

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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22nd Report of Session 2017–19

**Correspondence:  
Criminal Legal Aid  
(Remuneration) (Amendment)  
Regulations 2018**

Includes 9 Information Paragraphs on 10 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 Faulkner of Worcester

Baroness Finn

Lord Goddard of Stockport

Lord Haskel

Rt Hon. Lord Janvrin

Lord Kirkwood of Kirkhope

Baroness O'Loan

Lord Sherbourne of Didsbury

Rt Hon. Lord Trefgarne (Chairman)

Baroness Watkins of Tavistock

### *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).

# Twenty Second Report

## CORRESPONDENCE

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### **Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (SI 2018/220)**

1. In our 21st Report of this Session,<sup>1</sup> we drew attention to this Statutory Instrument which restructures the payments to be made under the Advocates' Graduated Fee Scheme (AGFS) to criminal defence advocates carrying out publicly funded work in the Crown Court. The Ministry of Justice (MOJ) states that these amendments are intended to reward the actual work done by defence advocates more accurately and do so by recategorising the offences and the associated payment from the current 11 categories to 48.
2. In our Report we queried the MOJ's assessment of the impact, and drew attention to submissions from the Bar Council and the Criminal Bar Association on the same point. As a result we asked the Minister to clarify the effect. The correspondence is published in Appendix 1.
3. While we did not feel that the Minister's response provided elucidation, the MOJ also published a revised Explanatory Memorandum which, subject to caveats about the exact volume and mix of cases that will come forward over the next year being unpredictable, reaffirms that MOJ anticipates that "there is a risk that spend will be higher than estimated. The most up to date analysis of this risk estimates an additional £9 million per year spend".
4. We acknowledge the difficulties that all Departments have in making such forward projections, but would ask them to be absolutely clear about the way that they express the resulting estimates that they publish in the Explanatory Memorandum, so that they are not open to more than one interpretation.

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<sup>1</sup> [21st Report](#), Session 2017-19 (HL Paper 88).

## INSTRUMENTS OF INTEREST

### Draft Welsh Ministers (Transfer of Functions) (Railways) Order 2018

5. In November 2014, the UK Government announced that agreement had been reached, in principle, to devolve executive franchising functions to the Welsh Ministers so that the Welsh Government could lead the procurement of the next Wales and Borders railway franchise, which is due to commence operations on 14 October 2018. This Order would facilitate that by transferring certain functions of the Secretary of State relating to railways to the Welsh Ministers and to provide for certain other functions to be exercisable concurrently by the Secretary of State and the Welsh Ministers. This Order is concerned primarily with functions connected with the franchising of railway passenger services and with functions relating to the discontinuance of railway services and the closure of stations.
6. The functions transferred by this Order to the Welsh Ministers broadly follow those transferred to Scottish Ministers by the Railways Act 2005, except in relation to cross-border services. The Order provides that the Welsh Ministers may designate, in addition to Wales-only services, only Welsh components of Welsh services. To ensure that the cross-border links can continue and be further developed, the Order will operate alongside an agency agreement which will allow the Welsh ministers to procure and manage a single franchise that can also operate to, from and within England subject to certain obligations.

### Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (SI 2018/221)

7. The Ministry of Housing, Communities and Local Government (MHCLG) has laid this Order with an Explanatory Memorandum (EM) and Impact Assessment. The Order extends the scope of mandatory licensing of Houses in Multiple Occupation (HMOs) in England.<sup>2</sup> MHCLG says that, by prescribing a broader description of HMO than in an earlier Order,<sup>3</sup> the effect is that mandatory licensing will apply to HMOs that are below three storeys (if they are occupied by five or more persons in two or more separate households) as well as to those of three or more storeys. MHCLG estimates that an additional 177,000 HMOs (on top of the existing 60,000) will become subject to mandatory licensing in England. It says that, by 1 October 2018 (when the Order comes into force) local housing authorities (LHAs) must promote the extension of mandatory licensing in their areas, and must also process applications for licences relating to those HMOs prescribed by this instrument. We obtained additional information about the scale of the task faced by LHAs, which we are publishing as Appendix 2. MHCLG has said that there have not been problems with local authorities processing applications in the past, but that it understands the need for good planning. **We are not persuaded that this significant extension of licensing can be readily achieved in the relatively short period until the Order takes effect, and we are writing to the Minister.**

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2 MHCLG intends to lay a separate instrument, subject to the affirmative procedure, in order to extend mandatory licence conditions in HMOs to include those relating to minimum sleeping accommodation standards, maximum occupancy of such rooms and the disposal of domestic waste in HMOs.

3 The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 ([SI 2006/371](#)).

**Motorways Traffic (England and Wales) (Amendment) Regulations 2018 (SI 2018/222)**

**Motorways Traffic (Scotland) (Amendment) Regulations 2018 (SI 2018/225)**

8. The Government's 2015 statement on road safety, "Working Together to Build a Safer Road System",<sup>4</sup> identified that young drivers are at least five times more likely to be killed or seriously injured on the roads than those over 25. This is in part due to young drivers having to face new situations which they are not properly prepared for, one of which is a lack of experience in driving on motorways. These instruments will allow learner drivers to have lessons on motorways, provided that they are accompanied by an approved driving instructor in a dual controlled car, so that they can gain a broader range of driving experiences prior to obtaining their driving licence.

**Civil Procedure (Amendment) Rules 2018 (SI 2018/239)**

9. The Aarhus Convention requires Contracting States to make sure that the costs for an individual taking certain environmental challenges through the courts are not prohibitively expensive. Our 25th Report of Session 2016-17<sup>5</sup> drew attention to a change to the Civil Procedure Rules,<sup>6</sup> which gave the courts discretion to put cost caps up or down according to the claimant's resources. Our Report noted respondents' concerns that the uncertainty over costs that this legislation introduced would deter people from pursuing genuine claims. A group of environmental charities subsequently challenged the February 2017 changes through the courts, arguing that they were not compliant with EU law. Judgment was given by the High Court on 15 September 2017.<sup>7</sup> In summary, the judgment concluded that the costs protection regime as amended in February 2017 was compliant with EU law, save that an application to vary costs caps in an Aarhus Convention claim should be heard in private. However the judgment also concluded that the costs protection rules would benefit from clarification to reflect the agreed understanding of how they are intended to operate, thereby providing certainty and minimising any possible "chilling effect" which might be caused by this uncertainty. The Ministry of Justice intend the rule amendments included in this instrument to address the High Court's concerns regarding clarification.

**Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018 (SI 2018/245)**

10. In our 14th Report of this Session,<sup>8</sup> we drew to the attention of the House the draft Higher Education (Access and Participation Plans) (England) Regulations 2018, and three other instruments, which related to the establishment and operation of the Office for Students (OfS), the new regulator of higher education providers. The OfS will replace both the Higher Education Funding Council for England (HEFCE) and the Office

4 Department for Transport, *Working Together to Build a Safer Road System, British Road Safety Statement*, December 2015: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/487704/british\\_road\\_safety\\_statement\\_print.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487704/british_road_safety_statement_print.pdf) [accessed 7 March 2018]

5 *25th Report*, Session 2016-7 (HL Paper 114).

6 *Civil Procedure (Amendment) Rules 2017* (SI 2018/95)

7 CO/1011/2017 *The Royal Society for the Protection of Birds, Friends of the Earth Limited and Client Earth v Secretary of State for Justice and Lord Chancellor* [2017] EWHC 2309 (Admin).

8 *14th Report*, Session 2017-19 (HL Paper 56).

of the Director of Fair Access (DFA) to Higher Education from 1 April 2018. We noted that the Department for Education (DfE) intended to lay a further instrument to provide that, from 1 April 2018, HEFCE and the DFA would cease to exist, and the OfS would take on their statutory functions during the rest of academic year 2017-18 and the whole of academic year 2018-19.

11. SI 2018/245 serves that purpose (alongside the Higher Education and Research Act 2017 (Commencement No. 3) Regulations 2018). In the Explanatory Memorandum to the Regulations, DfE says that keeping alive the functions of HEFCE and the DFA, albeit operated by the OfS in 2017-18 and 2018-19, will ensure a smooth transition to the new regime of registration of higher education providers, administered by the OfS.

#### **Borough of Weymouth and Portland (Change to Year of Election) Order 2018 (SI 2018/256)**

12. In a Written Ministerial Statement on 26 February 2018,<sup>9</sup> the Secretary of State for Housing, Communities and Local Government said that he had decided to implement, subject to Parliamentary approval, a “locally-led proposal to replace the existing nine councils across Dorset<sup>10</sup>... by two new councils”. He also said that he intended to lay drafts of the necessary secondary legislation to give effect to the decision, as well as an Order to delay for one year the May 2018 local elections in Weymouth and Portland “so as to avoid members being elected for only one year if Parliament approves the legislation establishing the new councils”. SI 2018/256 provides for that delay. In the Explanatory Memorandum, the Ministry of Housing, Communities and Local Government (MHCLG) says that, in August 2017, Weymouth and Portland Borough Council wrote to the Secretary of State seeking to defer the scheduled elections by a year (if the reorganisation proposal were implemented), “to avoid the unnecessary costs and democratic accountability concerns of electing councillors for only one year”. SI 2018/256 has come forward in advance of the laying of the draft Dorset (Structural Changes) (Modification of the Local Government and Public Involvement in Heath Act 2007) Regulations 2018 and the draft Bournemouth, Dorset and Poole (Structural Changes) Order 2018, which will embody the reorganisation proposals. We obtained additional information from MHCLG about the effect of these Regulations, which we are publishing as Appendix 3.

#### **Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018 (SI 2018/258)**

13. In our 13th Report of this Session,<sup>11</sup> we drew the draft Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 to the attention of the House, noting that, where someone had been convicted of a “banning order offence”, the local authority would be able to apply to a First-tier Tribunal for an order banning that landlord or property agent from being involved in the management of property. We noted as well that a national database of rogue landlords and property agents was to be set up, and that the Government intended to bring forward a further instrument to specify the information to be recorded by local authorities on the database which was to be introduced at the same time as the banning order Regulations were proposed to come into force, namely, 6 April 2018.

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<sup>9</sup> HC Deb, 26th February 2018, [HCWS486](#).

<sup>10</sup> Namely, the two unitary councils of Bournemouth and Poole and the two-tier structure of Dorset County Council and the district councils of Christchurch, East Dorset, North Dorset, Purbeck, West Dorset, and Weymouth & Portland.

<sup>11</sup> [13th Report](#), Session 2017-19 (HL Paper 49).

14. In the Explanatory Memorandum to SI 2018/258, the Ministry of Housing, Communities and Local Government (MHCLG) confirms that local housing authorities are to be responsible for maintaining the content of the database, and states that the Regulations set out for local housing authorities the information that they must include when making an entry. This includes the person's address or other contact details; the period for which the entry is to be maintained; details of properties the person owns, lets or manages; details of any banning order offences of which the person has been convicted; and details of any banning orders made against the person, whether or not still in force.

**M3 Motorway (Junctions 2 to 4a) and M25 Motorway (Junction 12) (Speed Limits) (Miscellaneous Amendments) Regulations 2018 (SI 2018/259)**

15. There has been a particular problem for heavy goods vehicles (HGVs) at this junction. A fixed speed limit of 50mph was introduced to ensure that HGVs travelling on the M3 westbound carriageway (towards Southampton) at junction 2, are able to navigate safely to the nearside lanes prior to the commencement of the variable speed limit. These Regulations remove a short stretch of national speed limit, extend the existing 50mph and variable speed limits on the westbound carriageway, and change the reference point for the start of the 50mph speed limit on the slip road from the anticlockwise carriageway of the M25 at junction 12 to the westbound carriageway of the M3. This is to reflect the physical changes recently made to the junction and to improve safety.

**Local Land Charges Rules 2018 (SI 2018/273)**

16. Local land charges are charges or restrictions on land which are governmental in character and imposed by public authorities under statutory powers: common examples are smoke control orders and conditions attached to planning permissions. They affect whoever owns the land and so must be registered to alert purchasers to their existence. The current regime under the Local Land Charges Act 1975 provides for the registration system and the fees for it to be specified by each local authority. The Infrastructure Act 2015 amended the 1975 Act, so that, in future, the local land charges registers kept by each local authority will be replaced by a national register kept by the Chief Land Registrar. Transition will be made by a rolling programme and initiated by the Chief Land Registrar. These new Rules make the necessary detailed provision about how this new register is to work. New fees rules for England will also need to be introduced. Both will only have effect in a specific local authority area from the date notified by the Chief Land Registrar.

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

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

Draft Crime and Courts Act 2013 (Deferred Prosecution Agreements) (Amendment of Specified Offences) Order 2018

Draft Welsh Ministers (Transfer of Functions) (Railways) Order 2018

### **Draft instruments subject to annulment**

Draft Forest of Dean (Electoral Changes) Order 2018

Draft Hertsmere (Electoral Changes) Order 2018

Draft Preston (Electoral Changes) Order 2018

Draft South Gloucestershire (Electoral Changes) Order 2018

Draft West Berkshire (Electoral Changes) Order 2018

### **Instruments subject to annulment**

SI 2018/215 Street Works (Charges for Occupation of the Highway) (England) (Amendment) Regulations 2018

SI 2018/218 Teachers' Pensions Schemes (Amendment) Regulations 2018

SI 2018/221 Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

SI 2018/222 Motorways Traffic (England and Wales) (Amendment) Regulations 2018

SI 2018/225 Motorways Traffic (Scotland) (Amendment) Regulations 2018

SI 2018/230 Public Regulated Service (Galileo) Regulations 2018

SI 2018/231 Blood Safety and Quality Regulations and the Care and Support (Business Failure) Regulations (Consequential Amendments) Order 2018

SI 2018/232 Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) Regulations 2018

SI 2018/233 Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018

SI 2018/234 Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018

SI 2018/235 Motorcycles (Type-Approval) Regulations 2018

SI 2018/236 Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018

SI 2018/237 Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018

SI 2018/239 Civil Procedure (Amendment) Rules 2018



- SI 2018/240 Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018
- SI 2018/242 Merchant Shipping (Maritime Labour Convention) (Miscellaneous Amendments) Regulations 2018
- SI 2018/245 Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018
- SI 2018/246 Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2018
- SI 2018/247 Bolton College (Designated Institution in Further Education) Order 2018
- SI 2018/248 Compulsory Purchase (Inquiries Procedure) (Miscellaneous Amendments and Electronic Communications) Rules 2018
- SI 2018/249 Portability of Online Content Services Regulations 2018
- SI 2018/250 Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2018
- SI 2018/253 Compulsory Purchase of Land (Written Representations Procedure) (Ministers) (Miscellaneous Amendments and Electronic Communications) Regulations 2018
- SI 2018/254 Electricity (Connection Offer Expenses) Regulations 2018
- SI 2018/255 Energy Information (Amendment) Regulations 2018
- SI 2018/256 Borough of Weymouth and Portland (Change to Year of Election) Order 2018
- SI 2018/257 Social Security (Contributions) (Amendment No. 2) Regulations 2018
- SI 2018/258 Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018
- SI 2018/259 M3 Motorway (Junctions 2 to 4a) and the M25 Motorway (Junction 12) (Speed Limits) (Miscellaneous Amendments) Regulations 2018
- SI 2018/262 Police Injury Benefit (Amendment) (England and Wales) Regulations 2018
- SI 2018/265 Housing (Right to Buy) (Designated Rural Areas and Designated Regions) (England) Order 2018
- SI 2018/269 London Government (London Fire Commissioner and Policing) (Amendment) Regulations 2018
- SI 2018/272 Wales Act 2017 (Consequential and Saving Provisions) Regulations 2018
- SI 2018/273 Local Land Charges Rules 2018

## **APPENDIX 1: CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) REGULATIONS 2018 (SI 2018/220)**

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### **Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Ms Lucy Frazer QC MP, Parliamentary Under Secretary at the Ministry of Justice**

I am writing as Chairman of the Secondary Legislation Committee which considered these Regulations at its most recent meeting.

We understand that the Ministry of Justice's (MOJ) standard policy with any review of Legal Aid fees is that the outcome should be cost neutral: the fees may be distributed in a different way but the total sum expended should not increase. Paragraph 10.3 of the Explanatory Memorandum to this instrument states that, exceptionally, the payment changes set out in this instrument are "likely to increase legal aid spend by an additional £9 million per year".

We have received submissions from both the Bar Council and the Criminal Bar Association contesting this statement. Both point to Table 9 on page 21 of the Impact Assessment which does confirm that MOJ anticipates that the spend under the new scheme will be £9 million above the figures for 2014-15, but goes on to state that this would be £3 million above the figures for 2015-16 and £2 million below the figures for 2017. So rather than being more generous as indicated in the EM, the MOJ's figures in the Impact Assessment indicate that the restructuring will represent a cut in funding of around £2 million in comparison to the most recent outturn.

Although the deviation in question is a small percentage of the total expenditure, there is a clear disparity between the figures in the Impact Assessment and the way the information is presented in the Explanatory Memorandum. As a result, there is, we believe, a risk that members of the House, and others, will fail to have a clear and accurate understanding of the implications of the new scheme.

The Committee would be grateful to receive your response to these concerns by Monday 12 March 2018.

**7 March 2018**

### **Letter from Ms Lucy Frazer QC MP to Lord Trefgarne**

Thank you for your letter of 7 March 2018 regarding the Explanatory Memorandum (EM) that supports the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018. I appreciate the Committee's careful scrutiny of this document and I am grateful to you for writing to me to offer an opportunity to clarify the EM. I apologise for the lack of clarity which you have identified. I have set out below the answers to your questions, which I hope that you will find helpful.

At the beginning of the second paragraph of your letter you raise the issue of cost neutrality. The Ministry of Justice (MOJ) does not have a standard policy about cost neutrality in respect of any review of legal aid fees. The consultation proposed a reform of the Advocates' Graduated Fee Scheme on the basis of cost neutrality against a 2014-15 baseline, where spend was £213 million. After consultation, this was later revised to cost neutrality against figures for 2016-17, where according to the most up to date figures at the time, year-end spend was £224 million.

At the end of the second paragraph of your letter you refer to paragraph 10.3 of the EM, which suggests the potential for an ‘additional £9 million per year’. This refers to an analysis presented at Table 10 of the Impact Assessment (IA). This analysis identifies costs, totalling £9 million per year, that could not be captured in the analysis presented at Table 9 of the IA. A full explanation of these costs is provided at paragraphs 76 to 79 of the IA. I should clarify therefore that the “additional £9 million” at paragraph 10.3 of the EM is not a reference to Table 9 of the IA, as suggested in the third paragraph of your letter.

In the third paragraph you also refer to points made by the Bar Council and the Criminal Bar Association. You highlight that they suggest there is a shortfall of around £2 million in comparison to the most recently published 2016-17 AGFS spend figures. It was necessary to choose a fixed point in time to model the cost of the new scheme. The MOJ used the most up to date figures available at the time the decision was taken to revise cost neutrality from the 2014-15 year to 2016-17. At the time that decision was taken, the figures available were those published in June 2017. The new scheme is cost neutral as against those figures.

I am very grateful to you for pointing out the lack of clarity in the EM. I apologise for this and can see that it would be beneficial to amend the EM to ensure a clear and accurate understanding of the new scheme. In the circumstances I will ensure that a new EM is drafted which I will forward to you tomorrow. Thank you again for your assistance in relation to this matter.

**12 March 2018**

## **APPENDIX 2: LICENSING OF HOUSES IN MULTIPLE OCCUPATION (PRESCRIBED DESCRIPTION) (ENGLAND) ORDER 2018 (SI 2018/221)**

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

*Q: It appears that 160,000 additional applications will need to be processed, as against 20,000 so far processed. How is that do-able in the timescale? Have local authorities all assured MHCLG that they can handle the task? And what are the cost and resource implications for the local authorities?*

A: [We] confirm that an estimated 160,000 properties will require a licence for the first time. However, to clarify, there have been at least 60,000 licences issued under mandatory HMO licensing to date. Many more have been issued under additional and selective licensing. Local authorities are able to process applications and administer schemes effectively because they are able to fund schemes through licence fees. ...it is important that local authorities have the right resources and we are allowing them to continue this self-funding model for the extension of mandatory HMO licensing.

While there have not been problems with local authorities processing applications in the past, we understand the need for good planning. We consulted extensively with local authorities in 2015 and 2016. There was broad support for the changes we proposed, and local authorities were aware that we intended to introduce them as soon as possible.

In order that local authorities could begin preparations in earnest, we confirmed our approach in December 2017 - our response document set out how the extended scope would work in great detail. Following this we know that some local authorities have been very much on the front foot in preparing, and haven't waited for us to lay secondary legislation. We are now working to produce guidance five months ahead of the changes coming into effect, and prior to that will be holding roundtables with local authorities.

It is equally important that landlords are aware of the changes and actively preparing for them. Landlord bodies are very aware that a significant number of landlords will need to obtain licences for the first time, having been engaged with the consultation process. We will be undertaking further engagement with landlord representatives shortly to ensure the changes are fully understood. There is also a role for local authorities at a local level in this respect; local authorities are under a duty to promote awareness of the extended scope of mandatory HMO licensing. We intend for our guidance to say that local authorities should encourage early applications but ultimately it is down to local authorities to determine how best to make arrangements to handle the extension of scope and consider the phasing of applications.

While we are doing what we can to make landlords aware of the requirements, we are conscious that some are generally less engaged with their obligations than others. Local authorities will need to consider how they deal with landlords who do not initially apply for a licence. We are aware that some local authorities have identified those who should be applying and will take action based on that information. As a minimum, they will need to continue to promote aware of the licensing requirements even after October. [But we] emphasise that the onus is ultimately on landlords to apply for a licence as otherwise they will be committing a criminal offence.

**5 March 2018**

### APPENDIX 3: BOROUGH OF WEYMOUTH AND PORTLAND (CHANGE TO YEAR OF ELECTION) ORDER 2018 (SI 2018/256)

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

*Q1: When exactly will the Dorset (Structural Changes) (Modification of the Local Government and Public Involvement in Heath Act 2007) Regulations 2018 and the Bournemouth, Dorset and Poole (Structural Changes) Order 2018 be laid before Parliament?*

A1: In his Written Statement of 26 February the Secretary of State said that he now intends “to prepare and lay before Parliament drafts of the necessary secondary legislation to give effect to [his] decision” to implement the Dorset unitary proposal. In preparing the secondary legislation, the Department is engaging with the councils who are now working together in their joint committees on implementation. The Secretary of State will share drafts of this secondary legislation with the council Leaders and the Dorset MPs before laying final drafts before Parliament, which the Secretary of State intends to do before the end of March.

*Q2: In the Explanatory Memorandum you say: “Provisions changing the date of (or cancelling) the election cannot be made in the structural change instruments, as these could not be made and come into force until after the elections on 3 May 2018.” Can you explain this further, please? Why is it not possible for the structural change instruments to be laid and debated before 3 May 2018, and for them to provide for the year change to take effect sooner than the structural changes?*

A2: On the timetable indicated above, it would not be possible for the secondary legislation implementing the proposal to be debated and come into force before 3 May 2018. Moreover, legislation affecting an election needs to be made and in force well before the election date - where practicable six months before - and in any event, before the last day on which the notice of the election must be given, in this case 27 March 2018.

*Q3: In the EM, you also say: “This order provides that the elections of councillors which would have taken place in 2018 will instead take place on the ordinary day of elections in 2019 (2 May 2019). Should the structural change instruments not be approved by Parliament and the proposal is not implemented, the election of councillors will take place on that day.” Will some councillors therefore have an extra year in office? Why is that acceptable if the structural change does not take place?”*

A3: It is well precedented that electoral terms can be extended where there are governance changes. For example, in 2016 the term of office of the Greater Manchester Police and Crime Commissioner was extended by a year until the first election of a Mayor with PCC powers, in order to avoid the costs of electing a Police and Crime Commissioner for a term of only one year.

Without this order there would be election of councillors in Weymouth and Portland for a term of only one year if Parliament approves the structural change order. This would both incur unnecessary costs and be potentially damaging to local democracy since candidates may not be willing to stand in the expectation of serving only one year. It is to address these risks that the order has been made, which it is considered wholly justifies the possibility of certain councillors having a five year term even if there is no structural change.

**7 March 2018**

## **APPENDIX 4: 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 13 March 2018, Members declared the following interests:

### **Draft Welsh Ministers (Transfer of Functions) (Railways) Order 2018**

Lord Faulkner of Worcester

*Chair, Great Western Railway Advisory Board*

### **M3 Motorway (Junctions 2 to 4a) and M25 Motorway (Junction 12) (Speed Limits) (Miscellaneous Amendments) Regulations 2018 (SI 2018/259)**

Lord Trefgarne

*Owens property near the junction of the M25 and M3*

### **Attendance:**

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



