

HOUSE OF LORDS

Merits of Statutory Instruments Committee

5th Report of Session 2009-10

**Social Security (Housing Costs Special
Arrangements) (Amendment) Regulations
2009**

**Draft Jobseeker's Allowance (Skills Training
Conditionality Pilot) Regulations 2010**

Report and oral evidence

Draft School Admissions Code

Correspondence:

**Proceeds of Crime Act 2002 (References to
Financial Investigators) (Amendment) Order
2009**

Ordered to be printed 12 January and published 15 January 2010

London : The Stationery Office Limited
£price

HL Paper 32

The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
 - (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 (3).
- (2) 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.
- (3) 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.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Baroness Morris of Yardley
The Baroness Deech DBE	The Lord Norton of Louth
The Lord Hart of Chilton	The Lord Rosser (<i>Chairman</i>)
The Lord James of Blackheath CBE	The Lord Scott of Foscote
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Contacts

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email merits@parliament.uk. The Committee's website, www.parliament.uk, has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

Statutory instruments

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Fifth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.

A. Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 (SI 2009/3257)

Summary: These Regulations amend defects in SI 2008/3195 which temporarily extended the scope of the Support for Mortgage Interest (SMI) scheme paid to home-owners who are claiming certain social security benefits with the aim of reducing repossessions. The Department for Work and Pensions (DWP) informed the Committee of the need to make these amendments in a letter of 30 January 2009 but took a year to bring them forward, during which time significant underpayments have accumulated, which will be resolved through extra-statutory payments. Although our report on the original regulations specifically raised the issue of the numbers of claimants who might be incorrectly paid, DWP did not include any figures on the number of claimants or sums involved in the Explanatory Memorandum to these amending Regulations. We therefore asked the Minister, Helen Goodman MP, to give oral evidence to provide more complete information and to explain why DWP continue to have difficulty in providing the information necessary to support Parliamentary scrutiny. Although the Minister was able to supply some estimates, she admitted that it was difficult to tease out precisely how much of the improvement was attributable to DWP activity and how much was due to other schemes. Without clear information on the number of repossessions among claimants at the outset of the new SMI scheme and no indication of the level of improvement the scheme is designed to achieve, Parliament will lack a good basis on which to assess whether this measure has been effective or represents good value for public money.

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. The Department for Work and Pensions (DWP) has laid these Regulations under a number of Acts including the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995 and the Welfare Reform Act 2007. They are laid in consequence of a defect in the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (SI 2008/3195). They are laid with an Explanatory Memorandum (EM) but no Impact Assessment (IA). There is also a report on the regulations by the Social Security Advisory Committee (SSAC), a statutory consultee.

The original regulations

2. SI 2008/3195 made changes to the Housing Costs scheme with effect from 5 January 2009 – under the rules that applied prior to that (“the old rules”) there were variable waiting periods of 8, 26 or 39 weeks according to the benefit claimed and the maximum capital limit for mortgage interest was

£100,000. The “new rules” introduced by that SI included a uniform waiting period of 13 weeks and increased the maximum capital limit to £200,000 but also set a 104 week limit on the payment of help with mortgage interest for claimants of Job Seekers Allowance (JSA).

3. Due to the poor quality of the information provided and the controversial nature of the 104 week cut off, the Committee held an oral evidence session on SI 2008/3195 on 6 February 2009. The then DWP Minister, Kitty Ussher, wrote to the Committee on 30 January 2009 to inform us that amendments would be required to remedy two unintended effects. The current instrument, SI 2009/3257, makes those corrections so that:
 - claimants who were entitled to housing costs before the change made by SI 2008/3195 will continue to receive benefits under the “old” rules that applied before 5 January 2009 if they transfer between benefits – as long as there is no break in the claim;
 - claimants who were entitled to housing costs under the old rules cannot get improved benefits from the new rules by artificially making a short break in their claim;
 - those claiming JSA who are subject to the 104 week limit cannot requalify for a further period of 104 weeks by artificially making a short break in their claim.

In addition the new Regulations respond to a further recommendation made by the SSAC to clarify that those who had applied for a relevant benefit on or after 5 January 2009 but were in a waiting period would be treated under the new rules.

SSAC Report

4. In making the original regulations last year the Minister invoked the urgency provisions in the Social Security Administration Act 1992 to by-pass prior consultation with their statutory consultee, the SSAC. The SSAC report published alongside these Regulations therefore also deals with the original regulations. The SSAC’s main concern was the 104 week cut off introduced in the original regulations: they were clear that the urgency provisions should not have been invoked for so controversial a measure. They also point out a number of operational difficulties (in both sets of regulations) where two similar claimants would be treated differently – some, but not all, of those problems are resolved by the amending Regulations which, following some revisions, the SSAC appear broadly to support.
5. The SSAC report, like our own, was critical about the lack of detail in the information provided by the Department on the numbers and groups of people who might potentially be assisted. The then Chairman concluded the 2009 evidence session by saying to the Minister “if the information you have now given ... had been in the EM I think our time would have been saved and yours certainly would have been” (5th Report, Session 2008-09, Q 44). Yet the EM provided with the current amending instrument showed many of the same deficiencies, particularly in respect of indicating likely costs and benefits.

Overpayments

6. Paragraph 7.5 of the EM mentions that as a result of these amendments an unknown but small number of claimants will “no longer” be able to receive

housing costs under the new rules. In response to written questions, DWP clarified that some people may have benefited incorrectly from having had their housing costs calculated on the new capital limit of £200,000 for some or all of the period between 5 January 2009 and 4 January 2010 and would now revert to the old rules based on a capital limit of £100,000, but DWP said that information on the numbers of cases affected and sums involved was not available. In oral evidence the Minister indicated that this was likely to be 50-100 households which had moved over from Lone Parent benefit (Q4). We are concerned that we had to ask repeatedly before being given an answer that indicated the scale of the problem.

7. It is mentioned in the SSAC report (page 48, paragraph 7) that no steps would be taken to recover these overpayments. In oral evidence the Minister qualified that these are technically not overpayments since they were in line with the law at the time paid, if not the original policy intention (Q4). Nonetheless this is another example of DWP paying out money incorrectly because of their poor drafting of legislation and we asked the Minister why the Department does not have better checks in place to prevent this.¹ The Minister said that DWP legislation is “immensely complex” and that “it can sometimes be very difficult to be fully alert to what all the different implications of one particular policy change might be”; but that steps were being taken to improve the alignment of the policy intention and the legal drafting (Q8).

Underpayments

8. In paragraphs 7.2-4 of the EM it is stated that DWP intends to address potential shortfalls through extra-statutory payments, and mentions around 30 people who have contacted the Department about the payment of the benefit. However in the supplementary evidence we discovered that Jobcentre Plus already has records of 2,263 cases which may qualify (Appendix 1).
9. The maximum sum payable to an individual claimant would be around £7,600, however DWP indicates that very few people are likely to qualify for the full amount. Using these figures we calculate that the maximum sum to be paid out could be in excess of £17m (not including administrative costs of rectifying the problem). Although in practice the sum is likely to be less than £17m, it may well exceed the £5m threshold for providing an Impact Assessment, however DWP did not do so, simply describing the impact on the public sector in the EM as “negligible”. When challenged, Mr Howarth argued that this was not new money, as it had formed part of the £55m provided by Treasury to fund the original regulations², but we still believe Parliament should have been given a better indication of the costs involved (Q7).

Timing

10. We asked the Minister about the timing of the Regulations, which were laid on 15 December, the day before Recess, effectively preventing any Parliamentary scrutiny before the Regulations came into effect on 5 January

¹ See 1st Report session 2009-10, paragraph 3, overpayment of £1.1m to be written off due to incorrect drafting in Child Support (Miscellaneous Amendments) (No. 2) Regulations (SI 2009/2909)

² 5th Report session 2008-09 on the original regulations SI 2008/3195, paragraph 11

2010, a practice for which we have previously had cause to criticise DWP.³ The Minister apologised and paraphrased Oscar Wilde: “to lay a statutory instrument on housing regulations on 15 December in one year might be considered a misfortune, to do it two years in a row really does look like carelessness”. The Minister added that the Department was reviewing its management of the procedures to prevent this happening again (Q2).

11. We were also concerned about the length of time it took to bring these amending regulations forward, while the over- and underpayments outlined above continued to accumulate. We had received a letter from the then Minister, dated 30 January 2009, stating that amending regulations would need to be brought forward shortly “to remedy some unintended effects” in the principal instrument. We note that the draft amending regulations were sent to the SSAC on 4 March and the SSAC response encompassing both the principal and amending regulations was sent to the Department on 13 May 2009. We therefore asked why these amending Regulations were not laid before Parliament until 15 December. In its written response DWP attributed the delay in part to a change of Ministerial team in June and in part because “this is a complex policy area and we needed to ensure that the regulations reflected our policy objectives and that we took the time to consider the comprehensive SSAC report before drafting them” (Appendix 1). Yet by laying the Regulations over the Recess DWP did not offer Parliament the same courtesy. The Minister conceded that this was unfortunate but felt that the Regulations could not have been laid before autumn at the earliest (Q4). While the detailed consideration of the policy intention and operation is welcome, in this case it might perhaps have been better to rectify the errors identified in January more expeditiously to ensure that claimants were properly paid.

Consultation

12. Despite a specific recommendation from the SSAC to do so, DWP did not consult stakeholders on these regulations as “there is no point in consulting when everything is already settled” (Appendix 1). This Committee has consistently maintained that one of the major benefits of consultation is that proposed regulations are looked at by other users who can point out omissions, flaws and unintended consequences. Such consultation is most effective if done when the policy is in formulation. We accept the Minister’s point that there is sometimes a need to balance the delay required for consultation against the need to act quickly to respond to circumstances (Q9). However given DWP’s recent spate of SIs to make corrections to their legislation as a result of MPs and others writing in to point out unintended consequences, we were not convinced that they have yet got the balance right.⁴

Evaluation

13. In our report on the original regulations, as well as criticising the lack of impact assessment we stated that “The Department also seemed currently

³ The previous regulations SI 2008/3195 were also laid over a Recess (on 15 December 2008 to come into effect on 4 January 2009); see also the Social Security (Miscellaneous Amendments) (No. 4) Regulations 2008 (SI 2008/2424) (28th Report session 2008-09)

⁴ See recent examples: the Child Support (Miscellaneous Amendments) (No. 2) Regulations (SI 2009/2909) 1st report session 2009-10, and SI 2009/3389 Housing Benefit and Council Tax Benefit (War Pension Disregards) (Amendment) Regulations 2009; in both cases errors resulting in unintended consequences were pointed out by MPs

unsighted on what criteria they would use to evaluate the policy” (paragraph 12). The current EM remains equally vague about evaluation plans. In written information officials said:

“Good progress has been made this year on developing the evidence base, which is vital to help monitor the delivery of the policy and inform the scope of the evaluation. At this stage, it is not possible to provide any specific detail, including baselines, as the plans are yet to be finalised and agreed, although we hope that this will be done early 2010.” (Appendix 1)

14. It is surprising that a year after the original regulations were made the Department is still not in a position to publish the baselines against which progress will be measured. In evidence the Minister was able to state that an estimated 60,000 additional claimants are currently receiving SMI as a result of the new rules, and provide some comparative figures about the number of repossessions now and in the recession of the 1990s. However she admitted that it was difficult to tease out precisely how much of the improvement was attributable to DWP activity and how much was due to other schemes including those run by BIS and DCLG (Q11). Without clear information on the number of repossessions among claimants at the outset of the new SMI scheme and no indication of the level of improvement the scheme is designed to achieve, Parliament will lack a good basis on which to assess whether the measure has been effective or represents good value for public money.

Conclusion

15. We reiterate that “It is difficult for us to assess whether a policy will achieve its objective if that aim is stated in vague, unquantified terms”.⁵ When we reported on the original regulations in February last year we specifically said “we will be interested to see how many claimants who have had their SMI increased by these Regulations will have it reduced by the corrective Regulations” but despite this we only obtained the answer through supplementary questioning (paragraph 9).
16. In our report on the original regulations we asked the then Minister to involve senior members of her Department in introducing a more consistent and effective quality control of the statutory instrument process (QQ 45–47). We reminded her that this information is intended for the information of Parliament as a whole and the general public and is an important means of holding the Executive to account. While there has been some improvement across the Department, the current Regulations show familiar flaws. We welcome the current Minister’s assurances that, with the Permanent Secretary, she will ensure that the deficiencies are addressed even more rigorously, but we will only be convinced by visible improvement.

⁵ “The Management of Secondary Legislation: follow-up” 13th report session 2007-08, para 33

B. Draft Jobseeker's Allowance (Skills Training Conditionality Pilot) Regulations 2010

Summary: This is an affirmative instrument, which proposes to add further complexities to the Flexible New Deal Regulations laid last year. Without having evaluated the initial phase, the Department for Work and Pensions (DWP) are now proposing to extend the project in 11 of the 12 trial areas. A key element of the extension is that sanctions will be imposed to require claimants to attend selected training courses. As part of the pilot protocol claimants will be randomly assigned to a control group (without threat of sanctions) or a "treatment" group where they will be told that their Jobseeker's Allowance will cease to be payable if they do not participate in the training identified. An SSAC report quotes evidence suggesting that the threat of sanction has a negative effect on the subject's probability of starting a job. We invited the Minister, Helen Goodman MP, to give oral evidence on this point, and to provide information which was missing from the Explanatory Memorandum accompanying the instrument. We raise no issues on the underlying policy intention, but we do share the concern of others that the timing of the Skills Conditionality Pilot is premature. While sanctions may improve participation in training, the evidence currently available gives no reassurance that, particularly given the current high levels of unemployment, DWP will be able to assess whether the training offered will necessarily result in people obtaining a job. We therefore question whether the specific policy objective of the Skills Conditionality Pilot "to test, over a period of 18 months, if conditionality ... leads to better employment prospects" can be achieved.

These Regulations are drawn to the special attention of the House on the ground that they may imperfectly achieve the policy objective.

17. DWP has laid this draft affirmative instrument under the Jobseekers Act 1995, along with an Explanatory Memorandum (EM). There is also a report on the instrument from the SSAC.
18. The original instrument, the Social Security (Flexible New Deal) Regulations 2009 (SI 2009/480) imposed a sanction regime for those claiming Jobseeker's Allowance (JSA) so that claimants who fail without good reason to take part in a new employment programme - the "Flexible New Deal" (FND) aimed at helping those claiming JSA to find work - may have their benefit reduced or stopped for 2, 4 or 26 weeks. It also introduced a sanction of one week loss of benefit for those claimants who fail without good reason to attend a "Back to Work Session" when directed to do so. Our 12th report of 2008-09 questioned that SI's intended objective and the DWP's practical ability to deliver it at a time of rapidly rising unemployment. Without having evaluated the initial phase, DWP are now proposing to extend the project in 11 of the 12 trial areas by means of the draft Regulations. A key element of the extension is to require claimants to attend selected training courses, with the threat of sanctions (withdrawal of JSA) if they do not participate.

SSAC report

19. The report from the SSAC recommends that the Skills Conditionality pilot should not proceed and makes the following points:
 - two previous DWP projects that made training mandatory had a sustained negative impact on the employment outcomes of the claimant (paragraph 4.8, on page 20 of the SSAC report),

- the effectiveness of the first stage of the JSA Flexible New Deal pilot should be evaluated before extending provisions (paragraph 4.6) and savings may be minimal (paragraph 4.21) ,
 - the design of the pilot is insufficiently robust to allow DWP to distinguish any value added by this new mandatory regime from the existing pilot (paragraph 4.12) and
 - the regime may be inappropriate when the unemployment register is high and still rising (paragraph 4.17).
20. Although DWP has modified its original proposals in some respects, including by delaying the start of the extension until April 2010, the Department has rejected the recommendation that the addition of the mandatory element should be delayed until after evaluation of the first part of the project, on the grounds that FND has achieved “steady state status in trial areas”. We accept DWP’s statement in supplementary evidence (Appendix 1) that due to additional resources, including the recruitment of 3,000 extra advisers, the FND programme is meeting its operational delivery targets, for example 91% of reviews are being conducted on time. However we see this as quite separate from considerations of whether this activity has been effective: as yet there is no indication of whether the programme is meeting its objective of improving employment prospects (and thereby reducing the claimant count) (QQ28-30).

How will the effects of sanction be distinguished?

21. The proposals for the Skills Conditionality pilot were put forward to the SSAC on 1 July 2009, only 3 months after the initial phase of FND had commenced, and long before any indications of what the basic FND scheme is achieving would be available. We therefore queried why this second stage is necessary, and, if two pilot projects are running side by side in the same area, how the different effects of each are to be distinguished.
22. DWP is relying on a randomisation element to make the distinction between the two pilots – claimants will be assigned to either a “treatment” group, with the threat of benefit withdrawal if they do not participate in the training, or a “control” group, with no such sanction, according to their National Insurance Number (Q18). However this will be within 11 of the 12 existing test areas, which does not allow for any pure control groups i.e. areas where no sanctions are proposed. (The results in the 12th trial area are already discounted as not providing conditions consistent with the rest of the pilot (paragraph 51 of Government memorandum, on page 46 of the SSAC report)). The SSAC raised technical queries about the design of the Skills Conditionality pilot, believing there are too many variables for the results to provide an answer to the question in the objective (paragraphs 4.10-12 of SSAC report), for example it has not yet been ascertained whether the type and quality of training being provided is appropriate to the task. We concur that the additional changes made by these latest proposals may blur the already complex picture.

Extension before initial evaluation

23. In our report on the original FND regulations (SI 2009/480) we commented on the lack of a clear plan for evaluation and the lack of baseline information against which progress could be tested. The EM to the Skills Conditionality Regulations is equally vague about how progress is to be assessed, and there

is no information available about the effects of the original FND project so far.

24. In answer to written questions DWP stated that: “The new Jobseekers regime has been live in around half of the country since April 2009 (the JSA Skills Training Conditionality pilot will be piloted in these areas). The remaining areas will begin to go live from April 2010. The Department for Work and Pensions has commissioned the Policy Studies Institute to lead a large scale and comprehensive evaluation on the effectiveness of the new regime and the additional measures that have been introduced this year in response to the economic downturn. A report will be published on early findings of these changes in the New Year” (Appendix 1).
25. In oral evidence Ms Crowther said that the first stage evaluation would be available at the end of the month and would be used between now and April to design the pilot, the support and processes (QQ 16-17). The overall policy intention is to provide an individually tailored service that seeks to improve the skills and therefore the employment prospects of those furthest from the market. The intention is laudable but we again wondered if the revisions could be designed, disseminated and fully understood by Jobcentre staff within so tight a timescale.

Will mandatory training improve employment prospects?

26. However the objective of the Skills Conditionality Pilot is more specific: “to test, over a period of 18 months, if conditionality (added responsibility over length of benefit claim) improves participation on skills training and leads to better employment prospects” (EM paragraph 2.1- but note at paragraph 4.1 of the same EM the objective is phrased as aiming to assess whether the sanction regime “has an impact on claimants entering long term employment”). No further rationale or measurable target is given in the EM.
27. In their memorandum to the SSAC the Government set out the policy rationale for introducing mandatory training as being that the better qualified are more likely to get a job. Review of the Employability Skills Programme showed that “nearly 20% of the individuals starting the course did not complete it, only a third of them withdrawing because they had found a job. The remainder lost interest, found the course was not what they expected or withdrew for personal reasons.” (paragraphs 7-8, page 37, SSAC report). So it appears that part of the problem these regulations are trying to fix through threat of sanction is an approximately 12% wastage rate in training courses. However, as the Minister was keen to point out, the FND programme is a different proposition – she said some of the earlier programmes were unpopular because they used full-time courses lasting twelve months and focused only on basic skills. Under FND part-time and short courses will be made available, that are more tailored to the need of the individual and to the skill needs of the local employers (Q12). It would therefore appear premature to impose the threat of sanctions before it has been ascertained whether the revised training provision has resulted in an improvement in the degree of voluntary take-up.
28. While the threat of benefit sanctions may inevitably improve the participation in skills training, determining whether this leads to “better employment prospects” is a more difficult task. As well as the potential confusion with the results of the main FND project, in the current economic climate there are other factors which may influence the outcomes. The Minister said that

although there is high unemployment at present, the degree of churn (numbers flowing on and off the register) is also high and the aim of the FND was to put claimants in a better position to take advantage of opportunities (Q22). However the Chairman pointed out that in some of the pilot areas unemployment was high, with more than 25 claimants for every vacancy, and success in obtaining a job may be due to luck or contacts rather than skills. The Minister was less able to comment on how the role of training and threat of sanction in the achievement of “better employment prospects” would be identified in these circumstances (Q23-24).

The negative impact of mandatory training

29. We had noted with particular concern that in paragraphs 4.7-8 of their report the SSAC mention similar pilot projects on Basic Skills in 2001 and 2004 which used sanctions to compel claimants to undertake training. The results showed a negative impact initially on the probability that participants would start a job. Following this up in 2008 DWP analysts found that, although slightly reduced, the negative impact on employment outcomes had continued for three years after the end of the pilot. Despite this discouraging experience, in the written responses to our questions DWP anticipate a “projected 5% increase in attendance rates” and assume that “for every 10 additional individuals who complete provision because of conditionality, an additional year of employment will be generated” (Appendix 1). The basis for these assumptions was not provided.
30. We asked the Minister why in the light of the evidence from past pilots, DWP believed the Skills Conditionality pilot was worth pursuing. She said that previous results were not relevant due to differences in the pilot design (Q31). She also appeared sanguine that the experiment was worth doing even if it only served to confirm that sanctions do not work (Q13), however we have grave doubts about the effect of this experiment on particular individuals should that prove to be the case.

Consultation

31. We have previously raised concerns about DWP’s general attitude to consultation. Paragraph 8.1 of the EM states that DWP would have liked to have conducted a full consultation specific to this pilot “but the time constraints for this pilot did not permit this”. We asked the Minister what these time constraints were – since DWP presumably sets its own timetable. She did not offer any argument more persuasive than that a Government which produced a White Paper in 2007 and had not implemented it two years later might be thought ineffectual (Q26).
32. DWP in part justified its lack of specific consultation by saying that it had raised the issue of conditionality in its 2007 Green Paper “Ready for work: full employment in our generation”, which received broad support. However when more detail about the pilot proposals was given in the subsequent 2008 Green Paper “No one written off”, more respondents objected to them (50%) than endorsed the proposal (40%). Much of the opposition was due to concern how those with mental health problems would be affected by threat of sanction. DWP said these concerns were not valid as those with mental and learning difficulties would be referred to the Disability Employment Adviser, would not be subject to sanctions and would have full rights of appeal were they imposed. However the Committee questioned how confident the Minister was that this would happen in practice at a time when

the work capability assessments were creating a large influx of clients into the JSA from Employment and Support Allowance, some of whom would have low level but definite mental health problems (QQ20-21).

Conclusion

33. We think that if there is any risk that an individual's employment prospects could be harmed by this pilot there should be a much stronger justification for the proposed course of action than DWP has provided in either the EM or the evidence session. Given the strength of the views expressed in consultation and in the SSAC report, we would have expected the EM specifically to address those concerns. The rationale laid before Parliament should have given a clearer explanation of why the initiative must be brought forward now and what the projected outcomes are, to enable the House to balance the weight of the contrasting arguments.
34. While the threat of sanctions may improve participation in training, we have as yet seen no evidence that demonstrates that the courses being offered under the main FND programme have actually improved people's employment prospects, particularly in areas of high unemployment. We commented that DWP seemed to be confusing activity with effectiveness (QQ29-30). No baseline figures are given and no quantified evidence of the improvement to employment results made by training undertaken on a voluntary basis has yet been produced, against which the effects of a sanction regime may be compared. We therefore have to question whether the policy objective of the Skills Conditionality Pilot, "to test, over a period of 18 months, if conditionality ... leads to better employment prospects" may be achieved.

C. Draft School Admissions Code

Summary: The School Admissions Code ("the Code") contains requirements and guidelines about the arrangements by which children are admitted to maintained schools⁶ in England. Local education authorities ("LEAs"), governing bodies of maintained schools and other bodies with relevant education functions must act in accordance with the relevant provisions of the Code. The Code is being amended to require admission authorities from 2011 to provide for the admission of all children in the September following their fourth birthday: currently some admission authorities only provide for younger children to be admitted to school later in the school year. The change follows a recommendation from Sir Jim Rose's recent independent review of the primary curriculum in response to his finding that summer born children are at greater risk of poor outcomes than children born earlier in the year. Although about two thirds of local authorities already provide such provision, the Government estimates that the change will result in an additional 7300-7400 primary school children. In the public consultation on the change, 62 per cent of respondents objected to the proposals for various reasons and recent research from the Institute for Fiscal Studies (IFS) suggested that having summer born children start school earlier makes only a modest positive contribution to test results. The House may therefore wish to satisfy itself that the change to the Code is justified by the evidence available.

⁶ "Maintained school" is defined in section 84 of the 1998 Act to mean a community, foundation or voluntary school

This Code is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

35. The School Admissions Code (“the Code”) contains requirements and guidelines about the arrangements by which children are admitted to maintained schools in England. Local education authorities (“LEAs”), governing bodies of maintained schools and other bodies with relevant education functions must act in accordance with the relevant provisions of the Code. The Code is being amended to require admission authorities from 2011 to provide for the admission of all children in the September following their fourth birthday: currently some admission authorities only provide for younger children to be admitted to school later in the school year. It will also require admission authorities to make it clear to parents that they may request part or full-time classes for such children, until they reach compulsory school age.
36. The change to the Code follows Sir Jim Rose’s independent review of the primary curriculum in England, which was completed in April 2009. He found evidence to show that summer born children are at greater risk of poor outcomes than children born earlier in the school year. The Secretary of State subsequently gave a commitment that from 2011 all children will be entitled to start school in September after their fourth birthday, but with parents having a choice about whether their child should start school full or part-time, or access full-time provision in an outside school setting.
37. The issue of educational achievement of summer born children was considered by the Institute for Fiscal Studies (“the IFS”) in their 2007 Report, ‘When You Are Born Matters: The Impact of Date of Birth On Child Cognitive Outcomes in England’⁷. The Report found evidence that there is a significant August birth penalty in all outcomes and at every age for children in English state schools. The Report says that the penalty is largest when a child first enters school, and although it declines over time, is still significant at ages 16 and 18 (Chapter 5). However, the Report also looked at which of the factors (absolute age, age of starting school, length of schooling, age position) drive differences in cognitive outcomes between August and September born children (Chapter 7). The IFS say that the results of their work on that question suggest that the major reason why August-born children perform significantly worse than September born children in the Key Stage tests is simply that they are almost a year younger when they sit them. The Report says that although their results show that August born children do benefit from starting school earlier rather than later (for example, in the September, rather than the January or the April, of their reception year), this makes only a modest positive contribution to test scores and only at early Key Stages.
38. The proposed changes in the Code were subject to public consultation. There were 496 responses to the consultation, of which 62 per cent objected to the proposals⁸. The EM says that the vast majority of local authorities who responded welcomed the proposal as around two thirds of local authorities already provide for the September admission of four year olds and the

⁷ ‘When You Are Born Matters: The Impact of Date of Birth on Child Cognitive Outcomes in England’, Institute of Fiscal Studies (Claire Crawford, Lorraine Dearden and Costas Meghir) 24 October 2007

⁸ The results of the consultation are set out in the Explanatory Memorandum at paragraph 8.1

amendment to the Code would provide greater consistency when children move areas during their reception year. But the concerns raised during the consultation appear quite broad, and included: that the proposal would lead to a loss of parental choice; admitting children to school at the age of 4 was too early; the proposals would adversely affect nurseries and the private, voluntary and independent (PVI) sector; and concerns around funding issues. As the consultation analysis is not yet available, it has not been possible for the Committee to consider the issues raised in detail. However, given the high percentage of objections to the proposals, and the previous findings by the IFS, the House may wish to satisfy itself that the Government has chosen the correct policy option for the problem under consideration.

39. The Impact Assessment (IA) for the Code says that the Government estimates that the changes may result in an additional 7300-7400 primary school children. This estimation range is based on the percentage of parents that said they would take up an early offer if available as identified by research completed as part of the review conducted by Sir Jim Rose⁹. The IA sets out the detailed methodology followed to reach the estimates and the resulting costs for Government¹⁰. However, the IA also acknowledges that the method of estimation means that the figures are subject to significant uncertainty. The House may therefore wish to seek assurance that effective processes are in place to verify these estimations in advance of the Code coming into force.

OTHER INSTRUMENTS OF INTEREST

Draft National Assembly for Wales (Legislative Competence) (Environment) Order 2010

40. This draft Order provides the National Assembly for Wales with legislative competence which will enable it to pass Assembly Measures in relation to waste, pollution and nuisances. The draft Order uses a broader definition of nuisance than is used elsewhere, to ensure that the Assembly's competence would be wide enough to enable it to address all of the local environmental issues identified by the Welsh Assembly Government in discussions about the draft Order, including litter, fly-tipping, graffiti, dog fouling, fly-posting, noise pollution and light pollution. The Wales Office have provided further information on this point which may be of interest to the House (see Appendix 2).

Draft Welfare of Racing Greyhounds Regulations 2010

41. These draft Regulations will introduce a set of minimum welfare standards for all greyhound racing tracks in England and will require tracks to be licensed by the local authority in respect of those standards. There are approximately 33 greyhound racing tracks in England. 26 are regulated by the Greyhound Board of Great Britain (GBGB), the rest operate independently of the GBGB. The GBGB enforces its own welfare standards at its affiliated tracks, but there is no similar enforcement of welfare

⁹ Impact Assessment page 3

¹⁰ Impact Assessment Annex 1, page 10

standards at the other tracks. The GBGB is seeking accreditation from the United Kingdom Accreditation Service (UKAS)¹¹ to enforce, at a minimum, the standards required by these draft Regulations. This would make the GBGB affiliated tracks exempt from the licensing requirement: the policy focus of the draft Regulations is therefore the independent tracks. Given the important role of local authorities, the House may be interested in the concerns expressed by the Local Authorities Coordinators of Regulatory Services (LACORS) that there is no offence framework in these draft Regulations, but also the Department for Environment, Food and Rural Affairs (Defra)'s explanation of the policy. The Committee also received evidence on the Regulations from Lord Lipsey and from the Royal Society for the Prevention of Cruelty to Animals (see Appendix 3).

Draft Code of Practice on the Welfare of Cats

Draft Code of Practice on the Welfare of Dogs

Draft Code of Practice on the Welfare of Horses, Ponies, Donkeys and their Hybrids

42. These three Codes of Practice have been made by Defra under the provisions of the Animal Welfare Act 2006 (“the 2006 Act”). The 2006 Act introduced a statutory duty of care on all owners and keepers to provide for the welfare needs of their animals, and the purpose of these Codes is to provide practical guidance on how to meet that duty of care. The Government will publicise the launch of the Codes through the press and media, and copies of the Codes will be freely available to download from the Defra website.

Agriculture (Cross Compliance) Regulations 2009 (SI 2009/3365)

43. These Regulations revoke and replace previous regulations on cross compliance from 2005. Essentially cross compliance requires farmers to meet environmental and other standards as a condition for certain subsidy payments including the Single Payment Scheme (SPS). These Regulations implement certain changes required by the revised underlying EU legislation (set out at paragraph 7.2 of the EM) and other changes that the Government believes will simplify and consolidate a number of existing standards and reduce the burden on farmers (see out at paragraph 7.3 of the EM). The Rural Payments Agency (RPA) has a role under these Regulations, and in response to questioning from the Committee on that Agency's recent problems, Defra has provided a detailed explanation of how the Regulations will impact on the RPA (see Appendix 4).

¹¹ UKAS is the sole national accreditation body recognised by government to assess, against internationally agreed standards, organisations that provide certification, testing, inspection and calibration services.

**PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL INVESTIGATORS) (AMENDMENT) ORDER 2009 (SI 2009/2707):
GOVERNMENT RESPONSE AND OTHER CORRESPONDENCE**

44. This SI was highlighted as an instrument of interest to the House in the 31st Report of Session 2008-09. The Committee had written to the Permanent Secretary at the Home Office to raise concerns about the lack of consultation on the SI. The Report included a copy of the response from the Permanent Secretary to those concerns. Following a subsequent debate on the SI in the House, the Government issued a Written Statement to clarify some of the points made by the Government in the debate (HL Debates, 14 December 2009, cols 211-213). The Written Statement included a comment to the effect that the Merits Committee would clear a subsequent Home Office Circular on the use of the powers.
45. In a subsequent exchange of correspondence between the Government and the Committee, the Committee reiterated that it is willing to publish a letter from the Government containing a general update on the Order if the Committee thinks it would be of interest to the House, and the Government accepted that the role of the Merits Committee is not to assess or clear the content of Departments' draft circulars. The correspondence is printed in Appendix 5.
46. The Committee has also been copied into an exchange of correspondence on the SI between the British Bankers' Association (BBA) and the Home Office. The BBA expresses its concern that there was no consultation and raises some substantive points about the expansion of the 'Accredited Financial Investigators (AFIs)' cohort. These include that there will be an increase of requests under the Proceeds of Crime Act and that the expansion in the number of bodies allowed to appoint AFIs could lead to a number of low quality or 'spurious' requests. As the material may be of interest to the House, it is printed in Appendix 6.

**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 requiring affirmative approval

Draft Asylum (Designated States) Order 2009

Draft Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2010

Draft National Assembly for Wales (Legislative Competence) (Environment) Order 2010

Draft National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010

Draft Welfare of Racing Greyhounds Regulations 2010

Draft Instruments subject to annulment

Draft Amendments to the Guidance issued under section 182 of the Licensing Act 2003

Draft Code of Practice for the Welfare of Dogs

Draft Code of Practice for the Welfare of Cats

Draft Code of Practice for the Welfare of Horses, Ponies, Donkeys and Their Hybrids

Instruments subject to annulment

SI 2009/3144 Bolton Metropolitan Borough Council (School Meals) Order 2009

SI 2009/3156 Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2009

SI 2009/3157 INSPIRE Regulations 2009

SI 2009/3160 Nitrate Pollution Prevention (Amendment) Regulations 2009

SI 2009/3175 Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) (No. 2) Order 2009

SI 2009/3176 Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009

SI 2009/3177 Non-Domestic Rating (Stud Farms) (England) Order 2009

SI 2009/3182 Companies Act 2006 (Substitution of Section 1201) Regulations 2009

SI 2009/3216 Waste Electrical and Electronic Equipment (Amendment) (No. 2) Regulations 2009

SI 2009/3220 Road Vehicles Lighting and Goods Vehicles (Plating and Testing) (Amendment) Regulations 2009

SI 2009/3221 Road Vehicles (Construction and Use) (Amendment) (No. 4) Regulations 2009

SI 2009/3222 Medicines (Products for Human Use) (Amendments relating to Fees for Variations) Regulations 2009

SI 2009/3228 Social Security (Miscellaneous Amendments) (No. 5) Regulations 2009

SI 2009/3229 Social Security (Miscellaneous Amendments) (No. 6) Regulations 2009

SI 2009/3230 Food (Jelly Mini-Cups) (Emergency Control) (England) Regulations 2009

SI 2009/3231 Price Marking (Amendment) Order 2009

SI 2009/3233 Legal Services Act 2007 (Approved Regulators) Order 2009

SI 2009/3235 Food Enzymes Regulations 2009

SI 2009/3236 Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2009

- SI 2009/3237 Yorkshire Coast College of Further and Higher Education, Scarborough (Dissolution) Order 2009
- SI 2009/3238 Food Additives (England) Regulations 2009
- SI 2009/3239 Braintree College (Dissolution) Order 2009
- SI 2009/3243 Quality Contracts Schemes (QCS Boards) (England) Regulations 2009
- SI 2009/3244 Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009
- SI 2009/3245 Public Service Vehicles (Registration of Local Services) (Quality Control Schemes) (England and Wales) Regulations 2009
- SI 2009/3246 Quality Contracts Schemes (Application of TUPE) Regulations 2009
- SI 2009/3247 Quality Contracts Schemes (Pensions Protection) Regulations 2009
- SI 2009/3248 Quality Partnership Schemes (England) (Amendment) Regulations 2009
- SI 2009/3249 Legal Services Act 2007 (Maximum Penalty for Approved Regulators) Rules 2009
- SI 2009/3250 Legal Services Act 2007 (Commencement No. 6, Transitory, Transitional and Saving Provisions) Order 2009
- SI 2009/3251 Food Supplements (England) and Addition of Vitamins, Mineral and Other Substances (England) (Amendment) Regulations 2009
- SI 2009/3255 Official Feed and Food Controls (England) Regulations 2009
- SI 2009/3259 Public Lending Right Scheme 1982 (Commencement of Variation) Order 2009
- SI 2009/3263 Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009
- SI 2009/3266 Motor Cycles Etc. and Tractors Etc. (EC Type Approval) (Amendment) Regulations 2009
- SI 2009/3267 Occupational Pensions (Revaluation) Order 2009
- SI 2009/3268 Child Benefit and Guardian's Allowance (Miscellaneous Amendments) Regulations 2009
- SI 2009/3269 International Joint Investigation Teams (International Agreement) Order 2009
- SI 2009/3275 Environmental Damage (Prevention and Remediation) (Amendment) Regulations 2009
- SI 2009/3277 Biofuel (Labelling) (Amendment) Regulations 2009
- SI 2009/3283 Petroleum Licensing (Amendment) Regulations 2009
- SI 2009/3307 Blood Safety and Quality (Modification) Regulations 2009

SI 2009/3312 Community Legal Service (Financial) (Amendment No. 3) Regulations 2009

SI 2009/3365 Agriculture (Cross compliance) (No. 2) Regulations 2009

HC120 Statement of Changes in Immigration Rules

Instruments subject to annulment (Northern Ireland)

SR 2009/391 Police Reserve Trainee (Amendment) Regulations (Northern Ireland) 2009 (GO)

SR 2009/393 Police Service of Northern Ireland Reserve (Part-Time) (Amendment) Regulations 2009 (GO)

SR 2009/404 Insolvency (Amendment) Rules (Northern Ireland) 2009 (GO)

APPENDIX 1: SOCIAL SECURITY (HOUSING COSTS SPECIAL ARRANGEMENTS) (AMENDMENT) REGULATIONS 2009 (SI 2009/3257) AND DRAFT JOB SEEKER'S ALLOWANCE (SKILLS TRAINING CONDITIONALITY PILOT) REGULATIONS 2010

Information from the Department for Work and Pensions on the Social Security (Housing Costs Special Arrangements) (Amendment) Regulations (SI 2009/3257)

Q1. The SSAC commented on the lack of detail in the information that the Dept could provide about the numbers and groups who might be affected (paragraph 23 page 8 SSAC document). At the session with the Minister on 3 February the Committee made it very clear that they expected to see estimates of numbers affected and costs in the EM so that we could set the policy change in context. While it is possible that the change does not exceed the £5m threshold for producing a full IA we would have expected to have some indication in the EM of the numbers and costs involved.

A1. The EM specifically addresses the changes introduced in this Statutory Instrument (S.I. 2009/3257) rather than those introduced in the “principal Regulations” through S.I. 2008/3195 in January 2009. The SSAC reference at paragraph 23, page 8 of the Act paper relates to the principal Regulations, which were also considered by the Merits of Statutory Instruments Committee at the session with (the then) DWP Minister Kitty Ussher 3 February last year.

Information on the numbers affected and related costs is very limited and so while we understand the need to set the change in context, what we are able to provide is, necessarily, limited. Further information is set out below on the potential numbers affected by the principal and amending legislation.

Our current estimate is that around 60,000 people will receive additional support each year through having a reduced waiting period, some of whom will also benefit from the increased capital limit. The Standard Interest Rate used as the basis for the Support for Mortgage Interest calculation has been frozen at 6.08% since November 2008. The Chancellor announced in the Pre Budget Report on 9 December 2009, that the rate would be frozen for a further six months. This increased support will continue to benefit the entire SMI caseload, around 220,000 homeowners (May 2009 figures), during the recovery, including those pensioners receiving SMI as part of Pension Credit.

A full impact assessment has not been provided in accordance with Government guidance which states that “An Impact Assessment must be produced for any legislative proposal with a significant impact on business, the third sector or the environment, or which imposes costs of more than £5m on the public sector...” As mentioned at paragraph 10.2 of the EM, we judge that the impact on the public sector is negligible. Although Jobcentre Plus is expected to be the main contact point for those seeking advice on these changes we recognise that customers may choose to seek advice from other organisations. The Department will ensure that clear guidance on the application of these changes is made widely available so that any potential burden on other agencies is kept to a minimum.

Q2. You have received correspondence from about 30 people who were excluded because of exceeding the income provisions and a further small number who were in the waiting period at 4th January who have been disadvantaged by the principal regulations and you state that you are going to pay any shortfalls from an extra-statutory scheme.

a) These are likely to be the articulate tip of the iceberg - what are you doing to identify how many cases there are in total?

b) what is the estimated number of cases?

A2. Paragraph 7.2 of the EM explains that the changes made by S.I. 2009/3257 extend the new rules to “new claimants who made their claims on or after 5th January 2009 who were or are

not entitled to [a relevant] benefit before qualifying for housing costs because their income or capital exceeds permitted levels.” However, the EM goes on to mention (paragraph 7.3) that we have no plans to apply the new rules introduced in the principal Regulations to those who were in a waiting period at 4th January but who were not at that time in receipt of a relevant benefit.

As noted in paragraph 7.4 of the EM the Department intends to set up a scheme to address potential shortfalls, details of which will be published in due course. The Department has details of the 30 or so people who have been in contact, directly or indirectly. In addition, Jobcentre Plus also has records of the majority of people who are likely to benefit from the change in regulations and who may therefore qualify for an extra-statutory payment. These are people whose income exceeded their requirements when they made their initial claim to benefit and whose qualifying period started on or after 5th January 2009. The first priority will be to ensure that benefit is paid correctly to these people, under the new rules, from 5th January 2010 when the amending Regulations first come into force. Once entitlement to statutory benefit has been established and paid, a special exercise will be run to consider and pay extra-statutory payments.

The total number of people listed on the clerical records kept by Jobcentre Plus offices is 2,263. The Department is confident that these records cover the majority of those who are potentially eligible for a payment. But it will consider what more might be done to identify any others, if it becomes clear that these records are significantly incomplete.

Q3. *What are the estimated sums that the scheme is likely to have to pay out a) per person b) in total?*

A3. It is not possible to estimate the amount that might be payable per person, or in total, as this will depend on: the person’s individual circumstances (financial and other) between 5th January 2009 and 4th January 2010; the amount of their qualifying loan for Support for Mortgage Interest (SMI) purposes; and their notional entitlement to SMI during that period. You will also want to bear in mind that *some people may not be entitled to an extra-statutory payment at all* if, for example, they returned to work within 13 weeks of making their initial claim i.e. during their SMI waiting period.¹²

It is possible to calculate the maximum extra-statutory payment for someone with a £200,000 mortgage who qualified for help under the SMI rules on the full amount of that loan. Assuming that their income was *exactly* the same as their basic benefit entitlement the maximum payable would be around £7,600. This calculation assumes that the person had been receiving help under the old rules since 5 January 2009 using a capital limit of £100,000 and that a 39 week waiting period was appropriate. So the person would potentially be entitled to an additional 26 weeks of SMI at £233.85 per week based on the interest (calculated using the standard rate of 6.08%) payable on a £200,000 loan to reflect a shortened waiting period of 13 weeks rather than 39 weeks. Additionally a further 13 weeks of SMI for the remaining 13 weeks of the year at £116.93 per week, based on the increased capital limit of £200,000, would be payable to top up what would already have been paid - a total of £7,600.

However, very few people are likely to have circumstances that fit exactly those outlined above as most will have a level of income that exceeds the basic benefit rate and so only qualify for partial help towards their mortgage interest payments. Weekly awards are therefore likely to be lower than the maximum shown above and would be expected to be more in line with the average weekly award of SMI.

¹² The weekly SMI payment has calculated by applying the standard rate of interest to the capital amount of the mortgage and dividing this by 52.

Based on latest figures available from May 2009 the average weekly award of SMI is:

	Jobseeker's Allowance	Income Support	Pension Credit	All
Average Award	£ 74.88	£ 51.06	£29.41	£41.28

Q4. *The original regs set the interest rate at 6.08% for 6 months, and it was announced in the recent PBR that it would continue at this level for a further 6 months (Act Paper paragraph 36). This was thought to be overly generous when the first regulations were discussed in comparison to the mortgage rate. Given that the benefit is called Support for Mortgage Interest which implies that only the interest should be covered - what is the estimate of current outturn - ie how much is the average claimant receiving above the actual level of interest due on the sum mortgaged (up to 200k)?*

A4. DWP does not have detailed information available on the individual interest rates payable by those receiving SMI and so is unable to provide information on the proportion of SMI recipients with mortgage interest rates above, at or below 6.08%. However, following the decrease in Bank of England base rates over the last year, we believe that the majority of customers are likely to have interest rates that are below 6.08%. It is not necessarily the case that SMI payments have helped to reduce a claimants' outstanding capital on their mortgages given that there is a waiting period before SMI can be paid and that some SMI recipients may well have accrued mortgage arrears before claiming benefit. The December 2009 Pre Budget Report confirmed that "the standard interest rate used to calculate SMI will be maintained at 6.08 per cent for a further six months, benefiting around 220,000 homeowners. Once the freeze ends, the Government intends to move towards a fairer, more affordable approach, that more closely reflects mortgage interest rates."

In paragraph 7.5 of the EM it explains that the changes made by this instrument mean that claimants who make a linked claim for the same or different benefit without a break in claim will no longer be able to receive housing costs under the principal Regulations, in particular the interest on capital up to £200k.

Q5. *How long and interruption is required to break a claim? (is it 13 weeks?)*

A5. Paragraph 7.5 of the EM explains that those who move from one benefit to another without a gap in entitlement will no longer be able to receive housing costs calculated using the new rules set out in the principal Regulations. For example, lone parents who are required to move off income support and claim jobseeker's allowance but are continuously in receipt of benefit were not intended to be able to gain from the increased capital limit of £200,000. From the outset, the policy intention has been to apply the new rules to those making new and unlinked claims on or after 5th January 2009 to the SMI working age qualifying benefits rather than to those transferring from one qualifying benefit to another without a break in their benefit entitlement. Any period where a claimant is neither in receipt of, nor treated as being in receipt of, benefit may constitute a "break in claim".

There are a number of different linking rules depending on the claimant's circumstances. Further information on these is set out below.

What are the linking rules?

Breaks in entitlement to JSA, ESA (IR) or IS can affect a customer's housing costs. But, there are special rules under which customers can be treated as continuously entitled to JSA, ESA(IR) or IS in certain circumstances. For example:-

- There is a 12 week linking period which applies to customers who make repeat claims to income-related ESA, IS or JSA. This rule links the housing costs in

claims made within 12 weeks of each other as continuous so that, for example, the qualifying date for SMI is the same as it was in another earlier claim, or where a waiting period had been served in the earlier claim the amount of housing costs payable is the same as it was in that earlier claim.

- For customers or their partners who move into work or undertake programmes such as New Deal, there is a 52 week linking period where they were receiving payment of eligible mortgage interest when they left benefit to move into work or a New Deal option, an employment zone scheme or a prescribed government scheme. In such cases the customer is treated as having been in continuous receipt of benefit and receives housing costs from day one of any linked repeat claim.
- There is a 26 week linking period for customers who leave benefit because their income from either child support or a Mortgage Payment Protection Insurance policy (MPPI) exceeds the amount of benefit to which they are entitled. This linking rule applies where the customer had qualified for housing costs before the previous award of benefit stopped in the circumstances described above.
- Customers can be treated as entitled to IS, JSA, ESA for periods of more than 26 weeks where the customer or their partner is participating in certain training or attending certain courses, or where they have income from a MPPI which exceeds their applicable amount. The effect of the linking rule in these cases is that the qualifying date for SMI is the same as it was in the earlier claim, or where a waiting period had been served in the earlier claim the amount of housing costs payable is the same as it was in that earlier claim.
- There is a 104 week linking period for Welfare to Work beneficiaries who become incapable of work again within 104 weeks. This applies where a customer or their partner moves into work following a period of incapacity and is no longer entitled to benefit as a result. The effect of this linking rule is that if the customer or their partner becomes incapable of work again their position on returning to benefit is protected for up to 104 weeks and is the same as it was when they left benefit.

Q6. *When you say “no longer” does this mean that those who may have benefited erroneously for the last 12 months will have their entitlement revised downwards?*

A6. It is possible that some people may have benefited incorrectly from the new rules for some or all of the period between 5 January 2009 and 4 January 2010. Some claimants with a qualifying loan exceeding £100,000 would have had their housing costs calculated on loans up to the new capital limit of £200,000 and they will see a reduction in the amount of SMI payable once they revert to the old rules based on a capital limit of £100,000.

If so what will happen about any overpayment made (paragraph 7 page 48 of the Act Paper indicates you intend to write off any overpayments)? What are the likely numbers/sums involved in this scenario?

Paragraph 7, page 48 of the Act paper confirms that in the circumstances described no steps would be taken to recover such overpayments that arise. Information on the likely numbers of cases affected and sums involved is not available but is likely to be small.

Q7. *Just to clarify paragraph 7.6 - if someone has had their full 104 weeks mortgage interest on JSA they would only requalify if they ceased claiming JSA for 13 weeks and would, in addition, have to serve a new waiting period of 13 weeks before they could receive housing benefit again. Is this correct? Is requalification dependent on them having worked in the interim to gain NI credits?*

A7. If the two-year SMI entitlement is exhausted, SMI can be claimed afresh only where claims do not link. A waiting period of 13 weeks has to be served before SMI is payable, but the

customer would start a new period of entitlement to (another) two years SMI. Requalification is not dependent on a person working to gain NI credits.

Linked periods of receipt of SMI accrue towards the two year limit. This means that customers who leave JSA whilst in receipt of SMI, for example either to start work or participate in a welfare to work initiative could return to JSA within, for example 52 weeks and not have to serve another waiting period to receive SMI. However their separate periods of SMI would be added together across linked claims and SMI would cease when a customer had received a total of 104 weeks SMI over linked periods.

Customers making repeat claims to JSA whose claims do not link would be required to serve a 13 week waiting period to qualify for SMI but in these circumstances they would start a new period of entitlement to 104 weeks SMI.

Q8. *The SSAC report suggest that before finalising the regulations the DWP should consult with stakeholders particularly those who responded to the SSAC's inquiry such as Citizen's Advice. But the EM paragraph 8.2 says that there has been no formal consultation.*

a) What informal consultation has there been?

b) Given that you are making these changes because a number of people have written in telling you of the problems that the changes have caused them – would it not have been better to hold a public consultation to check that there were likely to be no more unintended consequences?

A8. SSAC recommended that the “resolution of outstanding policy and operational issues should include engagement with stakeholders before the regulations are finalised in order to ensure that no issues remain unresolved, and that both the content and availability of public information on these complex measures will meet the needs of customers and their advisers.”

Paragraph 8.1 of the EM confirms that DWP has not undertaken any informal consultation on the amending Regulations as they deal with certain anomalies and unintended consequences arising from the principal Regulations on which the policy position had already been settled. Any informal consultation prior to a formal response from the Government to the SSAC report would have breached protocols and the Department was keen to ensure that the amending Regulations were laid as soon as possible. Informal consultation after the publication of the Government's response on 15 December would have delayed the coming into force date of the Regulations. However, DWP officials have continued to engage with key stakeholders such as Council of Mortgage Lenders through its regular liaison meetings with these groups. As noted at paragraph 8.1 of the EM, proposed amending regulations were included in SSAC's consultation exercise together with the principal Regulations and respondents would, therefore, have had the opportunity to comment on these and any further unintended consequences as part of that consultation. Page 23 of the Act paper contains a summary of the five responses to SSAC's consultation and the points raised have been addressed in the Government's response at the beginning of the Act paper.

We considered that a further public consultation was unnecessary. This is in line with the Government's code of practice¹³ on consultation, which sets out a number of criteria. In particular, it states that “formal consultation should take place at a stage when there is scope to influence the policy outcome” and that “there is no point in consulting when everything is already settled”.

As mentioned at paragraph 9.2 of the EM we are considering how best we might publicise these changes so that customers, welfare rights advisers and others are aware of them. The Department will ensure, as it did for the principal Regulations, that comprehensive guidance is available for

¹³ (<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>)

welfare advisors and Departmental staff to ensure that customers are aware of the help available to them.

Q9. *The rules are becoming increasingly complex see for example the various conditions set out in reg 4 of this SI - how well are staff coping with the complexity - what is the estimated percentage of claims paid incorrectly due to administrative error (ie staff misinterpreting the rules)?*

A9. We agree that the legislation on housing costs is a complex area. The drafting of the amendments set out in Regulation 4 of this S.I. is necessarily complex, but had to be drafted in that manner to ensure that the policy is set out accurately. The guidance that is being produced for staff and others will clarify how and to whom these provisions apply.

Although information is available on the level of official error in Income Support and Jobseeker's Allowance for mortgage interest and other housing costs such as ground rent and service charges, it is not possible to separate out the mortgage interest elements. Information for the total monetary value of fraud and error (MVFE) on Mortgage and Housing Costs between April 2008 to March 2009 shows:

Estimated official error overpayment on Mortgage and Housing Costs

	MVFE %	MVFE £m
Income Support (IS)	0.0% (0.0, 0.1)	£4m (2, 6)
Jobseeker's Allowance (JSA)	0.0% (0.0, 0.0)	£0m (0, 1)

Source: http://research.dwp.gov.uk/asd/asd2/fem/fem_apr08_mar09.pdf

Notes:

- Estimates are rounded to the nearest £1m and presented with 95% confidence intervals, which include adjustments to incorporate some non-sampling sources of uncertainty.
- MVFE% is the estimate of the percentage of benefit expenditure overpaid
- MVFE £m is the estimate of the annual monetary value of the error and a figure of £0m for JSA indicates that the unrounded estimate is less than £0.5m. For IS a small percentage error of, say, 0.04% which would appear in the table as 0% would give an error of around £3.5m which would be rounded up to the nearest £m.
- Information for this period is not available for Employment and Support Allowance recipients, as this benefit was introduced in October 2008.

Q10. *Paragraph 12 of the EM seems very vague. In our report on the principal Regulations we stated that The Department also seemed currently unsighted on what criteria they would use to evaluate the policy (QQ13-15 & 39). Given the Committee's concern over the lack of solid data in February, it would be helpful to update them on what the baseline figures to be used for comparison are and how the Department plans to be able to assess the numbers of claimants who benefited from the regulations, the direct impact of the change in SMI on preventing repossessions etc.*

A10. As noted at paragraph 12 of the EM the evaluation programme of work has been scheduled for 2010 and will be completed towards the end of next year. Good progress has been made this year on developing the evidence base, which is vital to help monitor the delivery of the policy and inform the scope of the evaluation. At this stage, it is not possible to provide any specific detail, including baselines, as the plans are yet to be finalised and agreed, although we hope that this will be done early 2010. But the overall structure is consistent with the Department's previously stated aims of evaluating each measure to establish the number of

claimants affected the extent of any benefit and whether there were particular groups that have been disproportionately affected. It is intended that the Department will use existing administrative data sources from the period 2008 onwards, along with published National Statistics, to inform the evaluation.

However, as set out at page one of this response, our current estimate is that around 60,000 people will receive additional support each year through having a reduced waiting period, some of whom will also benefit from the increased capital limit. The freeze of the Standard Interest Rate at 6.08% will continue to benefit the entire SMI caseload of around 220,000 homeowners.

As noted in paragraph 45 of the Act paper the Council of Mortgage Lenders has cut its forecast for the number of repossessions this year to 48,000. Having anticipated 75,000 repossessions in 2009 in last year's housing market forecasts, the forecast had already been revised down to 65,000 in June, but is now being cut again in recognition of lender forbearance, government measures to assist homeowners and the beneficial effect of continuing low interest rates which are helping most borrowers facing difficulty to keep their homes.

***Q11.** The day before the evidence session we received a letter from the Minister, stating that amending Regulations would need to be brought forward shortly "to remedy some unintended effects" in the principal instrument. We note that the SSAC response encompassing both the principal and amending regulations was sent on 13 May 2009. Why then were the amending regulations not laid before Parliament until 15 December, once again on the cusp of Recess preventing any scrutiny occurring before they come into effect?*

A11. We acknowledge that the SSAC report, which consulted on the principal Regulations and amending Regulations, was sent to officials at the end of May 2009 for consideration by the then Secretary of State, James Purnell. Since then, a new Ministerial team took charge of DWP in June and has considered these regulations in the light of other measures to help struggling homeowners. In his Pre-Budget Report on 9 December 2009 the Chancellor announced that the Standard Interest Rate used as the basis for the Support for Mortgage Interest calculation would be frozen at 6.08% for a further six months.

Whilst it was important to get the amending regulations laid as quickly as possible, in order to ensure that the beneficial measure comes into force early in the New Year, it was equally important that we got these regulations right. This is a complex policy area and we needed to ensure that the regulations reflected our policy objectives and that we took the time to consider the comprehensive SSAC report before drafting them.

We are convinced that the time taken to fully consider the policy design will ensure that the regulations deliver the much needed help for struggling homeowners in the current economic downturn as intended from the outset.

The Regulations were laid on 15 December 2009 and are due to come into force from 5 January 2010.

January 2010

Information from the Department for Work and Pensions on the Draft Job Seeker's Allowance (Skills Training Conditionality Pilot) Regulations 2010

Q1. *The 11 pilot schemes will be run in areas that are already running the FND schemes – so how will you be able to distinguish the effects of this new pilot from effects of the FND schemes in improving the claimant's chances of obtaining work?*

A1. We have designed the pilots so that we can distinguish the effects of the pilot from the enhanced jobseekers regime and FND, as well as other schemes.

Evaluation of the pilot will use the random assignment approach – the most statistically robust method of estimating the impact of a programme or intervention. Customers will be allocated to control and treatment groups and we will then be able to compare the non mandated customers in the control group to those in the treatment group and measure the impact on employment outcomes.

Q2. *How much value-added do you anticipate these new regulations providing - in terms of what percentage more people do you expect to get jobs under this scheme than under the FND scheme?*

A2. The purpose of this pilot is to specifically test whether referring jobseekers to training under the threat of sanction actually leads to improved job outcomes.

In terms of the increase in expected job outcomes this is quite difficult to estimate and is one of the things we hope to fully explore in the pilot. As a baseline we have assumed that for every 10 additional individuals who complete provision because of conditionality, an additional year of employment will be generated.

Q3. *How much is this additional training going to cost? (the SSAC memo indicates about 0.2m net costs and £2m programme costs is that correct?)*

A3. There will be no additional training costs for providing provision. The projected 5% increase in attendance rates will ensure maximum take-up across the full range of existing suitable provision: giving more flexibility to personal advisers and more choice to customers. The result of this could be that some voluntary learners are displaced from LSC provision.

Q4. *How many claimants do you expect to undertake it (SSAC memo paragraph 97 indicates 2000 – is this per annum or over the duration of the pilot)?*

A4. The initial 2000 was based on the assumptions around additional take-up (5% increase) across all provision in the 11 JCP districts over the whole 18 months of the pilot. We are currently working with the Learning and Skills Council (LSC) and Business Innovation and Skills (BIS) to develop revised projections.

Q5. *Given the current high levels of unemployment is this the right time to commit further resources when claimants may not be able to find work at the end of it simply because of the low number of employment opportunities in their area?*

A5. The economic downturn makes it even more important to ensure that people have the right skills to help them move into a new job and effectively compete in the labour market as quickly as possible. We need to help those looking for work to retrain or develop their skills so that they can quickly move back into sustainable employment, either in their existing sector or a brand new one. The analysis of the occupations of customers who had been unemployed for over 6 to 12 months in January-March 2009 does not suggest any major change from the same period in 2008.

ONS's vacancy survey (6/11/09) estimates an average of 432 thousand unfilled vacancies in the three months to November 2009, up a thousand on the quarter.

The economic downturn and resulting uncertainties around the job market make it more imperative that we measure non-employment outcomes than ever. We still want to look at sustainable employment but will also be exploring distance travelled measures.

- starts on training;
- completion of training;
- leaving training to get a job;
- job outcomes following training;
- sustained job outcomes; and
- qualifications gained.

On resources, some 3000 extra advisers have been recruited since the beginning of the economic downturn.

Q6. *What are the sanctions for those who do not comply?*

A6. If the Decision Maker decides that the customer has failed to satisfy one of the criteria for skills conditionality without good cause they will apply a “fixed sanction” to their benefit. The customer's benefit is stopped (or in the case of a joint claim reduced) for 2 weeks, and for 4 weeks for any subsequent fixed sanctions applied within the same 12 months. This relates to fixed sanctions incurred in connection with other, non-skills related activities. Customers will have full rights to appeal against decisions under existing arrangements.

Subject to the satisfaction of certain established criteria, jobseekers may be entitled to hardship payments during the period of a sanction under the existing hardship regime.

We have accepted the SSAC recommendation around the role of sanctions and will be reaffirming to advisers the importance of following specific instructions relating to procedures in connection with the pilot, in particular where a doubt arises around entitlement to benefit.

Q7. *Given that there were doubts expressed by the Committee and the SSAC when the FND regulations were laid about Jobcentre Plus' practical ability to deliver this programme effectively in a period of rapidly rising unemployment – how has the main scheme performed in the last year in improving the employment prospects of the unemployed? And in meeting the deadlines set for reviews etc with PAs.*

A7. The new Jobseekers regime has been live in around half of the country since April (the JSA Skills Training Conditionality pilot will be piloted in these areas). The remaining areas will begin to go live from April next year. The Department for Work and Pensions has commissioned the Policy Studies Institute to lead a large scale and comprehensive evaluation on the effectiveness of the new regime and the additional measures that have been introduced this year in response to the economic downturn. A report will be published on early findings of these changes in the New Year.

Jobcentre Plus has an ‘Interventions Delivery Target’ to carry out specified labour market interventions in a given time, in 85% of cases. The latest published data shows data for August. The target for conducting reviews on time covers (a) conducting interviews for lone parents within 3 months of them becoming due; and (b) conducting the main JSA interventions at 13, 26 and 52 weeks within 6 weeks of the prompt being generated. The ‘Year to Date’ figures for the JRFND areas for August showed that these targets had been met in 90.8% cases.

Q8. *Will the staff have the capacity to cope with further new procedures at a time when the FND scheme is still bedding in?*

A8. Skills conditionality does not place a great operational burden on Jobcentre Plus. It fits very well with the refreshed Jobseeker's Regime and flexible New Deal (JRfND) which, along with the need to test in consistent conditions, is why all areas selected for the pilot are already

operating JRfND (and Integrated Employment and Skills). Skills conditionality mirrors the increased levels of conditionality and support that JRfND brings at Stage 3 (six months stage of JSA claim).

Q9. *How does the different handling of the two sample groups measure up to legal requirements against discrimination – is there any scope for challenge from the treatment group for example under ECHR Article 4 (re forced labour)?*

A9. In this pilot we are not denying any customers access to a service; the control group will have the same access to training and financial support as the treatment group. The Equality Impact Analysis suggests that the disadvantaged group most affected by this policy is ethnic minority groups as they are more likely to be unemployed at six months, to have no qualifications (as a proxy for low skills) and to have been fast-tracked to stage 3. However, as all customers will be randomly assigned according to their National Insurance number, they will not be mandated purely on the basis of their first language - so this will not be direct discrimination

The aim of this pilot is to target those with low skills in the Integrated Employment and Skills trail areas and that means that we will be offering more support to people from ethnic minority communities to help them gain the skills they need to help them move into sustainable employment.

In relation to the Article 4 query – as this is a training course and not work or employment it is questionable if this article is invoked in the first place. Financial sanction I.e. loss of benefits, will apply where people fail to take up training, but this is only for a fixed amount of time, and some benefits will still be paid if hardship applies.

Consultation

Q10. *At paragraph 8.1 of the EM you state that DWP would have liked to have conducted a full consultation specific to this pilot but the time constraints for this pilot did not permit this. – what are these time constraints?*

A10. Ready for work: full employment in our generation (2007) contained a summary of the responses to the Green Paper In work, better off: next steps to full employment. The responses to themes of rights and responsibilities were generally positive and the general view was that offering more support and asking more from customers in exchange was acceptable as long as it was fair. The emphasis on skills was also welcomed, with many commenting that fundamental skills needs should be addressed from day one. Subsequently, the intention to pilot from 09/10 was announced, with a planned go live for January 2010.

The final SSAC meeting took place in July 09 and the SSAC consultation ended 3 August 2009 with the report to the Secretary of State in September 2009. We would have liked to engage in a widespread DWP consultation but could not do that alongside the SSAC consultation. Due to the legislative requirements and the need to put delivery plans in place for April 2010, we were not able to hold a separate full consultation. However, in No one written off (2008) [as detailed in Q12 below] people were given the opportunity to comment on pilot proposals.

Q11. *The SSAC, who are broadly in favour of the FND scheme, said the pilot should not proceed – we note that you have delayed commencement in response to the SSAC's concerns but what are your grounds for going forward nonetheless?*

A11. Although SSAC's advice was not to proceed they did make several recommendations should the pilot go ahead. Of these five recommendations we have accepted three:

- stakeholders to be given assurances that resources are in place; preparations made and training undertaken to ensure effective operation in the field; (as a result of these we have delayed the start date until April 2010);
- systems should be put in place to monitor and manage the level of PA discretion within the pilot; (addressing this by ensuring we give clear guidance and tools for

PA's to refer to, and by frequent monitoring of the randomisation process to identify potential biases)

- customer information strategy to be put in place offering complete and clear information for customers and staff about pilot design including the role of sanctions.

The grounds for going forward with the proposals are so that we can assess whether requiring jobseekers to attend training leads to improved outcomes. We know that even where customers have a training need they do not always take up or complete provision to address that need. The design of this pilot concentrates on providing individuals with the skills they need to obtain, sustain and progress in work, which may or may not lead to a qualification.

***Q12.** You state that skills conditionality was referred to in No one written off and more respondents objected (50%) than endorsed the proposal (40%). In the SSAC consultation - although some were supportive certain significant respondents such as the TUC objected. In the light of significant doubts expressed what are your grounds for going forward nonetheless?*

A12. Of the 50% of respondents who objected to the proposals, 40% were concerned about the effect this may have on claimants with mental health issues. As claimants with a long history of mental health issues are not likely to be on Jobseeker's Allowance, the risk of harm to this customer group is greatly minimised and therefore should not be a major factor against the pilot

Jobcentre Plus has very clear guidance that people with disabilities (not just mental health issues) that have a significant barrier to the type of employment sought should be referred to the Disability Employment Adviser for advice and appropriate help. This should ensure that customers with learning difficulties and disabilities will not be subject to sanctions. The DEA will also exempt customers with severe learning difficulties or disabilities from mandatory programmes where participation will not be beneficial to that person because of their particular learning difficulty or disability. This means that an adviser will have to take a view, supported by very clear guidance and training, as to whether or not the training would be appropriate for each individual jobseeker.

January 2010

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON MERITS OF
STATUTORY INSTRUMENTS

TUESDAY 12 JANUARY 2010

Present	Butler-Sloss, B	Methuen, L
	Deech, B	Rosser, L (Chairman)
	Hart of Chilton, L	Scott of Foscote, L
	James of Blackheath, L	Thomas of Winchester, B

Examination of Witness

Witnesses: HELEN GOODMAN, a Member of the House of Commons, Parliamentary Under Secretary; MR PAUL HOWARTH, Deputy Director, Housing Benefit Strategy Division; Ms CAROLINE CROWTHER, Deputy Director, Partnerships Division, Employment Group; and MR JOHN CRANE, Deputy Director, Legal Services, Department for Work and Pensions, examined.

Q1 Chairman: Could I first of all thank you very much indeed, Minister, for coming to talk to us this afternoon? As you know, it is regarding concern over two recent statutory instruments. Before I go any further, could I apologise for the layout of the room? It is a most unfortunate situation that we appear to be so far apart! Would you like to introduce your team to us before we start?

Helen Goodman: Thank you very much. Let us hope that the layout of the room is not a metaphor for the dialogue this afternoon! On my right is Mr Crane, who is the senior lawyer who has been involved in preparing these documents. On my left is Mr Howarth, who is the lead policy official on the housing policy area, and then Caroline Crowther, who will help to provide support on the second statutory instrument about the regulations on jobseeker's allowance ("JSA").

Q2 Chairman: I wonder if I could start by making one or two comments before moving on to the first question, which is on the housing costs amendment regulations. At the conclusion of our last oral evidence session with a DWP minister, which was with Kitty Ussher almost a year ago, the then Chairman of the Committee said, "If the information you have now given us in response to the questions had been in the Explanatory Memorandum I think our time would have been saved and yours certainly would have been. It is not just a nit-picky point; it is about Parliament being sighted so it can do effective scrutiny to see what is the policy intent, who it will affect, is it affordable, will it work, and how will it be reviewed. Those are what our terms of reference are". Yet here we are again, because in our view the DWP repeatedly fails to provide this Committee with sufficient information to allow it to do the job that the House of Lords set it up to do on behalf of the House.

On one of the SIs, the one on housing costs, the issues seem to us to be largely procedural, about timing, numbers affected and impact; and on the other, which is on skills conditionality, the questions are more to do with policy. Following the evidence session that we had with Kitty Ussher last year, your permanent secretary engaged to undertake a training programme to improve the overall standard. Our own staff have participated in your departmental training courses and the DWP has produced some good Explanatory Memoranda, which demonstrate that the department is aware of the standards that are required. However, we continue to be frustrated with your department because of what we regard—and I put it bluntly—as the variable quality of the material it produces. As I say, it is a matter that we did draw to your attention and have drawn to your attention before, in a letter to your secretary of state in 2008, and also to Kitty Ussher when she appeared before the Committee last year. It seems to us that the fact that in our view—and I appreciate you may well contest this—the department allowed the two examples under discussion today to be laid, and laid on the penultimate day of the term, both having had adverse reports from the SSAC, both having Explanatory Memoranda which appeared to be deficient, leading to our staff having to write further letters to seek further information and get further responses, and both modified schemes that we reported on about a year ago, in the light of that, it seems to us that—and I put it bluntly, because I do want to get over the feelings of the Committee—there does appear to be continued flouting of the standards that the rest of Whitehall generally operates to. I wanted to say that at the beginning, Minister, because I wanted you to know that it is not the case that we have come across these two most recent statutory instruments and decided that we wanted to have this

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discussion with you; it is part of a process that seems to have been going on for some time now with your department over comments that we have made in the reports that we give to the House, over letters we have written to the minister, and over previous sessions like this. It therefore appears to us to be a continuing issue and I wanted to say that to you at the beginning. Unless there was something you particularly wanted to say in response to what I have just said, and we are more than willing if you do, it would be my intention to move on to the questions. However, maybe you would wish to respond to what I have just said.

Helen Goodman: Yes, please. Of course, I want to begin with a very sincere apology for the performance of the department on this occasion with respect to these statutory instruments. In a former role I was Deputy Leader of the House of Commons. I take parliamentary scrutiny extremely seriously and I would not want members of the Committee to think anything else. To paraphrase Oscar Wilde, to lay a statutory instrument on housing regulations on 15 December in one year might be considered a misfortune but to do it two years in a row really does look like carelessness. I want to assure the Committee that, in the light of what has happened, I have gone through all the papers over the past year and made a thorough investigation as to what has happened. Clearly the permanent secretary felt that further training was required for officials in the department, and those officials who have been involved in these pieces of work have not taken that training.¹ In addition to that, however, it seems to me that there is an issue about the management of the process and I have asked for some further work to be done to look across at all the statutory instruments which we intend to place before the House during this session, so that we can be sure that the process is managed properly. I have also raised the matter with the permanent secretary. The British constitution has many positive things about it, but there is also some awkwardness about who has management responsibility for the practical aspects of work. I have therefore also asked him to take another look at what is going on. In this instance—and I think that this will probably come out of the later discussion that we have—these issues are quite complex, so obviously drafting the documents did take longer than might normally be the case. Notwithstanding what has happened and the unsatisfactory nature of the timetabling, it is still possible, because the housing statutory instrument is following the negative procedure, for Parliament to have 40 days in which to pray against it; so the technical opportunity for the scrutiny still exists. I would not in fact anticipate that that would happen, because in terms of the substance

I think that these policies command a high degree of support across parties, across stakeholder groups and with the general public. I therefore do not think that the policy intent is so controversial.

Q3 *Chairman:* Thank you for that, Minister. I wonder if we could move on then to the questions on the specific instruments, the first one being the Housing Costs Special Arrangements Regulations. Kitty Ussher did actually write and tell us on 30 January 2009 that corrections were needed. As we understand it, the draft amending regulations were sent to the SSAC in March, and that committee issued its report in May 2009. Your officials said that the delay in laying these regulations was because “this is a complex policy area and . . . we took the time to consider the comprehensive SSAC report before drafting them”. What we would therefore like to ask is why is Parliament not being offered the same opportunity? By laying them over the recess, the department gives the impression—and I used the words “gives the impression”—of deliberately trying to minimise scrutiny.

Helen Goodman: It certainly is not the intention of the department to minimise scrutiny and, as I said a moment ago, obviously there are still 40 sitting days during which anyone can pray against the Housing Costs regulations. The fact of the matter is that both sets of regulations have been discussed in some detail both informally and formally, and the SSAC undertook a thorough consultation. We are very grateful to them and their consultation has been very helpful to us in preparing the regulations. I do not really feel, My Lord Chairman, that I can say very much more about the process than I said in answer to your first remarks.

Q4 *Lord Scott of Foscote:* Minister, the delay seems to have run from January 2009 down to the present time in correcting the regulations. One of the answers that we were given indicated that there had been both overpayments during that period, the amount of which is said to be “small”, and also underpayments. The cumulative amount of underpayments appears to be up to £17.2 million. First of all, I wonder what “small” means in this context. Some people might say that £17 million was small in the overall view of government finances. Is the amount of the overpayments more or less the same sort of amount as the underpayments? Secondly, the underpayments presumably are still due to those who were underpaid. Have those payments been made or are they going to be made? If so, when are they going to be made? Do the people to whom they are due know that they are going to be made? Finally, is there any explanation for the reason why it has taken so long to

¹ The Department has since clarified that the staff referred to had undertaken that training.

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deal with these overpayments and underpayments and to correct the errors in the original regulations?

Helen Goodman: I will try to answer your points and then I think I might ask Mr Howarth to say a little more. First of all, we received the report following the consultation and the review of the regulations from the SSAC at the end of May. Obviously we had to pay attention to that, consider and look at that, and incorporate those aspects of their report which we agreed with into the work. With the very best will in the world, therefore, I really do not think that, under the most benign circumstances, it would have been possible to have laid regulations before the autumn, because we had to insert that extra process. Turning to the groups of people who you say have been underpaid and overpaid, the first group of people are people who we recognised quite early on would be potentially receiving more money than was our original policy intention. They fall into three categories. It is people on one benefit who change to another benefit. It is people who have a short break in a claim—because at the moment we have some quite complex linking rules, so that you continue with the same level of benefit even if there is a break in your claim and the breaks are different for different benefits—but I do not know whether we need to go into that. Finally, there is a group of people on Jobseeker’s Allowance who are subject to a two-year limit, and if they had a break they would still be subject to another two-year limit. That is one group of people, therefore. The regulations that we are laying are to prevent people in those three circumstances from abusing the situation by making false or manufactured new claims by taking breaks or shifting from one benefit to another. In technical terms, those people, if they have done that, have not been overpaid; because of course the payments have been made in line with the law, even though they were not in line with the policy intention. In practice, it is possible that there are some lone parents who fall into this category, because at the same time as we are making this set of changes we are moving lone parents from Income Support onto Jobseeker’s Allowance; so there could be a very small number of lone parents who fall into this category—but it is very small. We think that we have moved 20,000 lone parents; that only some two and a half per cent of them are claiming SMI and only some two per cent of those would have mortgages over £100,000. We are therefore in the realms of 50 to 100 households here. Furthermore, these parts of the benefits system are extremely complex. A claimant would have to be quite exceptionally well informed to be able to manipulate the rules. Therefore, I do not think there is a very significant issue about that particular group of people—though of course we have to get the regulations right.

Q5 Lord Scott of Foscote: Is there no ballpark figure that you can give us for the total amount?

Helen Goodman: I was going to ask Mr Howarth that in a minute but, to carry on with my answer about the underpayments—giving him time to search through for the numbers!—as far as the underpayments are concerned, we know more about the precise numbers. These are the people who we call “excess income over requirements”. We believe that in the year January 2009 to January 2010 there are 2,263 of these people. Because it was our policy intention that this group of people should receive payments and they did not, and we cannot make retrospective legislation, we have agreed with the Treasury that in their cases they should receive extra-statutory payments. I now want to ask Mr Howarth about the estimates for the total sums at stake here.

Mr Howarth: I think that the actual estimate is probably nil for overpayments, because we are not aware of any cases that have come to light here. You will appreciate that what we have been doing with this statutory instrument is to correct potential loopholes in the system, and we are not aware that anybody who has claimed has actually done any of the things that we are trying to close off here. We therefore think that there will be very small numbers, if any, who would fall into these categories. As the Minister has said, in fact there are no technical overpayments because these regulations were in place at the time; so, although it was not the policy intention, in fact the legislation would allow those payments to be made.

Q6 Lord Scott of Foscote: So there could not be a repayment claim anyway?

Mr Howarth: No. The only period that an overpayment recovery might take account from would be from 5 January this year, when the new regulations come into place. As the Minister has said already, we are looking at probably about 2,260 cases who will benefit from the changes that we are bringing forward in this SI, and that is based on a list that Jobcentre Plus have kept of these cases so that we can correct them when the legislation comes in and put the payments into being.

Q7 Lord Scott of Foscote: As I understand it, the payments to them to bring their payments up to the amounts that the policy was intending would be, as it were, gratuitous. Has the Treasury actually agreed to that?

Mr Howarth: Yes, they have. They are extra-statutory payments because clearly the legislation at the time did not allow it, and we cannot do it retrospectively; so they are extra-statutory payments but they were within the overall agreement that was reached with

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Treasury when we introduced the principal changes in the first place.

Q8 Lord Hart of Chilton: Minister, this is the second statutory instrument correcting a DWP drafting effort which has caused either overpayments or an ex gratia payment that we have seen within a few weeks. This might strike some as being a rather cavalier attitude to taxpayers' money. My simple question, therefore, is why does the DWP not have a better system for checking that its drafting accurately reflects the policy intention before the statutory instrument is signed off by the minister?

Helen Goodman: We do have a system and it is in the process of being improved to ensure that there is proper co-ordination between the policy divisions and the lawyers, to ensure that the policy intention and the legal drafting are properly aligned, as you say they need to be. As I am sure you will appreciate, the thing about social security legislation is that it is immensely complex; so it can sometimes be very difficult to be fully alert to what all the different implications of one particular policy change might be. It is therefore particularly difficult in this department. As the permanent secretary laid out in the correspondence that he had with the Chairman of the Committee, we have now introduced a new toolkit and new training for members of staff in order to improve the performance of the department.

Q9 Lord Methuen: The Merits Committee has consistently maintained that one of the major benefits of consultation is that proposed regulations are looked at by other users who can point out omissions, flaws and unintended consequences. Despite a specific recommendation from the SSAC to do so, DWP has not consulted stakeholders on these regulations, as there is no point in consulting when everything else is settled. Given DWP's recent track record of errors, what is the basis for your confidence that these regulations will fully deliver the policy intent?

Helen Goodman: I would just like to take your Lordships back to last year and say that, obviously, last year there was not a formal consultation process, which takes three months, because my predecessors—and I think this was the right judgment and the new team of ministers is fully supportive of the view that our predecessors took—felt that it was really urgent, in a time of recession, to get this support for people's mortgages in place as quickly as possible. In the subsequent year, the SSAC have undertaken a consultation on the changes which we are proposing in the new statutory instrument, but they also looked at some of the issues in the first statutory instrument and wrapped it all up in one consultation. They also made a series of judgments of

their own and had some discussion of their own. We have taken those into account and into consideration in bringing forward the new regulations. We could have a further consultation. That would have further delayed making the changes that Lord Hart was just enjoining us to make even faster. I think that it is important to have proper processes and open procedures and to have consultation with relevant stakeholders, and for Parliament to be given an opportunity to look at legislation. Of course, all those things are important; but it is also important that we act expeditiously and that we do not waste taxpayers' money. When all is said and done, a consultation done by the SSAC about the detail and a consultation done by the department about the detail will engage a very similar group of people; so we have on this occasion relied on the good work that the SSAC have done. Because they have done that work and because further time has been taken by officials within the department, I believe that these regulations should now be in a much better state than they were a year ago.

Q10 Baroness Thomas of Winchester: Could I ask a supplementary on that? Is it not true, Minister, that the DWP have been quite reluctant to consult? You say this policy was urgent. This one may be, but quite often in the past it has not done consultation because it has always relied on the SSAC to do it. I think that you are slightly masking the situation that has often happened: that DWP does not always consult when it should. I wonder if you could comment on that.

Helen Goodman: That has not been my experience of the department. We have just published a housing benefit Green Paper, which is a proper consultation. We published an employment White Paper, and there is time for people to comment on that. When we come on to talk about the JSA regulations, there have been both Green Papers and White Papers consulting on the issues of principle at stake there. I am not sure that I would therefore share that overall perception of the department.

Q11 Baroness Thomas of Winchester: In our report on the original regulations we emphasised the importance of evaluation. In our general report on the post-implementation review of statutory instruments we made it clear that when amending regulations are laid we expect an explanation of how the original regulations are working and why changes are necessary. Why is the department still unable to provide details of any evaluation of the original regulations or even the necessary baselines? A lot of this policy is very good but the two-year cut-off is very controversial as this is the first time this has happened in any benefit. You said at the beginning that these were not very controversial. I think that is

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a very controversial piece of the policy in the original regulations.

Helen Goodman: I take that point. Let me say that my predecessor Kitty Ussher promised, a year ago when she came before you, that there would be a full evaluation and work has been undertaken to set that in hand. There will be a full evaluation by the end of the year. What we will try and do is ensure that we know more precisely who is benefiting and what the impact of those benefits will be. I would like to take the Committee down some—they are not really highways and byways, because I think they are pretty relevant to having a sensible picture of what is going on in this policy area and the nature of the statistics that we are using. We know that some 220,000 people are getting SMI at the moment. We believe that 60,000 new people are getting SMI because of the reduction in the waiting period, as compared with the situation when we had a 39-week waiting period rather than a 13-week waiting period. That number is considerably higher than the estimate that we made this time last year, which was 10,000. I would also like to point out that we know what other benefits people are on who are benefiting from SMI. Of those people, therefore, 20,000 are on Jobseeker's Allowance; 80,000 are on Income Support; and 120,000 are on Pension Credit. The increase in the capital limit and the change to the waiting period only apply to the people on JSA and Income Support. Because this is an anti-recession measure, I think it is reasonable for us to have a time-limited approach to these new, more generous rules. Of course, they can be reviewed in the light of circumstance, in the light of developments in the housing market and in the light of developments in the labour market, and further decisions can be taken. In fact, the Chancellor of the Exchequer has already decided twice since Kitty Ussher gave evidence to you to maintain the interest rate of 6.08 per cent. I think that in looking at this policy it is very important to see it in the context of a range of policies which we are doing to support people and enable them to stay in their homes. The BIS department has therefore put extra money towards Citizen Advice Bureaux to give people more help; the DCLG department has a number of policies, some to enable people to access advice through local authorities; it has changed the rules on lenders; it has introduced something called the Homeowner Mortgage Support Scheme; it has provided further advice for people in the courts. If we look overall, taking all these policies together, we think that over 300,000 people have benefited in one way or another. When we look at the effectiveness of them, we have made a comparison between the level of repossessions in the recession of the 1990s and the level now; and, if we take account of the fact that there are a million more people who are home owners now than there were in the last big

recession, if we had been in the same policy environment we think there would have been 91,000 repossessions this year, whereas in fact the forecast is for 48,000. That is not our forecast; that is an independent forecast by the Council of Mortgage Lenders. We have similar figures on arrears. In the previous policy environment the equivalent rate would have been 396,000 people in arrears; actuals for quarter two 2009 were 154,000. The story is very similar in negative equity. In the previous policy environment it would have been 2.2 million people in negative equity; now it is 1.1 million in negative equity. Though it is difficult for me to tease out precisely how much of that is attributable to the DWP activity and how much to the other policies, I think that overall this is an extremely effective area of policy.

Chairman: Thank you, Minister. In view of the time, I think that we probably do need to move on to the second set—unless there is any Member who wants to add a further supplementary question on the SI on the housing costs. If not, perhaps we can move on to the draft Jobseeker's Allowance SI.

Q12 *Baroness Butler-Sloss:* Minister, I wonder if I could take you to the SSAC's report on the Jobseeker's Allowance Conditionality Pilot where, at paragraph 4.7 and 4.8, they refer to two previous basic skill pilots, one in 2001 and one in 2004, neither of which seems to have been very successful. You appear, looking at this particular statutory instrument, to be repeating something rather similar. The question is why do you want another pilot to test a premise which in 2001 and 2004 did not seem to have been very successful?

Helen Goodman: I hope that I will be able to describe some differences between this pilot and the other pilots, so that you can see that we are testing a different proposition now. The problem in 2001 with the pilots that we undertook then was that the numbers were too low for us to have something statistically significant; so we did not really have a robust experiment. In 2004, there are two aspects. One thing that was quite interesting that we found on the pilots in 2004 was that people were inclined not to move into work faster but to stay on courses for longer. We think that may have been because what was being put on offer for people was basic skills courses and only basic skills courses, and a lot of those courses ran September to September and were full-time. The courses that we will make available to people in the new pilots will be more work-related. There will be some basic skills courses, because that is what some people need but, in the areas where the pilots are taking place, there will be more consultation with local employers so that we attune what is on offer more to the things that will be more

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likely to help people get into work. Also, we will offer more part-time courses; so that should be accessible for a wider group of people. We want to test this out because we think this might work better.

Q13 Baroness Butler-Sloss: Perhaps I could ask a supplemental question on that. The threat of sanctions appears in the past to have had a negative impact on a claimant starting a job. Do you think it is likely to be any better on this? It is the negativity that seems rather worrying.

Helen Goodman: Yes, I appreciate that but I think what we are trying to see is whether it was because what was on offer was something that was not really very helpful to people, whereas if we offer something that is more helpful to people Of course, it is worth doing the experiment because maybe the contention that the Government has, going down the sanctions route, will be disproved once and for all; but we can only find that out if we do undertake the pilots.

Q14 Chairman: I take it that you are not going to keep doing pilots till you get a favourable result.

Helen Goodman: Of course that would be absurd.

Q15 Baroness Thomas of Winchester: Can I ask why you are doing this before the IES, the Integrated Employment Skills service, will be fully operational? It will not be fully operational until 2011.

Helen Goodman: No, it will not be fully operational until 2011 but it is operational in all the areas where we are going to undertake the pilots; so we are confident that the necessary co-ordination that you need between the Learning and Skills Council and the Jobcentres and the Careers Service will be working properly in those places.

Q16 Lord Hart of Chilton: One of the principles that we are constantly banging on about in this Committee is the necessity of having an evaluation of the outcomes of the work done by any department. Last year we raised questions on how your original regulations were to be evaluated and you said that that would be done. However, you are now putting forward these additional proposals before even the earliest evaluation results of the Flexible New Deal pilot scheme are available. Why is that?

Helen Goodman: We will receive the results for the Flexible New Deal evaluation this quarter and we will not begin the pilots until April; so there will be time to incorporate lessons from those into the new work. I do not know if Ms Crowther wants to add anything to that.

Ms Crowther: The first stage of the evaluation of the Flexible New Deal will be available at the end of this month; so that will tell us quite a lot of information

in terms of what support we provide to customers and the way in which we provide that support in terms of job-seeking support. Clearly we will need to build that into the design of these pilots and that is what we want to do between January and April and, as a result of the SAAC consultation, we are delaying the start date from January to April—precisely so that we can take account of a previous evaluation.

Q17 Lord Hart of Chilton: You do not think that is jumping the gun? That you should wait for the evaluation before commencing work?

Ms Crowther: The evaluation will help us design how we support customers; so we are working with Jobcentre Plus between now and April in terms of how we will actually design the pilot and the support and processes we will put in place to support customers, so that we will be able to use the evaluation results to do that.

Helen Goodman: I think it might be helpful to the Committee if you said something about the White Paper at the end of 2007 and what was in that, and the role of that in driving this policy.

Ms Crowther: In terms of where this policy has originated, the Leitch Report was very clear in terms of the importance of integrating employment and skills. We have come a long way since that period and there have been a number of Green Papers and White Papers since. Throughout that process we have been constantly making sure that we integrate skills support into the employment system, so that customers presenting themselves at Jobcentre Plus not only get access to employment support but they also get access to skills support. We are therefore in a very different space from 2001 and 2004, as the Minister said. A combination of that information and making sure that the processes and links between the different organisations are in place are informing this pilot, alongside the specific evaluation of the Flexible New Deal, which came into place earlier last year. We are using a combination of evaluation results to feed into the design and support that we are offering customers.

Q18 Baroness Thomas of Winchester: My question is about the pilot design. I think that you are relying on the randomisation to make the distinction between the two pilots; that customers will be assigned either to the control group or the treatment group. There is an argument which says that the additional changes made by the latest proposal could blur this already complex picture, and I wonder how the outcomes of the two instruments are going to be distinguished. I think the SSAC was very concerned about this and thought that the outcomes from the pilot evaluation should be clearly measurable.

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Helen Goodman: I think that they will be. Perhaps I may describe what will happen. People who are unemployed, who have been unemployed for six months, reach something called Stage 3 of Flexible New Deal. Because what we do now is that we have a system in the Jobcentres where the level of support, and indeed the level of conditionality, increase over time. We do that because what we know is that people who are near to the labour market, who find it fairly easy to get jobs, in fact do so quite quickly and most people do find another job, even at the moment with unemployment as high as it is, within six months. What we are doing, therefore, is that, at this six-month point where people enter Flexible New Deal, we are now going to introduce a choice, as it were. The choice is not for the person; the choice is in the way they are treated and we are going to measure that. We will make the training, the new work-based training—I do not know quite what word to use but it is not just basic skills training, it is also this training that I was describing before that should help people to get new jobs—will be available to both the control group and the treatment group. The only difference will be in whether or not the people will be sanctioned if they do not take up the training. So the randomised approach will be operated by distinguishing between people according to—something terribly simple—whether they have an even or an odd National Insurance number. Once the personal adviser in the Jobcentre has the jobseeker sitting in front of them, they will make an assessment as to what the skills needs of the person are and all the people will be offered the same skills opportunities; it is just dependent on whether you have a positive or a negative National Insurance number as to whether or not you will have conditionality attached. We have run systems like this in the Jobcentres previously with this randomised approach and they have been capable of doing this in the past. So those people for whom the sanctions do not apply will be the people who are being treated in the normal Flexible New Deal environment. We will be able to test and see what happens to that group as opposed to the other group.

Q19 Baroness Thomas of Winchester: You will be quite clear with those people what is happening? You will tell them what is going on?

Helen Goodman: Are people told whether they are part of an experiment? What information are they given?

Ms Crowther: We will be putting in place clear guidance for personal advisers so they will be able to talk the customer through what is happening to them at the different stages in the process.

Helen Goodman: The other point that I would like to make—because this is very important—is there are full appeal rights; people who are in the sanctioning group, the treatment group, are entitled to all the legal protections and the full appeal rights that everybody else has in the Jobseekers regime.

Q20 Baroness Thomas of Winchester: Could I now ask my other questions, slightly off *piste*, which you will not have had notice of? We know that a lot more people are now going on to JSA who are not in the Employment and Support Allowance group because of the rather controversial work capability assessment, the new one, and of course that is now going to be reviewed because there have been so many complaints about it. This could catch people with quite low level but definite mental health problems. I know this is a problem that a lot of respondents have worried about. There may be people, therefore, who have failed, as it were, the WCA who are on Jobseeker's Allowance rather than the ESA. Those people could be in the sanctioning group. You say that they would be sent to a disability employment adviser. Are you confident that this really will happen in all cases and that you will not catch people in the sanctioning regime for skills training, which is very controversial and which the SSAC say you should not go ahead with? Are you sure that they are not going to be made even worse by finding that they are going to be really bullied into taking training they do not really want or they cannot cope with, perhaps?

Helen Goodman: Obviously, that is not the intention and, obviously, the personal advisers in the Jobcentres are trained to avoid that eventuality. I would just like to point out that, of course, what we are trying to do here is up-skill people who are probably the furthest from the labour market. So, in a sense, although we are setting some quite tight boundaries for this group of people we are also offering them more. In a difficult labour market it is actually even more important that these people are not pushed further and further away from the possibility of getting a job. Do you want to add anything on the mental health point?

Ms Crowther: Only to say that in terms of integrating the employment and skills system, this is about offering a comprehensive service to individuals and, actually, an individually tailored service. We would be consistently talking to individuals about their skills needs and thinking about what is suitable for them and the courses that are suitable for them. Through this pilot there is a range of provision available, and clearly we would take into account at what stage they are in terms of looking for work and what their skills are. We would always take into account the customer need.

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Q21 Baroness Thomas of Winchester: May I say, as a rider to that, you make it sound very benign, but if you are putting conditionality on to this it immediately turns it into something else, which is coercion. I think we have to put that in the frame.

Helen Goodman: Lady Thomas, this is not my policy area; in fact, it is the policy area of my colleague, Jim Knight, so I will take away your remarks and remind him of your very serious and reasonable concerns and bring it to his attention.

Baroness Thomas of Winchester: Thank you.

Q22 Lord Scott of Foscote: Minister, it is easy, I think, to accept that training is likely to enhance the employability of the people who are given it, and it is also easy to accept that in relation to many people an element of sanctions if they do not go in for the training might encourage them to do that. However, if one is looking at areas where there is a great preponderance of claimants over vacancies, how can one tell whether the training is actually making any difference to the actual employability as opposed to the potential employability of the people who receive it?

Helen Goodman: The pilots are not in the places where unemployment is at its very highest, at the moment. I guess, in a way, I want to repeat the point I made a minute ago: what we believe is that in a difficult labour market it is even more important that these people are well equipped to get jobs. Although unemployment is very high, on-flows and off-flows from the register are also very high. This is quite remarkable: in November 336,000 people flowed off JSA, which was a small increase on the previous month, but most interesting of all it was 110,000 more than had flowed off in the previous year. So in the labour market, notwithstanding the very high levels of unemployment that we have at the moment, there is still a huge level of churn, and what we are trying to do is provide concrete and practical support to people who are, at the moment, most disadvantaged in the labour market.

Q23 Chairman: Just on that, the TUC figures show that in January 2009 there were 29 claimants for every vacancy in Lambeth and 26 for every vacancy in Wandsworth, and surely they are two of the test areas, are they not?

Helen Goodman: I have not got the Lambeth—

Q24 Chairman: I think you said that they did not tend to be in the areas of the highest unemployment.

Helen Goodman: Well, that is what I had understood. I need to go back and look at that again, evidently.

Q25 Baroness Butler-Sloss: That, perhaps, leads into my next question: according to your EM at paragraph 8.1, you would have liked to have conducted a full consultation specific to the pilot but you say that time constraints would not permit this. Whose are the time constraints? Are you not in charge of your own timetable?

Helen Goodman: What we have done is we have consulted on the general principles when we have published the Green Papers and the White Papers. We published a document called *Ready for Work* in December 2007 and at that point we were inviting views on the general principle. Since then the SSAC have consulted on the detail. I am afraid I am going to come back to saying what I said in answer to a previous question: of course, consultation is a good thing but action is also very good, and we are talking about public money, and we do know what the results of the SSAC consultation were and we have taken those into account.

Q26 Baroness Butler-Sloss: It is really because you chose to put into your EM that “time constraints did not permit this”. I just wonder what you really meant by that.

Helen Goodman: I am just looking here at the detail on this. The SSAC reported to the Secretary of State in September. I do not know (maybe your perspective on this is different from mine), but it seems to me that if you produce a White Paper at the end of 2007 and you still have not implemented the proposals in it more than two years down the track, that is not terribly impressive, and what we are trying to do is implement them in April 2010. I think a government that was writing documents and taking action on a slower timetable than that, most people would think, was rather an ineffective government.

Q27 Chairman: Just on that one, a lot of the consultees to the White Paper and the SSAC did, of course, argue for delay. You are talking in terms of the time constraints. Surely, if you go out to consultation, you have your own statutory consultee, the SSAC, and I appreciate they did say: “If you were going to proceed then there ought to be a number of conditions met”, but I am not sure, actually, that you met all the conditions that they laid down. How do you see the role of consultation, then, if you have your statutory consultee, you have other organisations, you have the TUC as well, people at least arguing for delay, and you turn round and say: “We can’t because of the time constraints”? It does not seem to add up.

Helen Goodman: I think a consultation is always within a set of boundaries and policy direction, and that is reasonable. In this instance, the SSAC made five major recommendations, of which we have

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accepted three. They wanted stakeholders to know that the Jobcentres would be adequately resourced. We believe that the delay that we have implemented from January to April and the better co-ordination we have got between Jobcentre Plus and the LSC mean that they will be adequately resourced. They raised an issue about the training of personal advisers—presumably for some of the reasons that Lady Thomas was talking about. Well, we believe that we have taken action to meet those concerns. They raised questions about the customer information strategy and asked a question about whether the threat of sanctions was proportionate. We are implementing a customer information strategy. So the things where we have not followed them are, as you say, on delay, but that is because we think that we are doing something different now and testing out a different schema. They also asked us to reconsider randomisation, but I hope that my responses this afternoon have shown why we think that that is a robust technique.

Q28 Chairman: On the issue of the mandatory element being delayed until after evaluation of the first part of the project, which is what the SSAC were after, I think your response was on the grounds that the IES has achieved, and I quote: “steady state status in trial areas”. What does that mean?

Helen Goodman: Do you want to describe that a bit more because that is really about the co-ordination between the different institutions?

Ms Crowther: Yes. We are trialling the Integrated Employment System in 12 trial areas, which was implemented during the course of last year, and we wanted to make sure that systems are in place both within Jobcentre Plus and the Learning and Skills Council and that things were working properly before we implemented this particular pilot. There was an initial evaluation published in December, which confirmed that processes were in place and things were running smoothly, so that is why we decided to implement in those areas.

Q29 Chairman: Could I ask: is that simply confirming that IES is operating and not really commenting on what it is achieving?

Ms Crowther: It is confirming that it is operating.

Q30 Chairman: However, what we are concerned about is what it is achieving. Are we not?

Ms Crowther: We have introduced it during the course of this year and, therefore, the evaluation will follow sometime after that. The crucial thing is to kind of get the processes in place and to get the culture right so that we can introduce the pilot in that context. Both the evaluation of the Integrated Employment System and this particular pilot will

obviously follow once they have both been in place for some time.

Q31 Chairman: The SSAC in their report, I think, if I have got the right document, in one of the annexes (I think Annex 6, previous pilots to sanction for non-attendance at training) actually said the threat of sanctions had a negative impact on the probability of starting a job by three percentage points. They said delay it until you know the results of the first two pilots but, as a Department, you said no.

Helen Goodman: Is that not because we were testing something different?

Ms Crowther: Yes, we were testing something different in those pilots. So, as the Minister said, in this particular pilot we are testing a range of work-focused training and we are providing that work-focused training to a range of customers that is actually linked to vacancies and is linked to what employers need. We have also integrated the system so that from the beginning of a claim a customer is talked through what provision and what work-focused provision is available to them. So this is very much about integrating that process from day one, and the threat of sanctions is clearly a last resort.

Q32 Chairman: Are there any other questions on the second issue that Members would like to ask? Minister, is there anything else you would like to say to us?

Helen Goodman: No, thank you very much.

Q33 Chairman: Could I thank you very much indeed for being with us this afternoon and responding in the kind of detail you have to the questions that we have asked? We obviously also take note of what you said to us in your opening comments. I certainly do not want to repeat everything I said at the beginning but I think you will understand where we are coming from; we do look for clarity, particularly as far as the explanatory memorandum is concerned, and of course in both these cases our Secretariat did have to raise a number of other questions. When one is looking at a situation—and I do not use this as the only example where this applies—where the SSAC are clearly unhappy and the results of the consultation have shown a degree of unhappiness, then I think what we are looking for is, if the Department is saying: “We are not going to take on board the unhappiness that has been expressed”, a very full explanation as to why the Department are doing that. That is just one example of the kind of thing that we do look for, because we have a role to play on behalf of the House here of looking at all the statutory instruments that come before us and deciding which to draw to the attention of the House

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for a variety of reasons (usually the main one is it raises policy issues that would be of interest to the House). Unless we have got the full information we are not in a position to do the job that we do on behalf of the House here, which is why we have expressed the concerns we have in the past to the DWP and why we have expressed those concerns to you today. We

do take on board what you said at the beginning to us, and let us just say we hope that does not lead to our having—enjoyable though this has been!—another occasion like this.

Helen Goodman: If I might say so, that is entirely reasonable. Thank you very much.

Chairman: Thank you very much indeed.

APPENDIX 2: DRAFT NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (ENVIRONMENT) ORDER 2010

Information from the Wales Office

The Committee has asked:

- whether the definition of “nuisance” in the draft Order includes private nuisance;
- if so, why this definition has been chosen, as it is broader than definitions used elsewhere.

In brief, the answers to these questions are:

- yes, the definition would extend to some private nuisances, as well as public and statutory nuisances;
- this definition has been used to enable the National Assembly for Wales to legislate in relation to the full range of local environmental nuisances, including litter, fly-tipping, graffiti, dog fouling, fly-posting, noise pollution and light pollution.

It is important to note that the Order would merely confer the power to legislate on the National Assembly for Wales; it would not amend any existing definition of nuisance, impose any liability or change the law of nuisance in any other way. Within the limits of the competence conferred by the Order, any substantive changes to the law would be for the Assembly to determine.

The Order would confer legislative competence on the National Assembly, to enable it to pass Assembly Measures in relation to four matters in the environment field. Matters 6.3 and 6.4 are “protecting or improving the environment in relation to pollution” and “protecting or improving the environment in relation to nuisances”. In drafting the matters in the Order, the UK Government and Welsh Assembly Government had regard to the functions which have been devolved to the Welsh Ministers in this field.

The draft Order defines “nuisance” as meaning “an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment, apart from an act, omission or state of affairs that constitutes pollution”. The italicised words are important, because the draft Order defines “pollution” in broad terms which reflect the very extensive powers under the Pollution Prevention and Control Act 1999 which have been transferred to the Welsh Ministers. The effect of the closing words of matter 6.4, together with the wide definition of “pollution”, is that the competence conferred by matter 6.4 is in reality relatively narrow. Matter 6.4 is also subject to a wider range of exceptions than matter 6.3, again reflecting the greater powers which the Welsh Ministers have in relation to pollution.

Matters 6.3 and 6.4 would both extend to protecting the environment from forms of harm and interference which could constitute a private nuisance (or a public nuisance). This was an issue which was considered in the drafting of the Order. The intention of the UK and Welsh Assembly Governments was that matter 6.4 should cover all forms of environmental nuisance (unless they were already covered by matter 6.3), and should not be limited to modifying the regime governing statutory nuisances under Part III of the Environmental Protection Act 1990. Hence exception (b) from matter 6.4 (and the provision about the meaning of “relevant defence” and “relevant exclusion”) refers to “rules of law” which impose liability rather than to legislation which does so. It was also intended that matter 6.4 should extend to certain kinds of harm to amenity, such as graffiti and invasive plants, even if they would not be regarded as statutory or common law nuisances.

The reason for defining nuisance in this way was to ensure that the Assembly's competence would be wide enough to enable it to address all of the local environmental issues identified by the Welsh Assembly Government in discussions about the draft Order, including litter, fly-tipping, graffiti, dog fouling, fly-posting, noise pollution and light pollution. In other words, the definition of "nuisance" which has been used is the one which is considered most appropriate given the purpose of this Order.

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APPENDIX 3: DRAFT WELFARE OF RACING GREYHOUNDS REGULATIONS 2010

Information from the Local Authorities Coordinators of Regulatory Services

As discussed, the majority of LACORS' consultation response remains current. The exception to this is of Part 3 ("Specific comments on drafting of Statutory Instrument") - the majority of the minor, technical amendments noted here have now been addressed. The more fundamental issues raised in the covering letter and parts 1 and 2 of our response have not, and remain of concern.

Foremost amongst these is the absence of offences with the Statutory Instrument. As noted in section 2 of our consultation response, this will make enforcement ineffectual and unnecessarily burdensome on both councils and businesses.

We remain unconvinced that the Regulations will address the issues related to the fate of ex-racing greyhounds that gave rise to them in the first place. Neither will they have a significant impact on racing greyhound welfare. With this in mind, we do not believe that the risk posed by the six independent tracks currently operating in England, or the additional degree of protection racing greyhounds afforded by these Regulations, is sufficient to justify the introduction of a new statutory licensing regime administered by councils.

I've provided a summary of some of our key concerns below, referencing some of the amendments made by Defra. This complements our original consultation response.

1) Absence of offences

Track operators will not commit an offence if they fail to comply with the requirements of the legislation / the licence conditions. The only related offence is for operating without a licence (an offence under section 13 of the Animal Welfare Act). This greatly limits the range of enforcement tools and sanctions available to local authorities, with implications for compatibility with better regulation principles. Offences, and the sanctions associated with them, are an important tool (common across all areas of regulation) in securing compliance.

Councils will have no capacity to take formal action against a licensed track prior to the suspension or revocation of their right to operate. Although councils will be able to suspend and revoke the track licence, there are likely to be circumstances in which a prosecution for a specific offence is more proportionate and appropriate than the removal of a business' right to operate.

More detail is provided in Part 2, paragraph 2 of our consultation response.

2) Suspension and revocation of a licence (s.5)

The processes in place for suspending and revoking a licence remain flawed. The legislation is phrased in a way that will make it difficult for a council to revoke a licence that has been suspended because of persistent failure to meet ongoing conditions such as veterinary presence or record keeping arrangements. It is also worth noting that a licence can only be revoked after it has been suspended for a period of 28 days (plus appeal time).

Again, the presence of offences within the legislation would make the licensing process more transparent, effective and easier to manage. For example, formal action could be taken for persistent failure to comply with requirement for veterinary presence, helping to drive compliance (and with successful prosecution resulting in a 'ban' from managing a track).

A council "must reinstate a suspended licence by way of notice once it is satisfied that the licensing conditions have been or will be complied with". We recognise that Defra has added the phrase "will be" as a result of LACORS' concerns that the previous wording would not allow councils to uphold suspensions which occurred as a result of failure to comply with ongoing conditions (like veterinary presence). However, we remain unclear about how this will work in practice – i.e. how will a council decide that conditions "will be complied with" and be confident

that these decisions are robust enough to be upheld should the operator appeal? This also applies to section 4 on granting and renewing the licence (i.e. “a local authority must...grant a licence to an operator, or renew a licence, if it is satisfied that the licensing conditions are or will be met”).

LACORS does not believe these processes will work in practice. As the effectiveness of the regime hinges on the effectiveness of these processes, it is vital that Defra provide a clear outline as to how they will work in practice. It is noted that, if passed, the Regulations would come into force in at the start of April 2010. This leaves less than 3 months to develop a framework for processing licenses before the Regulations take effect.

Section 11 (2) of the Regulations allows councils to vary the licensing period when reinstating a suspended licence. In informal discussions, Defra has indicated that it believes an effective way to deal with persistent non-compliance with the ongoing conditions would be to reinstate the licence for ever decreasing periods until the burden on the business becomes so great that it ceases to operate. LACORS fundamentally disagrees with this position. This approach would not be compliant with better regulation principles; would not a clear, transparent and effective process; would be ineffective use of resource and an unnecessary burden on both councils and businesses.

3) Granting and renewing a licence (s.4)

Section 4 (2) of the Regulations allows councils “to take account of the applicant’s conduct as the operator of the track to which the licence relates or in relation to any other track, or any other circumstances that are relevant” when granting/ renewing a licence. We welcome the fact that this potentially allows councils to refuse a licence to an operator who has previously had their licence suspended. However, further clarification on how this process would work in practice is urgently required as the circumstances in which a licence could be refused are currently broad and unclear (for both councils and tracks).

Councils can grant licences for any period up to 3 years. Defra has indicated that the duration of the licence should be determined on the basis of risk. This is welcomed and is in line with better regulation principles. However, again, no guidance has yet been provided on how this frequency should be calculated.

4) Definition of license holder (s.3)

Licenses are granted to the track operator, defined as “a person responsible for managing a track”. This is likely to cause enforcement difficulties as there will not necessarily be one individual who clearly has most responsibility for management of the premises (i.e. owner will have more control over structural issues, ‘manager’ for day-to-day issues such as record keeping procedures, and different “managers” at race meets who will have most responsibility supervising veterinary attendance, etc). This also exacerbates problems associated with the licence simply ‘changing hands’ when revoked from previous holder. LACORS believes licences should be granted on a premises basis, in line with other similar licensing regimes.

5) Record keeping requirements (Schedule, Part 1, s.5)

LACORS considers the record keeping and identification requirements contained in the S.I. confused and confusing (it’s also noted that 10 years is a long time to keep records – it’s common for legislation to require records to be kept for far shorter period). LACORS remains unclear about the circumstances in which a trainer/ owner will have to present proof of their identify to the track (e.g. if a dog is racing for the first time at a track under a new owner, and is presented by the trainer, does the trainer need to bring id (including photo/ address id and the proof or db registration) for both themselves and the owner? If the dog has changed ownership but has not changed trainer, and is presented by the trainer, what ID (owner/trainer/db letter) is required?)

6) Database (Schedule, Part 2)

We believe that the traceability afforded by the Regulations is largely meaningless. Although the requirements of Part 2 are based on the Microchip Advisory Group Code of Practice, there is no

legal requirement that the database used must be signed up to this Code of Practice. Anyone can set up a 'database' as laid out in Part 2 and any number of databases could be operating at any one time. The 'database' could consist, for example, of an Excel spreadsheet held on someone's personal computer.

No action can be taken under these Regulations if the database operator does not fulfil the requirements outlined in Part 2. No action can be taken under these Regulations if a dog owner knowingly races a dog entered on a database that does not meet the requirements of Part 2. Although the track operator can only allow dogs to race if the operator "reasonably believes the requirements set out in Part 2 of this Schedule are met", it is difficult to envisage a scenario in which culpability on the part of the track operator could be demonstrated.

7) Exemption for GBGB tracks

LACORS commends the work Defra has done with the industry and the industry's commitment to reforming and improving its processes and procedures. However, Defra's assertion in their summary of consultation responses that LACORS "welcomed the exemption" from licensing regime granted to GBGB tracks is not strictly accurate.

We welcomed the "move away from previous proposals to require all tracks to 'conditionally register' with local authorities, whilst being subject only to inspections by the industry body". This proposal gave local authorities responsibility for tracks but, in practice, no right of inspection or powers to take meaningful action against industry tracks. We appreciate Defra's efforts to accommodate our concerns and develop the current compromise solution, and agree that the current scenario of exempting GBGB tracks in law and in full (by virtue of their membership of the UKAS-accredited body) is both more transparent and more workable than previous proposals.

However, GBGB has not yet gained UKAS-accreditation and we continue to have a number of unanswered questions about how the system will work in practice. These relate to:

- Contingency arrangements if GBGB fails to obtain UKAS-accreditation by the time the Regulations come into force
- Contingency arrangements if GBGB loses UKAS-accreditation at a later stage
- Clarification on GBGB's processes (to be accredited by UKAS) for regulating member tracks – i.e. not just accreditation of the transparency of inspection processes, but the action taken to secure compliance and sanctions to be used in instances of persistent non-compliance (e.g. removal of membership?)
- The communication arrangements between GBGB and councils – e.g. relating to the handling of complaints from the public, notification that a track has ceased to be a GBGB member (and is therefore subject to LA licensing). Whilst LACORS is happy to work with industry and Defra on these points, it is noted that it is now less than 3 months before the Regulations take effect (if passed).

It would seem sensible to wait until GBGB has obtained UKAS-accreditation before proceeding with these Regulations. This would also allow time to assess the effectiveness of this self-regulatory regime.

January 2010

Information from the Department for Environment, Food and Rural Affairs

We have discussed with LACORS their concerns but, as we have explained to them, in view of the Government's acceptance of the 2006 Macrory review, which expressed concerns about the over-use of criminal law in the enforcement of regulations on businesses, we have had to consider different enforcement techniques.

As you know, under the Regulations, it will still be a criminal offence to operate a greyhound racing track without a local authority licence (unless the track is exempted by virtue of belonging to a UKAS accredited body). The maximum penalties will be imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000, or both. The Regulations are being made using powers provided for in the Animal Welfare Act 2006 and the offence itself is already contained in section 13(6) of the 2006 Act.

LACORS would have also liked to have seen individual criminal offences contained in the regulations i.e. there should be separate offences of not complying with each of the individual licensing conditions, so if a track did not employ a vet, for example, then the local authority could prosecute them for not having a vet - without having to revoke the licence itself.

However, the Regulations allow local authorities the discretion to award a licence for any period of up to three years. Therefore, they will be able to set a shorter licence period for those tracks they consider demonstrate a higher risk of non compliance and reward those tracks that demonstrate a low risk of non compliance with a longer licence.

Also, where a track does actually fail to meet a licensing condition, the local authority can consider revoking the licence. Alternatively, a local authority could suspend a licence until the track can demonstrate that it will be meeting the appropriate licensing conditions (i.e. getting a contract with a local veterinary practice, for example) and they then can reinstate the licence.

At that point, the Regulations do provide a power for local authorities to reinstate the licence but for a shorter period than the original suspended licence. And if a track demonstrates that it is a regular non-complier we have provided powers within the regulations for the local authority to refuse an application for a licence (or reinstate the licence).

We feel that between the ability to vary the length of the licence according to the risk of non-compliance and the ultimate sanction of a criminal prosecution of operating without a licence, local authorities should have enough powers to ensure compliance from greyhound tracks without the need of a new array of criminal offences.

December 2010

Information from Lord Lipsey

As a former chair of the British Greyhound Racing Board, I was closely involved in the process of discussion which gave rise to the present draft regulations. (I should also declare that I was until recently a consultant to the Greyhound Board of Great Britain (GBGB) and am a trustee of the Retired Greyhound Trust). It is perhaps not surprising therefore that I endorse the government's proposals.

By general consent, greyhound welfare has improved enormously over the past six years or so. To take one example, then around 2,000 of 10,000 dogs entering the sport each year were rehomed on retirement. Now, though a similar number of races are run, fewer dogs are required due to improved track safety. With a huge expansion in the rehoming effort, largely funded by the voluntary levy paid by bookmakers, today some 80% of those who retire are successfully rehomed.

The regulations come on top of a change in culture, where greyhound racing has come to recognise that it has had to get its welfare house in order if it is to survive and eventually prosper

in the modern sporting world. They also come on top of the duty of care which the Animal Welfare Bill imposes on everyone involved with animals and therefore those in greyhound racing. Even without the regulations, this duty imposes minimum standards.

In essence, the regulations before parliament will not apply to official tracks. These are those - the great majority - which operate under the auspices of the GBGB. It will be responsible for welfare. In its turn, its procedures will require the imprimatur of UKAS (the United Kingdom Accreditation Service, chaired by Lord Lindsay). The standard of welfare required at such tracks is high, higher than that required by these regulations. GBGB also enforces proper welfare requirements e.g. at trainers' kennels.

The small minority of independent tracks will however be required to observe, under local authority licence, the regulations. These set out some basic requirements for the welfare of greyhounds, most significantly that a vet should be available on track during racing to care for any injured dogs. This is required at present at official tracks, and is essential if any injuries are to be treated swiftly (and in rare cases euthanasia applied).

The regulations have to strike a balance between welfare and the costs of ensuring it. Most independent tracks are highly marginal businesses and even with the level of regulation now proposed they may struggle to continue. Were the regulations to force all independent tracks out of business at once, this would create serious welfare problems in finding homes for the dogs.

Some welfarists have argued that the regulations do not go far enough and should be extended to cover e.g. trainers' premises and breeders. Such an extension would be extremely difficult to implement in practice. Local authorities are capable of looking after dog tracks in their areas. But trainers may serve a number of tracks, and those tracks can be many miles from the track at which the dogs are running. It would be at best hugely expensive (and at worst wholly impracticable) for local authorities to seek to regulate such trainers. The cost of such regulation would fall on the sport, which is at present suffering from severe financial stresses. The likelihood is that trainers would be forced to pack up business, and their dogs rendered homeless, with all the welfare problems that that implies.

There would be no proportionate gain. Official trainers – and they make up by far the majority in this country - are already regulated by the GBGB. They are subject to the overarching duty of care. Welfare bodies are quick to pick up any serious problems that occur, and they are rare. So those affected would be a handful of trainers at unofficial tracks. Most keep a small number of dogs at home in “amateur” operations which would be particularly difficult to police.

The government has said it will review the regulations in five years' time. Naturally, greyhound racing hopes and believes that experience will show that the proposed level of regulation achieves all that can be reasonably expected in welfare terms.

6 January 2010

Information from the Royal Society for the Protection of Cruelty to Animals

The RSPCA welcomes the opportunity to provide the Merits of Statutory Instruments Committee with comments on the draft Welfare of Greyhounds Regulations 2010 (“the regulations”). We hope the following points assist the Committee in its considerations of the regulations.

The RSPCA starts from the position that any regulations should set minimum animal welfare standards for all greyhound tracks in England. Consistent standards of regulation between the regulated (GBGB (NGRC as it was then)) and non-regulated sector was something that the Minister at the time the Animal Welfare Bill was being passed by Parliament was keen to ensure; *“Our goal is for all greyhound racing to have the same high welfare standards, whether under NGRC rules or not.”* (Hansard, 24 May 2006, GC224-225). However it appears since then Defra has moved away from this to reinforce a two-tier system with little meaningful input from local authorities in the GBGB sector.

The RSPCA does however welcome the stipulations set out in Schedule 1 of the regulations setting the conditions for a licence. In particular the requirement of veterinary presence and facilities, permanent identification of greyhounds and the keeping of records. The kenneling requirements while a step in the right direction could go further. However we feel the level of detail provided about veterinary attendance and facilities perhaps highlights the failures in other areas where there is significantly less detail or the regulations are completely silent on, such as providing better welfare for greyhounds at trainers’ or breeders’ facilities.

The Society still questions where the figure of 20 per cent is obtained from for the provision of kenneling under Schedule 1. We would be extremely concerned if dogs were left in cars, especially on warm days, if there were insufficient number of kennels at a track. The RSPCA believes that it should require enough kennels, which meet and protect the welfare needs of racing greyhounds, be provided to allow all dogs to be kenneled if necessary.

The failure to provide regulation for greyhounds whilst at trainers’ premises is a missed opportunity as far as the RSPCA is concerned. On average we believe that most greyhounds spend around 3-6 hours every 7-14 days at race kennels thus indicating how much of their lives are spent at trainers’ premises. Indeed the majority spend 2-3 years at trainers premises and many are kept there once retired. Whilst the Animal Welfare Act provisions do indeed cover a greyhound throughout its life we believe that industry-based specific regulations should be included to better protect greyhounds from ‘cradle to grave’. This is perhaps a perfect example of the regulations missing their objective by specifying lots of detail for greyhound welfare where the dogs spend the minimal amount of their time and are silent on welfare provisions where they spend the greatest amount of their time.

Permanent identification of dogs is something the RSPCA supports but we do question the need to both tattoo and microchip. It is generally recognised that tattooing is painful, and a report on refining dog husbandry and care by the BVA AWF/RAME/RSPCA/UFAW working group stated that; “since it is impossible to tattoo painlessly, and because tattoos can be difficult to read on pigmented skin, tattooing is being phased out in preference to microchipping.”

The draft regulations do not provide for an effective system of wholly independent inspection of tracks, let alone trainers’ kennels and breeders’ premises, which belong to the GBGB system (although independent tracks will be regulated by local authorities). While it is hoped the GBGB achieves UKAS accreditation, if it does not, it does leave the industry open to not being able to be regulated in an open and accountable way.

Local Authorities have raised concerns about these regulations with Defra through LACORS who have repeatedly informed Defra of the difficulties in trying to effectively enforce such legislation without the necessary ‘teeth’.

While there are a number of specific issues the RSPCA does have concerns with about the regulations overall we do feel they are a step in the right direction. However putting this in

perspective, a greyhound starts to run at approximately 18 months of age, and may visit a track for only 3-6 hours once in every 7-14 days (less if it is injured, in season, or resting). Therefore this legislation will only help to protect the dog's welfare for those hours whilst at the track. A greyhound may only compete in a handful of races, 50 or occasionally 100+; nonetheless the proportion of time competing is small in comparison with their total life expectancy.

There are recognised issues that impact upon the welfare of greyhounds throughout their life. These include breeding/importation, rearing, schooling, training, trialing racing and retirement. At all these life stages, greyhounds are kenneled, transported and cared for by their owners/trainers. The RSPCA therefore believes that it is essential that the regulations protect them from any welfare issues that may impact at any stage throughout their lives - from cradle to grave.

January 2010

APPENDIX 4: AGRICULTURE (CROSS COMPLIANCE) REGULATIONS 2009 (SI 2009/3365)

Information from the Department for Environment, Food and Rural Affairs

How will the recent problems with the RPA impact on the implementation of these Regulations?

In respect of mapping/payments/report issues. The key point is that the new SI does not directly touch on or affect these elements. It makes things slightly simpler for farmers and does not place a significant extra burden on the RPA, and the implementation of the cross compliance standards is not directly related to mapping / payments etc (i.e. the problems occurred elsewhere in the system - not in cross compliance itself). There is therefore nothing to suggest that the introduction of these changes will adversely affect the RPA's ability to administer the Single Payment Scheme.

The consolidation and simplification of the soils standards will in the medium to long term benefit both RPA and the industry. There will be some small impact in the short term whilst both get used to the new Soil Protection Review and Guidance. There will also be initial training required for the RPA inspectorate (which is already in place).

The changes to the standards for agricultural land not in agricultural production and the protection of hedgerows and water courses will only have minimal impact on RPA. Indeed the simplification of these standards will be beneficial to RPA in that they should be easier to inspect and control.

With regard to abstraction licensing and no spread zones (from 2012), the Environment Agency will be the controlling authority (i.e. will inspect on farm for compliance). RPA in its role as the Paying Agency will have to receive and deal with the resulting data on compliance, but these numbers are not great and the failure rate is also minimal within this regime.

All of the above changes have required, or will require, amendments/updates to RPA's literature and the cross compliance database. The impact from a resource and financial perspective is not significant and in part will be deemed as business as usual.

More details on the impact on RPA is available in the Economic Impact Assessment attached to the Explanatory Memorandum.

January 2010

APPENDIX 5: PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL INVESTIGATORS) (AMENDMENT) ORDER 2009 (SI 2009/2707): GOVERNMENT RESPONSE AND CORRESPONDENCE WITH THE MERITS COMMITTEE

Letter from Lord Rosser to Baroness Royall of Blaisdon, Leader of the House of Lords

On Monday Lord Brett tabled a Written Statement in response to the vote in the House on 7 December on the Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009 (HL Debates 14 December, WS 211-213).

The statement set out the Government's response to the vote, and corrected some errors in Lord Brett's speech. The statement said that the Government "will be drafting a circular to be issued to all accredited financial investigators to clarify the purpose and extent of the powers under the Proceeds of Crime Act". It went on to claim that "A draft will be cleared with the House's Merits Committee before it is issued". I was surprised to read this. As you know the Committee's remit is to examine statutory instruments laid before the House, not to assess the contents of Departments' draft circulars. My Committee officials had indicated to the Home Office that the Committee might consider and possibly publish a letter giving an update to the House, but this is completely different from 'clearing' a draft circular.

It is regrettable that Members with an interest in the financial investigators order have been given an inaccurate impression about the Merits Committee's role in general, and about its involvement with this Order in particular.

I have to place the claim about the circular in context, since we have already criticised the Home Office over the inadequate information that they supplied with the instrument itself. Following an exchange of correspondence, which is published in our 31st report of last session, we concluded that the Home Office had failed to follow the spirit of the Government's own guidance on consultation which left the Merits Committee, the House and apparently the Home Office itself, unsighted on the controversy that surrounds this issue. During the debate on 7 December Lord Brett made the erroneous claim that the Government's guidance on consultation does not apply at all to negative instruments, though this at least was corrected in Monday's Written Statement.

I would be grateful for a prompt response to this letter, to enable the record to be set straight and to avoid any further confusion.

I am copying this letter to Lord Brett and the Earl of Onslow.

16 December 2009

Letter from Lord Brett, Government Spokesperson for the Home Office, to Lord Rosser

I understand that at yesterday's meeting of your Committee, concern was expressed that the Written Ministerial Statement I issued on Monday (14 December, HL Hansard WS 211) misrepresented what the Merits Committee was prepared to do in respect of the draft circular that we announced we would be issuing.

The language used in the Written Ministerial Statement on this point indicating that a draft would be "cleared" with the Committee before it was issued - was imprecise, and I extend my apologies to the Committee for that.

We of course recognise that the Merits Committee cannot "clear" the draft circular in the sense of endorsing it. What we did want to convey was that the Committee would be given the opportunity to see the circular in draft, and that if they chose to make any observations on it at that point, these would be carefully considered by Ministers.

The word “clear”, which I understand is what caused concern, was intended to reflect how serious we were about this process, and about any feedback that the House, via the Committee, might wish to offer, rather than to impute that the Committee would be drawn into policy development or lend its backing to HMG’s actions.

I would therefore like to reassure you and your Committee that although the language used in the Written Ministerial Statement on this point was clumsy, I hope that there is no difference of substance between what we envisage, and what we understand the Committee is prepared to do.

I of course invite you to let me know if you have any further concerns in this regard, and reiterate my apologies for the misunderstanding.

16 December 2009

Letter from Lord Rosser to Lord Brett

Thank you for your letter of 16 December. As your letter to me, and mine to the Leader of the same date, have clearly crossed over in the post, I am writing to eliminate the possibility of any continued confusion about the Committee’s role.

The Committee’s remit is to examine statutory instruments laid before the House. Once we have commented on an instrument, it is then for the House to pursue the issues raised as Members see fit.

As we have previously stated, the Committee remains willing to consider publishing a letter from the Government containing a general update on the Government’s response to the vote on the financial investigators order, if we think that the information it contains would interest the House. However, the Committee is in no position to offer any feedback on a draft circular to financial investigators clarifying the purpose and extent of the powers under the Proceeds of Crime Act. To do so would not be in accordance with our terms of reference.

I hope that the response to my letter to the Leader will indicate clearly the Government’s understanding that the Committee will not, and cannot, provide feedback on the proposed draft circular.

18 December 2009

Letter from Baroness Royall of Blaisdon to Lord Brett

Thank you for your letter of 16 December. I understand that you and Lord Brett have also exchanged letters on this subject, following the debate on 7 December and the subsequent Written Statement.

I accept entirely your points about the role of the Merits Committee not being to assess or clear the content of Departments’ draft circulars. I am sorry that the Statement suggested otherwise. As Lord Brett subsequently made clear in Questions on 16 December, the Government will send a draft of the circular to the Merits Committee and, should the Committee wish to make any observations on it, the Government will consider them carefully. I am also grateful for the offer from the Committee that it might consider and publish a letter giving an update to the House.

I hope that this reassures you as to the Government’s intention.

I am copying this to Lord Brett and the Earl of Onslow.

31 December 2009

APPENDIX 6: PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL INVESTIGATORS) (AMENDMENT) ORDER 2009 (SI 2009/2707): GOVERNMENT RESPONSE AND CORRESPONDENCE WITH THE BRITISH BANKERS ASSOCIATION

Letter from Angela Knight CBE, Chief Executive of the British Banker Association, to the Rt Hon Alan Campbell MP, Parliamentary under Secretary of State for Crime Reduction

The above Statutory Instrument comes into force on Monday 2nd November. The Order significantly extends the Proceeds of Crime Act (POCA) asset freezing and disclosure powers to financial investigators in a wide range of bodies. The content and manner in which the Order has been promulgated raises serious concerns, not least threatening to destroy the constructive, pragmatic partnerships we have sought to nurture among POCA regime participants.

While at face value the Order merely adds a range of bodies to the list of those able to use POCA powers, in real and practical terms the Order will have serious operational implications for BBA members and the wider reporting sector.

In this respect it is deeply concerning that there has been no consultation with the UK banks either prior to or since the Order was laid on 1st October. That we have to rely upon an article in The Times to discover the Government is making significant changes to the Proceeds of Crime regime is unacceptable.

While the Order specifies that Financial Investigators need the proper accreditation, we have serious misgivings whether the proper training and experience in the proportionate use of POCA powers resides within the bodies listed. Once again there is clear and apparent risk that laws with strong powers designed to fight terrorism and organised crime, will be used in inappropriately in other areas.

I would be grateful if you could provide answers to the following:

Which bodies or organisations did the Home Office consult in the drafting and laying of the Order?

Has the required Regulatory Impact Assessment or any other cost benefit analysis been conducted in respect of the Order? If so, please provide details.

What is the justification for granting POCA powers to bodies as diverse as Transport for London, the Rural Payments Agency and the Royal Mail? In what circumstances will these and the other bodies listed in the Order use such POCA powers?

Please treat this letter as a request under the Freedom of Information Act.

30 October 2009

Letter from the Rt Hon Alan Campbell MP to Angela Knight CBE

Thank you for your letter of 30 October about the above Order.

I am sorry to hear of your concerns over lack of consultation on this Order. I hope I can assure you that the changes made in the Order are incremental ones following earlier legislative provisions, and should have no significant impact on BBA members. The Order does not introduce any new Government policy.

It may be of assistance if I set out the background to the making of the Order. The Proceeds of Crime Act 2002 ('the 2002 Act') created a new type of investigator, an Accredited Financial Investigator (AFI). They form an extended cadre of financial investigators which previously only included warranted police and customs officers. The Secretary of State can by Order set out who is an AFI for the purpose of exercising specific powers under the 2002 Act.

Under section 3 of the 2002 Act, as amended by the Serious Crime Act 2007, the National Policing Improvement Agency (NPIA) provides a system for the accreditation of financial investigators. They took over this role from the Assets Recovery Agency on 1 April 2008. I can assure you that the individual bodies listed in the Order have no powers or authority to train and accredit financial investigators. I should make a further important point from the outset. The use of the various “POCA powers” by AFIs is subject to judicial approval or oversight.

AFIs, both within the police service and in other areas of law enforcement and the wider public sector, have played an integral role in the recovery of the proceeds of crime since the 2002 Act came into force in 2003. Three of the agencies identified in The Times report that you referred to were in fact listed in The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003 (SI 2003/172). They are the Financial Services Authority, the Medicines and Healthcare Products Regulatory Agency and the Rural Payments Agency.

The powers of AFIs were extended to local authorities in 2005 and they have been using their financial investigation skills successfully since that time. The relevant Statutory Instrument was The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2005 – SI 2005/386. Since that time, AFIs in local authorities have been able to apply to the court for restraint orders and orders under Part 8 of the 2002 Act in respect of confiscation and money laundering investigations in England and Wales.

The Government made amendments to the 2002 Act in the Serious Crime Act 2007 extending the range of powers available to AFIs. The new powers which can be exercised by suitably accredited financial investigators, therefore, have full Parliamentary approval. However, they can only be exercised by categories of persons approved by Order of the Secretary of State. It is the Government’s established policy to accord these powers to public bodies which have an investigatory function and have, or intend to have, financial investigators. The body also needs to show that they are (or intend to be) investigating crimes where a person may have benefited from criminal conduct.

The new Statutory Instrument (SI 2009/2707) in fact replaces a similar Order that came into force on 12 May this year - The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (SI 2009/975). That Order gave new investigative powers to AFIs in a range of public sector bodies. The full range of powers was set out in the Explanatory Memorandum that accompanied the Instrument. This followed the amendments to the 2002 Act which were made in the 2007 Act that I referred to earlier. The earlier Order attracted no interest when it was made. Given that background, my officials concluded that there was nothing of special interest or particular controversy in the current Order and advised Ministers accordingly.

I now turn to your specific questions. You asked firstly which bodies or organizations did the Home Office consult in the drafting and laying of the Order. In preparing this Instrument during the summer months, Home Office officials worked in full consultation with the National Policing Improvement Agency, which is the body with the statutory responsibility to train and accredit financial investigators. The NPIA was satisfied that the new bodies listed in the Order were suitable to be given the new investigative powers and asked the Home Office to lay the new Order. The Association of Chief Police Officers (ACPO) have commented that “the NPIA Proceeds of Crime Centre is held in the highest regard across the world and they maintain very high standards of professionalism”. The individual agencies that requested access to the powers were also closely involved in settling the detail of the Order. There was no wider consultation for the following reasons:

- Accredited Financial Investigators have been in existence since 2003
- the investigative powers were first given to local authorities in 2005,
- the extension of the range of powers available to accredited financial investigators was provided for in the Serious Crime Act 2007

- the SI of earlier this year (SI 2009/975) attracted no any Parliamentary, media or other interest.

You also asked whether a Regulatory Impact Assessment or any other cost benefit analysis had been conducted in respect of the Order? A Regulatory Impact Assessment was not prepared for the Order as it was not envisaged that there will be additional impact on business, charities or voluntary bodies. Most of the agencies listed already have accredited financial investigators. The bodies added will have previously had to rely upon the police to perform their investigations. No other cost benefit analysis was undertaken.

Finally, you asked what is the justification for giving “POGA powers” to bodies as diverse as Transport for London, the Rural Payments Agency and the Royal Mail and in what circumstances will these and the other bodies listed in the Order use such POGA powers? Each of these bodies has established that that they are (or intend to be) investigating crimes where a person may have benefited from criminal conduct. Transport for London applied direct to the Home Office for these powers. They have a few staff who have responsibility to investigate allegations of fraud on TFL contracts and also frauds perpetrated against the revenues collected by them. These investigations would normally be outside the remit of British Transport Police or the Metropolitan Police Service.

Similarly, agencies such as the Rural Payments Agency and the Royal Mail can be susceptible to internal and external fraud and other crimes where there is scope for unlawful financial gain. Not all AFIs have the same range of powers. But generally they will be able to use the following POGA powers:

- the power to apply to the court for a restraint order to effectively freeze property which may become subject to a confiscation order following a conviction,
- the ability to seize property subject to a restraint order to prevent its removal from the country,
- the powers to search for, seize, detain and seek the forfeiture of cash suspected of being the proceeds of crime or intended for use in such,
- the ability to apply to the court for investigation orders and warrants in financial investigations, namely confiscation investigations, money laundering investigations and detained cash investigations, and
- the power to execute search warrants in financial investigations.

You may also find it helpful to know that, as at mid -October, there were a total of 1011 AFIs. 536 are non-warranted AFIs in police forces, 256 are in SOCA, 127 are in Local Authorities and 92 in the other public bodies. Almost 80% of AFIs are, therefore, employed by the police service or SOCA.

In conclusion, my officials approached this work in the full knowledge that giving such powers to local authorities and other public sector agencies had the full backing of the ACPO. The Times published an ACPO letter of response to their earlier article on 31 October. In that letter ACPO said “the public rightly expects a/l public bodies to disrupt criminals whenever they can, to remove their criminal profit, and to protect the public purse”. The Statutory Instrument seeks to assist in that process.

I hope I have been able to assure you of the Government's good intentions in laying this Order. The Government fully recognises and appreciates the vital role that BBA members, the wider financial services industry and other sectors play in combating money laundering and recovering the proceeds of crime, particularly through the Suspicious Activity Reporting system but also by working in partnership with SOCA and other law enforcement agencies. We value strongly the positive relations that have been built up in this area between Government and the financial services sector and we hope that these can continue.

18 November 2009

Letter from Angela Knight CBE to the Rt Hon Alan Campbell MP

Thank you for your letter of 18 November.

While I note the points you make about the changes in the Order being incremental ones following earlier legislative provisions this does not, in our view, negate the need for prior consultation. A view which has been endorsed strongly by the House of Lords Select Committee on the Merits of Statutory Instruments when it comments:

“The financial investigation powers under the 2002 Act are powerful tools. The lack of broad consultation on this instrument meant that the Committee, and therefore the House, were unsighted on the views of key stakeholders. By not consulting with a wider range of interested parties on the development of this SI, the Home Office has not followed the spirit of the Government's own guidance on consultation.”

Appendix 1 - Thirty-First Report: The work of the Committee in Session 2008-09 and Correspondence

As you acknowledge the banking sector is the most actively affected sector in relation to proceeds of crime and money laundering issues, our members are by far the largest contributors of reports in submitting around 85% of the total number of suspicious activity reports (“SARs”). The BBA and its members would thus regard ourselves as a key stakeholder in this regard. The failure to consult the industry has undermined the sentiment behind the final comment in your letter that you “value strongly the positive relations that have been built up in this area between Government and the financial services sector”.

We in the banking sector have long supported the Government's adoption “of a partnership approach” with industry in the fight against financial crime including terrorism. Yet Government has repeatedly failed to consult on new legislation, and instead has continuously imposed additional burdens on the regulated sector, leading us to believe there is a distinctly hollow ring to “the partnership approach”.

The UK regime only operates because banks adopt a pragmatic approach in the face of possible criminal/regulatory sanction and the lack of regular and apposite consultation and feedback from the authorities supports the industry view that the burdens imposed by the regime outweigh the benefits.

It is a real concern of BBA and its members that there will be an increase in the numbers of POCA requests, as a result of the expansion in the number of bodies allowed to appoint ‘Accredited Financial Investigators (AFIs) and that the flexing of such powers by bodies not previously having them, could lead to a number of low quality or ‘spurious’ requests.

Having looked at the ‘Explanatory Memorandum’ accompanying the previous Order, in particular the conclusion that there was no need for an impact assessment, this would appear to be based on the flawed assumption that this was merely a transfer of activity from the police to these other public bodies. If the objective is to improve effectiveness and increase the amount of criminal assets being subject to confiscation, then surely, an increase in court orders will be the inevitable consequence.

Whilst we may be able to draw some comfort from the monitoring of the performance of AFIs by the 'National Policing Improvement Agency (NPIA) to ensure the correct use of powers, in particular that 'any incorrect use of the powers will result in the withdrawal of accredited status', we believe there needs to be some mechanism or procedure for banks to report back as part of this monitoring effort where we believe that such requests are not well-founded. In this context, in your letter you indicate that 'the use of the various POCA powers by AFIs is subject to judicial approval or oversight'. In this respect I would welcome confirmation from the Home Office that AFIs will require to submit any seizure orders through the usual court processes. Le. the third bullet at the bottom of page 3 of your letter, refers.

Ultimately, the concerns of the BBA and our members centre on the decision of Government to make ordinary use or possession of proceeds of crime predicate offences for money laundering, thereby allowing access to strong powers intended internationally to only be used against the more serious offence of laundering. But this would seem to fit with Government policy on asset recovery which is based on fiscal targets and not set by reference to the numbers of criminals, to crimes committed or indeed to the desire to reduce crime. Effectively taxing criminals must be an admission of failure and the pragmatic, strictly financial approach to serious crime, in our view, grates with the fundamental purpose of law enforcement and the criminal justice system.

I am copying this letter and our previous correspondence to Lord Rosser, Chair of the Lords Select Committee on the Merits of Statutory Instruments

18 December 2009

APPENDIX 7: INTERESTS

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 House of Lords Record Office and is available for purchase from The Stationery Office.

For the meeting on 12 January 2010, Members declared the following interest on three linked instruments of interest:

Draft Code of Practice on the Welfare of Cats

Draft Code of Practice on the Welfare of Dogs

Draft Code of Practice on the Welfare of Horses, Ponies, Donkeys and their Hybrids

Several members noted a general interest as owners of animals.