

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

33rd Report of Session 2017–19

**Draft New Towns Act
1981 (Local Authority
Oversight) Regulations
2018**

Includes 10 Information Paragraphs on 13 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.

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Rt Hon. Lord Janvrin

Rt Hon. Lord Trefgarne (Chairman)

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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.

Thirty Third Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft New Towns Act 1981 (Local Authority Oversight) Regulations 2018

Date laid: 4 June 2018

Parliamentary procedure: affirmative

Summary: The House may be interested to see that the Government have now brought forward these Regulations, to implement the policy change agreed in the Neighbourhood Planning Act 2017 which allows the transfer of specific functions related to the oversight of new town development corporations from the Secretary of State to a local authority or authorities. Putting this change into practice may take some time, since it depends on the readiness of local authorities to take on the role. It remains to be seen whether the resource implications of doing so will influence their readiness. The Government intend to publish guidance prior to Parliamentary debates on the Regulations.

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

1. The Ministry of Housing, Communities and Local Government (MHCLG) has laid these draft Regulations with an Explanatory Memorandum (EM). MHCLG says that the main purpose of the Regulations is to transfer specific functions related to the oversight of new town development corporations from the Secretary of State to a local authority or authorities.
2. The Regulations have been laid under the New Towns Act 1981 (“the 1981 Act”), in particular under provisions (section 1A) which were inserted into that Act by the Neighbourhood Planning Act 2017. The House may recall that this was effected by an amendment moved by Lord Taylor of Goss Moor, and accepted by the Government, at Third Reading of the Neighbourhood Planning Bill.¹ Lord Taylor made the point that the 1981 Act was “from a period when central government was much more involved in local delivery and when that was accepted”, and he contrasted that with the current “era of localism”, when the Secretary of State should have the capacity “to hand over the role of the corporations that will be set up to deliver these new settlements to the local councils that would bring them forward”.
3. In the EM, MHCLG explains that, while powers to create new town development corporations accountable to the Secretary of State remain on the statute-book, the Government consider that, alongside this, an oversight mechanism needs to be created which reflects the locally led approach to new garden towns and villages in the Government’s current programme. MHCLG says that the Regulations propose to transfer functions from the Secretary of State to the oversight authority, in a way that is consistent with

¹ HL Deb, 15 March 2017, [col 1893](#) [Lords Chamber].

ensuring that these new town development corporations are genuinely locally led.

4. MHCLG says that the Housing White Paper published in February 2017 contained a commitment to create such corporations which would be accountable to local authorities. We obtained additional information from the Department about the extent to which local authorities may be interested in making use of the Regulations, which we are publishing at Appendix 1. MHCLG has told us that it has not received any firm proposals, but that a number of current garden communities have informally expressed interest, and that the most advanced proposal is from North Essex Garden Communities who may submit a formal proposal seeking designation in early 2019.
5. Noting that consultation on the draft Regulations lasted only four weeks, between 4 December 2017 and 2 January 2018, we asked MHCLG why it set such a tight timetable. In its answer, the Department has told us that one reason for limiting this period was concern that a delayed laying date “could risk the Regulations coming into competition with Brexit legislation and potentially delay them for a considerable time”. MHCLG received five complaints about the short turnaround from individuals, and one local authority stated that the timescales meant that they were unable to provide a considered response to some questions. **We have often made clear our view that Government Departments should allow at least six weeks for consultation periods, and MHCLG’s experience in this case highlights the difficulties caused by shorter timescales. It also incidentally throws light on the impact which Government preparations for Brexit legislation are having on “business as usual” work.**
6. In the EM, MHCLG says that it will be producing guidance on the application of the Regulations. It has now published a summary of responses to its consultation.² In the summary, MHCLG flags up a number of issues raised by respondents and indicates that these will be covered in the guidance. In response to our question as to why the guidance had not yet appeared, MHCLG has told us that it has been unable to publish it alongside the draft Regulations “as we are still engaging with a number of stakeholders over the content. However, we intend to publish it prior to the Parliamentary debates”.
7. MHCLG also says in the EM that creating locally led new town development corporations may result in additional costs for local authorities compared to other delivery vehicles for large scale housing development. In response to our question as to whether these costs could act as a deterrent, MHCLG has commented that it does not expect such corporations to be appropriate for smaller garden communities below around 10-15,000 homes. It has added that it will seek to offer financial support and advice, where appropriate, to local authorities making robust proposals for delivering new garden communities, but that ultimately it will be for the authorities proposing such corporations to ensure they have the resources necessary to do the job.

2 Ministry of Housing, Communities and Local Government, *The New Towns Act 1981 (Local Authority Oversight) Regulations: Summary of consultation responses and Government response* 4 December 2017 [accessed 19 June 2018].

8. The House may be interested to see that the Government have now brought forward Regulations to implement the policy change agreed in the Neighbourhood Planning Act 2017, to allow local authorities to have oversight of new town development corporations. Putting this change into practice may take some time, since it depends on the readiness of local authorities to take on this role. It remains to be seen whether the resource implications of doing so will influence their readiness.

CORRESPONDENCE

British Nationality (The Gambia) Order 2018 (SI 2018/620)

9. After voluntarily leaving the Commonwealth on 3 October 2013, The Gambia was readmitted to the Commonwealth on 8 February 2018. This instrument, laid by the Home Office, amends the list in Schedule 3 to the British Nationality Act 1981 to allow citizens of The Gambia to be regarded again as Commonwealth citizens under UK law.
10. As Commonwealth citizens they will be eligible to enter the UK under the Immigration Rules on an ancestry visa and, if qualified, have the right to vote in UK elections to stand for election to Parliament and be eligible to hold certain posts, such as judge, magistrate, minister, police constable, member of the armed forces, or civil servant. However the Explanatory Memorandum to the instrument explained that when The Gambia left the Commonwealth any Gambian nationals with the Right of Abode in the UK lost that status, and the current Order does not have the effect of reversing this.
11. We wrote to the Minister of State for Immigration to ask how many Gambians were affected by this change and how they could seek appointment to the roles mentioned if they had not had their Right of Abode reinstated. The correspondence is published in Appendix 2.

INSTRUMENTS OF INTEREST

Draft Cambridgeshire and Peterborough Combined Authority (Business Rate Supplements Functions) Order 2018

Draft Liverpool City Region Combined Authority (Business Rate Supplements Functions) Order 2018

Draft West of England Combined Authority (Business Rate Supplements Functions) Order 2018

Draft West Midlands Combined Authority (Business Rate Supplements Functions and Amendment) Order 2018

12. These Orders laid by the Ministry of Housing, Communities and Local Government (MHCLG), confer functions corresponding to the business rate supplements (BRS) functions that the Greater London Authority has in relation to Greater London on four mayoral combined authorities (CAs): Cambridgeshire and Peterborough CA, Liverpool City Region CA, West of England CA and the West Midlands CA—in relation to their respective areas. The Orders provide that the functions are exercisable only by the mayors of each CA. MHCLG says that conferring the power to levy a BRS on to these combined authorities, to be exercised by the mayor, will ensure that they have the appropriate powers to develop projects that promote economic growth and regeneration in their area. It also explains that, if an authority wishes to levy a supplement, it is required to consult and publish a prospectus setting out the benefits of the proposed project. This is then subject to a ballot of affected businesses: a majority of affected individual rate-payers must approve it, and the aggregate rateable value of those businesses in favour must exceed those against.
13. We obtained additional information from MHCLG about the legislative background to this proposal, about local attitudes towards it, and about the position of other mayoral CAs. We are publishing the information at Appendix 3.

Draft Renewables Obligations (Amendment) Order 2018

14. The key change proposed in this draft Order is the introduction of cost controls for renewable energy that has been generated under the Renewables Obligation (RO) scheme by biomass conversion plants (former coal power stations that have been converted to run wholly on biomass) and biomass co-firing plants (plants that use a mixture of biomass and coal), which are not protected by previous ‘grandfathering’ commitments of the Government.³ The aim is to avoid an increase in costs to consumers.
15. According to the Department for Business, Energy and Industrial Strategy (BEIS), the RO scheme is one of the main mechanisms to encourage large-scale renewable electricity generation in the UK. Under the scheme, electricity suppliers are obliged to purchase from generators of renewable electricity a certain number of Renewable Obligation Certificates (ROCs) and present these to the Gas and Electricity Market Authority (Ofgem). Where suppliers do not have sufficient ROCs to cover their obligation, they have to pay into a buy-out fund to cover the shortfall. Under the RO scheme, costs to

³ Grandfathering is a commitment that certain renewable electricity generating capacity will not receive any less support under the RO than it received historically.

suppliers are passed on to consumers through their energy bills, and the total cost that can be levied on consumers is controlled through the Government's Levy Control Framework (LCF) which sets an annual budget.

16. BEIS explains that without this intervention, increases in the generation of electricity by biomass conversion and co-firing plants will put pressure on the LCF and lead to higher costs for consumers. The draft Order therefore proposes annual caps on the number of ROCs that can be issued. BEIS says that without these changes, the additional spend under the RO would be between £135 million and £240 million per year from 2019–20, adding an extra £1 to £2 per year to average household bills. Bills of business users with small electricity consumption would increase by between £80 and £140 per year and those of energy intensive industrial users by between £29,400 and £53,000.

Draft Social Workers Regulations 2018

17. On 4 June of this year, the Government made a Written Statement,⁴ announcing publication of the response⁵ to a consultation on establishing the regulatory framework for Social Work England - the new, specialist regulator for social workers in England - and also the laying of Regulations about the operation of Social Work England. The Department for Education (DfE) has laid these draft Regulations, with an Explanatory Memorandum (EM) in which it clarifies how they support the establishment of the new regulator by setting out the detail of the new framework. In particular, the Regulations deal with the way in which the new regulator will perform its core functions of keeping a register of social workers in England, approving education and training for social workers and making arrangements to operate the fitness to practise system.
18. In the EM, DfE acknowledges that during the passage of the Children and Social Work Act 2017, members of this House raised concerns about the role of Government in social work regulation and the delegation of too much of the detail about the key regulatory responsibilities to secondary legislation. We would draw attention in this context to the comments on the Children and Social Work Bill which were made by both the Constitution Committee⁶ and the Delegated Powers and Regulatory Reform Committee.⁷ DfE says that, in response, the Act was amended, so that Social Work England was established as a body corporate on the face of the Act, and its responsibility for core regulatory functions was also set out in the Act, with operational detail about how regulation was to be delivered reserved for secondary legislation.
19. **We commend the Department on providing an EM which helpfully summarises concerns raised during Parliamentary consideration of the parent Act, as well as key issues highlighted in responses to the consultation on the proposed secondary legislation.**

4 [HLWS707](#), 4 June 2018 [Lords Written Statement].

5 Department of Education, [Social Work England: secondary legislative framework](#), 8 February 2018 [accessed 19 June 2018].

6 [2nd Report](#), Session, 2016–17 (HL Paper 10), para. 5.

7 [1st Report](#), Session 2016–17 (HL Paper 13), paras. 57 and 61.

Draft Code of Practice for the Welfare of Laying Hens and Pullets

20. This draft Code of Practice has been laid by the Department for Environment, Food and Rural Affairs (Defra). The aim is to provide updated and improved guidance to owners and keepers of laying hens and pullets on how to comply with the relevant farm animal welfare legislation, and how to practice good standards of stockmanship. According to Defra, the draft Code incorporates the latest scientific, veterinary and husbandry advice, and is to replace the current “Code of recommendations for the Welfare of Livestock: Laying Hens” from 2002, as part of a programme of revising ten animal welfare codes. The first such code to be updated was in relation to meat chickens and meat breeding chickens. It came into force in March 2018 and the Committee published information about it in its 17th report.⁸ In that report, we welcomed the fact that Defra had not pursued its original plan of replacing the statutory codes of practice on animal welfare with non-statutory, industry-led guidance, and that the Department had instead taken forward the update on a statutory basis and in consultation with interested parties. Defra says that it will update the remaining eight animal welfare codes in due course.

Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) (Amendment) Order 2018 (SI 2018/657)

21. The Protection of Freedoms Act 2012 revised the requirements for the retention and destruction of DNA and other biometric material taken in the course of a criminal investigation. This was in response to a decision of the European Court of Human Rights⁹ that the blanket retention of such material from individuals who had not been convicted of a criminal offence was in breach of their Article 8 rights. Transitional provisions allowed until 31 October 2016 for the destruction of material taken under counter-terrorism powers before that date. However, provision was made to extend the transitional provisions for Northern Ireland until 31 October 2018. This Order further extends those transitional provisions to 31 October 2020 on the ground that biometric data collected there before the commencement of the retention and destruction provisions could have significant investigative value to the work of bodies charged with investigating Troubles-related deaths in Northern Ireland.

Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018 (SI 2018/673)

22. This Department for Transport instrument makes it an offence for a manufacturer or its subsidiary to supply a vehicle to the UK market with a prohibited “defeat device” (a device or computer software designed to circumvent or defeat the intention of regulatory testing). It also aligns the safety and environmental regulations that cover the type approval¹⁰ of road vehicles built in low volume with existing rules applicable to mass production vehicles. In relation to heavy vehicles (trucks and buses) the Regulations implement requirements for the latest “Euro VI” heavy vehicle exhaust emissions, Advanced Emergency Braking Systems (AEBS), Lane Departure

⁸ [17th Report](#), Session 2017–19 (HL Paper 71).

⁹ [ECtHR](#) in *S and Marper v the United Kingdom*.

¹⁰ The process whereby manufacturers of a new model of road vehicle are required to test it against a number of EU or international safety and environmental standards and obtain approval from a government body prior to placing it on sale.

Warning systems (LDWS) and improved passenger side mirrors (for goods vehicles only). The instrument also amends legislation on the provision to the public of standardised car emissions and fuel economy figures by requiring measurement of fuel economy to be carried out using a new and improved European laboratory test cycle.

State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018 (SI 2018/676)

23. Currently, support for pensioners who have responsibility for children is provided through Child Tax Credit. However, Child Tax Credit is being abolished as part of the Government's welfare reforms, and from 1 February 2019 support will be provided through Pension Credit. Although Pension Credit will broadly replicate the amounts paid under Child Tax Credit, because it is means tested, some claimants who would have been entitled to Child Tax Credit will not be entitled to Pension Credit. The Department for Work and Pensions estimates that the maximum number of such cases will be around 1,500 in 2019–20, rising to around 2,400 in 2020–21, then falling to around 1,800 in 2021–22.

Health Service Products (Provision and Disclosure of Information) Regulations 2018 (SI 2018/677)

24. NHS chemists and primary services providers are reimbursed by the Government for the cost of the medicines and medicinal products that they dispense. Under the current arrangements, supporting information about the sales and purchases of medicines is provided on a voluntary basis. To increase transparency these Regulations require everyone involved in the manufacture, distribution and supply of health service products to provide specified information. The Department of Health and Social Care (DHSC) will use this information to make its reimbursement strategy more robust by basing reimbursement prices on information from the whole market, rather than a partial view. The Regulations will also allow DHSC to identify potential shortages in the supply of certain medicines and to investigate where the price of an unbranded generic medicine appears to exceed the cost of its manufacture. Medicines and medical supplies pricing is a devolved matter and DHSC will disclose the information obtained from industry to the Welsh and Scottish Ministers to inform their pricing policies. For now, these Regulations apply to Northern Ireland and will be reviewed once a Northern Ireland Executive is reformed.

Public Lending Right Scheme 1982 (Commencement of Variations) (No. 2) Order 2018 (SI 2018/691)

25. This instrument extends the Public Lending Right (PLR) scheme to include remote loans of e-books and e-audiobooks to ensure that authors and others who hold rights can receive payments in respect of these loans. Under the PLR scheme, authors receive an annual payment if their titles have been borrowed from public libraries in the UK. To date, only the lending of audiobooks and e-books which are downloaded on library premises has been covered by the PLR. The Department for Digital, Culture, Media and Sport explains that while remote lending accounted for only around 3% of all public library lending in 2016–17, this proportion is expected to increase as e-lending becomes more popular. The instrument also makes it easier for authors and those making a posthumous application to register with the

PLR scheme for the first time, by removing the requirement to provide a certificate signed by an independent witness.

Police, Fire and Crime Commissioner for Staffordshire (Fire and Rescue Authority) Order 2018 (SI 2018/696)

26. This Order transfers responsibility for the governance of fire and rescue services to the current Police and Crime Commissioner (the PCC) for Staffordshire. The proposals were publicly consulted on and although the responses were evenly split, the local authorities in the PCC's area—Stoke on Trent City Council and Staffordshire County Council—were opposed to the proposal. This triggered a requirement for an independent assessment of the proposal, which was carried out by the Chartered Institute of Public Finance and Accountancy. Having taken it into account, the Secretary of State at the Home Office has decided that the proposal appears to be in the interests of economy, efficiency and effectiveness and that there will be no adverse effect on public safety, and has therefore made this Order to transfer governance of fire and rescue services in Staffordshire to the PCC. This is the first use of the review mechanism under the Fire and Rescue Services Act 2004 (as amended by the Policing and Crime Act 2017).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Cambridgeshire and Peterborough Combined Authority (Business Rate Supplements Functions) Order 2018

Contracts for Difference (Miscellaneous Amendments) Regulations 2018

European Union (Definition of Treaties) (Association Agreement) (Central America) Order 2018 (Jane)

European Union (Definition of Treaties) (Comprehensive and Enhanced Partnership Agreement) (Armenia) Order 2018

European Union (Definition of Treaties) (Framework Agreement) (Australia) Order 2018

European Union (Definition of Treaties) (Partnership Agreement on Relations and Cooperation) (New Zealand) Order 2018

European Union (Definition of Treaties) (Political Dialogue and Cooperation Agreement) (Cuba) Order 2018

European Union (Definition of Treaties) (Strategic Partnership Agreement) (Canada) Order 2018

Liverpool City Region Combined Authority (Business Rate Supplements Functions) Order 2018

Renewables Obligation (Amendment) Order 2018

Single Source Contract (Amendment) Regulations 2018

Social Workers Regulations 2018

West of England Combined Authority (Business Rate Supplements Functions) Order 2018

West Midlands Combined Authority (Business Rate Supplements Functions and Amendment) Order 2018

Draft instruments subject to annulment

Code of Practice for the Welfare of Laying Hens and Pullets

East Hampshire (Electoral Changes) Order 2018

King's Lynn and West Norfolk (Electoral Changes) Order 2018

Modifications to the Standard Conditions of Electricity and Gas Supply Licences, the Smart Meter Communication Licences and the Smart Energy Code (Smart Meters No.3 of 2018)

Nottingham (Electoral Changes) Order 2018

Proposal by the Secretary of State for Digital, Culture, Media and Sport to designate jointly Patrick Swaffer, Lord Kamlesh Patel and David Austin under Sections 4(1), 4(2), 4(4) and 4ZA of the Video Recordings Act 1984

Richmondshire (Electoral Changes) Order 2018

Scarborough (Electoral Changes) Order 2018

Instruments subject to annulment

- SI 2018/655 Professional Standards Authority for Health and Social Care (Fees) (Social Work England) Regulations 2018
- SI 2018/657 Protection of Freedoms Act 2012 (Destruction, Retention and Use of Biometric Data) (Transitional, Transitory and Saving Provisions) (Amendment) Order 2018
- SI 2018/673 Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2018
- SI 2018/676 State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018
- SI 2018/677 Health Service Products (Provision and Disclosure of Information) Regulations 2018
- SI 2018/682 Investigatory Powers (Consequential Amendments etc.) Regulations 2018
- SI 2018/687 Care and Support (Charging and Assessment of Resources) (Amendment) Regulations 2018
- SI 2018/688 Education (Pupil Information) (England) (Amendment) Regulations 2018
- SI 2018/691 Public Lending Right Scheme 1982 (Commencement of Variations) (No. 2) Order 2018
- SI 2018/695 Town and Planning and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2018
- SI 2018/696 Police, Fire and Crime Commissioner for Staffordshire (Fire and Rescue Authority) Order 2018

APPENDIX 1: DRAFT NEW TOWNS ACT 1981 (LOCAL AUTHORITY OVERSIGHT) REGULATIONS 2018

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

Q1: In the Explanatory Memorandum (EM) you state that: “A commitment to do this [the creation of new town development corporations which are accountable to the local authority] was made in the Housing White Paper published in February 2017”. Had MHCLG been approached by Local Authorities about this possibility before the 2017 White Paper? What approaches has MHCLG received since then?

A1: Prior to the publication of the Housing White Paper in February 2017, we had had informal, official level discussions with local authorities about interest in using these Regulations. However, we had not received any firm proposals for use. A number of the most ambitious current garden communities have informally expressed interest in creating a locally-led new town development corporation including North Essex Garden Communities (Colchester, Braintree and Tendring District Councils and Essex County Council), Basingstoke Garden Town (Basingstoke and Deane Borough Council and Hampshire County Council), St Cuthbert’s Garden Village (Carlisle City, Cumbria), and Otterpool Garden Town (Folkestone & Hythe District Council, Kent County Council).

The most advanced proposal is from North Essex Garden Communities who we expect to submit a formal proposal seeking designation in early 2019.

Q2: In the EM you say that MHCLG consulted on the draft regulations between 4 December 2017 and 2 January 2018. This is only 4 weeks, spanning the Christmas and New Year holidays. The Cabinet Office consultation principles flag up the issue of consultations over holidays. Why did MHCLG set such a tight timetable? Did any consultation respondents complain about the timetable?

A2: Prior to the consultation period MHCLG had already been in dialogue for some time with a number of key stakeholders. Due to the relatively niche subject matter, we understood that most of the key interested parties were already aware of, and engaged in the process and as such were able to respond quickly (including interested local authorities and key interest groups such as the Town and Country Planning Association).

We also decided not to use a longer consultation period partly due to concerns that a delayed laying date could risk the Regulations coming into competition with Brexit legislation and potentially delay them for a considerable time. In retrospect we probably could have allowed for a longer period but were advised at the time that later Parliamentary laying slots would be difficult to secure.

A total of 58 individuals and 17 local authorities responded to the consultation. We received 5 complaints about the short turnaround from individuals and one local authority stated that the timescales meant that they were unable to provide a considered response to some questions.

Q3: In the EM you say: “The Government will be publishing guidance on these Regulations, covering for example the circumstances in which government would expect, in response to a request from the local authority or authorities, to consult on the designation of an area for a new town and expectations on new town development corporations in relation to delivery.” The summary of consultation responses flags up the intention to

publish guidance to resolve various issues. Is it not possible to publish the guidance in draft alongside the draft Regulations, in order to inform Parliamentary consideration? How soon will MHCLG publish guidance?

A3: We have been unable to publish the guidance alongside the draft regulations as we are still engaging with a number of stakeholders over the content. However, we intend to publish it prior to the Parliamentary debates.

Q4: In the EM you say: “The impact on the public sector may, in some cases, be significant. The creation of locally-led new town development corporations may result in additional costs for local authorities compared to other delivery vehicles for large scale housing development.” Will the financial implications act as a deterrent to local authorities? What assistance will the Government offer towards this impact?

A4: The use of a locally-led New Town Development Corporation by a local authority is a relatively interventionist approach to the delivery of a garden community and generally means that the local authority is willing to play more of a leadership role in the delivery of that community. Compared to a less interventionist route, such as not using a statutory delivery vehicle at all, and instead using something like a joint venture with a private sector partner, this will result in additional legal and corporate costs for the development corporation, and administrative costs for the oversight of the new body.

This may be a deterrent for some local authorities that do not consider such a route value for money. Due to these resource costs and the organisation involved in setting one up, we don't expect them to be appropriate for smaller garden communities below c. 10-15,000 homes.

Through our garden cities, towns and villages programme the Government has to date provided £22 million of capacity funding, and direct expertise and advice. We will seek to offer financial support and advice, where appropriate, to local authorities where we consider that their proposals for a locally led New Town Development Corporation provide a robust route to delivering a new garden community. However, we are clear that any locally-led new town development corporations are just that, locally-led. They would be accountable to the local authorities that set them up and ultimately it is for those authorities to ensure they have the resources necessary to do the job.

7 June 2018

APPENDIX 2: CORRESPONDENCE ON THE BRITISH NATIONALITY (THE GAMBIA) ORDER 2018 (SI 2018/620)

Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Ms Caroline Nokes, MP, Minister of State for Immigration at the Home Office

I am writing as Chairman of the Secondary Legislation Scrutiny Committee which considered this Order at its most recent meeting. It seemed to the Committee that the Explanatory Memorandum accompanying this Order simply states what the legislation does without explaining the underlying policy rationale behind the choices made. The Committee has therefore postponed consideration of the Order until further information is made available.

We understand that the Home Office has no estimate of how many Gambians might have lost the Right of Abode in the UK as a result of the 2015 Order of the same title (SI 2015/1771) and would be grateful if you could explain why.

We note that, in reinstating The Gambia as a member of the Commonwealth, this Order does not reinstate those who lost the Right of Abode in the UK. We would be grateful if you could explain the rationale for, and effects of, that decision.

Paragraph 7.2 of the Explanatory Memorandum states that anyone who holds Commonwealth citizenship could be appointed as a civil servant, police constable etc. We would be grateful if you would explain how this process will work in practice if such individuals have not had their right of abode reinstated.

The Committee would be grateful to receive your response to these concerns by 10 am on Monday 18 June 2018, so that it may be considered at the Committee's next meeting.

13 June 2018

Letter from Ms Caroline Nokes, MP, to Lord Trefgarne

Thank you for your letter of 13 June regarding the British Nationality (The Gambia) Order (SI 2018/620). I am sorry that the Explanatory Memorandum did not sufficiently address the underlying policy rationale.

The purpose of the Order will be of benefit to Gambians in the UK at present and future arrivals. The effect of this Order will reinstate voting rights and the ability for Gambian nationals to apply for jobs in certain occupations, as well as to take advantage of, if eligible, ancestry visas. However, as highlighted in the Explanatory Memorandum it will not reinstate the Right of Abode for reasons I set out below.

In addition to British citizens, right of abode is held by Commonwealth citizens, providing that they had right of abode immediately before 1 January 1983 (when the British Nationality Act 1981 came into force) and have not ceased to be Commonwealth citizens at any time. When The Gambia (voluntarily) left the Commonwealth, its nationals ceased to be Commonwealth nationals and therefore those of its citizens who had the right of abode lost it.

Precise details on the number of people who hold right of abode are not held. This is because the right of abode is a statutory right which a person either has or does not have. There is no requirement for an individual to register or make an application to confirm this status, unless they are seeking entry to the UK.

Neither is there any requirement for their births to have been registered with UK authorities.

However, a requirement of right of abode is that those concerned need to obtain a certificate to demonstrate this. These are issued in line with the validity of the individual's passport and can be renewed when they obtain a new passport. In the 10 years prior to The Gambia's exit from the Commonwealth, only two Gambians applied for such a certificate. Both these individuals were advised of the change and invited to apply under the immigration rules.

Where a country leaves and subsequently rejoins the Commonwealth, it does not have the effect of reinstating the right of abode, as their nationals no longer meet the statutory requirement to have been a Commonwealth citizen throughout. This principle has previously been established when South Africa and Pakistan rejoined the Commonwealth in 1994 and 1989 respectively.

Nationality requirements apply to occupations such as the Police, the Civil Service and Members of Parliament. With regard to Commonwealth nationals, these require such individuals to be free of immigration conditions. Given this, whilst the Order does not have the effect of reinstating the right of abode, for those who lost it on The Gambia's removal from Schedule 3 of the British Nationality Act on 3 April 2014, it does have the effect of formally reinstating them as Commonwealth nationals. As such, where a Gambian national is not subject to immigration control due to having indefinite leave to enter or remain in the UK, they will be eligible to take up such positions by virtue of being Commonwealth nationals.

I trust that this information provides sufficient information on the rationale for the approach taken in the order for the Committee to consider the matter further.

18 June 2018

APPENDIX 3: DRAFT CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY (BUSINESS RATE SUPPLEMENTS FUNCTIONS) ORDER 2018 AND THREE RELATED INSTRUMENTS

Additional Information from the Ministry of Housing, Communities and Local Government

Q1: In the Explanatory Memorandum (EM) you say: “7.2 Devolution Deals made with Cambridgeshire and Peterborough, Liverpool City Region and West of England contained a mayoral infrastructure supplement, which has similar aims to the BRS [business rate supplement]. The Local Government Finance (LGF) Bill that was lost with interruption of business, as a result of the 2017 election, included provisions for a mayoral infrastructure supplement and for mayoral combined authorities to levy a BRS. The Government subsequently offered the BRS power to those mayoral combined authorities, which they have accepted, with the consent of the authorities in the area of the combined authority and subject to the agreement of Parliament.” If the LGF Bill that was lost had in fact proceeded to Royal Assent, when would the provisions for a mayoral infrastructure supplement and for mayoral combined authorities to levy a BRS have come into effect? How much time has been “lost” to these CAs as a result of the loss of the LGF Bill?

A1: It is not possible to say. This would have depended on the parliamentary progress of the Bill. Secondary legislation would also have been needed before an infrastructure supplement could be levied. In the absence of the LGF Bill, however, the Government has moved quickly to give combined authority mayors BRS powers, demonstrating our commitment to ensuring that they have the appropriate powers available to help strengthen their local economies.

Q2: In section 8 of the EM you say, in the case of the Liverpool CA consultation, that there were “5 comments related to business rates proposals including business rates retention and BRS, 2 were found to be positive, 2 to be negative and 1 was out of scope of the consultation”. This does not indicate strong support for the BRS power in the case of the Liverpool CA. Is MHCLG not concerned about local resistance to this power?

A2: The Department is not concerned about local resistance to this power, not least because in each case its conferral has been consented to by the elected mayor and by all the constituent authorities whose members comprise the democratically elected representatives of the area. As to the consultation responses: there were four responses properly within scope of LCRCA’s consultation regarding the BRS proposals out of a total 930 responses to the consultation as a whole. These four represent a balance between support and opposition, although for such a small sample the extent to which a firm conclusion can be drawn is questionable. Most importantly, the mayor must consult on any proposal to apply a business rate supplement, and following that consultation, must hold a ballot of business affected, which must yield a result in favour of the proposal both in terms of numbers of businesses affected, and in terms of their aggregate rateable value. This will help ensure that mayors invest time to get business support for their proposals. It also ensures that no business rate supplement can be applied without significant support among those from whom the supplement is to be collected.

Q3: What has happened about BRS powers and the other CAs?

A3: BRS powers are being conferred on those mayoral combined authorities who want them ... Tees Valley and Greater Manchester have confirmed to us they do not want these powers; we will consider the newly mayoral Sheffield City Region in due course.

Q4: In the EM to the draft West Midlands Combined Authority (Business Rate Supplements Functions and Amendment) Order 2018, you state that the amendments to the list of roads proposed in that Order were sought by the West Midlands Combined Authority (WMCA) so that the definition covers all strategic network roads. What has happened to make the WMCA realise that these amendments are now needed?

A4: MHCLG officials here have put this question to the WMCA, who understood that their response would be shared with members of the Secondary Legislation Scrutiny Committee and would be included in the subsequent report of that Committee. Their response is as follows: “The establishment of WMCA and definition of the KRN [Key Route Network] by local authorities was done at a rapid pace in order to satisfy the legislative timetable. Some errors and omissions in KRN descriptions have subsequently come to light and these were down to both the speed at which the work was done and some uncertainty on the part of our constituents, regarding what the new powers would mean which led to joint errors in the initial submission. We acknowledge that there is a need to ensure that this work is done meticulously the first time, and we apologise for taking further legislative time with this however, these further changes would ensure that the KRN powers are available to use as originally envisaged”.

7 and 12 June 2018

APPENDIX 4: INTERESTS AND ATTENDANCE

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 12 June 2018, Members declared no interests.

Attendance:

The meeting was attended by Lord Cunningham of Felling, Lord Faulkner of Worcester, Baroness Finn, Lord Haskel, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.