended to protect the rights of the consumer. An instrument that has the effect of deferring those rights for rail passengers for one year after they are applied to other forms of transport and for two years beyond their application to all other forms of goods and services appears contrary to the broader policy objective of the 2015 Act.**

Draft Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority (Election of Mayor) Order 2016

Date laid: 4 July 2016

Parliamentary procedure: affirmative

This is the fifth Order proposing the creation of an elected mayor for a Combined Authority that has been laid by the Department for Communities and Local Government in the current Session: in this case, for the Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority ("the North East Combined Authority"). While the other councils have provided the consents needed, Gateshead Council has not done so. The Department says that, if Gateshead continues not to provide consent by the time that the Order is made, the Secretary of State will be required to make another Order removing the area of Gateshead Council from the existing North East Combined Authority area, in the autumn.

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

25. The Department for Communities and Local Government (DCLG) has laid this draft Order with an Explanatory Memorandum (EM). The Order proposes that the area of the Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority ("the North East Combined Authority": NECA)[6] is to have a directly elected mayor; that 4 May 2017 is to be the date of the first election; and that the first term of office for the mayor is to be three years.

26. In the EM, DCLG says that, before laying the Order, the Government sought the views of the NECA and the constituent councils. While the other councils have provided the consents needed, Gateshead Council has not done so: the Order has been prepared on that basis. DCLG says that, if Gateshead gives the necessary consent before the Order is made, a further instrument will be laid to reflect that fact. If however Gateshead does not consent by that point, the Secretary of State will be required to make an Order removing the area of Gateshead Council from the existing NECA area; this would be in the autumn.

27. DCLG has told us that, on 4 July, the NECA councils decided that, before approving the Governance Review and Scheme, they would write to the Secretary of State seeking further assurances about the Government's commitment to the Devolution Deal for their area; and that they intend to return to the issue at their next meeting on 19 July. The Department has said that, if the councils do not approve the Scheme, the Government will not be able to come forward with further secondary legislation to confer functions as provided for in the Deal. If that situation arose, and if the draft mayoral Order currently before Parliament were approved and made, the Mayor would simply be the Chair of the Combined Authority, which would have its current functions.

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6 Established by the Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland (Combined Authority) Order 2014 (SI 2014/1012).

28. This is the fifth Order proposing the creation of an elected mayor for a Combined Authority that has been laid in the current Session. In our 5th Report of this Session[7], we drew two such Orders to the special attention of the House: the draft Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016; and the draft West Midlands Combined Authority (Election of Mayor) Order 2016.[8] Noting that there were questions arising out of the complexity of some of the new institutional arrangements being introduced by devolution orders, we said that we were writing to the Secretary of State to seek greater clarity. We have received a reply which we are publishing at Appendix 2 to this report. **The House may be interested in this Order for the light that it throws on the ongoing process of local government devolution in the North East.**

7 Session 2016–17, HL Paper 25.

8 The other two Orders laid this Session were the draft Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority (Election of Mayor) Order 2016, and the draft Tees Valley Combined Authority (Election of Mayor) Order 2016.

Draft Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016

Date laid: 4 July 2016

Parliamentary procedure: affirmative

Terrorism Prevention and Investigation Measures notices (TPIMs) are placed on terror suspects by the Home Secretary when officials decide that the person can neither be prosecuted or deported but needs to have their movement or contacts restricted to protect the public. The current arrangements, made under section 21(1) of the parent Act, were limited to five years and will lapse at midnight on 13 December 2016 unless an Order is made to provide for the continuation of TPIM powers. In view of current threat levels the Home Office is seeking authority to operate the scheme for another five years, the maximum time available under the parent Act. We commend the Home Office for starting the process in good time to allow full discussion, as, if agreed, the matter will not come before Parliament again until 2021.

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.

29. This draft Order has been laid by the Home Office under section 21(3) of the Terrorism Prevention and Investigation Measures Act 2011 ("the Act") with a revised Explanatory Memorandum (EM).[9] The instrument seeks to extend the current power to issue notices for a further five years.

Background

30. Terrorism Prevention and Investigation Measures notices (TPIMs) are placed on terror suspects by the Home Secretary when officials decide that the person can neither be charged nor deported but needs to have their movement or contacts restricted to protect the public. Such a suspect might have to wear an electronic tag, be subject to a curfew, be kept under surveillance and the police can enter their home at any time if it is thought that they have absconded. A warrant is required at other times, for example, if the police wish to check whether the person is in compliance with the conditions set by the notice.

31. A TPIM is valid for one year with the option of being extended for a further year. At the end of the second year the TPIM will expire. A new TPIM can be imposed if the subject has been involved in new terrorism related activity and the other conditions for imposing a TPIM are satisfied.

32. The last published set of figures[10] state that one TPIM is in force and that a total of 12 TPIMs have been imposed since the legislation was passed. The Government's use of the system is subject to independent monitoring, and a report is laid before Parliament annually.

Renewal

33. The current arrangements, made under section 21(1) of the Act, were limited to five years and will lapse at midnight on 13 December 2016 unless

9 The original EM had insufficient background information.

10 http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statements/.

an Order is made to provide for the continuation of TPIM powers. In view of current threat levels the Home Office is seeking authority to operate the scheme for another five years, the maximum time available under the Act. We commend the Home Office for starting the process in good time to allow full discussion, as, if agreed, the matter will not come before Parliament again until 2021.

INSTRUMENTS OF INTEREST

Draft Pensions Act 2014 (Consequential Amendments) Order 2016

34. The new State Pension came into operation on 6 April 2016: most of the amendments needed to fit it into the existing administrative framework have already been made. This affirmative instrument is needed, however, to make a few further amendments. Article 2 facilitates the annual up-rating of social security benefits in payment by enabling certain income-related benefits to be adjusted automatically where the rate of State Pension in payment is uprated. Article 3 introduces a right of appeal against decisions about whether National Insurance credits will count for new State Pension purposes. In paragraphs 7.12–7.15 of the Explanatory Memorandum the Department for Work and Pensions explains that this remedies an oversight and only a few individuals are likely to be affected by the lacuna. **Nonetheless it is concerning that the policy-making process overlooked so standard a requirement as an appeal mechanism until three months after the new pension scheme had commenced.**

Draft Welfare Reform and Work (Northern Ireland) Order 2016

35. This draft Order makes equivalent provision to the Welfare Reform and Work Act 2016 ("the 2016 Act") for Northern Ireland with some limited mitigation of certain reforms, as agreed in the Stormont House and Fresh Start Agreements. The Order mirrors welfare provision in the 2016 Act by reducing the benefit cap to £20,000, freezing certain social security benefits for four tax years, removing the work-related activity component in Employment and Support Allowance, limiting the child element of Universal Credit to a maximum of two children, removing the limited capability for work element in Universal Credit, making changes to conditionality for Universal Credit claimants who are responsible for young children and replacing the current support for mortgage interest payments with a recoverable interest-bearing loan. The variations are in Articles 18, 19 and 20 of the Order, which extend the scope of the Northern Ireland Department for Communities' Discretionary Support payments to cover also individuals impacted by the 2016 Act reforms, support the mitigation scheme for claimants who would otherwise be penalised because they are occupying a larger property than their household size warrants, and support supplementary payments under the 'Cost of Working Allowance' in recognition of the expenses that those in employment incur.

Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (SI 2016/624)

36. This instrument implements a measure, announced in the Autumn Statement in November 2015,[11] to reduce from 13 to four weeks the period for which entitlement to Housing Benefit and Pension Credit may continue when a person is temporarily absent from Great Britain. The new absence rules will apply to members of the claimant's household as well as to the claimant, so if a person who normally lives with the claimant is absent from Great Britain for more than four weeks the claimant's Housing Benefit will need to be reassessed. This aligns the temporary absence rules in these benefits with Universal Credit. The Regulations also set out some exceptions to this requirement, for example extending the permitted period to eight weeks

11 Chapter 3, paragraph 3.46.

where the absence is due to the death of a close family member abroad or to 26 weeks when medical treatment or domestic violence is involved. The Social Security Advisory Committee, a statutory consultee, has conducted a consultation exercise and produced a report making recommendations,[12] some of which the Government have accepted, for example on how the exception for members of the armed forces posted abroad should be phrased. The Department estimates that about 110,000 claimants will be affected by these changes.

Communications (Television Licensing) (Amendment) Regulations 2016 (SI 2016/704)

37. The Department for Culture, Media and Sport (DCMS) has laid these Regulations with an Explanatory Memorandum (EM). In the EM, DCMS explains that at present it is a requirement for a person who watches or records TV programmes as they are being shown live, using any television receiving equipment, including laptops, mobile phones or tablets, to be covered by a TV licence. This includes streaming live television services online and is referred to as "linear" television. However, if a person only watches "on-demand" services (through the BBC iPlayer or other catch-up services) at a different time to the broadcast (or provided as online only), there is no need for a TV licence. This is referred to as "non-linear" television.

38. In March 2016, agreement was reached between DCMS and the BBC to bring forward secondary legislation to extend the current scope of the TV licence to cover BBC on-demand services (most notably the iPlayer), but not the on-demand services provided by other public service broadcasters. These Regulations amend existing legislation[13] to that end.

12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536031/housing-benefit-and-pension-credit-temporary-absence-regs-2016-ssac-report.PDF.

13 Namely, the Communications Act 2003 and the Communications (Television Licensing) Regulations 2004 (SI 2004/692).

EVIDENCE SESSION, 12 JULY 2016

Quality of information provided in support of secondary legislation

39. The Committee has a long-standing concern that, when statutory instruments (SIs) are laid, they should be supported by sufficient information to enable scrutiny to be carried out effectively. The main vehicle is the Explanatory Memorandum (EM), though other documents, notably Impact Assessments (IAs), can also serve this purpose.

40. From the start of the 2014–15 Session, the House agreed that the Committee's terms of reference should be amended, to allow it to bring an SI to the special attention of the House on an additional ground: "that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation".

41. In 2014–15, the Committee saw 1,153 SIs. In total, it drew 89 to the attention of the House: nine (10% of SIs reported) were reported using the new ground of insufficient information. In 2015–16, the Committee saw 712 SIs. It drew a total of 67 of these to the House's attention: 13 (nearly 20% of SIs reported) on the ground of insufficient information.

42. Following correspondence with the Rt Hon. Matt Hancock, MP, then Cabinet Office Minister, the Committee took evidence on this issue on 12 July. Those giving evidence were Ms Elizabeth Gardiner, First Parliamentary Counsel (and Permanent Secretary in Cabinet Office); Mr Jonathan Jones, Treasury Solicitor; and Mr Chris Wormald, Permanent Secretary in the Department of Health, and head of the Government policy profession.

43. Mr Wormald and his colleagues told us that recognition of the policy profession was a new initiative across Whitehall, which was intended to improve the training of policy-makers within Departments. They had concluded that such training needed to put greater emphasis on better understanding of Parliamentary processes, including the preparation of EMs. We welcome this commitment, and will monitor the success of the initiative in our ongoing scrutiny of secondary legislation. We are publishing on our website a transcript of the evidence.[14]

14 http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

Draft instruments subject to affirmative approval

Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016

Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016

National Minimum Wage (Amendment) (No. 2) Regulations 2016

Pensions Act 2014 (Consequential Amendments) Order 2016

Welfare Reform and Work (Northern Ireland) Order 2016

Instruments subject to annulment

SI 2016/624	Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016
SI 2016/645	Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016
SI 2016/678	Social Security (Jobseeker's Allowance, Employment and Support Allowance and Universal Credit) (Amendment) Regulations 2016
SI 2016/686	National Health Service (Performers Lists) (England) (Amendment) Regulations 2016
SI 2016/697	Antarctic (Recognised Assistance Dog) Regulations 2016
SI 2016/700	Communications (Access to Infrastructure) Regulations 2016
SI 2016/702	Nuclear Decommissioning and Waste Handling (Finance and Fees) (Amendment) Regulations 2016
SI 2016/703	National Park Authorities (England) (Amendment) Order 2016
SI 2016/704	Communications (Television Licensing) (Amendment) Regulations 2016
SI 2016/705	Criminal Procedure (Amendment No. 2) Rules 2016
SI 2016/706	Office of Communications (Membership) (Modification) Order 2016
SI 2016/707	Civil Procedure (Amendment No. 2) Rules 2016
SI 2016/708	Civil and Criminal Legal Aid (Financial Eligibility and Contributions) (Amendment) Regulations 2016
SI 2016/709	Justice of the Peace Rules 2016
SI 2016/714	Central Rating List (England) (Amendment) (No. 2) Regulations 2016

SI 2016/715	Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016
SI 2016/716	Fal Fishery Order 2016
SI 2016/718	Renewable Heat Incentive Scheme (Amendment) Regulations 2016
SI 2016/719	Employers' Duties (Implementation) (Amendment) Regulations 2016
SI 2016/721	Dangerous Goods in Harbour Areas Regulations 2016
SI 2016/732	Children and Young People (Scotland) Act 2014 (Consequential Modifications) Order 2016
SI 2016/738	Waste (Meaning of Recovery) (Miscellaneous Amendments) Regulations 2016
SR 2016/258	Housing Benefit (Amendment) Regulations (Northern Ireland) 2016

APPENDIX 1: DRAFT CONSUMER RIGHTS (RAIL PASSENGER SERVICE EXEMPTION, ENFORCEMENT AND AMENDMENTS) ORDER 2016

Letter from Claire Perry, MP, Parliamentary Under Secretary of State at the Department for Transport, to The Chairman of the Secondary Legislation Scrutiny Committee

I am writing to you with an update on the work my Department is undertaking to benefit passengers by reducing the scope of the Rail Passengers' Rights and Obligations (Exemptions) Regulations (SI 2014/2793). When I wrote to you about this on 9th November 2015, I said that I expected to be in a position to make an announcement in early 2016.

I can assure you that I continue to hold the interests of rail passengers at heart and that I remain committed to removing certain exemptions early, where we are able to do so. However, I wanted to ensure that our approach remained consistent with broader developments in consumer rights policy. These have included work to implement the Consumer Rights Act 2015 in the Rail, maritime and aviation sectors, and also to formulate a UK response to a recent consultation on options for reforming the Passenger Rights and Obligations Regulation ((EC) 1371/2007). These have both proved more complex and time-consuming tasks than we had envisaged or hoped.

I am pleased to say that our work on these other pieces of consumer rights work is now at an advanced stage. In particular, we announced our decision on the Consumer Rights Act on 4th April 2016 and aim to lay an SI before Parliament in the summer. We therefore expect to be able to make further progress on our work on removing certain UK exemptions over the next few weeks and to be in a position to make an announcement within the next 2-3 months.

21 June 2016

APPENDIX 2: DRAFT DURHAM, GATESHEAD, NEWCASTLE UPON TYNE, NORTH TYNESIDE, NORTHUMBERLAND, SOUTH TYNESIDE AND SUNDERLAND COMBINED AUTHORITY (ELECTION OF MAYOR) ORDER 2016

Letter from the Chairman of the Secondary Legislation Scrutiny Committee to the Secretary of State for Communities and Local Government

Devolution Orders

At our meeting on 12 July, we considered two affirmative orders laid by your Department: the draft Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016; and the draft West Midlands Combined Authority (Election of Mayor) Order 2016.

In the Explanatory Memorandum to the first of these Orders, your Department stated that the councils of Bassetlaw and Chesterfield had resolved that they wished their areas to become part of the area of the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority.

We are aware that Bassetlaw is within the area of Nottinghamshire County Council, and Chesterfield in the area of Derbyshire; and also that both Bassetlaw and Chesterfield Councils wish to be non-constituent members of the proposed North Midlands Combined Authority, which is seeking a devolution agreement with Government.

We are bringing both Orders to the special attention of the House, commenting on the process of "combination creep", through the involvement in Combined Authorities of non-constituent councils or councils outside the geographical limits of existing Combined Authorities. We consider that this process raises a number of serious questions about the interaction between established local government structures, especially in areas of two-tier local government, and the new institutional arrangements being introduced by devolution orders. We also think that the prospect of councils being members of more than one Combined Authority highlights the issue of the respective responsibilities and accountability of the councils concerned.

At our meeting on 19 July, we expect to consider a further devolution order, namely the draft Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority (Election of Mayor) Order 2016. In the Explanatory Memorandum to that Order, your Department stated that Gateshead had not ratified the devolution agreement which had been accepted by the other constituent councils; and that if Gateshead's position remained unchanged, there would have to be a further order removing Gateshead from the area of the Combined Authority. This possibility illustrates the complexity of the arrangements that are being introduced by these orders.

We agreed to write to ask you to clarify the Government's thinking on the issues raised in this letter: in short, whether the Government have thought through the interaction between "old" and "new" local government structures, and how the intersection of responsibilities between these structures will work and, indeed, be readily understood by the population of the areas concerned.

We would welcome a reply in good time for us to take account of it at our meeting on 19 July.

13 July 2016

Letter from the Department for Communities and Local Government to the Secretariat of the Secondary Legislation Scrutiny Committee

Devolution Orders

The Chairman of the Secondary Legislation Scrutiny Committee wrote to the Secretary of State for Communities and Local Government on 13 July 2016 asking for clarification of the Government's thinking about the interaction between "old" and "new" local government structures, in short between existing councils and combined authorities and their mayors. The letter referred particularly to the proposals for the areas of Bassetlaw and Chesterfield to become part of the area of the Sheffield City Region Combined Authority, and to the situation of Gateshead and the North East Combined Authority.

We discussed that with the Ministerial changes it might not be possible for Ministers to reply by Monday 19 July, and you thought that if this were the case it might assist the Committee if an official wrote to you by that date setting out the factual position on the matters that your Chairman has raised. Accordingly, below I describe the circumstances of Bassetlaw and Chesterfield, as well as the situation in the North East.

Bassetlaw and Chesterfield councils have been non-constituent members of the Sheffield City Region Combined Authority since its establishment in April 2014. This means in effect that they are associate members of the Combined Authority, their representatives are able to take part in the Authority's discussions, and can be part of its decision making to the extent that the constituent members allow. These arrangements were adopted as the areas of these councils, whilst part of the Sheffield City Region functional economic area, were not part of the area of the Combined Authority.

Using the provisions that Parliament has enacted in the Cities and Local Government Devolution Act 2016, Bassetlaw and Chesterfield Councils together with the Combined Authority are now formally consulting on proposals that the area of these councils becomes part of the Combined Authority area, given the strong economic links between all these areas. It is suggested that as an integrated whole these areas provide a sound economic geography over which powers can be devolved.

Following the consultation, statute provides that the Secretary of State can seek Parliamentary approval to an order effecting the proposed change of area, if he is satisfied that it would be likely to lead to an improvement in the exercise of statutory functions. Before making any such decision he will consider very carefully the proposals and the summary of consultation responses which statute requires the Combined Authority to send to him, together with all other representations that he may receive. If expanding the area of the Combined Authority is to lead to an improvement in the exercise of statutory functions, arrangements will need to be in place to ensure there is clear accountability in the exercise both of the powers devolved to the area and of existing council functions. We understand the councils concerned are considering the details of such arrangements and how these might best be operated.

If the areas of Bassetlaw and Chesterfield were to become part of the area of the Sheffield City Region Combined Authority, the district councils of Bassetlaw and Chesterfield would be constituent councils of the Combined Authority, as would Nottinghamshire County Council and Derbyshire County Council in respect of those parts of the county within the Combined Authority area. Furthermore, the electors of Bassetlaw and Chesterfield Councils would participate in the election of the mayor of the Sheffield City Region area, who would exercise functions over the whole of the Combined Authority's expanded area.

In such circumstances, it would also be open to those district councils to be non-constituent members of any North Midlands Combined Authority, if that was wanted locally, met the statutory test of improving the exercise of statutory functions, and was approved by Parliament. Such an arrangement may be appropriate if for example, notwithstanding the strong economic links of these areas with the Sheffield City Region, there were also some economic links with the North Midlands. These district councils could not be constituent members of the North Midlands Combined Authority as a district council can be a constituent member of only one combined authority.

Your Chairman also mentioned the circumstances of the North East Combined Authority, where all the constituent councils except Gateshead Council have consented to the mayoral Order currently before Parliament. In the 2016 Act Parliament has specifically legislated for such circumstances. It has provided that an order may still be made establishing a mayor for the Combined Authority area, even though there is a non-consenting council, and that the Secretary of State is then under a duty to make a further order removing the area of that council from the Combined Authority area. Once that order is made, the council would cease to be a constituent member of the Authority.

These provisions allow an area to have an elected mayor, with the strong accountability that brings, whilst equally not imposing a mayor on any area where those elected to represent it do not give their consent. These arrangements do not have any effect on the traditional local government administrative areas, and we know that Gateshead and the other councils in the North East are already carefully considering how best to address any practical implications these arrangements may have for the delivery of local services

18 July 2016

APPENDIX 3: 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 19 June 2016 Peers declared the following interest:

Communications (Television Licensing) (Amendment) Regulations 2016 (SI 2016/704)

Baroness Stern

Not currently a television licence holder.

Attendance:

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