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Historical Note
In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012–13 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee has the following terms of reference:

1. The Committee shall, with the exception of those instruments in paragraphs (3) and (4), 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 the grounds specified in paragraph (2).

2. The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
   (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.

3. The exceptions are—
   (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
   (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
   (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

4. The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.

5. The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members
Baroness Andrews  Lord Hodgson of Astley Abbots  Baroness Stern
Lord Bowness  Baroness Humphreys  Rt Hon. Lord Trefgarne (Chairman)
Lord Goddard of Stockport  Rt Hon. Lord Janvrin  Lord Woolmer of Leeds
Lord Haskel  Baroness O’Loan

Registered interests
Information about interests of Committee Members can be found in Appendix 4.

Publications
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Information and Contacts
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Statutory instruments
Seventh Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015

Date laid: 16 July 2015

Parliamentary procedure: affirmative

Summary: These Regulations would bring into effect specific guidance for the Higher and Further Education sector under the Prevent strategy with additional duties in relation to extremist speakers. The question of balancing the duty to prevent incitement to terrorism against freedom of speech was discussed at length during the passage of the parent Act. These Regulations require Higher and Further Education establishments to have policies about the events held on their premises and to exercise caution where views that might draw people into terrorism cannot be mitigated.

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 to the House.

1. These Regulations have been laid by the Home Office under section 29(5) of the Counter-Terrorism and Security Act 2015 with an Explanatory Memorandum (EM) and the text of all the six items of guidance specified in the instrument. The guidance comprises Prevent Duty guidance for both Further and Higher Education institutions (separately) for England and Wales and for Scotland. The extraction of text into special editions for the Further and Higher Education sector has also led to some consequential revision of the general guidance.

2. The Committee received a letter from the Minister asking us to expedite our consideration of the Regulations and it is understood that the debate will be scheduled as soon as possible in order to have the legislation in place by the start of the academic year.

3. Although general guidance on the Prevent Duty was issued on 25 March 2015 and the duty came into effect on 1 July 2015 for all specified authorities, the duty is not yet in force for Higher and Further Education institutions. The duty will only be commenced once the revised chapters in the guidance listed in this instrument have been approved by Parliament.

4. The new guidance includes specific advice on managing external speakers and events held on premises belonging to the academic institution. For example, paragraph 8 of the guidance for Further Education institutions in England and Wales advises:

“... when deciding whether or not to host a particular speaker, institutions should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these
circumstances the event should not be allowed to proceed except where institutions are entirely convinced that such risk can be fully mitigated without cancellation of the event. This includes ensuring that, where any event is being allowed to proceed, speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that same event, rather than in a separate forum. Where institutions are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed.”

5. In additional material, the Home Office explained to the Committee that:

“Radicalisation through events held by extremist speakers has been identified as a particular problem in universities and colleges. In order to comply with the duty, HE and FE institutions should have policies and procedures in place for the management of events on campus and use of all their premises, and those which are university or college affiliated, funded or branded but taking place off campus. This would cover events held by clubs and religious institutions which use FE-HE institutions’ premises or which otherwise take place under the auspices of those institutions off-campus.”

Schools would be covered by the more general guidance.

6. The EM also mentions that monitoring will be set up to assess English and Welsh Higher Education bodies’ compliance with the duty. Once the duty has been commenced for these institutions, a separate monitoring framework will be published setting out the details of how the monitoring will operate. This monitoring will not cover Higher Education institutions in Scotland as the Scottish Government feel that the current arrangements in Scotland are sufficient.

Draft Hunting Act 2004 (Exempt Hunting) (Amendment) Order 2015

Date laid: 9 July 2015

Parliamentary procedure: affirmative

Summary: By amending existing exemptions to the ban on hunting with dogs of wild mammals which was introduced by the Hunting Act 2004, this Order proposes to increase the number of dogs that can be used to stalk or flush out wild mammals (the existing exemption allows only two dogs to be used); and also to allow the use of a dog below ground to flush out wild mammals, in order to prevent and reduce serious damage to livestock (the existing exemption allows such use in order to protect birds kept for shooting).

In considering the proposals in this Order to change the existing controls over hunting, the House may wish to press the Government to provide more information, about the views of different groups, and about the implications for public order, than has been provided in the Explanatory Memorandum.
We draw this Order to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House, and that the explanatory material laid in support provides insufficient information to gain a clear understanding about the Order’s policy objective and intended implementation.

7. The Department for Environment, Food and Rural Affairs (Defra) laid this draft Order, with an Explanatory Memorandum (EM).

8. In the EM, Defra explains that the Hunting Act 2004 (“the 2004 Act”) bans all hunting with dogs of wild mammals (including fox, deer, hare and mink) in England and Wales, except where it is carried out in accordance with an exemption set out in Schedule 1 to the Act. The exemptions currently allow hunting activities to take place in limited circumstances and with the consent of the occupier or owner of the land, such as: the stalking and flushing out wild mammals with up to two dogs; and using a single dog underground to flush out wild mammals, such as foxes, in order to protect birds kept for shooting.

9. The draft Order, in proposing to amend certain of these exemptions, would increase the number of dogs that can be used to stalk or flush out wild mammals, where this is appropriate having regard to the terrain and any other relevant circumstances, as well as for the hunting of wild mammals for the purposes of rescue or research. It would also allow the use of a dog below ground to prevent and reduce serious damage to livestock. In the context of the exemption for using a dog underground, the draft Order would remove the existing requirement for evidence of ownership of the land on which the activity takes place (or landowner’s permission) to be produced immediately on request by a constable, specifying instead an alternative period of seven days for the production of such evidence.

10. We put a number of questions to Defra in order to supplement the information in the EM, and we are publishing the answers which we received as Appendix 1. Noting the references in the EM to the legal position in Scotland, we asked whether Defra consistently sought to align its legislation with Scottish law. The Department says that it does not do so, but that “given that the restriction on the numbers of dogs does not apply in Scotland we felt it helpful to the members of both Houses of Parliament to be aware of this”.

11. In the EM, Defra states that it has received a variety of representations on the 2004 Act. We asked whether these representations included specific evidence which had now led the Government to amend the exemptions. The Department has told us that the amendments proposed in the draft Order are not a response to any specific piece of evidence; but that they provide farmers and gamekeepers with additional flexibility in achieving the ends of pest control, research and observation and capture of injured animals, by amending the constraint on the number of dogs to that which is appropriate for the terrain and other circumstances.
12. On 15 July, Lords Dubs asked a question\(^1\) about the amendments to the Hunting Act 2004 which are proposed in the Order. The Minister, Lord Bates, dismissed a suggestion that the amendments would make the Act unworkable. He added:

“There has been concern, which has been expressed in representations from farmers, particularly in upland areas, that the current provisions and exemptions for pest control are unworkable, causing them problems and resulting in the loss of livestock as a result of attacks by foxes. So the question was: can they bring it into line with that which is already the case in Scotland? The view was that that was a reasonable request and something which should be done.”

13. In the EM, Defra states that it has not consulted on these specific measures: we asked why not. The Department has said that it judged that more consultation would not have been likely to add to the information available and would have unnecessarily delayed bringing forward these amendments to support upland farmers.

14. In the EM, the Department also states that the impact on the public sector of the changes will be minimal, given that the police will continue to enforce the Act. We asked whether Defra had taken advice from representatives of the police on the implications for public order of the changes proposed. The Department has told us that it does not anticipate that the changes will call for a significant increase in policing; and that it is in contact with Home Office officials and no concerns regarding public order have been raised.

15. There is no doubt that the changes proposed by the draft Order are controversial and of interest to wide sections of the public. There is no recognition of this in the EM, either explicitly, through an acknowledgement of the concerns of any interested parties, or implicitly, through an approach to preparing for these amendments which would have invited concerned groups to express their views.

16. **In considering these proposals to amend existing exemptions to the ban on hunting with dogs of wild mammals which was introduced by the Hunting Act 2004, the House may wish to press the Government to provide more information, about the views of different groups and about the implications for public order, than has been provided in the Explanatory Memorandum.**

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\(^1\) HL Deb, 15 July 2015, col 575.
Statement of Changes in Immigration Rules (HC 297)

Date laid: 13 July 2015

Parliamentary procedure: negative

Summary: This instrument amends certain provisions in Tier 4 of the points-based system, dealing with study visas for non-EU nationals. The changes tighten the restrictions on those applying for Further Education courses, in particular preventing applicants from switching to another type of visa or extending their course unless it is an obvious progression from their current studies. Although the Explanatory Memorandum (EM) explains the changes reasonably clearly, it gives no indication of the numbers likely to be affected or the economic impact on colleges of Further Education. An article in the Times of India said: “In justifying the decision, the UK Home Office highlighted official figures which show 121,000 non-EU students entering the UK last year but only 51,000 leaving”. Given this, it is disappointing and surprising that the Home Office cannot supply figures in the EM to explain the policy. We have also received letters from the National Union of Students and Study UK (a body representing 130 colleges offering sixth form, further and higher education), listing a number of unintended consequences which they would have pointed out had they been consulted.

This instrument is drawn to the special attention of the House on the grounds that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy and that there appear to be inadequacies in the consultation process.

17. This instrument has been laid by the Home Office under section 3(2) of the Immigration Act 1971 and is accompanied by an Explanatory Memorandum (EM). It was laid on 13 July. Some administrative provisions came into effect on the following day, others take effect on 3 August and the rest on 12 November 2015. On the day of laying, the Minister also made a written statement to the House about the instrument.2

18. This instrument amends certain provisions in Tier 4 of the points-based system, dealing with study visas for non-EU nationals. The changes tighten the restrictions on those applying for Further Education courses. For example:

- new students at publicly-funded colleges are prohibited from working, bringing them in line with those at private colleges (from August);

- university students will be allowed to study a new course at the same level only where there is a link to their previous course or the university confirms that this supports their career aspirations (from August);

- college students are prevented from extending their Tier 4 visas in the UK unless they are studying at an “embedded college” (that is, a college which has a formal, direct link to a university that is recognised by the Home Office). The change will require them to leave and apply for a new visa from outside the UK if they wish to study another course (from November);

2 Written Statements, 13 July 2015, HLWS87.
• college students are prevented from being able to switch Tier 4 visas to another type such as Graduate Entrepreneur or work visa, and will be required to reapply from outside the UK (from November);

• the time limit for study at further education level is reduced from three years to two years. The Home Office states that this brings the maximum period into line with the length of time British students generally spend in further education (from November);

• Tier 4 (Child) students are prohibited from studying at Academies or schools maintained by the local authority (from August).

**Numbers affected?**

19. Although the EM explains the changes reasonably clearly, it gives no indication of the numbers likely to be affected. In supplementary material, the Home Office said:

> “Whilst it is not possible to estimate how many current students will wish to extend at the end of their course, we can provide an indication of the maximum number that could be affected:

In 2014, the number of extensions from study to Tier 2 was around 5,600, and to Tier 5 was around 400. It is expected that most of these will be university, not college students, and university students will not be affected by the changes.

In 2014, there were around 63,000 study to study extensions, of which (based on applications data), the large majority will have been to universities, and it is estimated that at most 12,000 will relate to colleges. This is very much an upper estimate of the numbers affected. Not all of these students will be affected by the changes, as it expected that a substantial proportion will meet the new academic progression criteria or are studying at an embedded college and will continue to be able to extend their visa in the UK.”

20. The Committee notes that the measure has been extensively covered by the press abroad. An article in the *Times of India*, for example, said: “In justifying the decision, the UK Home Office highlighted official figures which show 121,000 non-EU students entering the UK last year but only 51,000 leaving”. When asked about this, the Home Office stated: “These figures relate to the Office for National Statistics’ (ONS) estimate for the twelve months ending June 2014. Actually ONS estimate that 135,000 non-EU students came to Britain in 2014, while only around 44,000 former students left the country—a gap of 91,000.”

21. **It is disappointing and surprising that the Home Office did not supply figures in the EM to explain the scope and rationale for its policy.**

**Potential costs and benefits?**

22. The EM is similarly silent on costs and benefits. In supplementary material, the Home Office stated:
“Estimates of the cost to Universities are extremely uncertain, as they are based on the behavioural response of students to these measures. We do not expect these changes to deter genuine students from being able to study in the UK.”

**Consultation**

23. The EM mentions targeted consultation in 2014. In additional material the Home Office told us that it had consulted Universities UK and the Russell Group of universities, both of which were content with the proposals, and the Department for Business, Innovation and Skills as the sector sponsor. It appears, however, that the impact of these changes on universities is likely to be limited, with the main effect being in relation to vocational courses at colleges of Further Education.

24. The Committee has received letters from the National Union of Students (NUS) and Study UK (a body representing 130 colleges offering sixth form, further and higher education) underlining that point. The letters list a number of unintended consequences which the organisations state they would have pointed out to the Home Office and could have been addressed had they been consulted. (The letters are published in full on our website).

25. The NUS letter focuses on how the change to the rules about maintenance sums and working will affect those in the middle of a course, particularly medical students moving from study to a placement, and those for whom work experience is an essential part of their accreditation. It also warns that changes to the rules around dependents of Tier 4 students working is likely to deter postgraduates from conducting research in the UK. Finally, it illustrates the way that restricting Further Education studies to two years will deter up to 50% of non-EU students who often need an English course before their formal two-year course begins.

26. Study UK point out that making changes at this point in the year will disrupt the studies of many who have already been offered places but cannot meet the revised criteria in time. The new requirements will also inhibit vocational courses which are structured on a year-on-year progression from certificate to diploma to degree in year 3. Although the impact appears to be mainly at the Further Education level, the letter states that Universities UK estimate that 40% of international students entering a UK university do so having completed a lower level course at another UK institution. The Study UK letter also states that the normal consultative group, the Education Sector Forum, was not consulted on these changes.

**Conclusion**

27. These changes are in line with stated Government policy about reducing the abuse of study visas. The Home Office, however, has been reluctant to provide any evidence to inform the House about the likely numbers involved and the impact on the tertiary education sector. **We find the Home Office’s failure to consult with the broad range of relevant bodies affected by the change particularly regrettable in the light of the critical yet constructive tone of the correspondence we have received.**

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3 [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)
National College for High Speed Rail (Incorporation) Order 2015 (SI 2015/1457)
National College for High Speed Rail (Government) Regulations 2015 (SI 2015/1458)

Date laid: 3 July 2015

Parliamentary procedure: negative

Summary: These two instruments relate to the establishment and governance of a new National College for High Speed Rail which is being taken forward by the Department for Business, Innovation and Skills (BIS) in order that it can admit students from September 2017. The College is intended to deliver the skills needed for HS2 and other major rail projects, and to set industry standards for training within the sector based on emerging technology. It is one of seven new, employer-led National Colleges announced by BIS in December 2014. In 2015–16 and 2016–17, the Government are allocating up to £80 million of capital funding to the seven colleges, with the intention that this sum will be matched by employers. BIS has said that funding for the National Colleges has not come from the existing Further Education budget and should not have an impact on other existing institutions.

We draw these instruments 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.

28. The Department for Business, Innovation and Skills (BIS) has laid these instruments, each with an Explanatory Memorandum (EM). The Order establishes a new Further Education corporation to be known as the National College for High Speed Rail (NCHSR); the Regulations prescribe the initial Instrument of Government and Articles of Government for that National College.

29. In the EM, BIS says that the NCHSR is part of a wider programme to create a new set of employer-led Further Education institutions to meet identified gaps in the delivery of higher level technical skills for a particular industry or sector. The NCHSR will deliver the skills needed for HS2 and other major rail projects, and will set industry standards for training within the sector based on emerging technology and innovation. It will operate from sites at Birmingham and Doncaster. The college is expected to open its doors to students in September 2017.

30. In the EM, BIS explains that it consulted on the location of the NCHSR from March to April 2014, and received detailed proposals for 18 different sites, mainly in the Midlands, North or North West of England. BIS says that three responses advocated investment in existing colleges as an alternative to establishing a new institution. We asked the Department for more information about the consultation process and its decision to establish a new college. We are publishing the Department’s answers as Appendix 2. BIS has told us that no existing institutions specialise in the skills needed for an HSR project, and that, given the significant additional capacity which will be needed to deliver the scale of specialist skills required, it was believed that maximum value would be gained from concentrating the investment in a new elite national centre.
31. The then Secretary of State for Business, Innovation and Skills announced plans for seven employer-led National Colleges in December 2014. The announcement referred to National Colleges in the fields of advanced manufacturing, digital, wind energy and creative industries, intended to cater for some 10,000 students by 2020, as well as the previously announced National Colleges for HSR (the subject of these instruments), nuclear, and onshore oil and gas. Up to £80 million of Government capital funding would be matched by employers over 2015 to 2016 and 2016 to 2017.

32. We asked the Department about the implications for existing colleges of the support being given by the Government to seven new national Colleges. BIS has told us that funding for the National Colleges has not come from the existing Further Education budget and should not have an impact on other existing institutions. It has said that the National Colleges will have a long-term strategic focus on delivering high-quality vocational training in specific industries or sectors, and it anticipates that they will work with other existing colleges and providers.

33. In this wider context, we note that, on 20 July, in a Written Statement the Minister of State for Skills on Further Education, announced a policy statement on restructuring the post-16 education and training sector. The Statement referred to an intention to promote greater specialisation, including the creation of a new network of Institutes of Technology and National Colleges.

Homes and Communities Agency (Transfer of Property etc.)
Regulations 2015 (SI 2015/1471)

Date laid: 8 July 2015

Parliamentary procedure: negative

Summary: The Department for Communities and Local Government, which has laid these Regulations, says that maximising the release of surplus public sector land is a critical part of the Government’s plans to reduce the deficit and increase the number of houses being built. The Government now intend to release public sector land which could accommodate 150,000 homes. The Homes and Communities Agency will be the Government’s land disposal agent, and these Regulations specify eight public bodies whose land can be transferred to the Agency. The Department does not have information about the numbers of houses actually built on land released between 2011 and 2015; or about the extent to which contracts for the sale of such land have ensured that the Government receive a share of profits from the sale of such houses. It is regrettable that the Explanatory Memorandum to these Regulations makes no mention of the recommendations of the National Audit Office report of June 2015, on the disposal of public land for new homes which, in our view, should be taken very seriously by the Department if its professions of support for efficiency and value for money are to seem credible and persuasive.


5 Written Statement, 20 July 2015, HLWS142.
We draw these Regulations to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

34. The Department for Communities and Local Government (DCLG) has laid these Regulations, with an Explanatory Memorandum (EM). They specify the public bodies whose property, rights or liabilities can be transferred to the Homes and Communities Agency (“the HCA”) by a scheme made under the Housing and Regeneration Act 2008 (“the 2008 Act”).

35. In the EM, DCLG explains that maximising the release of surplus public sector land is a critical part of the Government’s plans to reduce the deficit and increase the number of houses being built. The Department states that, in 2011, the Government announced an intention to release surplus public sector land capable of supporting 100,000 new homes; and that, by March 2015, the Government had in fact announced the release of such land capable of supporting 103,000 homes. We asked DCLG how many of these 103,000 homes had been built. As its answers published at Appendix 3 show, it does not know: “information on subsequent build-out rates is not stored centrally.”

36. A press notice issued by the former Secretary of State for Communities and Local Government in March of this year gave more details of the land released by that date, and indicated that sites released by the Ministry of Defence, “enough land for 38,661 homes”, made up the largest element of the land to which the total of 103,000 homes relates. The press notice did not specify how many of the potential homes had in fact been built.

37. In the EM, DCLG says that the Government’s intentions will ensure the maximisation of the housing potential of public sector land while promoting its use in a way which is efficient and demonstrates value for money for the taxpayer. We asked what arrangements were in place to ensure that a share of any profits made from the developments on land released by the public sector goes back to the Government. DCLG has said that, while it is not unusual for Departments to build into their contracts an expectation of further profit from the eventual sale of the homes, for example through a “clawback” mechanism, “details of individual sales contracts are not stored centrally.”

38. DCLG fails to mention in the EM the fact that, on 24 June 2015, the National Audit Office (NAO) published a report on the “Disposal of public land for new homes” which highlighted a number of concerns with the Government programme from 2011 to 2015. These included that DCLG applied a wide interpretation of the land that could be counted towards the target, and that the total notional 109,590 homes figure included 15,740 homes on land that the public sector disposed of before the target was set. The NAO also stated that Departments did not routinely monitor what happened to a site after disposal so there was no information on how many homes had been built on sold land; that DCLG did not

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collect information on the amount of money raised from the sales; and that, without data on the number of homes or sales proceeds, it was difficult to assess if Departments obtained good value from their disposals and, more broadly, if Government secured value for money from the programme as a whole.

39. In the EM, the Department lists the eight bodies which are specified in the Regulations as transferors of surplus land to the HCA.\footnote{Biotechnology and Biological Sciences Research Council; Land Registry; Natural Environment Research Council; Coal Authority; Environment Agency; Highways England Company Limited; London and Continental Railways Limited; NHS Property Services Limited.} We asked DCLG whether it could provide specific information about the land expected to be transferred. Its answer suggests that it cannot: it says that work is underway to determine each site’s suitability for transfer, which will not be confirmed until due diligence has been carried out on each site.

40. We asked whether each of the transferring bodies had given consent to the transfer, and whether, in reaching a decision to give consent, they had consulted their own stakeholders. DCLG has confirmed that, where a site owned by a public body is assessed as suitable for transfer, it is a specific requirement under the 2008 Act that the public body must provide written consent to the terms of the scheme transferring its land. DCLG has also said, however, that it is for individual bodies to decide whether they should make their land surplus, and which stakeholders to involve in this decision, and that the HCA is not involved in this part of the process.

41. We share the concern voiced by the NAO that the Department does not have information about the numbers of houses actually built on land released to date; or about the extent to which contracts for the sale of such land have ensured that the Government receive a share of profits from the sale of such houses. In the EM, DCLG says that the Government now intend to release public sector land for a further 150,000 homes. It has told us that the Government are centralising land disposals in the HCA because that allows other parts of Government to focus on their core business; and that, as the Government’s land disposal agent, the HCA is best placed to work with local authorities and markets to align surplus public land and assets, ensuring the best use of the development opportunities.

42. In its report, the NAO recommended that, in taking forward this new programme, DCLG and the HCA should review and share the lessons from land disposals between 2011 and 2015, including the need for the Department to clarify how it intends to measure progress through sales proceeds or number of potential homes; and for someone to take responsibility for monitoring what happens to land after disposal within the target period. DCLG has told us that, in future, sales proceeds and revenue generated information will be collected by the Government Property Unit (in the Cabinet Office). The Department has said that monitoring a site’s progress through the planning system and build-out phase is likely to be resource intensive, but it is considering how it might be able do this in a cost-effective way.
43. The Department has stated that it wishes to promote the use of surplus public sector land in a way which is efficient and demonstrates value for money for the taxpayer. It seems clear that, despite declarations of achievement such as that made by the former Secretary of State in March of this year, the approach followed between 2011 and 2015 provided an inadequate basis for assessing whether the Government’s approach had met these objectives. **It is regrettable that the Explanatory Memorandum to these Regulations makes no mention of the recommendations of the National Audit Office report of June 2015: in our view, these recommendations should be taken very seriously by the Department if its professions of support for efficiency and value for money are to seem credible and persuasive. We are writing to the Minister about our concerns.**
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

**Draft instruments subject to affirmative approval**
- Armed Forces Act (Continuation) Order 2015

**Draft instruments subject to annulment**
- Colchester (Electoral Changes) Order 2015
- Peterborough (Electoral Changes) Order 2015
- Rochford (Electoral Changes) Order 2015
- Sheffield (Electoral Changes) Order 2015

**Instruments subject to annulment**
- Cm 9095 Education–Agreement on the Mutual Recognition of Higher Education Awards, Titles, Diplomas, and Academic Degrees between the United Kingdom and Mexico
- SI 2015/1439 Health and Social Care Act 2012 (Consistent Identifier) Regulations 2015
- SI 2014/1459 Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) (No. 2) Regulations 2015
- SI 2015/1470 Health and Social Care Act 2012 (Continuity of Information: Interpretation) Regulations 2015
- SI 2015/1477 Registration of Consultant Lobbyists (Amendment) Regulations 2015
- SI 2015/1479 Care Quality Commission (Membership) Regulations 2015
- SI 2015/1483 Public Service Pensions Act 2013 (Judicial Offices) (Amendment) Order 2015
SI 2015/1489 Civil Jurisdiction and Judgments (Maintenance) and International Recovery of Maintenance (Hague Convention 2007 etc) (Amendment) Order 2015

SI 2015/1491 Coroners and Justice Act 2009 (Alteration of Coroner Areas) (No. 2) Order 2015

SI 2015/1493 European Grouping of Territorial Cooperation Regulations 2015


SI 2015/1506 Local Justice Areas Order 2015

SI 2015/1510 Tribunal Procedure (Amendment) Rules 2015

SI 2015/1512 Child Benefit (General) (Amendment) Regulations 2015
APPENDIX 1: DRAFT HUNTING ACT 2004 (EXEMPT HUNTING) (AMENDMENT) ORDER 2015

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

Q1: In the Explanatory Memorandum the Department states: “The draft instrument amends certain exemptions under Schedule 1 to the Hunting Act 2004, in particular (and consistently with the law in Scotland under the Protection of Wild Mammals (Scotland) Act 2002), to allow for more than two dogs to be used in stalking or flushing out wild mammals for the purpose of shooting them…” Does Defra consistently seek to align its legislation with Scottish law? If not, why is there reference to Scottish law in this case?

A1: Defra does not consistently seek to align legislation with Scottish Law. However, in this instance the proposed changes are looking to align the approach in England and Wales with Scottish legislation, although controls will remain more restrictive. These are technical changes that will make the pest control measure already allowed for under the Hunting Act more workable—especially in upland areas where the two dog limit is not regarded as effective or practical for pest control. Given that the restriction on the numbers of dogs does not apply in Scotland we felt it helpful to the members of both Houses of Parliament to be aware of this.

Q2: In the Explanatory Memorandum, the Department states: “Since 7th May 2015, Defra has received a variety of representations on the Act but the department has not consulted on these specific measures.” Has this variety of representations included specific evidence which has now led the Government to amend the exemptions? If so, what is that evidence? If not, why are the changes being proposed now?

A2: Defra has received representations from a wide range of interested parties including upland farmers who have reported problems with predation by foxes. They regard the use of two dogs across large and difficult areas of ground, often covered by woodland, as neither effective nor practical. The proposed amendments are not a response to any specific piece of evidence. The exemptions in the Act were provided to enable pest control, research and observation and to facilitate capture of injured animals. The proposed changes provide farmers and gamekeepers with additional flexibility in achieving these ends by amending the constraint on the number of dogs to that which is appropriate for the terrain and other circumstances. The pursuit and kill by dogs remains illegal.

The Burns report acknowledged as long ago as 2000 that in upland areas, where the fox population causes more damage to sheep-rearing and game management interests, and where there is a greater perceived need for control, fewer alternatives are available to the use of dogs to flush out to guns.
Q3: Given the widespread interest in the issue of legal controls on hunting, why have the Government decided not to carry out consultation before making these changes?

A3: The Government has received representations from a wide range of interested parties. The measures we propose do not remove the ban on hunting and given this we judged that more consultation would not have been likely to add to the information available to us and would have unnecessarily delayed bringing forward these amendments to support upland farmers.

Q4: In the Explanatory Memorandum, the Department states: “The impact on the public sector is minimal, given that the police will continue to enforce the Act.” Has the Department taken advice from representatives of the police on the implications for public order, and the resultant need for policing, of the proposed changes? If so, did the advice confirm that the impact would be minimal? If not, why not?

A4: The Department does not anticipate that the proposed changes to the conditions of the exemptions are such as to call for a significant increase in policing. There are strong views on both sides of this debate and of course people have the right to protest in a peaceful and lawful way. The police are the law enforcement authority and deal with complaints of illegal hunting. This won’t change. Anyone who believes an offence is taking place, or has taken place, under the Hunting Act 2004 should report the matter to the police.

We are in contact with Home Office officials and no concerns regarding public order have been raised with us.

14 July 2015
APPENDIX 2: NATIONAL COLLEGE FOR HIGH SPEED RAIL (INCORPORATION) ORDER 2015 (SI 2015/1457) AND NATIONAL COLLEGE FOR HIGH SPEED RAIL (GOVERNMENT) REGULATIONS 2015 (SI 2015/1458)

Additional information from the Department for Business, Innovation and Skills

Q1: The Explanatory Memorandum (EM) states: “A consultation took place from March - April 2014 in relation to the location of the new National College.” The Committee considered that the EM should provide more details: who was consulted? Why was the consultation period so short?

A1: Plans to establish the National College for High Speed Rail were announced on 14 January 2014 under the Conservative and Liberal Democrat coalition Government. The purpose of the college is to meet the gap in the specialist skills needed for High Speed Rail, primarily at levels 4 and 5, which are not currently provided for in the existing provider landscape.

The Consultation which took place from 7 March to 30 April 2014 was aimed at gathering information about potential locations for the main site of the college. The consultation was published on the gov.uk website; and was open to anyone to respond, but was particularly aimed at Local Economic Partnerships, local authorities and employers and providers operating in the rail industry. Respondents were invited to provide information under 7 criteria: ability to establish links with employers delivering to the rail industry and with a network of other education and training providers; ease of access for students; the extent to which the location would help rebalance the economy; size and availability of a suitable site; affordability and value for money; and the extent of support from partner bodies. A copy of the consultation document is attached.¹⁰

To enable the college to open its doors to students from September 2017, it was considered that a preferred location needed to be identified by summer 2014 to enable the new facilities and provision to be put in place in a timely manner. A seven week period was thought to be a proportionate and realistic timeframe to allow stakeholders to provide a considered response. This was especially so given the nature of the respondents, who largely had a good appreciation of the issues involved. The consultation period of just over seven weeks aimed to maximise the time available for responses to be prepared, whilst allowing sufficient time for responses to be properly assessed, and for Ministers to make a decision.

The assessment process involved the detailed consideration of supporting information provided against all 7 of the consultation criteria. The consultation document also made clear that the decision on location would take into account the degree to which responses have a ‘strategic fit with the vision for the high speed rail college’. The vision for the college was set out in the consultation document. This process included opportunity for the teams from the short-listed locations which most strongly met the location criteria (Birmingham, Derby,

¹⁰ Not included in this report.
Doncaster and Manchester) to present and discuss their detailed proposals to a senior assessment panel.

Q2: The EM states: “Three responses advocated investment in existing colleges as an alternative to establishing a new institution. Having assessed the information provided against a number of factors, including size, accessibility, and the potential to develop strong links with employers and providers already operating in the sector, it was determined that the best option would be to establish the new institution in Birmingham and Doncaster.” Please provide more information about why the Department decided against investment in existing colleges: were the potentially adverse implications for existing colleges taken into account?

A2: Consideration was given to alternatives to a new institution, recognising that there are existing providers in both the Vocational and Higher Education sectors which deliver engineering disciplines, and some railway engineering in particular. However, none specialise in the skills needed for a high speed rail project, and given the significant additional capacity which will be needed to deliver the scale of specialist skills required, it was believed that maximum value would be gained from concentrating the investment in a new elite national centre which is strategically located to deliver the core criteria identified in the consultation document. As a National College, the intention is that the college will deliver high quality training using state of the art technology and equipment which can be accessed by employers and learners across the country. The National College will focus on meeting a significant gap in existing provision, and is not expected to replicate existing college provision, but to create new opportunities for vocational study.

It is expected that existing providers will also play an important part in helping to meeting the challenge that HS2 provides. The College will aim to maximise its reach across the country by operating through a network of “spoke” providers, some of which will be existing FE colleges and training providers. It will also establish close links with existing FE and HE providers to deliver strong progression routes for learners into the college and beyond; and it is likely that existing providers will need to grow their offer, both in scale and content, to help meet the additional demand that is expected to be generated.

Q3: The EM states: “An Impact Assessment has not been prepared for this instrument as it has no wider impact on the costs of business, charities or voluntary bodies. The impact on the public sector is minimal.” The Committee would like to see more information about the proposed funding for the college. In December 2014 the BIS Secretary of State made an announcement which referred to a total of £80 million of Government funding for seven colleges. Could you set out the Department’s current intentions on both public and private funding for this college, as well as the six others? Could you comment on what potentially adverse implications there may be for existing institutions of setting up these new colleges: will the funding given to the new colleges be at the expense of existing institutions?

A3: Government have set aside up to £80m of capital funding over 2015–16 and 2016–17 to support the establishment of the National Colleges. Employers will be expected to contribute towards the capital costs, including equipment costs. The National Colleges will also be required to generate a significant level of private
investment in training, including from employers. Other sources of income are likely to include 24+ loans and some funding from the Skills Funding Agency, depending on the course and age group of learners. Funding for the National Colleges has not come from the existing FE budget and should not have an impact on other existing institutions.

The requirement to establish strong feeder routes into the college and the development of spoke provision is expected to bring positive benefits. To address the significant higher level skills gap, the capacity of the provider base to deliver technician-level skills will need to increase. The National Colleges will have a long term strategic focus on delivering high-quality vocational training in specific industries or sectors; and we anticipate that they will work with other colleges and providers, through formal arrangements, to deliver aspects of the offer, whether that is generic skills or core skills where existing colleges or providers have recognised expertise in those areas.

20 July 2015
APPENDIX 3: HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.) REGULATIONS 2015 (SI 2015/1471)

Additional information from the Department for Communities and Local Government

Q1: In the Explanatory Memorandum you state: “Maximising the release of surplus public sector land is a critical part of supporting the Government’s ambitions to reduce the deficit and increase the number of houses being built. With this in mind, in 2011 Government announced its ambition to release surplus public sector land capable of supporting 100,000 new homes. By March 2015, Government had exceeded this target, announcing the release of public sector land capable of supporting 103,000 homes.” How many of these 103,000 homes have been built?

A1: The public sector land programme for 2011–15 was focused on identifying and releasing surplus Government land with capacity for housing units to the market. In order to “score” for the programme, there needed to be a high level of planning certainty. In some cases this might have been if planning permission had been given, or identified in a local plan or a Strategic Housing Land Availability Assessment. Information on subsequent build-out rates is not stored centrally.

Q2: Where homes have been built on public sector land released by the Government, have arrangements been in place to ensure that a share of any profits made from the developments goes back to the Government, as “value for money for the taxpayer”?

A2: It is usual for Departments to seek a degree of planning certainty for housing before taking the site to market, to ensure an uplift in land values to maximise the return to the taxpayer. All profits from the sale of Government land are recycled. In selling their land, it is not unusual for Departments to build into their contracts an expectation of further profit from the eventual sale of the homes, for example by way of a “clawback” mechanism. However, details of individual sales contracts are not stored centrally.

Q3: Can you provide specific information about the surplus land that each of the bodies listed in the EM is expected to transfer to the HCA?

A3: Work between the HCA and the public bodies is ongoing to determine each site’s suitability for transfer, and this will not be confirmed until due diligence has been carried out on each site. Not all sites have been fully assessed at this early stage and some sites are not envisaged to deliver housing and are identified for other uses, i.e. commercial, industrial and retail. The pipeline of identified sites is an evolving work stream and is developed in collaboration with the relevant Government Departments and their arms-length bodies. As and when a site is ready for transfer the HCA commences detailed due diligence on the site. This enables the more detailed assessment of its proposed use and where relevant the forecasting of housing capacity.
Q4: In each case, has the transferring body given consent to the transfer? In reaching a decision to give consent, have the bodies consulted their own stakeholders?

A4: Where a site owned by a public body is assessed as suitable for transfer, it is a specific requirement under section 53A (5) of the Housing and Regeneration Act 2008 that the public body must provide written consent to the terms of the scheme transferring its land. The consent would necessarily be obtained towards the end of the process once the terms of the scheme were known to the body.

Government is centralising land disposals in the HCA because that allows other parts of Governments to better focus on their core business. As the Government’s land disposal agent, the HCA is best placed to work with local authorities and markets to align surplus public land and assets, ensuring we make the best use of our development opportunities. This centralised role for the HCA is set out in ‘Disposal of surplus public sector land and buildings protocol for land-holding departments’ ([https://www.gov.uk/government/publications/disposal-of-surplus-public-sector-land-and-buildings-protocol-for-land-holding-departments](https://www.gov.uk/government/publications/disposal-of-surplus-public-sector-land-and-buildings-protocol-for-land-holding-departments)) which is referenced in Managing Public Money Annex A1.1.1 and is binding on most central Government departments and their arm’s-length bodies (ALBs). (It does not apply to MoD or NHS Trusts.)

It is for individual ALBs to decide whether they should make their land surplus, and which stakeholders to involve in this decision. The HCA is not involved in this part of the process. However, whenever a site is made surplus, the HCA must always be informed so that they can assess the site’s suitability for development.

13 July 2015
APPENDIX 4: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 21 July 2015 Committee Members declared no interests.

Attendance:
The meeting was attended by Baroness Andrews, Lord Bowness, Lord Goddard of Stockport, Lord Haskel, Lord Hodgson of Astley Abbots, Baroness Humphreys, Lord Janvrin, Baroness O’Loan, Baroness Stern, Lord Trefgarne and Lord Woolmer of Leeds.