

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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25th Report of Session 2017–19

### **Draft Crime and Courts Act 2013 (Commencement No. 18) Order 2018**

### **Draft East Suffolk (Local Government Changes) Orders 2018; Draft West Suffolk (Local Government Changes) Order 2018, and two related instruments**

### **Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018, and one related instrument**

**Oral evidence: Government consultation policy**

**Correspondence: Sifting under the Withdrawal Act**

Includes 3 Information Paragraphs on 3 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 Blackstone	Lord Haskel	Lord Sherbourne of Didsbury
Lord Faulkner of Worcester	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne (Chairman)
Baroness Finn	Lord Kirkwood of Kirkhope	Baroness Watkins of Tavistock
Lord Goddard of Stockport	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).

# Twenty Fifth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft Crime and Courts Act 2013 (Commencement No. 18) Order 2018

*Date laid: 13 March 2018*

*Parliamentary procedure: affirmative*

*Summary: This draft Order will enable GPS based location monitoring of an offender where this is a standalone provision of their sentence and imposed as part of a community sentence or suspended sentence. The new scheme is currently being piloted and is to be rolled-out nationally in 2019. The Ministry of Justice told us that it has laid the draft Order now, before Parliament's time becomes occupied with matters relating to the UK's departure from the European Union. Courts will only be able to proceed with the new service next year, however, once arrangements are in place for the GPS tags to be deployed. Learning from the pilots will inform the implementation of the new service and accompanying guidance.*

**This draft 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. The Ministry of Justice (MoJ) has laid this draft Order with an Explanatory Memorandum (EM). The purpose of the draft Order is to commence fully provisions under sections 44 and Part 4 of Schedule 16 to the Crime and Courts Act 2013. These provisions allow Courts to impose a standalone location monitoring requirement as part of an offender's community sentence or suspended sentence. To date, this has only been possible as part of pilots run in specific geographical areas.

#### *What is being done*

2. The MoJ is in the process of delivering a new service which will enable GPS based electronic location monitoring ("tagging") of offenders. This new service is currently being piloted and is expected to be rolled out nationally in 2019.
3. The tagging of offenders, where it is imposed to monitor compliance with a condition of their prison licence (for example an exclusion zone), has been in use for a number of years. This instrument enables the tagging of an offender where this is a standalone provision (meaning it is not imposed to monitor compliance with another requirement of the offender's licence), and, for the first time, where it is imposed as part of a community sentence or suspended sentence, rather than a prison licence. This new use of tagging of offenders is currently being piloted and is to be rolled-out nationally in 2019.

#### *Additional information from the MoJ*

4. We asked the MoJ about the use of standalone tagging as an alternative to custody, specifically to release offenders from custody who are currently serving indeterminate sentences. The MoJ explained that the draft Order

was only concerned with standalone tagging of offenders in relation to community sentences and suspended sentences; existing legislation already permitted standalone tagging to be used as part of a prison licence. The MoJ added that according to HM Prison & Probation Service Policy, the requirements of a licence have to be proportionate and necessary, so there is nothing to prevent standalone tagging to be used as part of a prison licence, where the offender has been deemed suitable for release and where the condition of tagging is considered to be proportionate and necessary.

5. We also asked about the use of standalone tagging to prevent someone from having to go to prison. The MoJ said that where an offence meets the threshold for a custodial sentence, a Court may consider that location monitoring of the offender, along with other requirements if necessary, offers a suitable alternative and may choose to impose a sentence served in the community instead of custody.
6. Current pilots are testing how GPS tagging might impact on the behaviour of offenders and how decision makers respond when given the option of using tags. With regard to preventing re-offending, the MoJ explained that evidence from the pilots showed that the information provided by tagging allowed offender managers to have constructive conversations with offenders about their behaviour, helping them lead law-abiding lives. Imposing a GPS tag could also provide a deterrent effect; some offenders used the fact they were on a GPS tag to avoid giving in to peer pressure.

#### *Timing of the new scheme*

7. We asked the MoJ why the draft Order had been laid while the pilots were still ongoing and before they had been evaluated. The MoJ explained that the draft Order was laid before Parliament's time becomes occupied with matters relating to the UK's departure from the European Union. Courts will only be able to proceed with the new use of location monitoring of offenders next year, however, once the MoJ has informed them that arrangements are in place for the GPS tags to be deployed.
8. Learning from the pilots will inform the roll-out of the new service and the guidance that will be developed for probation practitioners and the Courts. The MoJ explained that an early decision now will allow plenty of time to engage with stakeholders and plan for the actual delivery of the new service in 2019.

**Draft East Suffolk (Local Government Changes) Order 2018****Draft East Suffolk (Modification of Boundary Change Enactments) Regulations 2018****Draft West Suffolk (Local Government Changes) Order 2018****Draft West Suffolk (Modification of Boundary Change Enactments) Regulations 2018***Date laid: 19 March 2018**Parliamentary procedure: affirmative*

*Summary: These instruments provide, respectively, for the abolition of Suffolk Coastal and Waveney districts and their district councils, and for the creation of a new East Suffolk district and council which covers the same geographic area; and for the abolition of Forest Heath and St Edmundsbury districts and their district councils, and for the creation of a new West Suffolk district and council which covers the same geographic area.*

*The Government's own criteria for council merger proposals include the demonstration that any such proposal commands local support. There is no doubt that the merger proposals for East and West Suffolk are seen favourably by a number of local stakeholders. At the same time, however, significant numbers of residents and, it seems, parish councils have voiced concern about, and opposition to, the proposals; and it may be questioned whether the opportunities provided for such views to be expressed have allowed enough scope to opponents to voice their concerns and have them properly recognised.*

**We draw these instruments to the special attention of the House on the ground that that there appear to be inadequacies in the consultation processes which relate to the instruments.**

9. The two statutory instruments (SIs) relating to East Suffolk provide for the abolition of Suffolk Coastal and Waveney districts and their district councils, and for the creation of a new East Suffolk district and East Suffolk district council which covers the same contiguous, geographic area. The two SIs relating to West Suffolk provide for the abolition of Forest Heath and St Edmundsbury districts and their district councils, and for the creation of a new West Suffolk district and West Suffolk district council which covers the same contiguous, geographic area.
10. The Ministry of Housing, Communities and Local Government (MHCLG) has laid these instruments, with a shared Explanatory Memorandum (EM) for the East Suffolk SIs, and a shared EM for the West Suffolk SIs; and, in each case, a report under the Cities and Local Government Devolution Act 2016.

*Criteria for mergers between councils*

11. In both EMs, MHCLG says that, in line with a manifesto commitment to support those authorities that wish to combine to serve their communities better, it is committed to consider unitarisation and mergers between councils when requested. The Government set out the criteria against which merger proposals would be considered in a Written Ministerial Statement

on 7 November 2017.<sup>1</sup> These are that the proposal is likely to improve local government in the area, commands local support, and comprises a merged area with a credible geography.

*Improving local government in the area*

12. In the EM, in describing the impact of the East Suffolk proposal, MHCLG says that the councils<sup>2</sup> consider that becoming a single council is estimated to generate a further £2.2 million of annual cashable savings and £0.3 million non-cashable savings (for example, efficiency gains), and to protect the shared services savings of £20 million achieved since 2010 across East Suffolk. MHCLG states that the establishment of a single district council would maintain all the services that are currently carried out by the two councils individually, while providing the opportunity to bring savings which would allow the Council to invest in services. The establishment of a single district council would help ensure “the strong and influential local leadership required to tackle challenges such as an ageing population and the need for affordable new homes”.
13. MHCLG makes similar statements in the EM to the West Suffolk SIs, explaining that the councils<sup>3</sup> consider that becoming a single council is estimated to generate a further £0.5 million of annual cashable savings alongside £0.35 million of non-cashable savings. The move to a single council would also protect the shared services savings of £4 million each year across West Suffolk that they have already achieved, while maintaining all the services that are currently carried out by the two councils individually. MHCLG says that it is likely that the establishment of a single district council would help ensure “the strong and influential local leadership required to tackle challenges such as an ageing population and the redevelopment of RAF Mildenhall, which is being vacated in 2023”.

*Local support*

*East Suffolk*

14. In section 8 of both EMs, MHCLG describes at some length the outcome of consultation. In the case of the East Suffolk SIs, MHCLG says that in 2016 the councils undertook a programme of engagement with residents and stakeholders, which comprised the following activities: an independent, weighted to be representative phone poll; open public consultation, with comments invited via a dedicated email address or by post; press releases and articles in the local press; outreach events with community groups; banners promoting the merger at council offices and libraries; and on-going website and social media promotion.
15. In the open consultation process, 114 responses from the public were against the proposal, and 17 were in favour. A recurring concern among objectors was that a single council covering a larger geographic area would weaken local democracy, and that certain areas would be under-represented.<sup>4</sup> MHCLG says that, following the consultation, a “myth-busting” document was

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1 See [HCWS232](#), 7 November 2017 [Commons Written Statement]

2 In this case, Suffolk Coastal, and Waveney, District Councils.

3 In this case, Forest Heath, and St Edmundsbury, District Councils.

4 For details of the consultation responses received, see: <http://www.eastsuffolk.gov.uk/assets/Your-Council/Consultation-Responses-merger-proposal.pdf>

published on the councils' shared website to address the principal concerns raised during the consultation process.

16. MHCLG says that ComRes, an independent polling organisation, carried out a telephone survey of 1,000 residents in Suffolk Coastal and Waveney between 3 and 14 October 2016 to gauge public support for the proposal: 57% of local adults surveyed said they were favourable, compared to 22% who were unfavourable. MHCLG comments that “a demographically representative telephone poll carries some weight as it removes the propensity for consultation responses to be heavily dominated by certain, sometimes self-selecting, groups”.
17. In the EM, MHCLG explains that, after the Secretary of State had announced that he was minded to implement the proposal, there was a period for representations from 7 November 2017 until 8 January 2018. Of the 20 representations received, 17 were supportive of the proposal, one was neutral and two were opposed. Only two of these 17 responses were from members of the public.
18. We obtained additional information from MHCLG, which we are publishing at Appendix 1. In particular, we asked about the very low response to the late-2017 period for representations. MHCLG has said that these representations did not form part of the council-run consultation, but were invited as direct representations to the Secretary of State; and that, while the councils made it clear locally that there was a period of representations by informing local stakeholders, parish councils and other interested parties directly, “... it may be that the intensive distribution of the myth-busting document reduced the need to make representations at that point”. MHCLG has told us that it has not received any further communications from members of the public suggesting that concern is ongoing, and that “perhaps the best indication of local views are the views of those who have been democratically elected to represent the area. Both Councils are strongly supportive of the merger”.
19. **We would urge caution in deploying this argument: if the views of councillors are a sufficient indicator of local reactions, there would be no need for the programme of consultation and engagement described in the EM. Given the strength of concern about the proposal evidenced in the responses to the open consultation of 2016, we are also not convinced that the low level of responses to the late-2017 period for representations reflected widespread acceptance among local residents: it might equally well result from a sense that further objection was pointless.**<sup>5</sup>

### *West Suffolk*

20. In the case of the West Suffolk SIs, MHCLG says that the councils undertook a programme of engagement with residents and stakeholders from May 2017 to the end of August 2017, which comprised the following activities: an independent, weighted to be representative, sample survey phone poll; a media campaign; 52 media stories published or broadcast; publicity packs for councillors and town and parish councils; a dedicated webpage and online survey to collect comments on the proposals; formal communication to 162

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<sup>5</sup> We note that one response to the council's 2016 consultation included this: “Lucky us having a say! You won't listen so what's the point in asking us?” This was not untypical.

stakeholders; presentations and talks at resident and business forums and public events; and staff briefings for frontline employees. We asked MHCLG why there was no reference to an “open public consultation” (as there is in the EM to the east Suffolk SIs). The Ministry has said that opportunities to provide input were also provided for those unable or unwilling to contribute online feedback (as set out in paragraph 8.7 of the EM), “the equivalent of the public consultation referred to in the East Suffolk EM.” The councils have published comments received from the public in their Business Case document.<sup>6</sup> **We are surprised that there were differences of approach in enabling local residents to express their views on the merger proposal, and we are not persuaded that the arrangements made by the West Suffolk councils were “equivalent” to those made in East Suffolk.**

21. MHCLG says in the EM that ComRes carried out a demographically proportionate telephone survey of 1,200 residents in Forest Heath and St Edmundsbury. When asked “In general, to what extent are you favourable or unfavourable towards the proposed creation of a single District-level Council for West Suffolk”, 65% of adults were favourable to the proposal, compared to 19% who were unfavourable. When provided with further information about the proposal, within the same survey, including providing details of its potential benefits and concerns, 70% of local adults were favourable to the proposal and its impact, compared to 22% who were unfavourable. These findings are given in Appendix D to the Business Case document (at paragraph 3.3).
22. That document also reports, however, that, while a majority of adults in West Suffolk (54%) say they are not concerned with the proposal to create a new single District level Council, “around two in five adults in West Suffolk express concerns with the proposal (42%). Indeed, one in nine (11%) say they are very concerned about it” (paragraph 3.5). The document identifies as the primary concerns “a loss of ‘local voices’ being heard, a lack of political accountability, and the perception that the delivery of services that are already stretched will be negatively affected”.
23. While MHCLG does not refer to these findings in the EM, it does state that seven responses were received from the eighty-five town and parish councils, of which four were supportive and three raised concerns; and that the primary concerns were for local decision-making and service delivery. MHCLG comments that “the West Suffolk councils do not expect there to be any negative effects on local decision-making or service delivery as a result of any implementation of their proposals.” We asked for further detail of these expectations. MHCLG has said that the merger is estimated to generate a further £0.5 million of annual cashable savings, help develop ways of working focusing on prevention rather than crisis interventions, and release some capacity; and that a full review of ward arrangements is expected to be carried out by the Local Government Boundary Commission of England which will ensure that councillors can effectively represent their ward areas.
24. **We are left with the impression that the engagement with local residents undertaken by the West Suffolk councils revealed levels of**

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6 See: <https://democracy.westsuffolk.gov.uk/documents/s22109/COU.FH.17.026%20Appendix%202%20-%20Final%20business%20case.pdf>. Appendix H (page 274).

**concern about the proposal to merge the councils, which are not fully acknowledged in MHCLG's EM.**

*Conclusion*

25. Change divides communities. The Government's own criteria for council merger proposals include the demonstration that any such proposal commands local support. **There is no doubt that the merger proposals for East and West Suffolk are seen favourably by a number of local stakeholders. At the same time, however, significant numbers of residents and, it seems parish councils, have voiced concern about, and opposition to, the proposals; and it may be questioned whether the opportunities provided for such views to be expressed have allowed enough scope to opponents to voice their concerns and have them properly recognised.**

**Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018 (SI 2018/434)**

*Date laid: 27 March 2018*

*Parliamentary procedure: negative*

**Education (Student Support) (Amendment) (No. 2) Regulations 2018 (SI 2018/443)**

*Date laid: 28 March 2018*

*Parliamentary procedure: negative*

*Summary: SI 2018/434 revokes an earlier set of Regulations, which provided that full-time students starting postgraduate pre-registration courses in nursing, midwifery, and the allied health professions from August 2018 would be funded through the student loan system, rather than through the NHS Bursary. SI 2018/443 reinstates the original policy intention of that earlier set of Regulations. The Department for Education DfE says that the new Regulations are part of arrangements made by the Government to give effect to the request from the Official Opposition for a debate in Government time.*

*Universities generally deal in January with recruitment to courses starting in the following September, and the uncertainty caused in recent weeks by the controversy surrounding these Regulations may well have dissuaded significant numbers of potential students from applying for such courses.*

*There is considerable pressure on both Houses to scrutinise secondary legislation, and we view with concern any development which increases this pressure by revoking statutory instruments already laid for consideration and replacing them with further instruments which need to be examined even if they purport simply to reinstate the original policy intention. We look to the Government to act in a timely and effective manner to enable Parliamentary scrutiny of secondary legislation. This should exclude any necessity to shuffle statutory instruments in this manner.*

**We draw these Regulations to the special attention of the House on the ground that that they give rise to issues of public policy likely to be of interest to the House.**

*Education (Student Support) (Amendment) Regulations 2018 (SI 2018/136)*

26. In our 21st Report of this Session,<sup>7</sup> we drew to the House's attention the Education (Student Support) (Amendment) Regulations 2018 (SI 2018/136), which provided that eligible full-time students starting postgraduate pre-registration courses in nursing, midwifery, and the allied health professions from 1 August 2018 onwards would be funded through the standard student support system, rather than through the NHS Bursary. We noted that this would mirror the change in funding introduced for undergraduate students starting pre-registration courses in the same sectors from August 2017. We had received comments on the Regulations from the Royal College of Nursing (RCN) and the Chartered Society of Physiotherapy, and a response from the Department of Health and Social Care to the RCN's comments. The RCN had pointed to data about applications to nursing courses as evidence of a negative impact of the change in funding from bursaries to loans, while the Government warned against premature interpretation of the

<sup>7</sup> [21st Report](#), Session 2017–19 (HL Paper 88).

data, and stressed the initiatives being taken to encourage people to pursue healthcare careers.

27. In our earlier Report, we said that we considered that the time had come for the Government to take a definitive view of the effect of the changes from the 2017 Regulations on participation in nursing courses, and to judge the funding reforms by results, rather than by aspirations. We commented that the review of post-18 education now underway included assessing whether the funding system promoted the skills needed by our society, and that evidence already available from the healthcare education sector must surely be central to this assessment.
28. SI 2018/136 was laid before Parliament on 6 February 2018, and came into force on 27 February 2018.

*Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018 (SI 2018/434)*

29. SI 2018/434 revokes SI 2018/136. In the accompanying Explanatory Memorandum (EM), the Department for Education (DfE) says that this is subject to a saving provision for students who have already made an application for support in respect of pre-registration courses in dental profession subjects or postgraduate pre-registration courses, and whose applications have been received by the Secretary of State by the time the Regulations come into force.

*Education (Student Support) (Amendment) (No. 2) Regulations 2018 (SI 2018/443)*

30. In the EM to SI 2018/443, DfE says that these Regulations reinstate, with near-immediate effect, the original policy intention of SI 2018/136—in other words, they again provide that eligible full-time students starting postgraduate pre-registration courses in nursing, midwifery, and the allied health professions from 1 August 2018 onwards will be funded through the standard student support system, rather than through the NHS Bursary.

*Explanation for revocation of SI 2018/136 and reinstatement of policy intention*

31. In the EM to SI 2018/443, DfE says that it is making the instrument “as part of arrangements made by the Government to give effect to the request from the Official Opposition for a debate in Government time”. The 40-day praying period for SI 2018/136 expired on 28 March 2018. Although a prayer motion to annul the Regulations was tabled by the Opposition in the House of Commons on 8 February 2018, DfE says that “it was not possible for the Government to accommodate time within the instrument’s praying period”. By revoking SI 2018/136 and reinstating its original policy intention in laying SI 2018/443, DfE says that this “will re-start the 40 day praying period to enable a debate, if requested, to be facilitated on the changes to the loan system as they originally appeared in SI 2018/136”. The Department adds that SI 2018/443 comes into force less than 21 days after it is laid (in fact, it was brought into force within 24 hours of being laid) “because we wish to preserve the continuity of the policy intent and the offer to students, as originally given effect by the S.I. 2018/136”.

*Impact*

32. In the EM to SI 2018/443, DfE says that the revocation of SI 2018/136 by SI 2018/434 was considered to affect about 100 students who had already applied for the standard student loan package from the Student Loans Company; and also fewer than five students (as estimated) who may have applied between midnight on 27 March and midnight on 28 March when SI 2018/443 comes into force. The Department adds that it has ensured that all eligible students are able to apply for the standard student loan package under either SI 2018/136 or SI 2018/443.
33. In the light of the comments which we received and published in relation to SI 2018/136, we continue to see cause for concern about the wider impact on recruitment to post-graduate nursing courses which may result from the switch from bursary to loan support. **Universities generally deal in January with recruitment to courses starting in the following September, and the uncertainty caused in recent weeks by the controversy surrounding these Regulations may well have dissuaded significant numbers of potential students from applying for such courses. This surely cannot have been the intention.**

*Conclusions*

34. In the 15 years during which this Committee has scrutinised secondary legislation, we have seen no previous example of a statutory instrument being revoked, to be succeeded almost immediately by a second statutory instrument with unchanged policy effect, in order to make good shortcomings in the handling of Parliamentary business. **DfE has said that it was not possible for the Government to accommodate time within the instrument's praying period. So bald a statement offers no real insight into the Government's difficulties, which we would have expected to be fully explained in such circumstances.**
35. There is considerable pressure on both Houses to scrutinise secondary legislation, and we view with concern any development which increases this pressure by revoking statutory instruments already laid for consideration and replacing them with further instruments which need to be examined even if they purport simply to reinstate the original policy intention. **We look to the Government to act in a timely and effective manner to enable Parliamentary scrutiny of secondary legislation. This should exclude any necessity to shuffle statutory instruments in this manner.**

## ORAL EVIDENCE

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### Government consultation policy

36. On 20 March 2018, we took oral evidence on Government consultation from Mr Oliver Dowden, CBE, MP, Parliamentary Secretary in the Cabinet Office. We have published the transcript of that evidence on our website.
37. We previously took oral evidence on this subject from the Rt Hon Sir Oliver Letwin, MP (then Minister for the Cabinet Office), in January 2016. Sir Oliver told us that the Cabinet Office would “undertake the monitoring and improvement of consultations on an ongoing and case-by-case basis”.<sup>8</sup> We were therefore disappointed that, when in February 2017, the Rt Hon. Ben Gummer, MP, (who had taken over as Minister for the Cabinet Office) wrote to the Committee with the first Cabinet Office report, it failed to match the prospectus held out for it by Sir Oliver. In particular, it resiled from the undertaking that the Cabinet Office would actively monitor consultation practice.<sup>9</sup>
38. In his evidence on 20 March, Mr Dowden said that the Rt Hon. David Lidington, now the Minister for the Cabinet Office, and he had reviewed Mr Gummer’s decision that it would not be appropriate for the Cabinet Office to have that role, and that they supported the decision. The Cabinet Office would not provide a further annual report on consultation. He explained their view that the Cabinet Office’s role should be to support Departments and encourage training, rather than actively to intervene in their work.
39. We asked Mr Dowden about the evidence available to the Cabinet Office to inform its view of the adequacy of Government consultations. He referred to our own work, and in particular to those reports of the Committee in which individual statutory instruments were drawn to the attention of the House on the ground of inadequate consultation. We have written to Mr Dowden to point out that, in our reports, we may also voice concerns about consultation in comment on other statutory instruments which we may not formally bring to the House’s attention. There are of course other consultation exercises carried out by Government Departments which do not relate to secondary legislation: we have no knowledge of these exercises, and our reports cannot serve as a guide to them. We are publishing our letter of 21 March 2018 and Mr Dowden’s reply of 26 March.
40. We are not persuaded of the case for the Cabinet Office to confine its role to supporting Departments, without also monitoring their performance, and we have again written to Mr Dowden to underline our concern. We shall publish further correspondence in due course.

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8 [23rd Report](#), Session 2015–16 (HL Paper 89).

9 [26th Report](#), Session 2016–17 (HL Paper 120).

## CORRESPONDENCE

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### Sifting mechanism under the Withdrawal Act

41. During the committee stage debate on Clause 7 of the European Union (Withdrawal) Bill on 19 March 2018, Baroness Evans of Bowes Park, Leader of the House of Lords, outlined the sifting function which the Government intends should be undertaken by this Committee;<sup>10</sup> namely, to advise the House whether any negative instruments proposed under the European Union (Withdrawal) Act should be upgraded to the affirmative procedure.
42. In response, this Committee sent a letter on 21 March 2018, welcoming the additional sifting function. We also expressed our continued concern, however, that the proposed 10-sitting day sifting period would not be sufficient to scrutinise more complex instruments, and strongly urged the Leader to consider extending this to 15 days.
43. We received a response from the Leader on 29 March 2018. We were very disappointed that, despite the long experience of this committee in scrutinising SIs, the Government felt unable to respond positively to our concerns about the length of the sifting period.
44. We have published this correspondence at Appendix 2 of this report.

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10 HL Deb, 19 March 2018, [cols 152-155](#) [Lords Chamber]

## **INSTRUMENTS OF INTEREST**

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### **Draft Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018**

45. These draft Regulations have been laid by the Department for Education (DfE) together with an Explanatory Memorandum. The draft Regulations relate to reviews of serious child safeguarding cases where children have died or been seriously harmed, and abuse or neglect is known or suspected by a local authority or another person exercising functions in relation to children. The purpose of such reviews is to identify learning on how children can be better protected. The draft Regulations cover national reviews, commissioned and supervised by the Child Safeguarding Practice Review Panel (“the Panel”), and local reviews, commissioned and supervised by local safeguarding partners (local authorities, clinical commissioning groups and chief officers of police). The draft Regulations specify criteria which the Panel and local safeguarding partners must take into account when they commission reviews. These criteria include cases that: highlight recurrent themes or the need for improvements in the safeguarding of children; raise issues which require changes to the law or national guidance; or highlight concerns about the way local agencies are working together. The draft Regulations also make provisions for the procedure for reviews; the appointment (and removal) of reviewers both nationally and locally; and for the content and publication of reports. The draft Regulations also specify the agencies with whom local safeguarding partners may choose to work. The intention of the proposed changes is to support the consistency and clarity of decision making by the Panel and local safeguarding partners and to improve both the standard of reviewers and the quality of reviews.
46. DfE consulted on the proposed changes and revised statutory guidance between October and December 2017. More than 1,100 people responded or attended nine regional public consultation events. DfE explains that there was broad support for the proposals. Some changes have been made in response to the feedback received, including adding religious organisations and organisations providing or supervising sport activities to the list of relevant agencies with whom safeguarding partners may work.

### **Draft Employment Rights Act 1996 (NHS Recruitment - Protected Disclosure) Regulations 2018**

47. These draft Regulations have been laid by the Department of Health and Social Care (DHSC). They prohibit discrimination by NHS employers, such as NHS trusts, Clinical Commissioning Groups, special health authorities, the Care Quality Commission or Monitor, against job applicants who have ‘blown the whistle’ during previous employment in the NHS. The draft Regulations implement a key recommendation from Sir Robert Francis’ QC review of whistleblowing (“Freedom to Speak Up”) in 2015 that the Government should introduce protection from discrimination for whistle blowers who are seeking new NHS employment.<sup>11</sup> The draft Regulations give job applicants the right to complain to an employment tribunal if they think that they have been discriminated against, set a timeframe of three months during which such a complaint must be made and set out the remedies and the amount of compensation which the tribunal may award if

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<sup>11</sup> Freedom to Speak Up, *Report*, 11 February 2015: <http://freedomtospeakup.org.uk/the-report/> [accessed 18 April 2018]

a complaint is upheld. Under the draft Regulations, job applicants would be required to submit their claim to the Advisory, Conciliation and Arbitration Service (ACAS) before taking their case to the employment tribunal, so that early conciliation can be attempted. The draft Regulations also introduce an additional protection by making discrimination actionable as a breach of statutory duty, enabling the job applicant to take a case to court. The draft regulations make clear, however, that a job applicant cannot complain to a tribunal and bring an action to court for the same conduct, except for the purpose of restraining or preventing discriminatory conduct by the employer. DHSC's consultation on the draft Regulations showed broad support, with a majority of responses (71% of the total of 45 responses received) agreeing with the proposals. DHSC estimates that around 20 cases per year will be brought before the employment tribunal and a further two cases will go to court for breach of statutory duty.

### **Draft Licensing Act 2003 (Royal Wedding Licensing Hours) Order 2018**

48. As is customary with such events, the Home Office is planning to extend licensing hours on the weekend of the Royal Wedding on 19 May 2018. This draft Order enables pubs and other licensed premises (but not supermarkets and off-licenses) to sell alcohol for an extra two hours until 1.00 am on both Saturday 19 May and Sunday 20 May. Although the FA Cup Final will be played on the same day, the Home Office states that, based on its previous experience, the risk of additional crime and disorder is minimal.

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

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

Draft Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018

Draft Employment Rights Act 1996 (NHS Recruitment - Protected Disclosure) Regulations 2018

Draft Licensing Act 2003 (Royal Wedding Licensing Hours) Order 2018

Draft Renewable Heat Incentive Scheme Regulations 2018

Draft Transport Levying Bodies (Amendment) Regulations 2018

### **Instruments subject to annulment**

- SI 2018/365 Tax Credits and Childcare (Miscellaneous Amendments) Regulations 2018
- SI 2018/378 Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions (Commonhold Land) Order 2018
- SI 2018/383 Early Years Foundation Stage (Exemption from Learning and Development Requirements) and Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2018
- SI 2018/384 Health Service Medicines (Price Control Penalties and Price Control Appeals Amendment) Regulations 2018
- SI 2018/385 Mandatory Travel Concession (England) (Amendment) Regulations 2018
- SI 2018/389 Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018
- SI 2018/390 Personal Protective Equipment (Enforcement) Regulations 2018

## APPENDIX 1: DRAFT EAST SUFFOLK (LOCAL GOVERNMENT CHANGES) ORDER 2018; DRAFT WEST SUFFOLK (LOCAL GOVERNMENT CHANGES) ORDER 2018, AND RELATED INSTRUMENTS

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### Additional information from the Ministry of Housing, Communities and Local Government

#### *East Suffolk SIs*

*Q1: As regards the East Suffolk SIs, the Explanatory Memorandum says: “8.1 Following the decisions of the councils to proceed in principle with the proposals to merge, the councils undertook a programme of engagement with residents and stakeholders. The engagement programme was comprised of the following activities: an independent, weighted to be representative phone poll; open public consultation, with comments invited via a dedicated email address or by post; press releases and articles in the local press; outreach events with community groups; banners promoting the merger at council offices and libraries, and on-going website and social media promotion ... 8.4 Of the consultation responses from the public, 114 were against and 17 were in favour. Of the 114 residents who objected, a recurring concern was that a single council covering a larger geographic area would weaken local democracy. There were also concerns around certain areas being under represented. Following the consultation, a ‘myth-busting’ document was published on the councils’ shared website to address the principal concerns raised during the consultation process.”*

*Have the councils published a summary of consultation responses? If not, why not?*

A1: The councils have published the results of the consultation, which can be found via the following link:

<http://www.eastsuffolk.gov.uk/assets/Your-Council/Consultation-Responses-merger-proposal.pdf>.

This information was submitted to the Secretary of State prior to taking his decision to proceed with the merger.

*Q2: Have the councils offered any evidence that the “‘myth-busting’ document” was widely read by local residents, in particular by any of the 114 members of the public who were against the proposals?*

A2: The myth-busting document was provided to all respondents to the original consultation who provided details for further contact to be made. Therefore, though it may not have been provided to all individuals who objected, it would have been made directly available to those that expressed an interest in further information. It was also freely available on the East Suffolk website. In short, the councils made every effort to ensure the information was available. It may be the case that one of the impacts of the myth-busting document was to result in few people feeling the need to make representations during the period for representations, see below.

*Q3: The EM also says: “8.7 After the Secretary of State announced his initial decision that he was minded to implement the proposal, there was a period for representations lasting from 7 November 2017 until 8 January 2018. 20 representations were received. Of these 17 were supportive of the proposal, one was neutral and two were opposed.” The EM makes it clear that only 2 of these 17 responses were from members of the public. Have the councils offered an explanation for why so few members of the public responded at this second stage?*

A3: These representations did not form part of the council-run consultation but were submitted as a result of the opportunity provided by the Secretary of State to any interested party to send to him directly any representation regarding his initial minded-to decision to proceed with the merger. The Council did make clear locally that there was a period of representations by informing local stakeholders, parish councils and other interested parties directly. As mentioned above, it may be that the intensive distribution of the myth-busting document reduced the need to make representations at that point.

*Q4: Have the councils any evidence that this “silence” meant “assent” by local residents, or is there any evidence of ongoing local concern at the proposals?*

A4: There is no evidence of ongoing local concern regarding the proposal and it is apparent through the representations made that the majority of stakeholders are supportive. The Department has not received any further communications from members of the public suggesting that concern is ongoing. Moreover, perhaps the best indication of local views are the views of those who have been democratically elected to represent the area. Both Councils are strongly supportive of the merger.

#### *West Suffolk SIs*

*Q5: In section 8 of the Explanatory Memorandum there is no reference to “open public consultation” (which is stated in the Explanatory Memorandum to the East Suffolk SIs): was no such open consultation held and if not, why not?*

A5: The consultations undertaken by West Suffolk councils are described in paragraph 8.1 of the Explanatory Memorandum. These consisted of a survey phone poll; a media campaign; publicity packs; a dedicated webpage and online survey; formal communications to key stakeholders; presentations and talks; and staff briefings. The councils received 88 responses through the dedicated webpage and online survey, and all contributors who supplied an email address received a full response from West Suffolk. The outcomes of the public engagement process were reported by the councils (section H of the business case and the contributions and the responses are included in full in Appendices D through to H) and published in full on the dedicated webpage: <https://democracy.westsuffolk.gov.uk/documents/s22109/COU.FH.17.026%20Appendix%20-%20Final%20business%20case.pdf>

Opportunities to provide input were also provided for those unable or unwilling to contribute online feedback. These methods are outlined in paragraph 8.7 of the Explanatory Memorandum.

This is the equivalent of the public consultation referred to in the East Suffolk EM.

*Q6: The EM also says: “The majority of town and parish councils that sent representations in response to the proposals were supportive. Seven responses were received from the eighty-five town and parish councils - four were supportive and three raised concerns. The primary concerns were for local decision making and service delivery. However, the West Suffolk councils do not expect there to be any negative effects on local decision making or service delivery as a result of any implementation of their proposals.” In other words, almost as many parish councils had concerns (three) as were supportive (four). What evidence have the West Suffolk councils offered of no “negative effects”?*

A6: The councils’ aims for the single council arrangement include an ambition to “[make] sure things are done at the right level (subsidiarity), including a greater

role for town and parish councils in truly local matters”. All parish councils were provided with an information and publicity pack, discussions were held at town and parish forums and town and parish councils were contacted individually and encouraged to comment.

As stated in paragraph 8.3 of the Explanatory Memorandum three parish councils raised concerns mainly around local decision-making and service delivery.

The councils are confident that the proposal would improve local services. The two councils already operate on a fully shared service arrangement which has so far saved £4 million and seen savings invested back into high quality services. Becoming a single council is estimated to generate a further £0.5 million of annual cashable savings, help develop ways of working focusing on prevention rather than crisis interventions, and release some capacity by introducing a more simple and effective way of working.

Another concern raised was around local decision-making and fewer councillors. A full review of ward arrangements is expected to be carried out by the Local Government Boundary Commission of England which will ensure that councillors can effectively represent their ward areas. The councils’ view is that a “new single council with a unified democratic leadership gives members the opportunity to drive real improvements for their localities while attracting investment and championing them nationally.”

Other concerns raised focused on potential staffing reductions. As the councils already have shared service delivery and a single Chief Executive they do not anticipate staff changes directly related to the single council proposal.

*Q7: The EM also says: “8.7 The councils took steps to ensure that all residents, including those who were less likely or not able to engage via the dedicated website, were able to share their views on the proposals.” What was the outcome of all these “steps”? Have the councils published a document setting out the results of this “engagement”, in terms of views expressed and the councils’ response? If not, why not?*

A7: The ComRes polling referred to in paragraph 8.6 of the Explanatory Memorandum found that 50% of residents were aware of the proposals when they were contacted. In the view of the councils, these findings show that the forms of engagement that they had undertaken were highly effective, especially as awareness levels are usually lower for local government structure related proposals and that the ComRes work was carried out early on in the engagement period.

The councils also believe that as the engagement was about explaining the proposal, the fact that some people did not reply is an indication that they had enough information or did not wish to add anything further. Reminder letters and e-mails were sent reinforcing the deadlines and the offer of further information if needed.

The full results of the public engagement which took place between May 2017 and August 2017 were included in the proposal submitted to the Secretary of State. This information has been published on line in Appendix D: Stakeholder engagement of the final business case here:

[https://www.westsuffolk.gov.uk/Council/single\\_council/index.cfm](https://www.westsuffolk.gov.uk/Council/single_council/index.cfm)

The full report on engagement, including the views and the councils’ responses, was also published as part of the Council agenda pack for the St Edmundsbury

Council meeting on Tuesday 26 September 2017 and the Forest Health District Council meeting on Wednesday 27 September 2017 and this informed Councillors discussions at those meetings.

In addition, the councils replied directly to stakeholder organisations and members of the public (these replies are set out in Appendices D-H of the final business case referenced above), and a list of answers to address common queries and concerns was consolidated and published online here: [https://www.westsuffolk.gov.uk/Council/single\\_council/singlecouncilquestions.cfm](https://www.westsuffolk.gov.uk/Council/single_council/singlecouncilquestions.cfm)

**5 April 2018**

## APPENDIX 2: CORRESPONDENCE ON THE SIFTING MECHANISM UNDER THE WITHDRAWAL ACT

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### Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Baroness Evans of Bowes Park, Leader of the House of Lords

#### *Sifting Mechanism under the Withdrawal Act*

Yesterday, the Secondary Legislation Scrutiny Committee (SLSC) discussed the proceedings on Monday of this week of the committee stage of the European Union (Withdrawal) Bill. We considered, in particular, the group of amendments (beginning with Amendment 237) about a proposed sifting mechanism and your very helpful speech in response.

During your speech you reported to the House the decision of the Procedure Committee on 5 March to recommend that the proposed sifting function under the Withdrawal Act should be undertaken by the SLSC. As we said in our letter to the Senior Deputy Speaker after second reading, we welcome this decision and appreciate your acknowledgement, and that of the Procedure Committee, of the expertise which the SLSC has developed since its inception in 2003 and of the contribution it makes to the legislative scrutiny function of the House.

As currently framed in the Bill, the role of the sifting committee is advisory only. We note however the importance that will be placed by the Government on the decisions of the two sifting committees, signified by the Government's commitment made in debate that if the sifting committees in both Houses were to make a recommendation to upgrade to the affirmative procedure the scrutiny procedure in respect of the same instrument then "the Government's expectation is that such recommendations are likely to be accepted". We also welcome your commitment that where the Government does not agree with the committees, then you would expect "to justify fully" your reasons to the relevant committee.

In your speech, you refer to the efforts that are being made to increase the resources available to the SLSC, both in terms of expert advice and additional members. These additional resources are needed because of the anticipated 800 to 1000 instruments arising from the Brexit legislation. In your speech, you said that there will be a "steady flow" of instruments. In order to undertake the scrutiny of instruments to the very high standards which the House expects, and to which it is accustomed, a "steady flow" is critically important. In order to assist the Committee in its planning, we would urge the Government to make every effort to maintain a "steady flow" and to keep the Committee fully informed of their forward plans for laying instruments.

You stated that instruments would be laid "from when the Bill receives Royal Assent until shortly before exit day". We would be grateful if you could confirm whether that means that the Government intend laying all 800 to 1000 instruments during that period up until March 2019, and whether that intention is likely to change in the light of an agreement in relation to a transition period until December 2020.

Finally, in our letter to the Senior Deputy Speaker mentioned above, we made representations about extending the 10-sitting day sifting period to 15 days. Whilst for many of the proposed negative instruments laid under the Withdrawal Act, the Committee does not anticipate difficulty in meeting that deadline, there will be occasions when the nature and complexity of an instrument will require

time to undertake further investigation and consultation before the Committee is able to make a decision on whether to recommend the affirmative procedure. We therefore strongly urge the Government to increase the sifting period available to the Committee from 10 to 15 days. This request is not made lightly. We are keenly aware of the tight timetable to which the Government is working. However, given the Committee's long experience of scrutinising secondary legislation, we hope that the Government will now feel able to adopt our suggestion.

We look forward to your response to the above points. On receipt of your reply, we would propose to publish this exchange of correspondence for the benefit of the House.

**21 March 2018**

**Letter from Baroness Evans of Bowes Park to Lord Trefgarne**

*Sifting Mechanism under the Withdrawal Act*

Thank you for your letter of 21 March setting out the Secondary Legislation Scrutiny Committee's recent discussion about the points raised during the committee stage on the amendments concerning the proposed sifting mechanism. I am pleased that the Committee has welcomed the proposal for it to undertake the sifting function under the EU (Withdrawal) Act and I want to thank you again for the constructive approach that you, the Committee and your officials have adopted in order to achieve this outcome. I will look forward to working with your Committee to make a success of the new arrangements.

You ask a very pertinent question about the potential impact of an implementation period. The Government continues to work with the estimate of 800-1,000 statutory instruments. However, the implementation period may well affect the number and timing of SIs. This will be worked through and become clearer as we move closer to the final withdrawal agreement. At this stage, it is too early to say exactly when all SIs will be brought forward, though we are still preparing for the large majority to be laid between Royal Assent of the EU (Withdrawal) Bill and March 2019. When I am in a position to provide more clarity I of course will.

I note the Committee's request to extend the 10 sitting day sifting period to 15 days. As I said during the debate we continue to believe that the existing 10-day period as proposed by the House of Commons Procedure Committee in the Bill will be adequate, particularly in light of the short time-frame available between now and exit day, and the fact that the sifting committees will be able to report directly to the House. I am, as always, open to further discussion about what your Committee may need to make this process work.

I note your intention to publish this exchange of correspondence in due course, which I welcome. In the meantime, and for the convenience of other members who took part in the debate, I will also place a copy of this letter in the Library of the House.

I am copying my response to the Secretary of State for Exiting the European Union and the Chairman of the Delegated Powers and Regulatory Reform Committee.

**29 March 2018**

### APPENDIX 3: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 17 April 2018, Members declared the following interests:

**Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018 (SI 2018/434)**

**Education (Student Support) (Amendment) (No. 2) Regulations 2018 (SI 2018/443)**

Baroness Watkins of Tavistock

*Nurse Adviser, BUPA Medical Advisory Panel and Global Quality Committee*

*Registered Nurse (non-practising)*

*Visiting Professor of Nursing, King's College London*

*Member of the Royal College of Nursing*

**Mandatory Travel Concession (England) (Amendment) Regulations 2018 (SI 2018/385)**

Lord Faulkner of Worcester, Lord Haskel and Lord Trefgarne

*Owners of bus passes*

**Attendance:**

The meeting was attended by Lord Faulkner of Worcester, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Lord Trefgarne and Baroness Watkins of Tavistock.