Draft Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018


National Emission Ceilings Regulations 2018

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

Includes 3 Information Paragraphs on 3 Instruments

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Secondary Legislation Scrutiny Committee

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

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

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

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

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

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

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

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

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

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

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

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

Members

Baroness Blackstone    Lord Haskel    Lord Sherbourne of Didsbury
Lord Faulkner of Worcester    Rt Hon. Lord Janvrin    Rt Hon. Lord Trefgarne (Chairman)
Baroness Finn    Lord Kirkwood of Kirkhope    Baroness Watkins of Tavistock
Lord Goddard of Stockport    Baroness O’Loan

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seelegpublications

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 hlseclegscrutiny@parliament.uk.
Nineteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF
THE HOUSE

Draft Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018

Date laid: 1 February 2018
Parliamentary procedure: affirmative


Date laid: 1 February 2018
Parliamentary procedure: negative

Summary: These two instruments relate to the role of Ofgem in investigating possible breaches of EU legislation on energy market integrity and transparency. As regards SI 2018/104, the Explanatory Memorandum (EM) serves its purpose adequately; but we were disappointed that the EM to the draft Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018, as originally laid, provided significantly less information than is required for effective Parliamentary scrutiny.

We draw these instruments to the special attention of the House on the ground that that they give rise to issues of public policy likely to be of interest to the House; and that that the explanatory material laid in support of the draft Order provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

1. The Department for Business, Energy and Industrial Strategy (BEIS) has laid both these instruments, in each case with an Explanatory Memorandum (EM). Both instruments relate to the role of the Gas and Electricity Markets Authority (“Ofgem”) in investigating possible breaches of EU legislation on energy market integrity and transparency, namely the “REMIT” Regulation.1

Draft Criminal Justice and Police Act 2001 (Powers of Seizure) Order 2018

2. In the EM to this Order, BEIS says that, under Regulations made in 2013,2 Ofgem can search premises under a warrant and remove relevant documents, when investigating suspected breaches of REMIT. It adds, however, that it is sometimes not reasonably practicable to determine at the time of carrying out a search whether material is relevant, and that the additional powers conferred by the Order would allow Ofgem to investigate market abuse more effectively by allowing it to remove documents from premises and sift these elsewhere to establish whether they are relevant.

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2 The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 (SI 2013/1389).
3. In the EM to this Order, BEIS explains that the Enterprise Act 2002 restricts the disclosure by a public authority of information which it has obtained under that Act or other specified legislation. The purpose of the Order is to permit a public authority to disclose specified information to Ofgem for purposes related to the investigation by Ofgem of possible breaches of the REMIT.

Consultation

4. BEIS says that it published a consultation paper in December 2015 seeking views on changes to Ofgem’s powers under gas and electricity legislation and the REMIT Regulation.

5. As regards the change made by SI 2018/104, 15 responses were received. Nine respondents supported arrangements for the passing of information from the Competition and Markets Authority to Ofgem; one respondent was opposed because of concerns that the additional information might risk additional, unwarranted investigations; other responses were neutral. BEIS states its view that existing provisions that specify the circumstances in which Ofgem may carry out investigations will ensure that the new proposed powers are used proportionately.

6. As regards the draft Order on powers of seizure, BEIS says that some energy companies expressed support for the initially proposed “seize and sift” powers, but the majority of companies and representative groups argued that these were disproportionate, unnecessary or gave Ofgem too much leeway on which information to remove. BEIS adds, however, that it considers that the aim of the policy, to increase the effectiveness of enforcement of REMIT by Ofgem, justifies the additional burdens identified by industry.

Conclusions

7. We considered that the EM to the draft Order gave an incomplete picture of the consultation process, and we obtained additional material from BEIS, which we are publishing at Appendix 1. We are struck by the fact that, while consultation respondents were given only six weeks over Christmas 2015 to submit their views, the Department published a Government response to the consultation only two years later, in February 2018. We regard so long a gap as regrettable and likely to damage the Department’s reputation among respondents. We also considered that, since the EM made no reference to publication of the Government response to the 2015 consultation, its description of the outcome of that process was too cursory. We have now received additional clarificatory material, but we are disappointed that the Explanatory Memorandum as originally laid provided significantly less information than is required for effective Parliamentary scrutiny.

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National Emission Ceilings Regulations 2018 (SI 2018/129)

Date laid: 1 February 2018

Parliamentary procedure: negative

Summary: These Regulations require the Secretary of State to ensure ongoing reductions in the emission of key air pollutants, over the period to 2030. The reductions are specified in EU legislation and an international convention promoted by the United Nations Economic Commission for Europe. The UK’s withdrawal from the EU raises questions about enforcement of these commitments in the longer term. The House may look for answers in the proposals for a new “advise and challenge” body which the Government intend to publish for consultation later this year.

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

8. In our 15th Report of this Session, we drew to the House’s attention the draft Environmental Permitting (England and Wales) (Amendment) Regulations 2018, which served to transpose the EU Medium Combustion Plants Directive. We noted that the Regulations were intended to tackle air pollution, and that, in the accompanying Explanatory Memorandum (EM), the Department for Environment, Food and Rural Affairs (Defra) set these measures in the context of the EU’s National Emissions Ceilings Directive (“the NEC Directive”), which had to be transposed by mid-2018. The latest Regulations (SI 2018/129), also laid by Defra, have been laid in order to transpose the NEC Directive.

Background to the EU’s National Emissions Ceilings Directive

9. In the EM to SI 2018/129, Defra says that the UK is a Party to the 1979 Convention on Long-Range Transboundary Air Pollution (“the Convention”) of the United Nations Economic Commission for Europe (“UNECE”) and the original 1999 Gothenburg Protocol (“the 1999 Protocol”) to the Convention which sets emission limits for four air pollutants. In 2012, an amendment to the 1999 Protocol was agreed among Parties (and supported by the UK), to establish emission reduction commitments for five air pollutants, to be achieved by 2020. The NEC Directive implements the emission reduction commitments agreed under the 2012 amendment to the 1999 Protocol into EU law.

10. We obtained additional information from Defra, which we are publishing as Appendix 2. Defra has told us that the most recently published data (the 2015...
National Atmospheric Emissions Inventory\textsuperscript{9} show that the UK meets all current emission ceilings which have applied since 2010 (under the previous version of the NEC Directive).

\textit{Oversight and enforcement of emission reductions}

11. In the EM, Defra says that, after withdrawal from the EU, the UK will continue to be a member of the UNECE and Party to the Convention. We asked what arrangements existed for oversight and enforcement of the UNECE Convention. Defra has said that oversight is carried out by the Convention’s Implementation Committee, which meets twice a year and reports annually to the Executive Body, and that the Executive Body makes decisions on recommendations by the Committee.\textsuperscript{10} Defra has also said, however, that some existing mechanisms which allow scrutiny of the achievement of environmental targets by Government will not be carried over into UK law, and that it intends to consult on a new, independent and statutory body to advise and challenge Government and potentially other public bodies on environmental legislation.

\textit{New UK body}

12. The role and powers of the proposed new body are matters of considerable interest to the House. In the debate on the “Environment: 25-year Plan” on 29 January of this year, Lord Gardiner of Kimble, Parliamentary Under-Secretary of State in Defra, acknowledged the widespread concern about “metrics and an independent body”, and said: “It is very important that we do not set these metrics in isolation and that they are consulted on. By definition, a statutory body requires legislation. I will be very straightforward and say that consultation on the precise vehicle by which that manifests itself is yet to be determined, but clearly it needs a statutory footing. The role of the statutory body will be designed through the consultation, and I very much look forward to your Lordships participating in a rigorous response to that consultation, because we expect and want it to have a strong role in holding the Government to account on the achievement of the metrics.”\textsuperscript{11}

\textit{Clean Air Strategy}

13. In the EM to SI 2018/129, Defra says that the NEC Directive also sets further emission reduction commitments for 2030 for the five main air pollutants, with commitments for each pollutant set individually for each Member State for 2020 and 2030. The Regulations require the Secretary of State to draw up a National Air Pollution Control Programme setting out the measures that will be taken to meet the respective national emission reduction commitments in 2020 and 2030. Defra states that the UK will publish a Clean Air Strategy for consultation in 2018 setting out the steps to be taken towards the 2020 and 2030 targets. In the debate on 29 January, Lord Gardiner also referred to this forthcoming strategy, noting that implementation of the Environmental Permitting (England and Wales) (Amendment) Regulations 2018 “will take us a significant way to achieving our 2030 air quality targets, but there is more work to be done”.\textsuperscript{12}

\textsuperscript{9} See: http://cdr.cionet.europa.eu/gb/eu/nec_revised/inventories/envwjyo9g/ \ [accessed 20 February 2018]

\textsuperscript{10} See: https://www.unece.org/environmental-policy/conventions/envlrtapwelcome/convention-bodies/implementation-committee.html \ [accessed 20 February 2018]

\textsuperscript{11} HL Hansard, 29 January 2018, col. 1343.

\textsuperscript{12} Ibid.
Conclusions

14. These Regulations require the Secretary of State to ensure ongoing reductions in the emission of key air pollutants, over the period to 2030. The reductions are specified in EU legislation which, in turn, reflects commitments made under an international convention promoted by the United Nations Economic Commission for Europe. The UK’s withdrawal from the EU raises questions about the effectiveness of oversight and enforcement of these commitments in the longer term. The House may look for answers in the proposals for a new “advise and challenge” body which the Government intend to publish for consultation later this year.
CORRESPONDENCE

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

Transfer of surplus land from NHS Trusts for release to market

15. In our 17th Report of the current Session, we drew the Homes and Communities Agency (Transfer of Property etc.) Regulations 2018 (SI 2018/8) to the attention of the House, on the ground that they might imperfectly achieve their policy objectives. The Regulations designated 16 NHS Trusts that could transfer surplus land to the Homes and Communities Agency (now renamed Homes England), to be developed for housing. We commented on such transfers in the context of the Government’s plans for “Homes for Nurses”.

16. We wrote to the Secretary of State for Health and Social Care on 31 January, seeking more detail about the Government’s plans. On 8 February, Lord O’Shaughnessy, Parliamentary Under-Secretary of State for Health, replied, explaining in particular that, while the Regulations were important for the disposal of the surplus health estate, his Department did not expect that land transferred to Homes England would deliver the “homes for staff” policy. We are publishing this correspondence at Appendix 3.

INSTRUMENTS OF INTEREST

Draft Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2018

17. The Department for Digital, Culture, Media and Sport (DCMS) has laid these draft Regulations with an Explanatory Memorandum (EM) and Impact Assessment. In the EM, DCMS says that all types of operating licences issued by the Gambling Commission which permit betting are subject to a mandatory condition that no betting takes place on the outcome of the National Lottery. The Department states that, in the UK, the lottery that is promoted under the brand name EuroMillions is part of the National Lottery, and that some betting operators licensed under the 2005 Act offer non-UK EuroMillions bets. These Regulations propose to supplement the existing mandatory licence condition so as to ban all non-UK EuroMillions bets in respect of customers in Great Britain, in order to preserve a distinction between betting and the National Lottery. DCMS says that this will prevent consumer confusion, and may also protect returns to UK good causes. In a consultation on the proposal held between March and May 2017, DCMS received 52 responses: 32 respondents strongly agreed that non-UK EuroMillions bets should be prohibited, while five respondents strongly disagreed.

Draft Passport (Fees) Regulations 2018

18. This instrument revises the charging framework and individual fee levels for administering UK passport applications, and is intended to take effect from 27 March 2018. The revised charging structure is anticipated to generate £50 million additional income in financial year 2018-19 and move Her Majesty’s Passport Office closer towards full recovery of its costs (which includes the cost of checking the passports of British Citizens crossing the border). The Home Office estimates that about four-fifths of the total Home Office cost associated with its UK passport functions will be fee-funded after the increases enabled by these Regulations, as opposed to about three-quarters without these increases. All passport fees also include a charge of £15.50 to cover consular services which is forwarded to the Foreign and Commonwealth Office. The Committee particularly noted the Home Office’s deliberate introduction of a differential pricing framework for online (new fee £75.50) and postal (new fee £85) applications. Paragraph 2 of the Impact Assessment (IA) explains that this reflects the actual difference in cost of processing a postal application. The IA also explains that this pricing differential is deliberately intended to modify applicant behaviour from the current 35% online: 65% postal applications towards a 50:50 split. While noting the Home Office’s intent to become more financially self-sufficient the Committee was concerned that this represented another example of the poorer or older parts of the community, who might not have easy access to a computer, being penalised financially by public services.

Town and Country Planning (Local Authority Consultations etc.) (England) Order 2018 (SI 2018/119)

19. In our 16th Report of this Session, we published information about the Town and Country Planning (Permission in Principle) (Amendment) Order

2017 (SI 2017/1309), which provided for a period of five weeks for the
determination of “permission in principle”. We noted that, as regards the
possibility that the five-week period might coincide with a holiday season,
the Ministry of Housing, Communities and Local Government (MHCLG)
had told us of a 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 fell within the relevant period, which would be
met by amending the Order. The commitment was given by Lord Bourne of
Aberystwyth during the passage of the Neighbourhood Planning Act 2017
in response to an amendment to the Bill.\(^{15}\)

20. SI 2018/119 fulfils that commitment, setting out a requirement to add days to
the consultation period for applications for planning permission, permission
in principle, listed building consent and for development affecting the setting
of listed buildings or character and appearance of a conservation area, and
applications for “prior approval”.\(^{16}\)

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15 See HL Hansard, 23 February 2017, volume 779, columns 459-460.
16 In connection with planning permission granted by development order where the local planning
authority is required to give 21 days' notice of proposed development to adjoining owners or occupiers.
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF
THE HOUSE

Draft instruments subject to affirmative approval

Draft Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2018
Draft Electronic Commerce Directive (Miscellaneous Provisions) Regulations 2018
Draft Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2018
Draft Industrial Training Levy (Construction Industry Training Board) Order 2018
Draft National Employment Savings Trust (Amendment) Order 2018
Draft Passport (Fees) Regulations 2018

Instruments subject to annulment

SI 2018/92 Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2018
SI 2018/94 Natural History Museum (Authorised Repositories) Order 2018
SI 2018/95 Pension Protection Fund (Compensation) (Amendment) Regulations 2018
SI 2018/96 Protection of Wrecks (Designation) (England) Order 2018
SI 2018/98 Fluorinated Greenhouse Gases (Amendment) Regulations 2018
SI 2018/102 Waste Electrical and Electronic Equipment (Amendment) Regulations 2018
SI 2018/108 Export Control (Venezuela Sanctions) Order 2018
SI 2018/119 Town and Country Planning (Local Authority Consultations etc.) (England) Order 2018
SI 2018/120 Social Security (Contributions) (Amendment) Regulations 2018
SI 2018/121 Ionising Radiation (Medical Exposure) (Amendment) Regulations 2018
SI 2018/130 Alteration of Judicial Titles (Registrar in Bankruptcy of the High Court) Order 2018
SI 2018/132 Criminal Procedure (Amendment) Rules 2018
SR 2018/24 Crown Court (Amendment) Rules (Northern Ireland) 2018
SR 2018/25 Magistrates’ Courts (Amendment) Rules (Northern Ireland) 2018
APPENDIX 1: DRAFT CRIMINAL JUSTICE AND POLICE ACT 2001 (POWERS OF SEIZURE) ORDER 2018; ENTERPRISE ACT 2002 (PART 9 RESTRICTIONS ON DISCLOSURE OF INFORMATION) (SPECIFICATION) ORDER 2018 (SI 2018/104)

Additional information from the Department for Business, Energy and Industrial Strategy

Q1: The DECC December 2015 consultation paper: “Strengthening enforcement in gas and electricity markets” was issued on 21 December 2015, with a response deadline of 31 January 2016. Why was such a short period set (over the Christmas period)? Did any consultation respondents complain about the timescale?

A1: The timeline was driven by the non-REMIT parts of the consultation which included new proposals for new primary legislation on which decisions were due to be taken in early 2016. The opportunity for this decision to be taken was then delayed. We received no stakeholder complaints about the length of the consultation.

Q2: The Government response was issued only on 1 February 2018. Why did it take over 2 years to produce a response (given that respondents were given only 6 weeks to make their views known)?

A2: The Government has been considering priorities against a very restricted legislative timetable. A decision was taken in July 2017 to take forward the proposals on REMIT separately from the other proposals in the consultation.

Q3: The Government response says: “Stakeholder views on the proposed “seize and sift” powers were more polarised, with the majority of companies and representative groups arguing that these were disproportionate or unnecessary. For example, some stakeholders believed that Ofgem already has ‘strong powers in this space.’” How many respondents were there to the 2015 consultation paper? How many of them said that the proposed “seize and sift” powers were disproportionate or unnecessary?

A3: We had 15 consultation responses that addressed the questions in the consultation regarding REMIT. Of these, 8 respondents specifically stated that the powers proposed were disproportionate or unnecessary.

Q4: Why does the Explanatory Memorandum to the Order contain so little detail about the timing of the consultation process and publication of the Government response, and why does it not include web-links to the documents themselves?

A4: A web link to the consultation response was not available at the time the Instrument was laid as publication had not yet taken place. Other details were omitted through oversight, for which we apologise. The web-links follow:


5 February 2018
APPENDIX 2: NATIONAL EMISSION CEILINGS REGULATIONS 2018
(SI 2018/129)

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

Q1: In the Explanatory Memorandum you say: “The Directive repeals the NECD 2001, subject to a transitional provision ensuring that the emission ceilings established by that Directive to be met from 2010 continue to apply until 31 December 2019. Accordingly, this instrument revokes the National Emission Ceilings Regulations 2002 but includes a provision that ensures the 2010 ceilings continue to apply until the new emission reduction commitments have to be met in 2020.” What were the emission ceilings which the UK was required to meet from 2010 to 2019? Has the UK met those ceilings?

A1: The emission ceilings set by the original National Emission Ceilings Directive 2001/81/EC are as follows (in kilotonnes):

These are included at Schedule 3 Table 1 of the 2018 Regulations which preserve these ceilings until December 31 2019.

Table 1:

<table>
<thead>
<tr>
<th>SO₂ (kT)</th>
<th>NOx (kT)</th>
<th>NMVOCs (kT)</th>
<th>NH₃ (kT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>585</td>
<td>1167</td>
<td>1200</td>
<td>297</td>
</tr>
</tbody>
</table>

The most recently published data (the 2015 National Atmospheric Emissions Inventory) shows that the UK meets all current emission ceilings which have applied since 2010. The 2016 National Atmospheric Emissions Inventory will be published on 15 February 2018.

Q2: In the Explanatory Memorandum you also say: “The Directive implements the emission reduction commitments agreed under 2012 amendment to the Gothenburg Protocol into EU law. The UK will continue as a member of the UNECE and Party to the Convention following exit from the EU.” The European Commission oversees compliance by Member States with EU legislation. What arrangements are there for oversight and enforcement of the UNECE Convention?

A2: Under the UNECE Convention on Long-range Transboundary Air Pollution (CLRTAP), oversight is carried out by the Convention’s Implementation Committee and the Executive Body. Parties that fail to meet emission ceilings or other obligations under the Convention are referred to the Implementation Committee. The Implementation Committee meets twice a year and reports annually to the Executive Body which makes decisions upon recommendation by the Committee.

The European Union (Withdrawal) Bill is designed to ensure that the UK exits the EU with the maximum certainty, continuity and control. As far as possible, the same rules and laws will apply on the day after exit as on the day before. Some of the existing mechanisms which allow scrutiny of the achievement of environmental targets and standards by government will not, however, be carried over into our law. We intend to consult on a new, independent and statutory body to advise and challenge government and potentially other public bodies on environmental legislation – stepping in when needed to hold these bodies to account and be a champion for the environment. We will consult on the specific scope and powers of the new body early this year.
Q3: In the EM you also say: “A consultation was not undertaken for this instrument as the instrument imposes no new obligations on external bodies.” What consultations were undertaken by the UK Government in advance of the 2016 Directive being agreed?

A3: The proposal for the 2016 Directive came out of the EU’s extensive review of its Clean Air Policy Package between 2011 and 2013. The review included the establishment of stakeholder expert groups and regional committees, public consultation and the publication of various supporting documents. In accordance with usual practice, Defra worked with other Government departments, the devolved administrations and external stakeholders during the negotiations for the Directive and in particular the level of emission reduction commitments to be met by the UK. However, Defra did not undertake formal public consultation at that stage. The obligations imposed by the 2016 Directive and these Regulations are placed upon the Secretary of State, they do not create direct new obligations on external bodies. The Directive and Regulations do require public participation in respect of the development of the National Air Pollution Control Programme, which the Secretary of State needs to prepare and implement in order to meet the obligations. The programme will include the specific policies and measures being considered for implementation and will only be adopted after the views expressed in the consultation have been considered.

In addition, Defra intends to consult upon a Clean Air Strategy this year, setting out how we will work towards meeting the 2020 and 2030 targets that the Regulations establish.

Q4: In the EM you also say: “The assessment of impact produced for negotiations at EU level ahead of finalisation of this Directive has been updated to reflect current baseline data and will be published on the legislation.gov.uk website.” Where is this impact assessment published?

A4: An assessment of the impacts of the 2016 Directive was undertaken to support the negotiations. This has since been further updated to reflect developments in the evidence on costs and benefits. The UK played an active role in negotiating the 2016 Directive, securing a deal, which halved the costs for the UK whilst retaining the benefits. The updated cost benefit analysis is undergoing final checks and will be published on the legislation.gov.uk website imminently.

7 February 2018
Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Jeremy Hunt, Secretary of State for Health and Social Care

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

Transfer of surplus land from NHS Trusts for release to market

As part of our scrutiny of secondary legislation, the Committee considered these Regulations at our latest meeting. The 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.

On 3 October 2017, you announced a set of nursing workforce reforms, and this 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.

In order to assist our consideration of the Regulations, we obtained additional information from the Ministry of Housing, Communities and Local Government (which laid the instrument), drawing on input from your own Department. We were told that, since the October 2017 announcement, your Department 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, and were told that the cost of affordable housing depended on the type, tenure and location, and that DHSC was “exploring all potential delivery options including purchase and rental”.

In the absence of hard evidence that nurses are benefiting from the creation of affordable housing on surplus NHS land, we concluded that these Regulations may not achieve the objectives of the “Homes for Nurses” scheme, and we are reporting to the House accordingly.

We also agreed, however, that we should write to you about the outcome of our scrutiny, and seek assurance from you that your Department will make effective efforts to ensure that the “Homes for Nurses” scheme delivers the commitment that you made. We would welcome more detail about those efforts. It is an issue that may be expected to arise again if other NHS Trusts are designated through future Regulations, and one to which we would most likely return.

It would be helpful if you could reply to this letter by 20 February.

31 January 2018

Letter from Lord O’Shaughnessy, Parliamentary Under Secretary of State for Health, to Lord Trefgarne

I write concerning your letter to the Secretary of State for Health and Social Care, regarding the Homes and Communities Agency (Transfer of Property etc.) Regulations 2018 (SI 2018/8), Transfer of surplus land from NHS Trusts for
release to market. I am responding as the Minister responsible for the surplus land programme.

Housing supply and affordability is one of the greatest challenges facing the country and one of the top priorities for this government. For this reason the Department of Health and Social Care’s (DHSC) surplus land programme has targets to dispose of surplus land for 26,000 houses by March 2020 under the cross-Government Public Land for Housing Programme, and to generate £3.3billion in capital receipts by March 2023 as set out in the 2017 Autumn Budget.

As part of this programme individual land owners, which are predominantly NHS Trusts and Foundation Trusts, will consider as part of their strategic health planning which, if any, parts of their land holdings are no longer needed, now or in the future, for use as health estate. Where this land is no longer required it is classified as surplus and the land owner will determine the best disposal method for the site. A potential disposal method is through Homes England (HE) (formerly the Homes and Communities Agency). HE will accept transfers of surplus health sites which meet appropriate criteria for upfront payment to the land owner and these will then be disposed to private residential developers for development. In order for the sites to transfer to HE, the names of the Trusts wishing to transfer land to HE are required to be listed within transfer regulations.

Separately to this, in October 2017, the Secretary of State announced a right of first refusal for NHS staff on affordable housing built on sold surplus NHS land. Our ambition is that this could benefit up to 3000 families. Officials in the Department’s Surplus Land Programme are currently implementing this policy and as part of this are exploring different approaches that Trusts could utilise, including purchasing and rental schemes. We expect to announce further detail about support for Trusts in due course.

While the Transfer Regulations are important for the disposal of the surplus health estate, we would not expect land transferred to HE to deliver the homes for staff policy. Further commitment will be required from Trusts to ensure an arrangement is made with developers to ensure their staff, where needed, can successfully access a first right of refusal.

I hope this clarifies the need for these regulations and how affordable homes for NHS staff fits within that.

8 February 2018
APPENDIX 4: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 20 February 2018, Members declared the following interests:

Draft Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2018

Lord Faulkner of Worcester

Chairman, Alderney Gambling Control Commission

Attendance:

The meeting was attended by Baroness Blackstone, Lord Faulkner, Lord Janvrin, Lord Haskel, Lord Kirkwood of Kirkhope, Baroness O’Loan, Lord Sherbourne of Didsbury, Lord Trefgarne and Baroness Watkins of Tavistock.