

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

9th Report of Session 2017–19

Includes 3 Information Paragraphs on 6 Instruments

Ordered to be printed 7 November 2017 and published 9 November 2017

Published by the Authority of the House of Lords

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

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.

Ninth Report

INSTRUMENTS OF INTEREST

Draft Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018

Draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018

Draft Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018

Draft Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018

1. These instruments would bring three revised codes of practice, and one new Code on Listed Assets, into operation on 31 January 2018 to reflect changes made by the Criminal Finances Act 2017 (“the 2017 Act”) to the Proceeds of Crime Act 2002. The revised codes of practice concern the use of search, seizure and detention powers in confiscation, cash recovery and investigation. The new Code sets out the procedure for a new search power available for certain items of personal or moveable property (such as art or jewels). Amendments made by the 2017 Act include the introduction of unexplained wealth orders, which require someone to provide a statement to explain the origin of assets that appear to be disproportionate to their known income and may be associated with serious crime. The 2017 Act also widens the use of disclosure orders, which require any person who is considered to have relevant information to answer questions, provide information, or produce documents for investigations into money laundering.¹

Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017

2. The Department for Communities and Local Government (DCLG) has laid these draft Regulations with an Explanatory Memorandum (EM). Among other things, the Regulations propose a 20% increase in the fees charged by local planning authorities for planning applications: planning application fees were last increased in 2012. DCLG says that, in a report published in December 2016,² the Local Government Association found that over three years a £450 million shortfall in fee-derived resources going into planning had been subsidised by local taxpayers from their local taxes. **While DCLG states that the Government accepted the evidence presented, it presents none of this evidence in the EM and no detail to support the figure of £450 million.**

¹ See also Draft Criminal Finances Act 2017 (Consequential Amendment) Regulations 2018, Draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2018, and Draft Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2018.

² Local Government Association, *Building our homes, communities and future* : <https://www.local.gov.uk/sites/default/files/documents/building-our-homes-commun-740.pdf> [accessed 7 November 2017]

3. It aims to reduce this funding gap through the 20% increase, which was announced in the Housing White paper in February of this year.³ DCLG notes that it is estimated that the fee increase will mean that some £80 million additional income will be raised annually, and that authorities' costs will overall still be higher than the fee charged. **While, as DCLG says in the EM, the overall impact will be to make additional ring-fenced resources available to planning departments, it seems clear that some level of subsidy from local taxpayers will also still be needed.**

Criminal Legal Aid (Remuneration) (Amendment) Regulations 2017 (SI 2017/1019)

4. Remuneration for criminal litigation services in the Crown Court is paid as a “graduated fee”. That fee is affected by the complexity of the case and the primary factor in determining that is the number of Pages of Prosecution Evidence (PPE) served. PPE is currently subject to a cut-off threshold of 10,000 pages, after which the claims of legal aid providers are treated as a “special preparation”, that is, separately assessed for payment by the Legal Aid Agency. The Costs Judge’s decision in *R v Napper (Costs)*⁴ broadened the circumstances in which electronic evidence could be paid as PPE beyond the Government’s original policy intention. The Ministry of Justice (MoJ) notes in the Explanatory Memorandum that since that decision, despite the overall caseload falling, average payments under the graduated fee scheme have risen sharply. Rather than changing the treatment of electronic evidence, these Regulations amend the cut-off for the graduated fee scheme to cases with 6,000 pages. This will increase the number of cases being considered under the “special preparation” provisions to about 2% of the total caseload. Over 1,000 respondents raised objections during the consultation exercise stating that cases with more than 6,000 pages would be paid between 13% and 34% less than they are currently. This view seems to be supported by the MoJ’s estimate that the change will result in gross savings of £26–36 million per year in payments to legal aid providers. The Legal Aid Agency intends to employ up to three additional full-time staff to assess the cases with 6,000–10,000 PPE and states that in consequence they do not anticipate any significant delays in providers getting paid.

3 Department for Communities and Local Government, *Fixing our broken housing market*, Cm 9352, February 2017, para 2.15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590464/Fixing_our_broken_housing_market_-_print_ready_version.pdf [accessed 7 November 2017]. This foresaw increasing fees in July 2017.

4 *R v Napper (Costs)* (2014) 5 LR 947.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017

Draft Criminal Finances Act 2017 (Consequential Amendment) Regulations 2018

Draft Designs (International Registration of Industrial Designs) Order 2017

Draft Electronic Communications Code (Jurisdiction) Regulations 2017

Draft Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018

Draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018

Draft Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2018

Draft Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018

Draft Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018

Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017

Draft Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2018

Draft instrument subject to annulment

Draft Blackburn with Darwen (Electoral Changes) Order 2017

Draft Bolsover (Electoral Changes) Order 2017

Draft Kingston upon Hull (Electoral Changes) Order 2017

Draft North East Derbyshire (Electoral Changes) Order 2017

Draft Ribble Valley (Electoral Changes) Order 2017

Draft Surrey Heath (Electoral Changes) Order 2017

Instruments subject to annulment

SI 2017/1008 Electronic Communications Code (Transitional Provisions) Regulations 2017

SI 2017/1011 Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Secondary Legislation) Regulations 2017

- SI 2017/1015 Social Security (Miscellaneous Amendments No. 4) Regulations 2017
- SI 2017/1016 Social Security (Information-sharing in relation to Welfare Services etc.
- SI 2017/1019 Criminal Legal Aid (Remuneration) (Amendment) Regulations 2017

APPENDIX 1: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 7 November 2017, Members declared the following interests:

Draft Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017

Lord Trefgarne

Chairman of Fairoaks Airport Consultative Committee

Attendance:

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