

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

8th Report of Session 2016–17

Draft Contracting Out (Functions relating to the Royal Parks) Order 2016

Includes 5 Information Paragraphs on 6 Instruments

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Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Andrews	Lord Hodgson of Astley Abbots	Lord Rowlands
Lord Bowness	Baroness Humphreys	Baroness Stern
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne (<i>Chairman</i>)
Lord Haskel	Baroness O'Loan	

Registered interests

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

Publications

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

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

Information and Contacts

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

Eighth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Contracting Out (Functions relating to the Royal Parks) Order 2016

Date laid: 21 July 2016

Parliamentary procedure: affirmative

This Order proposes that the Government may contract out the management of the Royal Parks and other open spaces. The Department for Culture, Media and Sport has said that it proposes to contract out management of the parks and other spaces to a new organisation, replacing the Royal Parks Agency, which would be a company limited by guarantee of the Secretary of State, and which would apply for charitable status. The proposal raises issues of public support, maintaining the balance between the parks' historic environment and commercial activity, and finance, which the House may wish to raise with the Government.

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.

1. The Department for Culture, Media and Sport (DCMS) has laid this draft Order with an Explanatory Memorandum (EM). In the EM, DCMS explains that the Order proposes to allow the Secretary of State to contract out the management of the Royal Parks¹ and other open spaces, instead of the current arrangement based on the Royal Parks executive agency. DCMS proposes to contract with a new organisation which will be a company limited by guarantee of the Secretary of State, and which will apply for charitable status.
2. DCMS says that no formal consultation has been undertaken, but that engagement with key stakeholders and the wider public has shown broad support for the proposal. We obtained further information from DCMS, including about the reaction of stakeholders, which we are publishing as Appendix 1.
3. The Department says that the proposal has been discussed over many months at a series of meetings attended by friends groups of all the Royal Parks and other visitor representatives, concessionaires, elected representatives and the police; and that local authorities bordering the estate that are represented on the Royal Parks Advisory Board, and the Greater London Authority, are fully supportive. **Given that there has been no public consultation process, however, we question whether the changes in prospect are widely known among the large numbers of people who use the Royal Parks, including London residents and visitors from elsewhere; in the absence of such consultation, we question whether it is appropriate to assume that the proposal will be readily welcomed by many users of the parks.**

¹ Including Saint James's Park, Hyde Park, Green Park, Regent's Park, Primrose Hill, Greenwich Park, Richmond Park and Bushy Park.

4. In the EM, DCMS says that it is not the intention to permit the estate to become overly commercialised as a result of the proposed changes but rather that current opportunities can be broadened “in a more effective and beneficial way.” We asked the Department what would be done to ensure that the new organisation would continue to focus on protecting and enhancing the intrinsic qualities of the parks. DCMS has said that the Secretary of State will set out, in the contract, the obligations of the new organisation in terms of maintaining quality in the parks, including key performance targets that the charity will be obliged to meet; and that the new organisation will continue to be subject to all the existing statutory designations relating to environmental protection and management. **The House may wish to press for more detail of the regime that will apply to the future management of the parks, given that reference to “broadening opportunities” inevitably raises questions about the balance between protecting the historic environment of the parks and allowing commercial activities in them.**
5. In the EM, DCMS states that the Royal Parks Agency currently generates almost 70% of its own income, with the balance covered by grant-in-aid from HM Treasury. It says that, under the proposed contracting-out arrangements, the Government will provide resource funding and capital investment to the new organisation, which will be able to raise funds through commercial activities. It expects that in the longer term this will reduce the burden on the public purse. It also says that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) will apply, but that staff working in the existing Agency will cease to be civil servants.
6. It seems likely that the changes proposed, including the future arrangements for the remuneration and pension provision of staff, will have major financial implications for the new organisation’s budget, which are touched on in very little detail in the Department’s EM. **The House may wish to seek a fuller explanation from the Government about budgetary planning for the new organisation, and the extent to which the Exchequer will provide financial support to the organisation alongside any revenue derived from commercial activities.**

INSTRUMENTS OF INTEREST

Draft Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016

7. HM Treasury (HMT) has laid this draft Order with an Explanatory Memorandum (EM). HMT explains that, in the wake of the financial crisis of 2007–09, the Government’s programme of structural reform of the UK banking system included, as a central element, the ring-fencing of retail from wholesale/investment banking. The framework for ring-fencing was provided by the Financial Services (Banking Reform) Act 2013, with further details set out in secondary legislation.² HMT says that since the secondary legislation was introduced, as banks have begun to implement the required structural changes, it has become aware of technical issues that have the potential to undermine the effectiveness of the ring-fencing regime. The purpose of this draft Order is to make a total of 18 amendments to address these issues.

Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016 (SI 2016/781)

8. These Regulations react to an Appeal Court judgement on the allocation of legal aid funds to judicial review of civil cases. The Civil Legal Aid (Merits Criteria) Regulations 2013 (SI 2013/104) (“the Merits Criteria Regulations”) set out the criteria that the Legal Aid Agency must apply when determining whether an applicant qualifies for civil legal aid, in particular the Regulations required that the case must generally have a 50% or higher prospect of success. Following a judicial review, (the “IS case”³), the High Court declared aspects of SI 2013/104 unlawful. The Ministry of Justice appealed but introduced interim Regulations (SI 2015/1571) to comply with the High Court judgement.⁴ On 20 May 2016, the Court of Appeal overturned the High Court’s decision and held that the Merits Criteria Regulations, as they were prior to being challenged, were lawful.
9. This instrument removes the interim provisions introduced by SI 2015/1571, but, rather than simply reverting to the original version of the criteria, makes legal aid funding available for certain cases where the prospects of success are “borderline”⁵ or between 45% and 50% (defined as “marginal” prospects of success). The new category would allow funding for cases of overwhelming importance to the individual (that is, where the outcome may result in the person losing their liberty or their home) or that are of wider public interest (that is, where either the general public or a class of individuals may also be affected by its outcome). This instrument is a made affirmative, which means it had immediate effect with respect to applications for civil legal services made on or after 22 July 2016, but must be approved by Houses within 120 days in order to remain in force. It should, however, be noted that the legal arguments continue and the Supreme Court is currently considering an application for a further appeal in the IS case.

2 HMT mentions in particular the Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014 (SI 2014/1960); the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (SI 2014/2080); and the Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015 (SI 2015/547).

3 *IS v The Director of Legal Aid Casework and the Lord Chancellor* [EWHC 1965 (Admin)], 15 July 2015.

4 The Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2015 (SI 2015/1571).

5 “Borderline” means that it is not possible, by reason of disputed law, fact or expert evidence, to quantify the prospects of success.

Education (Pupil Registration) (England) (Amendment) Regulations 2016 (SI 2016/792)

Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 (SI 2016/808)

10. SI 2016/792 places a duty on schools to notify their local authority when they remove a pupil's name from, or add it to, the admissions register at "non-standard transitions", that is, where a school-age child leaves a school before completing the school's final year, or alternatively such a child joins a school after the beginning of the first year. The instrument was laid on 22 July, to come into force on 1 September 2016. This timing does not respect the Department for Education's (DfE) undertaking in general to leave a term between laying an instrument with a new requirement on schools and bringing it into force (DfE completed the relevant consultation on 7 March 2016). Nothing is said in the Explanatory Memorandum (EM) about this departure from normal practice.
11. SI 2016/808 requires schools to include additional data items in the termly School Census. It was laid on 27 July, to come into force on 1 September 2016: again, this does not allow for a term's interval between laying and coming into force. In this case, the EM (at paragraph 3.2) acknowledges this failure to give one term's notice, but states that the instrument means only a "modest expansion" of an existing requirement.
12. We obtained further information from DfE about these two sets of Regulations and the impact on schools of such short notice before the new requirements come into force. We are publishing that information as Appendix 2 to this report. It seems clear that the pre-referendum period of "purdah" contributed to the compression of the timetable for finalising the first set of Regulations. While DfE has told us that no concerns have been raised with them about the timetable, it cannot be helpful to schools if new requirements, to be applied in the autumn term, are set out in statutory instruments laid at the end of the preceding summer term.
13. We received comments on SI 2016/808 from Defenddigitalme, a group which campaigns for DfE to change its policies on the National Pupil Database, and also a response to those comments from the Department itself. We are publishing this material on our website.

School Teachers' Pay and Conditions Order 2016 (SI 2016/831)

14. The Department for Education (DfE) has laid this Order with an Explanatory Memorandum (EM). The Order, which comes into force on 1 September 2016, provides that the remuneration and conditions of employment of school teachers is to be determined by reference to section 2 of the "School Teachers' Pay and Conditions Document 2016 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The Document reflects recommendations made by the School Teachers' Review Body (STRB). In the EM, DfE sets out the consultation process which was followed before the Document was finalised. In particular, DfE says that, on 6 July 2016, the Secretary of State invited consultees to comment on the STRB's 26th Report and the revised draft Document during a four-week consultation process, from 6 July to 2 August; and that this consultation period was delayed from its original proposed six-week consultation period from mid-May because of the EU referendum purdah arrangements.

15. The Department acknowledges that the majority of the respondents were unhappy about what they saw as an unacceptable and avoidable delay in publishing the report and consultation, which in their view left schools very little time to digest and implement the pay award in September. We obtained further information from the Department about the timing of these processes, which we are publishing as Appendix 3.

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2016 (SI 2016/847)

16. Section 59(1) of the Immigration Act 2016 requires the Secretary of State to produce guidance on the matters to be taken into account when determining whether a person would be particularly vulnerable to harm if they were to be detained or to remain in immigration detention. This instrument brings into force new “*Guidance on adults at risk in immigration detention*” (“the Guidance”) which was laid in July.⁶ Paragraph 11 of the Guidance lists the indicators of risk, which include: mental health conditions, conditions as a result of torture, trafficking etc., pregnancy, disability, being aged over 70 or being inter- or trans-sexual. The Home Office states that this does not mean that a vulnerable person will never be detained, other relevant factors (such as public protection concerns) will need to be weighed up in each case. When the Guidance comes into force on 12 September, the Home Office will be publishing more detailed guidance for its caseworkers which will set out how they should assess the evidence when making a decision about detention. **This caseworker guidance was not available to us, even in draft, and we consider it unhelpful that material relevant to Parliament’s understanding of how a system will operate in practice is not available when the implementing instrument is being scrutinised by Parliament.**

6 See: <https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>.

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

Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016

Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016

Instruments subject to affirmative approval

SI 2016/781 Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016

Draft instruments subject to annulment

Misuse of Drugs Act 1971 (Amendment) Order 2016

Instruments subject to annulment

Cm 9306 Instruments Amending the Constitution of the International Telecommunication Union—Minneapolis 1998

Cm 9307 Instruments Amending the Constitution of the International Telecommunication Union—Minneapolis 1998, Marrakesh 2002

Cm 9308 Instruments Amending the Constitution of the International Telecommunication Union—Minneapolis 1998, Marrakesh 2002, Antalya 2006

Cm 9309 Instruments Amending the Constitution of the International Telecommunication Union—Minneapolis 1998, Marrakesh 2002, Antalya 2006, Guadalajara 2010

SI 2016/662 Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2016

SI 2016/663 Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2016

SI 2016/729 Civil Aviation (Denied Boarding, Compensation and Assistance and Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) (Amendment) Regulations 2016

SI 2016/741 Companies (Disclosure of Information) (Specified Persons) Order 2016

SI 2016/743 Social Security (Treatment of Postgraduate Master's Degree Loans and Special Support Loans) (Amendment) Regulations 2016

- SI 2016/745 Magistrates' Courts (Forfeiture of Political Donations) (Amendment) Rules 2016
- SI 2016/761 Scotland Act 2016 (Saving) Regulations 2016
- SI 2016/762 Modern Slavery Act 2015 (Duty to Notify) (Amendment) Regulations 2016
- SI 2016/764 Ada National College for Digital Skills (Incorporation) Order 2016
- SI 2016/767 Ada National College for Digital Skills (Government) Regulations 2016
- SI 2016/765 Air Navigation Order 2016
- SI 2016/777 Non-Domestic Rating (Miscellaneous Provisions) (No. 2) Regulations 1989 (Amendment) (England) Regulations 2016
- SI 2016/787 Export Control (Libya Sanctions) Order 2016
- SI 2016/788 Civil Procedure (Amendment No. 3) Rules 2016
- SI 2016/789 Home Loss Payments (Prescribed Amounts) (England) Regulation 2016
- SI 2016/792 Education (Pupil Registration) (England) (Amendment) Regulations 2016
- SI 2016/793 Childcare Payments (Eligibility) (Amendment) Regulations 2016
- SI 2016/796 Childcare Payments (Amendment) Regulations 2016
- SI 2016/798 Police (Amendment) Regulations 2016
- SI 2016/808 Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016
- SI 2016/820 Harbour Directions (Designation of Harbour Authorities) Order 2016
- SI 2016/821 Harbour Directions (Designation of Harbour Authorities) (Amendment) Order 2016
- SI 2016/822 Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) (Pilot) (Revocation and Transitional Provision) Regulations 2016
- SI 2016/831 School Teachers' Pay and Conditions Order 2016
- SI 2016/833 National College for the Creative and Cultural Industries (Incorporation) Order 2016
- SI 2016/834 National College for the Creative and Cultural Industries (Government) Regulations 2016
- SI 2016/838 Ecodesign for Energy-Related Products and Energy Information (Amendment) Regulations 2016
- SI 2016/841 Protection of Wrecks (Designation) (England) (No.2) Order 2016
- SI 2016/847 Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2016

APPENDIX 1: DRAFT CONTRACTING OUT (FUNCTIONS RELATING TO THE ROYAL PARKS) ORDER 2016

Additional Information from the Department for Culture, Media and Sport

Q1: In the Explanatory Memorandum (EM) you say that charitable status “would also make it possible for the Agency to join the Royal Parks Foundation, an existing charity that raises money for the parks, in forming the new organisation. Having one single organisation for the parks would bring greater coherence to fundraising, income generation and volunteering opportunities.” Does this mean that new “Royal Parks Company” would merge with the Royal Parks Foundation? If so, how would this merger be achieved?

A1: Subject to the agreement of Parliament and the Charity Commission, the Royal Parks will become a charitable public body. It will be a company limited by guarantee of the Secretary of State and registered as a charity with the Charity Commission. The new organisation will be responsible for functions currently undertaken by The Royal Parks Agency and the Royal Parks Foundation. Both organisations will effectively be subsumed into the new organisation but the Foundation may continue as a legal entity for a short time if necessary to meet existing legal obligations, although it will no longer fund-raise for the park or in any way compete with the new charity. The Secretary of State will have a contract with the new Royal Parks organisation. Transfer agreements will be made between the Foundation and the new charity and between the Secretary of State and the new charity transferring staff and assets (although the land will remain Crown land).

Q2: In the EM you say: “The core purpose of the new organisation will continue to focus on protecting and enhancing the intrinsic qualities of the parks. It is not the intention to permit the estate to become overly commercialised; rather it will mean that we can broaden the current opportunities (see 7.4) in a more effective and beneficial way.” How will the Secretary of State ensure that “the new organisation will continue to focus on protecting and enhancing the intrinsic qualities of the parks”? Is this a requirement laid down in statute?

A2: The Secretary of State will set out, in the contract, the obligations of the new organisation in terms of maintaining quality in the parks. This will include key performance targets that the charity will be obliged to meet. The new organisation will continue to be subject to all of the existing statutory designations relating to environmental protection and management.

Q3: You say in the EM: “Local authorities (LA) exercise planning control over major events, such as Winter Wonderland, the summer concerts season and other key activities in the Royal Parks. This will continue to be the case.” Does this mean that there are minor events not subject to LA planning control? How often do such minor events take place? Will the Secretary of State have the ability to limit minor events if they proliferate?

A3: Local authorities regulate our largest events that are subject to planning or licensing law. For other events that fall outside the statutory oversight of local authorities, the new charity, acting on behalf of the Secretary of State, will continue to regulate them through a licensing regime in accordance with park regulations. This will ensure that the number of events is controlled so as not to undermine the overall enjoyment of the parks by those who visit.

The TRP Agency's "Major Events Strategy" which will continue to apply once the new charity is in place, includes guiding principles applying to all events, as well as park-specific criteria, including respecting and complementing the park environment, minimising the impact on the park fabric and ecology and minimising the impact on park users and local residents. The numbers vary from year to year, in the hundreds, but the majority are small community events such as sponsored walks and runs to picnics and school sports days.

Q4: In the EM you say: "8.1 The Royal Parks will remain free to all and will continue to be managed as high quality listed landscapes. Given that this instrument amends the status of the organisation rather than changes the face of the parks as experienced by visitors, no formal consultation has been undertaken. There has however been engagement and discussion with key stakeholders and the wider public." What has been the nature of the engagement and discussion with key stakeholders and the wider public? Who are the key stakeholders in this context? Has the Royal Parks Foundation expressed a view? What is the basis for the statement in the EM that there is broad support for the new proposal?

A4: The aspiration to create a new charity has been discussed over many months at a series of meetings attended by friends groups of all the Royal Parks and other visitor representatives, concessionaires, elected representatives and the police. Local Authorities bordering the estate are represented on the Royal Parks Advisory Board and are fully supportive of the proposal. So too is the GLA. Discussions have also taken place with the army in view of the number of ceremonial events that take place in the estate. In addition "Meet the Park Team" events have been held across the parks providing the opportunity for visitors to learn about the parks including the proposed change of status for the organisation.

The Royal Parks Foundation's Board supports the proposed change and its executive team is fully involved in the preparations for the new charity.

Q5: As regards the discussions with friends groups and visitor representatives, have these groups voiced support for the Government's proposals?

A5: [I]t is fair to say that there has been little criticism or dissent. Most of the Friends etc understand that the change is intended to ensure the long term financial stability of the estate and also know that the ownership itself is not changing, so they are therefore understanding of the proposal.

28 July 2016

APPENDIX 2: EDUCATION (PUPIL REGISTRATION) (ENGLAND) (AMENDMENT) REGULATIONS 2016 (SI 2016/792)

Additional Information from the Department for Education

On 14 July 2015, the former Secretary of State committed to take “immediate steps to amend the current regulations about the information schools collect when a pupil is taken off the register” to address the weakness in the regulations in relation to children missing education (CME). This issue was highlighted by HM Chief Inspector in his advice letter of 14 July 2015 following inspections of schools in Birmingham and Tower Hamlets.

It is correct to say that the Department has confirmed to the Committee that it would allow a term’s notice between the laying of an SI and it coming into force, except in exceptional circumstances, such as where public commitments have already been made. The Department takes this commitment seriously and we continue to use our best endeavours to give a full term’s notice. However in this particular case, the Department acted quickly to meet a public commitment to ensure the safeguarding of vulnerable children, and therefore we consider this departure from normal practice to be an exceptional circumstance.

The consultation, launched on 19 January and closed on 7 March 2016, made clear the Government’s intention to bring amended regulations into force in September 2016. There were no concerns expressed by schools or local authorities (LA) about this timetable in the consultation responses. Similarly, no concerns were expressed in informal face-to-face consultation and telephone interviews, undertaken by officials to inform implementation.

Following the end of the consultation, the Department undertook a detailed analysis of school and LA workloads using data gathered from consultation responses, and this informed the Impact Assessment. Clearance of the Impact Assessment was subsequently required from the Regulatory Policy Committee, which was sought on 9 May and the committee responded on 31 May. The EU referendum “purdah” period of 27 May to 23 June then militated against being able to release the government response to the consultation before this date. The government response was, however, published before the end of the school term and communicated to the sector.

The Department continues to be mindful of the very short lead-in time and has planned accordingly. Officials have been in regular communication with all lead officers responsible for CME in local authorities in England. They in turn will be planning communication with schools in their local area. The Department also plans specific communication with schools and local authorities for the beginning of the autumn term, and guidance is due to be published shortly.

The Regulations place a duty on schools to share information about pupil movements at only non-standard transition points, i.e. when a pupil leaves the school before completing the final year of education provided by that school or joins the school after the start of the youngest year. The Regulations will therefore apply to a relatively small proportion of pupils during the school year, as set out in the Impact Assessment. The local authority can require schools to provide information on pupils leaving or joining the school at standard transition points, and if they choose to do so, this would only apply between the end of the third term in summer 2017 and the beginning of the first term in autumn 2017.

Officials will monitor implementation through the local authority CME leads mentioned above, which will inform the Department's assessment of how long it will take before all schools and local authorities are fully compliant with the new regulations. The Department has committed to reviewing the regulations before September 2019, as set out in the regulations.

19 August 2016

Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 (SI 2016/808)

As with all previous amendments to these Regulations, and, as with all departmental proposals for new, or revised, data collections, the proposals for these changes were reviewed by the Star Chamber Scrutiny Board (SCSB). The SCSB is an independent external panel of representatives from schools and local authorities with responsibility for representing the sector and ensuring that all proposals are necessary, provide value for money and are designed to add as small a burden to the frontline as possible. The collection of data required by SI 2016/808 was considered, and approved, by the SCSB on behalf of the sector. Should there have been concerns regarding these changes, SCSB would have raised these for discussion requesting clarification or amendment before providing their formal decision to accept or reject the changes.

Schools are already required to collect a range of information from parents for their own purposes locally and also to support centrally specified data collections. The new data required from parents as part of this SI will therefore be obtained alongside the other child / pupil information already routinely collected by schools. Likewise, to support a child's learning, teachers should already be making judgements as to the impact proficiency in English has on a pupil's ability to engage in classroom activities to ensure adequate levels of support are provided to support the child's education.

19 August 2016

APPENDIX 3: SCHOOL TEACHERS' PAY AND CONDITIONS ORDER 2016 (SI 2016/831)

Additional Information from the Department for Education

Q: Could the delay complained about have been avoided? How easily can schools implement arrangements from September which have been set out in an SI laid on 8 August—during the school holidays? What has been the timetable followed by the Department for Education (DfE) for these processes in previous years?

A: As regards the delay to the publication of the STRB report and the start of the consultations on the Government's proposed response to its recommendations, this was an unavoidable consequence of the challenges faced by the Department and the Government as a whole in the run up to the EU referendum on 23 June, the period during which the report would normally have been published and the consultation commenced. It was not possible to obtain clearance to publish the report and start the consultation earlier.

The Department arranged for publication of the report as quickly as it could following the referendum. The report was published on 6 July and the consultation commenced on the same day. Following a 4 week consultation period, the revised School Teachers' Pay and Conditions Document (STPCD) and the Pay Order were laid in Parliament on 8 August.

The Pay Order and STPCD were laid a few days earlier this year than last year and closely in line with the usual practice in previous years. The timetable is one to which schools are well accustomed. It enables them to implement the new arrangements from the beginning of the autumn term.

The annual practice is to make and lay the Pay Order and STPCD in the first or second week of August ensuring that this is achieved at least 21 days in advance of 1 September. For example, the documents were laid on 10 August in 2015 and 8 August in 2014. This is because the STPCD and Pay Order need to come into effect from the start of the academic year (1 September).

It is common practice for schools to review and update their pay and appraisal policies at the start of the school year in September. In those cases where the pay policy sets out specific salary ranges, they would need to refer to the revised STPCD at this point so that they are able to insert the new figures that are published in the STPCD into their policies. However, we know that in practice most schools simply include general references to the rates set out in the latest STPCD rather than stating specific figures.

The main consequence of the revised STPCD which requires action from schools is that they need to take steps to change their payroll arrangements to reflect any update to individual salaries. The timescale for this action will vary from school to school and will be dependent on their timetable for appraising their teachers' performance over the previous 12 months and finalising objectives for the forthcoming year. The advice from the Department that accompanies the STPCD recommends that schools should complete this action by 31 October for their classroom teachers and by 31 December for the members of the leadership group. Publication of the STPCD in August thus ensures that schools have all the information that they need at the beginning of the school year to implement the new arrangements smoothly.

APPENDIX 4: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 6 September 2016 Peers declared the following interests.

Draft Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016

Lord Janvrin

Deputy Chairman, HSBC Private Bank (UK) Ltd (interest ceased 3 March 2016)

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.