

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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17th Report of Session 2017–19

**Draft Renewable Transport Fuels  
and Greenhouse Gas Emissions  
Regulations 2018**

**Homes and Communities Agency  
(Transfer of Property etc.)  
Regulations 2018**

**School and Early Years Finance  
(England) Regulations 2018**

Includes 2 Information Paragraphs on 2 Instruments

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### *Secondary Legislation Scrutiny Committee*

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

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

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

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

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

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

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

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

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

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

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

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

### *Members*

Baroness Blackstone

Lord Haskel

Lord Sherbourne of Didsbury

Lord Faulkner of Worcester

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Rt Hon. Lord Trefgarne (Chairman)

Baroness Finn

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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](http://www.parliament.uk/seclegpublications)

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

### *Information and Contacts*

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

# Seventeenth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft Renewable Transport Fuels and Greenhouse Gas Emissions Regulations 2018

*Date laid: 25 January 2018*

*Parliamentary procedure: affirmative*

*Summary: These Regulations amend the targets to reduce greenhouse gas emissions from fuels supplied in transport, thereby supporting the delivery of savings to meet UK carbon budgets. While the end targets set are simply in line with two 2015 Directives, the interim stages proposed were subject to consultation. We received a letter from Vivergo Fuels Ltd, a producer of crop-derived biofuels, which supports the obligation to increase the overall amount of renewable fuels used, but expresses unhappiness with the proposed decreasing limit on their crop-derived component (“the crop cap”). The Department for Transport’s (DfT) additional explanations show that considerable thought has been put into formulating a comprehensive policy on biofuels and the decision to promote the production of waste-derived biofuels. While giving an indication of the direction of travel, DfT’s responses also make clear that many of the decisions about the composition are commercial and up to the producer, and that the Department is facilitating those decisions but not taking responsibility for them, leaving the market to find its own level.*

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

1. These Regulations have been laid by the Department for Transport (DfT) under provisions of the Energy Act 2004, the Pollution Prevention and Control Act 1999, and section 2(2) of the European Communities Act 1972. They are accompanied by an Explanatory Memorandum (EM).

#### *Background*

2. These Regulations aim to reduce greenhouse gas emissions from fuels supplied in transport, thereby supporting the delivery of savings to meet UK carbon budgets. They amend the existing UK schemes to align with requirements in EU legislation which were updated in 2015:
  - EU Directive 2009/28/EC, referred to as the Renewable Energy Directive, requires that 10% of energy used in transport is renewable by 2020.
  - EU Directive 1998/70/EC, referred to as the Fuel Quality Directive, requires suppliers to reduce the greenhouse gas intensity of the fuels used in vehicles by 6% by 2020, when measured against a baseline representing typical greenhouse gas emissions of fossil fuel consumed in the EU in 2010.

*The Targets*

3. While the end targets set are simply in line with the two 2015 Directives, the interim stages proposed were subject to consultation. However, some clarification may be useful because, although paragraph 4.2 of the EM says “The Renewable Energy Directive requires that 10% of energy used in transport is renewable by 2020”, paragraph 7.2 says the SI will “increase the targets for renewable fuels to 9.75% of fuel supplied in 2020”. DfT officials explained:

“Direct comparison between the Renewable Energy Directive (RED) target for transport of 10% and Renewable Transport Fuel Obligations (RTFO) can be misleading as the RED target is set by energy whereas RTFO obligation levels are set by volume. The obligation level proposed for 2020, 9.75%, actually equates to around 5-6% by energy. However, under the RED the energy content of certain fuels, such as those made from wastes and residues, are considered to count twice towards the 10% target. As such, we expect renewable transport fuels under the RTFO to contribute just over 9% of the 10% target. Renewable electricity used in transport, though it is not part of the RTFO, is also allowed to contribute to the RED 10% target and we estimate that this will account for around 1.1% of transport energy demand in 2020 (after multiple counting). We therefore expect the 9.75% obligation level in 2020, together with renewable electricity used in transport, to be sufficient to meet the RED 10% transport target.”

4. Some of the calculations above rely on double counting because there are higher incentives for wastes that would be disposed of, than for those with other uses. The Committee asked DfT for an example of each type and to state what the difference in incentive actually is:

“Renewable fuels derived from certain wastes and residues will be awarded double renewable transport fuel certificates (RTFCs) per litre supplied. Renewable transport fuels ordinarily receive one RTFC per litre. As RTFC prices tend to be roughly around 20p according to recent media reports and our modelling (though many are traded privately), the difference in incentive may therefore be around 20p per litre. (NB certain gaseous fuels receive an uplift to compensate for their higher energy content relative to liquid fuels).

Examples of waste feedstocks which we consider suitable for double RTFCs include used cooking oil and tallow category 1, which do not have any other uses (particularly as their use as animal feed is prohibited in the EU) and would otherwise be disposed of. Feedstocks which might be considered as waste but that have higher value end uses, such as those that can be used in chemicals or industry, will only receive one RTFC per litre. An example is crude tall oil, which arises from the process of pulping coniferous wood.”

*Representations on the crop cap*

5. We received a letter from Vivergo Fuels Ltd, a producer of crop-derived biofuels (the letter is published in full on our website),<sup>1</sup> which supports the obligation to increase the overall amount of renewable fuels used, but

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1 See: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> [accessed 31 January 2018]

expresses unhappiness with the proposed decreasing limit on their crop-derived component (“the crop cap”).

6. The DfT’s analysis of consultation responses indicates that the amount of crop-derived biofuel to be allowed has been a divisive issue. As a result, although DfT consulted on up to the maximum of 7% allowed under the Directive, in the legislation this ceiling has been reduced to 4% and falling. We asked DfT for more information on the reasoning that led it to this policy decision:

“The RED requires Member States to set a limit on the amount which crop-derived biofuels can contribute to targets at a maximum of 7% of energy used in relevant transport. To clarify, the Government did not propose a 7% limit but consulted on a range of levels from 0-7% whilst suggesting a preferred option of a 2% limit in 2020.<sup>2</sup> In the consultation we asked “For both 2020 and 2030 at what level should the supply of crop derived fuels be set? a) 0% b) 2% c) 7% d) another percentage”, to which we received the following responses:

Total	0%	2%	7%	Other
576 (480 campaign)	6	20	537 (480 campaign)	13

The bulk of responses (including campaign responses) supporting the highest possible limit, 7%, came from bioethanol suppliers, their business partners (including in the agricultural sector) and their employees. Some fossil fuel suppliers and local authorities also supported a 7% cap. A range of respondents were in favour of a 2% cap including biodiesel suppliers, whilst the environmental NGOs supported a 0% cap meaning that crop based biofuels wouldn’t count towards UK targets.

Those pressing for a lower cap argued that this would better mitigate the effects of indirect land use change (ILUC). ILUC means that on a lifecycle basis some biofuels made from crops can produce greater greenhouse gas emissions than the fossil fuels they are replacing, when the indirect impacts of food crops being displaced by crops grown for biofuels are taken into account. It was also argued that a lower cap would further support the supply of waste-based biofuels which tend to have greater greenhouse gas emissions savings.

Those pressing for a higher cap argued that a cap of 0% or 2% would not sustain the UK’s existing bioethanol plants, and highlighted the positive impact the industry has had, not only in terms of jobs, but in reducing the UK’s reliance on imported animal feed. After considering the evidence and balancing these sectorial interests, the Government proposes through this instrument, to cap the contribution that crop-based biofuels can make towards renewable targets at 4% in 2018, reducing from 2021 onwards to 3% in 2026 and 2% in 2032. The gradual tightening of the limit will provide a clear signal as to where future investments in the biofuel industry should be directed as we transition to the most sustainable renewable fuels, whilst maintaining an important market for existing UK bioethanol production.”

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2 See paragraph 1.75 of the [consultation document](#).

7. The Vivergo letter also states that 4% would be the lowest crop cap in Europe, and that others including the NFU, are concerned about the lowering of the limit. Although the NFU has not made direct representations, material on their website supports the 7% cap arguing that 40% of UK produced oilseed rape is currently exported for biofuel production in other Member States, and that production of bioethanol in the UK uses 2.2 million tonnes of wheat (that is 13% of the UK wheat harvest in 2014).
8. DfT explained why it favoured the lower limit:

“The RED leaves it open to respective Member States to determine their own level for a crop cap. The majority of other Member States already have a higher proportion of crops being used for biofuels than in the UK, whereas we have provided additional incentive for waste derived biofuels for several years. Whilst recognising the importance of UK bioethanol production and its wider economic benefits, our policy on biofuels is to ensure that their supply delivers genuine reductions in greenhouse gas emissions. The sliding crop cap and proposed increase in the obligation provides space and a market for the UK ethanol industry, a possible introduction of E10, flexibility for obligated suppliers in how they meet their targets and mitigates the risk that biofuels with negative indirect land use change impacts will be supplied in the UK.”

*Higher levels of ethanol*

9. The Vivergo letter also suggests that many improvements to transport emissions would be gained by switching from E5 fuels (containing 5% bioethanol), to the E10 fuels (containing 10% bioethanol) used elsewhere. The Committee therefore asked DfT to explain its policy on increasing the bioethanol percentage in fuels. It replied:

“It is recognised that increasing the renewable content of petrol by moving to E10 fuel should make achieving our renewable energy targets easier and potentially more cost effective, as well as providing an economic boost to domestic producers of bioethanol and UK farmers in the supply chain. Bioethanol offers greenhouse gas savings compared to fossil fuels, even when taking other factors such as indirect land use change into account. A vehicle using E10 would emit around 2% less CO<sub>2</sub> than one using E5 for the same distance travelled. Effects on other emissions are limited.

The RTFO provides suppliers with the flexibility to choose which fuels to supply to meet their obligation, and E10 is one option. It is more likely to be released onto the market following the increase in the RTFO targets, but the decision of whether to supply E10 is a commercial decision for fuel suppliers.

The Government is committed to working with industry to ensure any future introduction is managed carefully with appropriate information provided to consumers. The Department has convened a working group with the relevant industry representatives to discuss how this can be best achieved so as to ensure that any E10 roll out in the UK is handled carefully and fuel suitable for older (pre-2000) petrol vehicles, which may not be compatible with E10, remains available.”

*Conclusion*

10. The DfT's additional explanations show that considerable thought has been put into formulating a comprehensive policy on biofuels and to promote the production of waste-derived biofuels. While giving an indication of the direction of travel, DfT's responses also make clear that many of the decisions about the composition are commercial and up to the producer, and that the Department is facilitating those decisions but not taking responsibility for them, leaving the market to find its own level. We note Vivergo's concerns but the firm is just one player in a complex market.

**Homes and Communities Agency (Transfer of Property etc.)  
Regulations 2018 (SI 2018/8)**

*Date laid: 10 January 2018*

*Parliamentary procedure: negative*

*Summary: These Regulations specify 16 NHS Trusts which are being designated for the purpose of transferring surplus land to the Homes and Communities Agency: the Agency will in turn prepare the land for release to market, in order to promote housing development. The Government have said that they want to use the sale of surplus NHS land to deliver more homes specifically for nurses and similar professionals. The information which the Government have provided to us is replete with good intentions, but short on hard evidence that nurses are benefiting from the creation of affordable housing on surplus NHS land. In the absence of such evidence, we conclude that these Regulations may not deliver the objectives of the "Homes for Nurses" scheme.*

**We draw these Regulations to the special attention of the House on the ground that they may imperfectly achieve their policy objectives.**

11. The Ministry of Housing, Communities and Local Government (MHCLG) has laid these Regulations with an Explanatory Memorandum (EM). In the EM, MHCLG explains that in 2015 the Government appointed the Homes and Communities Agency (HCA)<sup>3</sup> as its land disposal agency in England (outside London). The land disposal process involves transferring a significant amount of land from Government Departments and their arm's-length bodies to the HCA, so that it is able to prepare that land for release to market, promoting housing development and boosting economic growth.

*Previous Regulations on transfer of surplus land*

12. SI 2018/8 is the fourth set of Regulations laid by the Government since 2015, specifying bodies from which land may be transferred to the HCA. We drew the Regulations laid in 2015<sup>4</sup> and 2016<sup>5</sup> to the special attention of the House, not least because of a National Audit Office (NAO) report of June 2015 on the disposal of public land for new homes.<sup>6</sup> We published information about

3 In January 2018, the Homes and Community Agency was re-named Homes England; this report refers to the body by its pre-2018 name, in accordance with the title of the Regulations.

4 The Homes and Communities Agency (Transfer of Property etc.) Regulations 2015 (SI 2015/1471), in our 7th Report of Session 2015–16 (HL Paper 28).

5 The Homes and Communities Agency (Transfer of Property etc.) (No. 2) Regulations 2016 (SI 2016/515), in our 35th Report of Session 2015–16 (HL Paper 147).

6 See National Audit Office, *Disposal of public land for new homes*, June 2015: <https://www.nao.org.uk/wp-content/uploads/2015/06/Disposal-of-public-land-for-new-homes.pdf> [accessed 29 January 2018].

the 2017 Regulations,<sup>7</sup> noting that the Department had highlighted the relevance of the announcement in the 2016 Autumn Statement of £1.7 billion of investment for Accelerated Construction to speed up house-building on surplus public sector land. MHCLG refers to these earlier instruments, and to the NAO report and its consideration by the House of Commons Public Accounts Committee, in the EM to SI 2018/8.

*Latest Regulations: NHS Trusts*

13. The Schedule to the latest set of Regulations specifies 16 NHS Trusts for the purpose of transfer of surplus land to the HCA to prepare for release to market. In February 2017, the Ministry published the first annual report on the “Public Land for Housing programme 2015–20”.<sup>8</sup> This showed that, overall, in the period from May 2015 to September 2016, Departments participating in the programme had sold land with capacity for 13,817 homes. In relation to the Department of Health (DH), the report said that the “majority of the Health estate is owned by individual NHS and Foundation Trusts” and that DH’s role was “to provide leadership to NHS bodies, acting as a source of challenge and support” (paragraph 3.13). It added that, since mid-2015, land transferred from the NHS with capacity for 3,516 homes had been sold, and that DH had identified potential sites with capacity for nearly 4,000 homes, forecast for sale in 2016–17 and 2017–18. The February 2017 document contained an undertaking that a further report would be published in July 2017, covering the period from October 2016 to March 2017. By January 2018, however, no further report had appeared.

*Government statements on “Homes for Nurses”*

14. On 3 October 2017, the Secretary of State for Health announced a set of nursing workforce reforms, which included a “Homes for Nurses” scheme to give 3,000 NHS workers first refusal on affordable housing generated through the sale of surplus NHS land.<sup>9</sup> On 17 January 2018, in answering a Private Notice Question on “NHS: Nurse Retention”,<sup>10</sup> Lord O’Shaughnessy, Parliamentary Under-Secretary of State at the Department of Health (now called the Department of Health and Social Care (DHSC)), said: “We know that housing costs are an issue, particularly in the south of England and cities, which is why we want to use the sale of surplus NHS land to deliver more homes specifically for nurses and other similar professionals.”
15. In January 2018, the New Economics Foundation published a report entitled “No Homes for Nurses”.<sup>11</sup> Among its key findings, the report stated: “Of the homes to be built for sale on NHS land, four out of five will be unaffordable to a nurse on an average salary. And where they could afford the mortgage repayments, a nurse would have to save for an average of 53 years to afford the deposit.” The report looked at 59 former NHS sites which were reported to have been sold under the “public land sale programme”, and found that

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7 The Homes and Communities Agency (Transfer of Property etc.) Regulations 2017 ([SI 2017/199](#)), in our 28th Report of Session 2016–17 ([HL Paper 131](#)).

8 See DCLG, Public Land for Housing programme 2015–20, Annual Report, February 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/592919/170124\\_PSL\\_Annual\\_Report\\_FINAL\\_for\\_publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592919/170124_PSL_Annual_Report_FINAL_for_publication.pdf) [accessed 29 January 2018]

9 See: <https://www.gov.uk/government/news/health-secretary-announces-nursing-workforce-reforms>

10 HL Deb, 17 January 2018, [cols 645–649](#) [Lords Chamber]

11 See New Economics Foundation, No Homes for Nurses, January 2018: <http://neweconomics.org/wp-content/uploads/2018/01/nhs-land-briefing.pdf> [accessed 29 January 2018]

the average price of market-rate housing across the areas in which those sites were located was £315,279—“10 times the annual salary of a nurse”.

16. We obtained additional information from MHCLG (in conjunction with DHSC), which we are publishing at Appendix 1. We have been told that, since the October 2017 announcement on “Homes for Nurses”, DHSC has been working through implementation of the policy. We asked how many nurses had benefited from the offer of a first refusal on affordable housing on surplus NHS land, but have not received an accurate reply to the question.
17. We asked how much affordable housing had been provided on surplus NHS land, and how the cost of such housing related to salaries paid to nurses. We have been told that, at present, there is no easy way to ascertain the level of affordable housing provision on land released through the Public Land for Housing Programme; that the cost of affordable housing depends on the type, tenure and location; and that, while DHSC considers that nurses could afford “a significant number of the housing units in its surplus land pipeline”, it is “likely that rental accommodation will be a more realistic option” in London and other areas with particularly high housing costs.

### *Conclusions*

18. There is no doubt that, following the designation of a range of bodies by these and earlier Regulations, a good deal of surplus public sector land has been transferred to the HCA, and that this has been put into general development or is being prepared for doing so. However, it is also clear that, within this wider programme, the Government have the objective that the sale of surplus NHS land should be used to deliver more homes specifically for nurses and other NHS staff. **The information which the Government have provided to us is replete with good intentions, but short on hard evidence that nurses are benefiting from the creation of affordable housing on surplus NHS land. In the absence of such evidence, we conclude that these Regulations may not deliver the objectives of the “Homes for Nurses” scheme.**

### **School and Early Years Finance (England) Regulations 2018 (SI 2018/10)**

*Date laid: 15 January 2018*

*Parliamentary procedure: negative*

*Summary: These Regulations provide for how local authorities are to set their 2018–19 education budgets. When the previous Regulations came forward in 2017, flagging up intended savings of £600 million, there was considerable concern across the education sector about future funding. The 2018 Regulations have been laid against the background of announcements in July 2017 of an additional £1.3 billion, and in September 2017 of the final national funding formula, which have been widely welcomed by the sector. While the Department has provided further information about the source of this additional funding at our request, in our view these details should have been clarified in the Explanatory Memorandum as originally laid.*

**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.**

19. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). In the EM, DfE says that the Regulations provide for how local authorities are to set their 2018–19 education budgets (the non-schools education budget, the schools budget, the central expenditure and the individual schools budget). They also set out how local authorities are to allocate funding from the individual schools budget to maintained schools and private, voluntary and independent providers of free early years provision through a locally determined formula.

### *2017 Regulations*

20. We published information on the equivalent instrument in 2017, the School and Early Years Finance (England) Regulations 2017 (SI 2017/44).<sup>12</sup> That instrument pre-figured some of the changes now being made, including the ending from September 2017 of the Education Services Grant (ESG), which DfE had previously provided to local authorities to support their education functions. The decision to remove the ESG was intended to make £600 million of savings. We criticised the fact that the EM to SI 2017/44 contained little detail about this.

### *2018 Regulations*

21. The latest EM is undoubtedly more informative, but we obtained additional material from the Department, which we are publishing as Appendix 2. In particular, DfE has clarified to us that, although the removal of the ESG is generally not now a live issue, there have been disagreements in a small number of local authorities about the amount that the authority is top-slicing from maintained schools' budgets in order to pay for the statutory duties that were previously funded by the ESG.
22. DfE explains that, by comparison with the 2017 Regulations, SI 2018/10 contains some substantive changes relating to the introduction of the national funding formulae for schools, high needs and central school services, and also how local authorities are to spend the schools, high needs, central school services and early years blocks of the Dedicated Schools Grant ("DSG"). In particular, local authorities will now have the ability to set a minimum per pupil funding level, and to choose the level of the minimum funding guarantee within a specified range.
23. The Department says that the national funding formula for schools means that for the first time, school funding will be distributed to local authorities according to a formula based on the individual needs and characteristics of every school in the country; and that this will direct resources where they are needed most, and provide transparency and predictability for schools.

### *Consultation*

24. In the EM, DfE says that two consultations were held on the introduction of the national funding formulae: the first stage, relating to the principles of the schools and high needs formulae, took place between 7 March and 17 April 2016; the second stage, on the details of the formulae, between 14 December 2016 and 22 March 2017. DfE received responses from over 26,000 individual respondents and representative organisations.

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<sup>12</sup> In our 24th Report of Session 2016–17 ([HL Paper 110](#)).

25. A Government response to the second stage consultation was published in September 2017.<sup>13</sup> This explained that one of the questions posed was whether respondents thought that the Government had struck the right balance between fairness and stability in designing the national funding formula. The document stated that, while there was broad support for the principle of having a formula, “93% of respondents ... felt that we had not struck the right balance between fairness and stability in the proposals, largely due to their concerns about the overall amount of funding available for schools. Many respondents felt that rather than redistributing current funding there should be an increase in the overall budget for school funding.”
26. In its published response to these concerns, DfE referred to the July 2017 announcement<sup>14</sup> of an additional £1.3 billion in schools and high needs across 2018–19 and 2019–20 to support the introduction of the national funding formulae, commenting that “on top of the existing schools funding settlement from the 2015 Spending Review, this will maintain funding in real terms per pupil to 2019–20”.
27. We asked the Department what relationship there was between the £600 million of savings which was expected to flow from the removal of the ESG and the additional £1.3 billion announced in July 2017. DfE has told us that none of the additional £1.3 billion has come from the £600 million savings from removing the ESG. It expects to release £280 million in savings from the free schools programme, and £420 million through efficiencies and savings from the main capital budget (the majority of which - £315 million - will come from the healthy pupils capital programme). It intends to identify the rest of the savings from efficiencies across the rest of the Department’s budget (for example, £200 million from central programmes that support schools on relatively narrow areas of their work).

### *Conclusions*

28. The education budgets to which these Regulations relate comprise substantial sums of money. In the July 2017 announcement mentioned above, the Secretary of State stated that core funding for schools and high needs would stand at £42.4 billion in 2018–19. **When the 2017 Regulations came forward, flagging up the removal of the Education Services Grant and the resultant savings of £600 million, there was considerable concern across the education sector about future funding. The 2018 Regulations have been laid against the background of the announcement of an additional £1.3 billion, and the Department has confirmed that the final national funding formula announced in September has been widely welcomed by the sector. While the Department has provided further information about the source of this additional funding at our request, in our view these details should have been clarified in the Explanatory Memorandum as originally laid.**

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13 See Department for Education, Analysis of and response to the schools national funding formula consultation, September 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/648553/Schools\\_national\\_funding\\_formula\\_consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/648553/Schools_national_funding_formula_consultation-response.pdf) [accessed 30 January 2018]

14 See: <https://www.gov.uk/government/speeches/justine-greening-statement-to-parliament-on-school-funding> [accessed 30 January 2018]

## INSTRUMENTS OF INTEREST

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### Draft Code of Practice for the Welfare of Meat Chickens and Meat Breeding Chickens

29. The Department for Environment, Food and Rural Affairs (Defra) has laid this draft Code with an Explanatory Memorandum (EM). It provides updated and improved guidance to owners and keepers of meat chickens and meat breeding chickens on how to comply with farm animal welfare legislation and how to practise good standards of stockmanship. It is intended to replace the “Code of Recommendations for the Welfare of Livestock: Meat Chickens and Breeding Chickens”, issued in 2002 (“the 2002 Code”).
30. In February 2016, Defra laid a draft Order to revoke the 2002 Code, with the intention that it should be replaced by non-statutory, industry-led guidance, prepared by the British Poultry Council. In our 29th Report of Session 2015–16,<sup>15</sup> we brought that draft Order to the special attention of the House, on the ground that it might imperfectly achieve its policy objectives, and we wrote to the Secretary of State to underline concerns about the implications for animal welfare that had been voiced by respondents to a consultation about the move to non-statutory Codes. In our 31st Report of Session 2015–16,<sup>16</sup> we published a reply from the Secretary of State, in which she told us that she had concluded that it was possible to achieve the Department’s objectives while retaining the statutory codes, and that she had decided to withdraw the draft Order.<sup>17</sup>
31. We welcome the fact that Defra has taken forward updating the statutory Code on the basis of consultation with interested parties; and that the EM provides a good overview of the need for, and purpose of, the updated Code.

### Andrey Lugovoy and Dmitri Kovtun Freezing Order 2018 (SI 2018/60)

32. HM Treasury (HMT) has laid this Order with an Explanatory Memorandum (EM). On 21 January 2016 the report into the death of Alexander Litvinenko by the Litvinenko Inquiry, chaired by Sir Robert Owen, was published; it found that Mr Litvinenko was deliberately poisoned by Andrey Lugovoy and Dmitri Kovtun in November 2006. On 22 January 2016, HMT laid the Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016 (SI 2016/67) which prohibited persons in the United Kingdom from making funds available to or for the benefit of the individuals named in the Order.<sup>18</sup> The 2016 Order was considered in Grand Committee on 10 February 2016,<sup>19</sup> when Lord Ashton of Hyde, for the Government, confirmed that it would lapse two years after it was made (as set out in section 8 of the Antiterrorism, Crime and Security Act 2001). However, Lord Ashton added that the Government would continue to monitor the evidence, “and if the order is still in force after two years, we will consider at that point whether it is necessary and proportionate to make a new order.” The laying of the latest Order is the outcome of that consideration.

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15 29th Report, Session 2015–16 ([HL Paper 114](#)).

16 31st Report, Session 2015–16 ([HL Paper 126](#)).

17 It was withdrawn in April 2016.

18 We published information about the 2016 Order in our 23rd Report, Session 2015–16 ([HL Paper 89](#)).

19 See: HL Grand Committee, 10 February, [col 223](#).

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

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

Draft Enhanced Partnership Plans and Schemes (Objections) Regulations 2018

Draft Guaranteed Minimum Pensions Increase Order 2017

Draft Immigration and Nationality (Fees) (Amendment) Order 2018

Draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2018

Draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2018

Draft Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018

Draft Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018

Draft Social Security Benefits Up-rating Order 2018

Draft Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2018

Draft Tax Credits and Guardian's Allowance Up-rating etc. Regulations 2018

Draft Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018

### **Instruments subject to affirmative approval**

SI 2018/60      Andrey Lugovoy and Dmitri Kovtun Freezing Order

### **Instruments subject to annulment**

Draft Code of practice for the welfare of meat chickens and meat breeding chickens

Draft Rotherham (Electoral Changes) Order 2018

SI 2018/4      Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2018

SI 2018/11      M32 Motorway (Bus Lane and Speed Limit) Regulations 2018

SI 2018/15      Plant Health (Fees) (England) (Amendment) Regulations 2018

SI 2018/17      Public Lending Right Scheme 1982 (Commencement of Variation) Order 2018

SI 2018/21      Advanced Quality Partnership Schemes (England) Regulations 2018

- SI 2018/22      Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018
- SI 2018/25      Goods and Motor Vehicles (Miscellaneous Amendments) Regulations 2018
- SI 2018/26      Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018
- SI 2018/29      Aerosol Dispensers (Amendment) Regulations 2018
- SI 2018/30      Asylum Support (Amendment) Regulations 2018
- SI 2018/39      Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2018
- SI 2018/42      Nuclear Installations (Prescribed Sites and Transport) Regulations 2018
- SI 2018/56      Scotland Act 2016 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018

## APPENDIX 1: HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.) REGULATIONS 2018 (SI 2018/8)

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### Additional information from the Ministry of Housing, Communities and Local Government and the Department of Health and Social Care

*Press coverage of the January 2018 report from the New Economics Foundation (NEF) included the statements that: “Four out of five homes built on former NHS sites that have been sold off to private developers will cost more than nurses can afford, according to new research ... The Royal College of Nursing has previously warned that high housing costs could force 40% of nurses out of the capital by 2021 ... In November, the government announced nurses would have first refusal on affordable housing generated through the sale of surplus NHS land. But the NEF argued that in London even affordable rent, which can be as high as 80% of market rent, is not affordable for nurses.”*

*Q1: What was the reported announcement about giving nurses first refusal on affordable housing generated through the sale of surplus NHS land? How many nurses have benefited from the offer of such a first refusal?*

A1: An announcement to grant NHS staff a right of first refusal on affordable housing generated through the sale of surplus NHS land was made at Conference 2017. DHSC are working through implementation of the policy, but there are already a number of examples of local NHS organisations using their surplus land innovatively to provide housing for their staff. For example, Frimley Health NHS Foundation Trust provided accommodation for 86 staff on surplus land through an agreement with a housing association. DHSC expects to offer more support to Trusts over the coming months, around how they could offer a first right of refusal.

*Q2: How much affordable housing has been provided on surplus NHS land? And how does the cost of such affordable housing relate to salaries paid to nurses?*

A2: At present, there is no easy way to ascertain the level of affordable housing provision on land released through the Public Land for Housing Programme. Initially, the Programme was concerned with land released, not on homes built. However, the Programme has since been reframed to look at homes built as well as land released. MHCLG has commissioned Ordnance Survey to monitor the construction of homes on land sold through the Programme - the level of affordable housing provision is something that the department will be reporting on in future.

The cost of affordable housing depends on the type, tenure and location. DHSC are exploring all potential delivery options including purchase and rental. Based on DHSC’s analysis, Band 5 staff (equivalent of a nurse) on the agenda for change pay scale could afford a significant number of the housing units in its surplus land pipeline. In London and other areas with particularly high housing costs it is likely that rental accommodation will be a more realistic option, especially for staff without a partner earning at least an equivalent salary. DHSC are putting in place a package of support to help Trusts meet the local needs of their staff.

In the particular context of these regulations, colleagues at Homes England have commented that DHSC is working with Trusts and local providers are working hard to ensure they strategically plan the estate needs of the Trusts. Homes England and DHSC are then looking at innovative ways which will bring forward land that has been assessed as surplus after detailed assessment with local stakeholders and agreed in their strategic estate plans. The ability for Homes England to work with

Trusts is ensuring the best value can be retained by Trusts and this in turn is then being reinvested in operational facilities, which include nursing accommodation. Through its work with Trusts, Homes England is using its property expertise to support the provision of new facilities including new staff accommodation, car parking and other facilities and incorporating these into new development schemes that come forward. This is very much a collaborative approach which has at its heart the operational needs of Trusts.

**23 January 2018**

## APPENDIX 2: SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2018 (SI 2018/10)

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### Additional information from the Department for Education

*Q1: What relationship is there between the £600 million of savings, announced during the autumn statement 2015, and the additional £1.3 billion, announced in July 2017?*

A1: There is not a direct link between the savings that were made from the removal of the Education Services Grant (ESG), announced as part of the 2015 Spending Review, and the additional £1.3 billion that we announced in July 2017. The £600 million savings came from the removal of the ESG general funding rate, which was paid to local authorities (LAs) at a rate of £77 in 2016–17 for the statutory services they carry out for maintained schools, and at an equivalent per pupil rate to academies, who carry out these duties for themselves. The ESG general funding rate was removed in September 2017, but from 2017–18 LAs have been able to top-slice maintained school budgets to pay for the statutory duties that were previously funded by the ESG.

In July 2017 we announced an additional £1.3 billion for schools and high needs for 2018–19 and 2019–20, over and above the spending plans announced at the Spending Review in 2015. This additional funding has been added to the national funding formula, providing for an increase in funding for all schools and local areas, such that schools and high needs funding are protected in real terms per pupil at a national level for the remainder of the spending review period. The additional £1.3 billion is not for the services previously funded through the ESG; although it should mean that maintained schools are in a better position to manage a reduction in funding if LAs top-slice their budgets to pay for statutory services; and that academies are better placed to fund these services themselves.

None of the additional £1.3 billion has come from the £600 million savings generated from the removal of the ESG. We will release £280 million in savings from our free schools programme, and £420 million through efficiencies and savings from our main capital budget. The majority of this (£315 million) will come from the healthy pupils capital programme. We will identify the rest of the savings from efficiencies across the rest of the Department's budget (for example, £200 million from central programmes that support schools on relatively narrow areas of their work).

*Q2: The Government response to the second stage consultation notes that: “The removal of the Education Services Grant (ESG) was also cited as having a negative impact on school funding.” The SLSC referred to this in its 24th Report of Session 2016–17. There is no further discussion of the removal of the ESG in the Government response: is this an ongoing issue, or is it subsumed in Government decisions on overall funding levels?*

A2: The ESG general funding rate was removed from September 2017. Funding previously delivered through the ESG retained duties rate for duties that local authorities carry out in respect of both maintained schools and academies has been moved into the central school services block and will be paid to local authorities on a per pupil basis.

The removal of the ESG is generally not now a live issue, but there have been disagreements in a small number of local authorities about the amount that the authority is top-slicing from maintained schools' budgets.

*Q3: The second stage of the consultation took place between December 2016 and March 2017: the Government response was issued in September 2017, but the announcement of the additional £1.3 billion was made in July 2017. Is it the case that many of the concerns with the second stage proposals have been dissipated by the July 2017 announcement, or are there still major issues of contention about school finance between DfE and the education sector?*

A3: With regards to wider school funding, the additional £1.3 billion announced in July has significantly reduced the amount of correspondence that we receive about funding levels. The final national funding formula that we announced in September was widely welcomed by the sector.

**24 January 2018**

### APPENDIX 3: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 30 January 2018, Members declared the following interests:

#### **Homes and Communities Agency (Transfer of Property etc.) Regulations 2018 (SI 2018/8)**

Baroness Watkins of Tavistock

*Non-executive Director, Aster Group Limited (charitable society providing affordable homes)*

*Member, Southern Housing Group Remunerations and Nominations Committee and Customer Services Committee*

#### **Attendance:**

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