

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

16th Report of Session 2017–19

**Draft Investigatory
Powers (Codes of
Practice) Regulations
2018
and three related instruments**

**Correspondence:
Marshall Scholarships Order 2017**

Includes 9 Information Paragraphs on 12 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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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.

Sixteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Investigatory Powers (Codes of Practice) Regulations 2018

Draft Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

Draft Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018

Draft Investigatory Powers (Technical Capability) Regulations 2018

Date laid: 18 December 2017

Parliamentary procedure: affirmative

Summary: These draft Regulations will bring into force five Codes of Practice under the Investigatory Powers Act 2016 (“the 2016 Act”) which relate to the bulk acquisition of communications data, equipment interference, national security notices, and the intelligence services’ retention and use of bulk personal datasets. These are significant matters as the Codes set out the way in which the powers under the 2016 Act will be used in practice, the criteria to be used when applying for or authorising a warrant and what safeguards will apply to the use and retention of the data obtained. The bundle of papers is sizeable, running to several hundred pages. We were therefore disappointed with the obscurity of the original Explanatory Memorandum which gave the reader no indication at all of the potential effects of these Codes. At our request the Home Office has now replaced this with one that sets out more clearly what the Codes do and why. Because bulk interceptions in particular have the potential to include the communications of people who are not suspects as well as those whom the security services are targeting, this legislation is likely to be of interest to the House.

These Regulations are drawn to the special attention of the House on the ground that they raise policy issues likely to be of interest to the House.

Background

1. These Regulations have been laid by the Home Office under provisions of the Investigatory Powers Act 2016 (“the 2016 Act”). The Codes of Practice Regulations will bring into force five separate Codes of Practice relating to the interception of communications, equipment inference, the bulk acquisition of communications data, national security notices and the intelligence services’ retention and use of bulk personal datasets.¹ An inadequate Explanatory Memorandum (EM) was laid with the Regulations and this has now been replaced with a more informative one.

¹ The Home Office states that a sixth code on communications data will be brought into force at a later date.

The five Codes of Practice

2. The 2016 Act permits all these activities but these Codes regulate how those powers are to be used and the conditions and safeguards that apply to them. The 2016 Act makes it a criminal offence to intercept the communications of a person in the UK without lawful authority and stipulates what constitutes lawful authority to do so, for example a warrant issued by the Secretary of State. The decision to issue interception warrants is also subject to approval by a Judicial Commissioner. In each case a warrant may only be issued where it is necessary and proportionate and meets one or more of three statutory grounds, that is, it is in the interests of national security, for the prevention and detection of serious crime or in the interests of the economic well-being of the UK (so far as those interests also relate to national security).
3. Each Code contains guidance on a range of practical matters including what details the public authorities must include in an application to use the relevant powers; the format of, and detail that must be included in, a warrant or notice; the authorisation and renewal process; the safeguards that apply in relation to the retention, storage, copying, destruction and dissemination of material obtained using the relevant investigatory powers.
4. **Interception of Communications:** this Code relates to the exercise of targeted and bulk interceptions permitting the content of the communication to be made available to someone other than the sender or intended recipient. Targeted interception warrants are primarily an investigative tool that enable authorities such as the Police, HMRC or the Ministry of Defence to intercept communications in relation to a specified subject matter such as an individual person or a group of persons carrying out a particular activity or sharing a common purpose, for example an organised crime group. Bulk interception warrants may only be sought by the intelligence services in relation to matters of national security and authorise the interception of overseas-related communications, for example, to identify previously unknown threats to the national security of the UK. Such a warrant may result in the acquisition of large volumes of data that may only be selected for examination for an operational purpose specified on the warrant.
5. **Equipment Interference:** this Code describes a range of techniques that may be used to obtain communications, equipment data or other information. Equipment interference can be carried out either remotely or by physically interacting with the equipment. At the lower end of the scale, this may mean covertly downloading data from a subject's mobile device or using someone's login credentials to gain access to data held on a computer. More complex equipment interference operations may involve exploiting existing vulnerabilities in software in order to gain control of devices or networks to extract remotely material or monitor the user of the device. Targeted equipment interference warrants may only be sought by a limited number of public authorities such as the intelligence services, law enforcement agencies (including police forces, the National Crime Agency, HMRC and immigration and customs authorities) and certain oversight bodies such as the Independent Police Complaints Commission.² In addition, certain equipment interference authorities may only seek warrants for specified limited purposes, for example, an immigration officer may only seek an equipment interference warrant in relation to a serious crime

that is an immigration or nationality offence. As with bulk interception, bulk equipment interference warrants are primarily used as an intelligence gathering tool, may only be sought by the intelligence services and must be necessary in the interests of national security.

6. **Bulk Acquisition of Communications Data** may result in the collection of large volumes of data, which are essential to enable communications relating to subjects of interest to be identified and subsequently pieced together in the course of an investigation. Warrants for the acquisition of bulk communications data are limited to the three intelligence services and the 2016 Act does not impose a limit on the volume of communications or constrain them to a specific investigation. Once acquired in bulk, selection of data for examination is only permitted for the operational purposes specified on the warrant.
7. **National Security Notices:** using a national security notice, the Secretary of State may require an operator to take specified steps to do something to facilitate the activities of an intelligence service, deal with an emergency or provide services or facilities for the purpose of assisting an intelligence service to carry out its functions more securely or more effectively. However, a national security notice could not be used as an alternative to an interception warrant where such a warrant is required to authorise the relevant activity.
8. **Intelligence Services' Retention and Use of Bulk Personal Datasets:** having obtained material from a variety of sources to meet the requirements of their statutory functions under the Security Service Act 1989 and the Intelligence Services Act 1994 the intelligence services need to process it. A bulk personal dataset will be held electronically and will typically be very large, for example relating to all the travellers on a particular route. It is also likely that the majority of individuals within it are not, and are unlikely to become, of interest to the intelligence services. The 2016 Act does not create any new powers to obtain such datasets but requires that the retention and use of these datasets by the intelligence services must be subject to an authorisation scheme and robust and transparent safeguards.

Ancillary legislation

9. At the same time as laying these Regulations, the Home Office also laid three other sets of draft Regulations which deal mainly with consequential aspects of the proposed new system, particularly the practical impact on telecommunications and postal firms:
 - Draft Investigatory Powers (Technical Capability) Regulations 2018 – relate to the requirements that the Secretary of State can impose on a firm to ensure that they have the equipment and capability to provide interception when required to do so by a warrant.
 - Draft Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018 - provide the legal basis under which a body, whether a company or a public authority, may intercept communications for monitoring or record keeping.
 - Draft Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018 – set out the mechanism by which a firm can seek to appeal against the conditions set out in an interception notice by the Secretary of State and how that appeal will be heard.

Conclusion

10. These are significant matters as the Codes set out the way in which the powers under the 2016 Act will be used in practice, the criteria to be used when applying for a warrant and what safeguards will apply to the use and retention of the data obtained. The bundle of papers is sizeable, running to several hundred pages. We were therefore disappointed with the obscurity of the original Explanatory Memorandum which gave the reader no indication at all of the potential effects of these Codes. At our request the Home Office has now replaced this with one that sets out more clearly what the Codes do and why, which should aid the House in its scrutiny of the way the system is to operate. **Because bulk interceptions in particular have the potential to include the communications of people who are not suspects as well as those who the security services are targeting, this legislation is likely to be of interest to the House.**

CORRESPONDENCE

Marshall Scholarships Order 2017 (SI 2017/1109)

11. In our 13th Report of this session, we drew attention to the Marshall Scholarships Order 2017 (SI 2017/1109), expressing concern about the proposal to increase, at public expense, the number of scholarships offered to American post-graduate students to study in the UK from 40 to 50. The Committee raised a number of questions about the policy and the FCO's responses were included in Appendix 1 of our 13th Report.³ The Committee was not persuaded that the FCO's plans to use taxpayers' money to increase its sponsorship of foreign students from a rich nation were appropriate at a time when there is significant concern about the effect of student loans on British students. Nor was the Committee persuaded that it was equitable to sponsor American students to do two MAs back to back when that opportunity is not available to our own students. The further correspondence on this matter is included at Appendix 1 of this report. We remain unpersuaded.

3 13th Report, Session 2017-19 ([HL Paper 49](#)).

INSTRUMENTS OF INTEREST

Draft Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018

Draft Legal Services Act 2007 (Appeals From Licensing Authority Decisions) (General Council of the Bar) Order 2018

12. At present, the regulatory regime applied to barristers is non-statutory, with barristers, in effect, consenting to be contractually bound by the rules of the Bar Standards Board (BSB).⁴ This arrangement is underpinned by a series of agreements between the Bar Council, the Inns of Court, the Bar Tribunals and Adjudication Service and the BSB. The BSB believes that some of its regulatory functions, including in relation to individual barristers, should be put on a statutory footing to enable it to regulate the whole profession more effectively and efficiently, and that is what the Modification of Function Order seeks to achieve. The Appeal Order proposes that appeals about decisions made by the General Council of the Bar, in its capacity as a licensing authority, should be heard in the General Regulatory Chamber of the First-Tier Tribunal instead of in the High Court.

Draft Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

13. The Department for Environment, Food and Rural Affairs (Defra) has laid this draft Order with an Explanatory Memorandum (EM). The Order confers a power on district councils in England (outside London) to require the keeper of a vehicle to pay a fixed (civil) penalty if there is reason to believe that a littering offence has been committed from the vehicle. Defra explains that borough councils in London already have powers⁵ to impose a penalty charge on the owner of vehicles from which litter is thrown, but these powers are not currently available in the rest of England. Defra says that littering is a criminal offence, and enforcement action (issue of a fine or prosecution) should be taken only when the council has evidence against the offender to the criminal standard of proof (that is, beyond reasonable doubt). When littering offences take place from a vehicle, it can be difficult for councils to identify the offender with sufficient certainty to take enforcement action. A penalty charge notice is a civil fine which does not carry the risk of a criminal prosecution, and therefore does not require the offence to be proven to a criminal standard of proof.
14. In the EM, Defra says that it consulted on these proposals over 10 weeks to 18 June 2017, and received 181 separate responses, of which 67 were from councils. Defra says that the majority of responses agreed with the Government's proposals in respect of the proposed exemptions, level of penalty, and penalty for late payment, and suggested no significant changes.⁶

4 The General Council of the Bar (the Bar Council) is an approved regulator for the reserved legal activities of the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities and the administration of oaths. The Bar Council has delegated its regulatory functions to the Bar Standards Board.

5 Under section 24 of the London Local Authorities Act 2007 (amended in 2012).

6 Defra, *Review of fixed penalties for environmental offences and introduction of civil penalties for littering from vehicles outside London: summary of responses*, August 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/640295/penalties-for-environmental-offences-summary-of-responses.pdf

15. We obtained additional information from Defra about experience in London on the use of penalty charge notices; and also about the position of keepers of vehicles that are stolen. We are publishing this information as Appendix 2. It seems clear that the powers available have not been used widely across London boroughs; Wandsworth Borough Council in particular has experienced difficulties in processing and recovering unpaid penalties, which Defra says are now resolved. The Department has stressed that the Local Government Association has welcomed the new powers; it has also said that the period of 28 days during representations can be made, for example, that a vehicle had been stolen, is consistent with other similar legislation.

**Draft Representation of the People (England And Wales)
(Amendment) Regulations 2018**

**Draft Representation of the People (Scotland) (Amendment)
Regulations 2018**

**Draft Representation of the People (Northern Ireland)(Amendment)
Regulations 2018**

16. In response to representations made, these three Regulations amend the current regulations made under the Representation of the People Act 1983 throughout the UK. The main change they make is to lower the evidence threshold required for people, for example the survivors of domestic abuse, who wish to register anonymously because their safety could be put at risk if their details appear on the electoral register. The representations were concerned that the threshold of evidence required for anonymous registration was originally set too high, requiring a court injunction or the attestation of a Police Superintendent: these changes lower the evidence required to include attestations by Police Inspectors, medical staff and officials of recognised refuges. Except in Northern Ireland where required provisions are already in place, the Regulations also amend the wider aspects of the registration system, to add certain warnings on the application form for the Parliamentary and local government registers, to expand the sources of information which can be used to delete deceased voters and to change the status of some correspondence from mandatory to discretionary.

**Whole of Government Accounts (Designation of Bodies) Order 2017
(SI 2017/1259)**

17. HM Treasury (HMT) has laid this Order with an Explanatory Memorandum (EM). HMT states that the Order identifies bodies to be included in the consolidated Whole of Government Accounts (WGA) for the year ending 31 March 2017, and that designating these bodies enables HMT to require them to provide the necessary audited financial information, in a specified form and to a specified timescale, for the preparation of the WGA. It also says that the reasons for preparing the WGA include providing better transparency and accountability to Parliament, as well as improved information for fiscal policy.

18. We asked HMT for details of the use made of the WGA, and were told that HMT has quarterly meetings with the executive leadership from the National Audit Office, at which the WGA form part of the discussions. The House of Commons Public Accounts Committee (PAC) has annual hearings on the WGA: at the most recent PAC hearing, on 29 November 2017,⁷ the Committee discussed the 2015-16 WGA publication. HMT said that it was currently awaiting the report from the Committee and would respond to the recommendations contained in it in due course. We also obtained additional information from HMT about the exclusion or inclusion in the latest WGA of bodies which were either present in, or absent from, the previous Order; and about what action had been taken in relation to the qualification of the WGA 2015-16 mentioned in the EM.
19. We consider that all these details should have been included in the EM as laid before Parliament in order to assist the process of scrutiny, and we have asked HMT to revise and re-lay the EM accordingly.

Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 (SI 2017/1306)

20. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). On 20 December 2017, the Minister of State for Children and Families (Mr Robert Goodwill, MP) made a Written Statement⁸ in which he referred to a Government commitment (of March 2017) to introduce a two-year national trial to expand the powers of the First-tier Tribunal (SEND) to make non-binding recommendations on the health and social care aspects of Education, Health and Care (EHC) plans, alongside the educational aspects. The Minister announced that these Regulations were being laid to allow a national trial on “the single route of redress” to proceed, and to run for two years from April of this year. In the EM, DfE gives more details about the national trial, including the membership of an external steering group of key stakeholders which will support the project (with planning, implementation, communication and monitoring), and the Department’s intention to appoint an external organisation to carry out an evaluation which will inform a decision on future roll-out of this approach.

Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (SI 2017/1309)

21. The Ministry of Housing, Communities and Local Government (MHCLG) has laid this Order with an Explanatory Memorandum (EM). MHCLG says that local planning authorities already have powers to grant permission in principle (which is intended to separate decision-making on “in principle” issues addressing land use, location, and amount of development, from matters of technical detail) to suitable sites allocated on registers of brownfield land.⁹ The Order extends this consent regime by giving developers the opportunity to identify sites and make an application to the local planning authority for a grant of permission in principle. The right to make such an application is only available for minor development as defined in the Order, that is, for small sites that support fewer than 10 dwellings.

7 See: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/government-borrowing/oral/74818.pdf>

8 HCWS376, 20 December 2017

9 Under the Town and Country Planning (Permission in Principle) Order 2017 (SI 2017/402).

22. In the EM, MHCLG says that consultation on the planning changes was undertaken between 18 February and 25 April 2016; and that concerns were expressed by some respondents that the proposed determination period of five weeks (the amount of time the local planning authority has to reach a decision) would not allow the public and other interested parties enough time for proper consideration of the issues. However, the Government's view is that the proposed period would allow the in-principle matters adequate engagement to take place: the five-week period is therefore being prescribed in the Order.
23. We obtained additional information from MHCLG about the consultation responses, which we are publishing as Appendix 3. As regards the proposed determination period of five weeks for permission in principle, 97 respondents were in agreement, but 276 respondents were not. As regards the possibility that the five-week period might coincide with a holiday season, MHCLG has told us of a Government commitment to require local planning authorities to extend the period of public consultation for planning applications by one day for each bank/public holiday that falls within the relevant period: the Order will be amended accordingly.

Criminal Legal Aid (Amendment) Regulations 2017 (SI 2017/1319)

24. In December 2013, the Ministry of Justice implemented changes which narrowed the scope of criminal legal aid available for those already in prison. These changes were challenged by judicial review and, in its judgment of 10 April 2017, the Court of Appeal¹⁰ concluded that without legal aid there was an unacceptable risk of unfair decision-making in three categories of prison law:
- Pre-tariff review¹¹ hearings and other advice cases involving life and other indeterminate sentence prisoners appearing before the Parole Board where the Board does not have the power to direct release but advises the Secretary of State on whether the prisoner is suitable for a move or return to open conditions;
 - Category A prisoner reviews, where subject to their progression, a high security prisoner may be moved to a less restrictive security category; and
 - Directions about placing a prisoner in a close supervision centre within a prison, which are applied to particularly violent or disruptive prisoners.
25. The Lord Chancellor has decided to address the Court's concerns by reinstating criminal legal aid for those three categories of prison law review. In addition, because of the strong parallels between close supervision centres and separation centres, the Lord Chancellor has also decided to make criminal legal aid funding available for advice and assistance regarding directions as to a prisoner's placement in a separation centre within a prison. (Separation centres are part of the Government's wider strategy to combat the spread of extremism in prisons.)

10 [2017] EWCA Civ 244

11 The tariff is the minimum length of time that the prisoner is ordered to stay in prison before they can be considered for release.

Non-Domestic Rating (Rates Retention) (Amendment) Regulations 2017 (SI 2017/1321)

26. The Ministry of Housing, Communities and Local Government (MHCLG) has laid these Regulations, which modify arrangements introduced by Regulations from 2016¹² allowing “pilot authorities” to keep the 50% share of business rates which otherwise went to Government, if their non-domestic rating income exceeded a “baseline” amount: the policy was intended to encourage authorities to “grow their local economies”. The 2016 Regulations gave effect to the Government’s agreement to establish “growth pilots” in Greater Manchester, Cheshire East, Cambridgeshire and Peterborough, to run for three years, up to and including financial year 2017-18.
27. The latest Regulations provide for authorities in the areas of the West Midlands and Tees Valley (where Combined Authorities with elected Mayors have been established in the last year or so) to become “growth pilots” on the same basis as the earlier pilots. They also provide that the existing “growth pilots” in Cheshire East, and Cambridgeshire and Peterborough, will come to an end after 31 March 2018. We obtained additional information from MHCLG about the interaction between business rates pilot schemes, and policy on devolution to cities and local government, which we are publishing at Appendix 4. This clarifies that, while Greater Manchester has already been removed from the additional growth pilot arrangements dating from 2016, it is now the beneficiary of another scheme - “100% business rates pilots” – which Cambridgeshire and Peterborough tried, and failed, to join.

Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2017 (SI 2017/1323)

28. Following an announcement in the Summer Budget in 2015, the Government made regulations to freeze Local Housing Allowance (LHA) rates for four years from April 2016.¹³ At the same time, in mitigation, the Government also announced that it would make provision through “Targeted Affordability Funding” (TAF) for high rent areas where the LHA rates have diverged the most from local rents: this instrument delivers that commitment. It provides for certain LHA rates to be increased by 3% in certain areas, where higher rent increases are causing affordability problems for Housing Benefit and Universal Credit tenants in the private rented sector. The maximum LHA levels or national “caps” will also be increased by 3% for 2018-19. The Department for Work and Pensions states that it will be using the TAF to increase 213 LHA rates in 2018-19 and the new amounts are set out in this instrument. The money from the TAF which will be used to finance these increases is derived from 50% of the savings from the LHA freeze policy for 2018-19. Rent Officers will publish the 30th percentile of market rents and the new LHA rates on 31 January 2018.

12 The Non-Domestic Rating (Rates Retention) (Amendment) Regulations 2016 ([SI 2016/1268](#)).

13 Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2015 ([SI 2015/1753](#)).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

- Draft Building Societies (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018
- Draft Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2018
- Draft Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2018
- Draft Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018
- Draft Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018
- Draft Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2018
- Draft Representation of the People (England and Wales) (Amendment) Regulations 2018
- Draft Representation of the People (Northern Ireland) (Amendment) Regulations 2018
- Draft Representation of the People (Scotland) (Amendment) Regulations 2018

Instruments subject to annulment

- SI 2017/1238 Cremation (England and Wales) (Amendment) Regulations 2017
- SI 2017/1259 Whole of Government Accounts (Designation of Bodies) Order 2017
- SI 2017/1279 Registration (Entries of Overseas Births and Deaths) (Amendment) Order 2017
- SI 2017/1280 Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017
- SI 2017/1283 Transfer of Functions (International Development) Order 2017
- SI 2017/1287 Crown Court (Amendment) Rules 2017
- SI 2017/1290 Magistrates' Courts (Freezing and Forfeiture of Terrorist Money in Bank and Building Society Accounts) Rules 2017
- SI 2017/1291 Magistrates' Courts (Detention and Forfeiture of Cash) (Amendment) Rules 2017
- SI 2017/1293 Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017

- SI 2017/1295 Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (Amendment) Rules 2017
- SI 2017/1296 Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017
- SI 2017/1297 Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017
- SI 2017/1305 Council Tax Reduction Schemes (Amendment) (England) Regulations 2017
- SI 2017/1306 Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017
- SI 2017/1307 Building Societies (Restricted Transactions) (Amendment to the Limit on the Trade in Currencies) Order 2017
- SI 2017/1309 Town and Country Planning (Permission in Principle) (Amendment) Order 2017
- SI 2017/1310 Apprenticeships (Miscellaneous Provisions) Regulations 2017
- SI 2017/1311 Export Control (Syria and Libya Sanctions) (Amendment) Order 2017
- SI 2017/1317 Immigration Act 2016 (Consequential Amendments) (Licensing of Booking Offices: Scotland) Regulations 2017
- SI 2017/1318 Care and Support (Deferred Payment) (Amendment) Regulations 2017
- SI 2017/1319 Criminal Legal Aid (Amendment) Regulations 2017
- SI 2017/1320 Blood Safety and Quality (Amendment) Regulations 2017
- SI 2017/1321 Non-Domestic Rating (Rates Retention) (Amendment) Regulations 2017
- SI 2017/1322 Ionising Radiation (Medical Exposure) Regulations 2017
- SI 2017/1323 Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2017
- SI 2017/1328 Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment No. 2) Order 2017

APPENDIX 1: CORRESPONDENCE: MARSHALL SCHOLARSHIPS ORDER 2017 (SI 2017/1109)

Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Rt Hon. Mark Field, MP, Minister of State for the Foreign and Commonwealth Office

I am writing to you as Chairman of the House of Lords Secondary Legislation Scrutiny Committee. The Committee considered the Marshall Scholarships Order 2017 at its meetings on 13 and 20 December, and included a commentary on it in its 13th Report.

At the Committee's request, your department has provided some additional information about the Order, for which many thanks. The Committee, however, remains concerned about aspects of the Marshall Scholarship scheme and would welcome further explanation.

The Committee's particular concern is the "back to back" option, whereby students are funded to undertake two Masters degrees, one after the other. We found the brief explanation provided by your department of why the option is offered – namely, that a US Masters usually take two years, unlike a UK Masters – wholly unpersuasive. Added to which, we wonder why it would not be preferable to extend the scheme to more students by offering funding for one Masters degree, thereby – presumably – opening up the opportunity of funding to twice the number of students.

We note your department's comment that the "back to back" offer is provided by other scholarship programmes, such as the Rhodes scholarships. We question the relevance of this comparison given that it is our understanding that the Rhodes scholarships are funded from endowments and not by the taxpayer.

The adequacy of funding for British university students is a subject of continuing debate. In this context, our queries about the increase in subsidy for the Marshall Scholarship by the taxpayer is particularly pertinent. Please could you provide a full explanation of why the "back to back" option continues to be offered, including whether the option we have suggested above has been considered and why you regard a scholarship scheme not funded by the taxpayer as a relevant comparator.

The Committee would be grateful to receive your response to these concerns by Friday 12 January 2018.

21 December 2017

Letter from Mark Field, MP, to Lord Trefgarne

Many thanks for your letter of 21 December regarding the Marshall Scholarships Order 2017.

I am grateful for the genuine interest you and your fellow Committee members are taking in this issue and welcome the opportunity to respond to your heartfelt concerns.

As you know, our university sector represents a great British global success story. The international reputation of our leading research-orientated universities is truly world class. For some years the UK Government has sought to build on

this asset in our public diplomacy and will be committed to doing so post-Brexit. The provision of graduate scholarships under the Chevening and Commonwealth Programmes, as well as Marshall, will remain a significant element of our long term 'soft power' strategy.

The Marshall Scholarship Programme has developed into a valuable asset for the UK, first by creating a body of American alumni of great distinction who have a deep and well-informed understanding of the UK, and secondly in underlining the instinct to see merit in a strong and purposeful Anglo-American relationship.

From the outset, Marshall Scholarship awards have normally been for two years, enabling the 'back to back' master's courses. In terms of a Scholar's experience, a two-year award is of real value. It is often only in the second year that a deep appreciation of the UK is developed. Second-year Scholars also help first-year Scholars to 'find their feet', thereby more quickly taking up the opportunities of the Programme. Time helps to develop enduring bonds of friendship with other British students and within the scholarship group. Finally, from the academic point of view, two years creates more meaningful opportunities for learning, research and development, and there can be particular value in studying at two different institutions.

Scholars can opt to take up a one year award, and a handful tend to do this each year, particularly when the individuals concerned plan further studies back in the US; for example at a Law School, Medical School or on a doctoral programme. Conversely, another handful of Scholars will plan to study for more than two years in the UK in the pursuit of a doctoral qualification, often supported by third parties for their funding, beyond the two year duration of the Marshall award.

Competition for Marshall awards is invariably intense and the calibre of students who receive the awards is outstanding. Many of the successful recipients will have alternative scholarship options either in the US or internationally (and hence the earlier reference to Rhodes). For Marshall awards to be confined to one year would, we believe, weaken their appeal to the highest calibre graduates whom we are currently able to attract, as well as undermine the Programme's reputation for academic excellence and be interpreted negatively by the wider Marshall community. There is a risk that the prestige of the Programme would, as a result, be diminished.

Currently the Marshall Scholarship Programme is attracting high-quality graduates, broadly representative of talented young Americans who enrich the British universities at which they study. This reinforces an alumni community - in which US opinion formers and decision makers are heavily represented - which is full of goodwill towards the UK. The high regard of the Programme in its present form is underlined by the growing third-party support it attracts, which in recent years has effectively funded eight of the awards made. The proposal to raise the number of awards made to up to 50 is designed to facilitate additional awards funded by third parties, including alumni.

As Minister for Scholarships, I have already experienced the appreciation of Marshall Scholars for the support they receive. I believe that their determination to make the most of the opportunity the award offers - both whilst studying and in their subsequent careers - is reinforced by their knowledge of the principal source of its funding. There is no misplaced sense of entitlement.

The structure of a Programme such as this should always be open to challenge. The provision of postgraduate education in the UK has been transformed during the life of the Programme and there has been corresponding evolution in how awards are taken up and experienced. This will remain under review but, please, be in no doubt as to the success and value of the Programme in its present form.

Please let me know if I can assist you and your colleagues with any further information.

11 January 2018

Letter from Lord Trefgarne to Mark Field, MP

Thank you for your letter of 11 January 2018 responding to mine of 21 December 2017 about the policy behind the Order to extend the Marshall Scholarship scheme. The Committee considered your response at its meeting yesterday and, I am sorry to say, remains unconvinced by the points you make.

In particular, the Committee noted your comments about the international relations benefits of the scheme but was disappointed that your response did not address the issue of whether the use of more single year scholarships might result in a larger cadre of grateful alumni at the same cost.

While fully appreciating the value of the current scheme, members also felt that your letter did not adequately address our question about the rationale for expanding the scheme's capacity, using taxpayer's money, at a time when the adequacy of funding for British university students is in question.

We do not intend to pursue this matter further but will publish the correspondence for the information of the House.

17 January 2018

APPENDIX 2: DRAFT LITTERING FROM VEHICLES OUTSIDE LONDON (KEEPERS: CIVIL PENALTIES) REGULATIONS 2018

Additional Information from the Department for Environment, Food and Rural Affairs

Q1: In the Explanatory Memorandum you say: “Section 24 of the London Local Authorities Act 2007 (amended in 2012) confers powers on borough councils in London to impose a penalty charge on the owner of vehicles from which litter is thrown, but these powers are not currently available in respect of the rest of England. Section 88A of the Environmental Protection Act 1990 empowers the Secretary of State to confer similar powers on authorities in England.” Why were these powers given to borough councils in London but not to other English local authorities at the same time?

A1: The London Local Authorities Acts 2007 and 2012 which created the powers were private (rather than Government) legislation, sponsored and introduced by London Councils.

Q2: What has been the experience of borough councils in London in their use of these powers, and what has been the reaction of other interested parties in London?

A2: Government undertook a scoping study in 2015¹⁴ to understand councils’ expectations and attitudes to enforcement against littering from vehicles. This included interviews with two London Boroughs about their experiences. London Councils and a small number of London boroughs and other London-based organisations also responded to the consultation last year, as described in the Summary of Responses. All these responses were positive and supported the proposals, except where described in the Summary.

Q3: In the scoping study in 2015, the interviews with two London Boroughs about their experiences offered little support for a system of Penalty Charge Notices. The study says: “Only one of these authorities had started to use PCNs to enforce against littering from vehicles. The other London Borough stated they had not started to use PCNs because they did not believe that littering from vehicles was a main problem within their borough, and had higher priorities than setting up a civil process to tackle littering from vehicles... In the case of the one London Borough that had started to use a PCN system, they had experienced a lot of problems in firstly processing this type of fine, and then subsequently recovering the fine as a civil debt.” Did the Government give no weight to this actual experience in deciding to extend the power to other local authorities?

A3: Extending the London powers “immediately” to the rest of England was a recommendation of the House of Commons Community and Local Government Committee in its 2015 Report on Litter and Fly-Tipping in England.¹⁵ In giving evidence to the Committee, Shaun Morley of Wandsworth Borough Council explained that: “Obviously, we have the benefit of the London Local Authorities Act and, as was mentioned by previous colleagues, we have piloted that. It has been quite successful, in that we have used it to good effect. The enforcement guys have been very successful at it. They have got to understand the likely candidates who are going to throw something out of the window. [...] What we have found is that the legislation has not been in place properly for us to take it to its full conclusion. Because it is through PATAS—the Parking and Traffic Appeals Service—and it is a penalty-charge notice, there is a cycle of appeal, etc. and at the end of it, it is not

¹⁴ See: <http://sciencesearch.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=19619#Description>

¹⁵ Seventh Report of Session 2014–15 ([HC Paper 607](#)) (paragraph 64).

in place. Yes, we have been quite successful and we have a payment rate of about 60%, but if we have to go to the next stage that mechanism is not in place to take it to its final conclusion.” (Q87) Despite these difficulties, in their written evidence to the CLG Committee, Wandsworth Council still recommended that the powers be extended outside London (LIT041 paragraph 20).

In developing the policy and Regulations since 2015 we have had several conversations with Wandsworth Borough Council, including learning from the difficulties they experienced in processing and recovering unpaid penalties. The issues they described in 2015 have since been resolved, and they are now able to process appeals and recover unpaid penalties effectively. We have also engaged with the Traffic Penalty Tribunal and the Ministry of Justice in developing our draft Regulations, to ensure that appropriate procedures are in place for appeals and recovery of unpaid penalties under the new Regulations, and that we do not replicate the problems initially experienced in London.

Both London Councils (as the body representing London borough councils) and the Local Government Association are also members of the Litter Strategy Advisory Group, which helped to shape the Litter Strategy for England, including the commitments in respect of tackling littering from vehicles and roadside litter. On the publication of the Strategy and consultation on the proposed new powers, the LGA said: “Allowing councils to fine the owners of vehicles which litter is thrown from, rather than expecting councils to prove who exactly in the vehicle had thrown litter, is also something that the LGA has long called for. It is great that from April, councils will be able to get tough with the anti-social minority who think our roads are a repository for rubbish.”

Q4: Regulation 14 deals with representations about receipt of a penalty charge notice. Regulation 14(2) says that representations must be made within 28 days; 14(6) gives as a possible ground for a representation that the vehicle in question was stolen; and 14(17) specifies the documents needed to support representations about a stolen vehicle. Does Defra consider that the timing allows the keeper/owner of a stolen vehicle enough time to make his or her case to the litter authority?

A4: A period of 28 days to make representations is consistent with other similar legislation (for example, Regulation 8(2) of the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013), and is considered sufficient to obtain the relevant documents. This has not been raised as an issue with Defra by any of the respondents to the consultation, or other stakeholders (including the Traffic Penalties Tribunal).

12 and 16 January 2018

APPENDIX 3: TOWN AND COUNTRY PLANNING (PERMISSION IN PRINCIPLE) (AMENDMENT) ORDER 2017 (SI 2017/1309)

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

The relevant section of the summary of consultation responses says: “Question 2.10: Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites? There were 433 and 411 responses to questions 2.10 (a) and 2.10(b) respectively with a range of responses to our proposals on determination periods and a significant number of respondents indicated that they considered that the proposed timescales are appropriate. Concerns were expressed by some respondents that the proposed determination periods do not allow the public and other interested parties enough time to comment and/or for proper consideration of the issues. Other respondents said that the proposed determination periods would not fit with the timing of planning committees.”

Q1: Of the 433 and 411 responses to questions 2.10 (a) and 2.10(b), in each case: how many considered the proposed timescales appropriate and, conversely, how many considered the timescales inadequate?

A1: Questions 2.10(a) and 2.10(b) asked respondents whether they agreed with the proposed timescales. Out of those respondents that answered yes or no to question Q2.10a, 97 respondents answered ‘yes’ and 276 respondents answered ‘no’. Out of those respondents that answered yes or no to question Q2.10b, 87 respondents answered ‘yes’ and 270 respondents answered ‘no’. Some respondents provided only comments in response to these questions. The Town and Country Planning (Permission in Principle) (Amendment) Order 2017 introduces the determination period for permission in principle applications. As stated in the Explanatory Memorandum, permission in principle by application will only be available for minor development (i.e. small sites that support fewer than 10 dwellings), and the Government’s view is that the proposed period would allow the in-principle matters to be considered fully and for adequate engagement to take place.

Q2: As regards the 5 week period proposed, what consideration have you given to the possibility that this might coincide with holiday periods (so that interested parties might in fact be away from home for a significant proportion of the 5 weeks)?

A2: The Government has made a commitment to require local planning authorities to extend the period of public consultation for planning applications by 1 day for each bank/public holiday that falls within the relevant period. Our intention is to amend the Order to meet this commitment in alignment with legislative changes that will need to be made for other types of planning application.

Q3: What are the requirements for notifying local residents of applications for permission in principle? And what action is being taken by Government to ensure that there is adequate public understanding of the new procedures?

A3: Article 5G of the Order sets out the statutory requirements for publicising sites where a valid application for permission in principle has been received by the local planning authority. This requires a site notice and an online notice and is therefore broadly in line with the requirements for other types of planning application. It will be for local planning authorities to decide if they take further steps to inform communities and other interested parties beyond the statutory requirements. We will be shortly publishing revised planning guidance to help inform the public of these arrangements.

15 January 2018

APPENDIX 4: NON-DOMESTIC RATING (RATES RETENTION) (AMENDMENT) REGULATIONS 2017 (SI 2017/1321)

Additional Information from the Department for Housing, Communities and Local Government

Q: Through the Government's devolution policy, Cambridgeshire and Peterborough are now co-operating in the Cambridgeshire and Peterborough Combined Authority. But it appears that Cambridgeshire and Peterborough will no longer benefit from the ability to keep the Government's "central share" as well as the local share of the Non-Domestic Rating income – though, apparently, Greater Manchester (which also has a Combined Authority) will. Is this the case? And, if so, why are Cambridgeshire and Peterborough being treated differently from Greater Manchester?

A: The "additional growth pilots" give authorities the right to keep a proportion of the growth on the Government's "central share. They cannot keep the entirety of that share (unlike the "100% business rates pilots").

Additional growth pilots were first set up in Greater Manchester, East Cheshire, Cambridgeshire and Peterborough with effect from 2015-16 (long before "100% business rates pilots" were ever conceived). It was always the intention that they would come to an end after 2017-18.

However, before we could put an end to them in Greater Manchester, the Greater Manchester authorities were selected as "100% business rates pilots" and from 2017-18, keep all of the Government's central share, including all the growth on that share. We legislated for this by means of "The Non-Domestic Rating (Rates Retention) and (Levy and Safety Net) (Amendment) Regulations 2017 (SI 2017/496)", regulation 8 of which killed the additional growth pilot in Greater Manchester with effect from 2017-18, a year earlier than originally planned. (Obviously, it would have been unnecessary to provide for an authority to keep all the central share (including growth) and, at the same time, a proportion of the growth on the central share).

So neither Greater Manchester nor Cambridgeshire/Peterborough will be an additional growth pilot in 2018-19.

Greater Manchester will be treated differently, insofar as they are a 100% business rates pilot in 2018-19 and Cambridge/Peterborough are not. However, it was open to all authorities to apply to become 100% pilots for 2018-19. 26 areas applied, including Cambridgeshire /Peterborough. Unfortunately they were not successful and not amongst the ten areas announced by Ministers at the Provisional Settlement.

11 January 2018

APPENDIX 5: 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 16 January 2018, Members declared the following interests:

Draft Investigatory Powers (Codes of Practice) Regulations 2018 and three related instruments

Lord Janvrin

Member of the Intelligence and Security Committee of Parliament

Draft Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2018

Draft Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018

Baroness Blackstone

Chair of the Bar Standards Board

Attendance:

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