

HOUSE OF LORDS

Merits of Statutory Instruments Committee

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2nd Report of Session 2009-10

**Waste Electrical and Electronic  
Equipment (Amendment)  
Regulations 2009**

**Rail Passengers' Rights and  
Obligations (Exemptions)  
Regulations 2009**

**Flood Risk Regulations 2009**

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### *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           |
| The Lord Lucas                        | The Baroness Thomas of Winchester   |
| The Lord Methuen                      |                                     |

### *Registered interests*

Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://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.

Declared interests for this Report are in Appendix 3.

### *Publications*

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

### *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](mailto:merits@parliament.uk). The Committee's website, [www.parliament.uk](http://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*

The Government's Office of Public Sector Information publishes statutory instruments on the internet at [www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm), together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

# Second Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**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. Waste Electrical and Electronic Equipment (Amendment) Regulations 2009 (SI 2009/2957)**

*Summary: The Waste Electrical and Electronic Equipment Regulations 2006 (SI2006/3289) as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2007 (SI2007/3454) (“the 2006 Regulations”) transposed the main provisions of the Council Directive on waste electrical and electronic equipment (WEEE) (“the Directive”). This instrument amends the 2006 Regulations to give effect to the conclusions of a review of the operation of those Regulations. As part of the review, the Department held a public consultation and also held discussions with stakeholders on the impact of the proposals in both practical and monetary terms. The EM says that the amendments to the 2006 Regulations made by this instrument will improve the Producer Compliance Scheme<sup>1</sup> approval process and reduce the administrative burdens placed on business by simplifying the data reporting requirements and evidence system<sup>2</sup>. One important change is that treatment facilities will provide notification that the producer’s obligations have been discharged at the point that WEEE arrives at the facility, not when treated WEEE leaves it. Overall, the Committee believes that there could be benefits from the lessons learned from its review of the 2006 Regulations being spread more widely across Whitehall.*

**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 Waste Electrical and Electronic Equipment Regulations 2006 (SI2006/3289) as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2007 (SI2007/3454) (“the 2006 Regulations”) transposed the main provisions of the Council Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) as amended by the provisions of Directive 2003/108/EC (“the Directive”). This instrument amends the 2006 Regulations to give effect to the conclusions of a review of the operation of those Regulations.
2. The Directive has the aim of “...the prevention of waste electrical and electronic equipment (WEEE), and in addition, the reuse, recycling and other forms of recovery of such wastes so as to reduce the disposal of waste.”<sup>3</sup> The 2006 Regulations were intended to make sure that WEEE is stripped out of the normal waste stream, does not end up in landfill, and is treated in an environmentally responsible manner. As the 2006 Regulations would have

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<sup>1</sup> WEEE producers are required to join one of these schemes, who then discharge the obligations of producers

<sup>2</sup> EM paragraph 7.2

<sup>3</sup> Article 1 of the WEEE Directive

a fundamental impact on the disposal of waste, and as the Directive was being implemented in the UK almost two years after the EU deadline, this Committee took oral evidence from the then Department of Trade and Industry (DTI) on 16 January 2007. The Committee subsequently drew the 2006 Regulations to the special attention of the House on the ground that that they gave rise to issues of public policy likely to be of interest to the House. The Committee's conclusion was that whilst the delay in implementation had been undesirable, the Government had made sustained efforts to ensure that a practical system for processing WEEE was in place from July 2007.

3. The 2006 Regulations were one of a number of instruments used as case studies in the Committee's recent report on post implementation of secondary legislation<sup>4</sup>. In the Report, the Committee commended the frankness of DTI officials in oral evidence in saying that the Directive had been agreed to without people really understanding whether or how the commitment could be delivered. The Committee said that the Department had made great efforts to implement the legislation in as practical a way as possible, but given that there were inevitably elements of compromise, it is important that the 2006 Regulations are evaluated and the lessons learned are spread more widely across Whitehall<sup>5</sup>.
4. The Government issued a public consultation paper on 19 December 2008 outlining proposals to amend the existing WEEE Regulations, and "... *to reduce the burdens on business and improve the effectiveness of the UK system.*"<sup>6</sup> The Explanatory Memorandum (EM) says that in addition to the formal consultation, discussions were undertaken with stakeholders, in groups and on a one to one basis, to assess the impact of the proposals in both practical and monetary terms.
5. The Impact Assessment (IA) for this instrument says that data from 2008 showed that the UK WEEE System achieved a separate collection rate of household WEEE in the UK which exceeded by almost 75% the minimum per head required by the Directive<sup>7</sup>. The IA sets out the detailed costs for the WEEE Scheme in the UK but says that there is less information readily available on the monetary value of the benefits<sup>8</sup>. Although 93 responses were received to the public consultation, the IA says that relatively few provided any quantitative answers<sup>9</sup>.
6. The EM says that the amendments to the 2006 Regulations made by this instrument will improve the Producer Compliance Scheme<sup>10</sup> approval process and reduce the administrative burdens placed on business by simplifying the data reporting requirements and evidence system<sup>11</sup>. One change in particular should be noted. At present the evidence of compliance issued by treatment facilities is a two-stage process: first they issue a receipt

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<sup>4</sup> 'What happened next? A study of Post-Implementation Reviews of secondary legislation: Report with evidence.' Merits of Statutory Instruments Committee 30<sup>th</sup> Report of Session 2008-09. HL Paper 180

<sup>5</sup> 'What happened next?' page 35

<sup>6</sup> Page 5 of the Consultation Document

<sup>7</sup> IA page 11 (paragraph 8)

<sup>8</sup> IA page 11 (paragraphs 9 to 11)

<sup>9</sup> IA page 12 (paragraph 16)

<sup>10</sup> WEEE producers are required to join one of these schemes, who then discharge the obligations of producers

<sup>11</sup> EM paragraph 7.2

when they receive WEEE from an operator; and second once the treated WEEE has left the facility (or is at port awaiting export) they issue evidence that the operator has discharged their obligations for that WEEE. The amendment made by these Regulations will mean that facilities will be able to issue evidence that operators' obligations have been discharged on receipt of the WEEE at the facility, and not when it has been treated. BIS explains that there will be a safeguard in that facilities will remain subject to an independent audit process, and that administrative savings for businesses as a result of this change will be in the region of £0.2m - £1.6m. As part of its ongoing review process the Department will wish to ensure that this change does not have any adverse effect on the proper treatment of WEEE.

7. The WEEE Directive remains a challenging piece of EU legislation. The Government's commitment to ongoing monitoring and review of the UK WEEE system should be welcomed, and current negotiations in Brussels to recast the Directive will provide a significant opportunity to influence the Directive at the EU level. Domestically, the Committee reiterates that there could be benefits in ensuring that the Department's experience of negotiating and then having to implement a complex piece of EU legislation, as set out in the Merits Committee review of the 2006 Regulations, are communicated and understood widely across Whitehall.

#### **B. Rail Passengers' Rights and Obligations (Exemptions) Regulations 2009 (SI 2009/2970)**

*Summary: This instrument provides a blanket 5 year exemption for all non-core provisions of an EC Regulation on rail passengers' rights and obligations so as to give the Department for Transport (DfT) time to consider the evidence on which provisions it might be desirable or otherwise to apply to domestic rail services. The House may wish to note that although the EC Regulation was agreed in 2007, the DfT has not yet obtained a clear view of the financial and other implications of the various options. Its recent public consultation process ended on 3 November 2009, far too late to provide answers in time for the EC Regulation's implementation date of 4 December 2009. The Committee is concerned that DfT may have agreed to the EU Regulation without being fully informed about its implications and does not yet appear to be in a position to make sound judgements about which derogations it might be appropriate to apply. Although delaying the implementation of all the non-core provisions will save rail firms money, there is an opportunity cost because delay also defers the benefits to passengers such as improved service information and compensation for cancellations. Comments from Passenger focus indicate that they believe these exemptions to be only a temporary position pending a formal decision early in 2010 and say any attempt to utilise the full five year derogation would be "deeply disappointing". We support this view and note that the Department's approach to managing the implementation of this EU legislation appears to have been far from ideal.*

**These Regulations are drawn to the special attention of the House on the grounds that they may inappropriately implement EU legislation.**

8. The Department for Transport (DfT) has laid this instrument under the European Communities Act 1972 along with an Explanatory Memorandum (EM).
9. This instrument exempts domestic train services from the application of some of the provisions of EC Regulation 1371/2007 on Rail Passengers'

Rights and Obligations for 5 years from its entry into force on 4 December 2009.

10. The purpose of the EC Regulation is to harmonise the rights of, and obligations on, rail passengers throughout the Community. Its core provisions must be applied to all rail services, these include duties relating to train companies' liability for carrying passengers and their luggage (including for personal injury and damage to property), and to the right to transport of disabled people. The other "non-core" provisions relate primarily to the information to be provided to passengers; companies' obligations to passengers in the event of delay, missed connections and cancellations; the definition and monitoring of service quality standards; the personal security of passengers; and the handling of complaints. At the discretion of Member States, these non-core provisions may be the subject of exemptions for up to a maximum of 15 years. This instrument gives a blanket 5 year exemption for all non-core provisions so as to give the Department time to consider the evidence as to the desirability or otherwise of applying the Regulation in full to domestic services, and to finalise the measures necessary to support the implementation of the Regulation.
11. Consultation with stakeholders on the implementation of the EC Regulation has been going on since 2007 and a public consultation exercise was held from 11 August to 3 November 2009 but this was too late to allow analysis of the responses before the EC Regulation came into effect on 4 December. While the Department is to be commended for conducting a serious and in-depth consultation with stakeholders, the Committee is perturbed that this appears to have started only after the Regulation was agreed – we would have expected these sorts of discussions to have informed the UK's negotiating stance. The fact that there are so many complex issues arising from those discussions that the Department cannot meet the implementation deadline also leads us to question whether the implications of the EC Regulation were fully evaluated before it was agreed.
12. DfT could not provide the Committee with an Impact Assessment on the cost of implementing the non-core provisions – officials could only offer a 2005 report which related to an earlier version of the proposals that only applied to international services. A partial RIA is included in the 2009 consultation document but it is based only on financial estimates provided by the Association of Train Operating Companies and therefore its estimates are in the process of being moderated by comments from other contributors.
13. Paragraph 3.1 of the EM states that there has been no consultation on this delaying instrument, and no impact assessment has been produced. It argues that this is because the purpose of this instrument is to have the time to reach a policy that has been properly consulted upon. While this is laudable from one perspective, there is also an opportunity cost from delay; passengers in the UK will not be receiving the benefits that those in other Member States are. There is a risk that the DfT position will appear to favour the train operating companies.
14. We sought the views of Passenger focus, the main organisation representing passengers, which said that just before they submitted their response to the consultation exercise they had received an email from DfT that said that the Department had decided to grant a five-year derogation. In its response to the consultation Passenger focus said:

*“We recognise DfT’s concerns that there is insufficient time between the end of this consultation and the December implementation date to reach an informed decision. As a result we understand DfT’s decision to grant a derogation for domestic services. We believe, though, that this must be a temporary/holding position pending a formal decision early in 2010. Any attempt to utilise the full five-year derogation period would be deeply disappointing.”*

15. We support this view and note that the Department’s approach to managing the implementation of this EU legislation appears to have been far from ideal.

### **C. Flood Risk Regulations 2009 (SI 2009/3042)**

*Summary: The Regulations transpose the EC Floods Directive into domestic law. The purpose of the Directive is to establish a framework for assessing and managing flood risks, aimed at reducing the negative impact of flooding on human health, the environment, cultural heritage and economic activity across the European Community. The Regulations place duties on the Environment Agency (EA) and local authorities (LAs) to prepare flood risk assessments, flood risk maps and flood risk management plans. Defra consulted on the transposition of the Directive as part of their consultation on the Flood and Water Management Bill. Although there was a high level of support for the Government’s proposed co-ordination arrangements, a significant number of respondees called for sufficient funds and resources to enable LAs to undertake their responsibilities under the Directive. Although Defra say that they have not identified any additional burdens on LAs, the Local Government Authority believe that the Government has underestimated the cost of the lead role generally. Defra will keep the situation under review and have committed to fully funding any new burdens for LAs as a result of these Regulations.*

**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.**

16. These Regulations transpose the EC Floods Directive (“the Directive”) into domestic law and implement its provisions. The purpose of the Directive is to establish a framework for assessing and managing flood risks, aimed at reducing the negative impact of flooding on human health, the environment, cultural heritage and economic activity across the European Community. The Directive was developed in response to a number of extreme flooding events suffered across the EU and aims to establish effective cross-border flood risk management to address this. As a Member State of the EU, the UK is obliged to transpose the Directive into domestic legislation.
17. The Directive requires Member States to make a preliminary assessment of flood risk from all sources, except sewers, and then to identify areas at significant potential risk of flooding. For these ‘significant risk’ areas, maps must be plotted to show the potential flood extent and the adverse consequences arising from such a flood. Objectives and measures must then be developed to reduce this flood risk in flood risk management plans. All assessments, maps and plans must be made available to the public. The Regulations place the responsibility for these deliverables on the Environment Agency (EA) and local authorities (LAs).
18. On 19 November, Lord Davies of Oldham (Parliamentary Under-Secretary of State for Defra) made a Written Statement [HL Written Statements: 19

November 09: WS5 to WS6] on the Flood and Water Management Bill (the “Bill”). The statement informed the House that the Government had introduced to Parliament a revised Bill and had published a command paper setting out the Government’s response to pre-legislative scrutiny and consultation on the draft Bill. The statement also informed the House of the laying of these Regulations. The Government had previously intended to transpose the Directive through the Bill, but as Member States are required to bring in the provisions to transpose the Directive before 26 November 09, they decided that the Regulations provided a more pragmatic way forward for the timely transposition of the Directive (Explanatory Memorandum paragraph 4.2).

19. Defra consulted on the transposition of the Directive as part of the consultation on the Bill. The summary of responses shows that just under a third of the responses included comments on the transposition of the Directive, and that over 95% of those agreed with the Government’s proposed co-ordination arrangements<sup>12</sup>. However, a significant number of respondents called for sufficient funds and resources to enable local authorities to undertake their responsibilities under the Directive. The Local Government Association (LGA) has written to the Merits Committee (see Appendix 1) and said that although LAs are ready and willing to take on flood risk management in their local areas, they believe that the cost of the lead role has been underestimated by Defra. The LGA is pleased that Defra has commissioned new research on costs and benefits but would have wanted to see this analysis undertaken before the Regulations were laid.
20. In response to questions from the Merits Committee (see Appendix 1), Defra has said that they believe the Regulations are unlikely to place significant additional burdens on local authorities as they will be able to rely on information gathered for existing documents. However, they are keeping the situation under review, and are committed to fully funding any new burdens on local authorities as a result of these Regulations.

## OTHER INSTRUMENTS OF INTEREST

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### ***Draft Charities Act 2006 (Changes in Exempt Charities) Order 2009***

### ***Draft Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2009***

21. These instruments continue the simplification of the regulation of charities by either drawing a number of formerly exempt organisations into the supervision of the Charities Commission or by requiring the exempt organisation’s appointed regulator to also check its compliance with charity law. The Committee considered an earlier version of these two instruments in the last session and found the EM obscure (see comments in our 26<sup>th</sup> Report of 2008-09), leaving a number of issues unclear. When making a number of minor drafting changes the Cabinet Office has taken the opportunity to radically revise the EM to address the concerns we expressed.

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<sup>12</sup> Summary of Responses to the consultation on the draft Flood and Water Management Bill from 21 April 2009 – 24 July 2009 (pages 48 to 50)

***Draft General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010***

22. This affirmative Order abolishes the Postgraduate Medical Education and Training Board (PMETB) and provides for its functions to be performed by the General Medical Council (GMC). This change acts on recommendations made by the Tooke Inquiry into *Modernising Medical Careers* which found that the structure of medical education and training in the UK was fragmented and needed reform. The Inquiry also found a lack of continuity between the processes for setting and monitoring standards for training and for continuous professional development, as well as no clear link between registration, certification and revalidation. This Order integrates all of the functions within the GMC with the intention of putting the administration in a better position to respond to any further changes required as a result of the comprehensive review of the regulation of medical education and training currently being conducted by Lord Patel, Chairman of the National Patient Safety Agency, which is expected to report in early 2010.

***Draft Pharmacy Order 2010***

23. This Order revises the arrangements, in Great Britain, for the professional regulation of pharmacists and pharmacy technicians and establishes a new regulator, the General Pharmaceutical Council (GPhC). The Order also transfers to the GPhC duties in respect of the registration and regulation of pharmacy premises, which include powers of entry to registered premises. Provisions are also included on the education and training of pharmacists and pharmacy technicians, the establishment of a new scheme for the continuing professional development of pharmacists and pharmacy technicians and regarding the regulator's capacity to address fitness to practise issues.

***Plant Health (Forestry) (Amendment) (No2) Order 2009 (SI 2009/3020)***

24. This Order amends the Plant Health (Forestry) (Order) 2005 so as to implement Commission Directive 2009/118/EC amending Council Directive 2000/29/EC ("the Directive"). The Directive deals with protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. Paragraph 4.3 of the EM explains that this amending Order makes the definition of the Directive in the principal Order ambulatory, in order to ensure that future changes to the codes of certain wood products are directly applicable to the UK. Given that the use of the ambulatory reference in the Order covers some substantive matters as well as purely technical issues, the Explanatory Memorandum would have benefited from a greater explanation as to how any risks associated with the use of the power are being managed. Further information from the Forestry Commission is at Appendix 2.

***Social Fund (Applications and Miscellaneous Provisions) Amendment Regulations 2009 (SI 2009/3033)***

25. Since previous regulations<sup>13</sup> came into effect on 1 October 2008, which allowed applications for crisis loans for living expenses to be made by phone,

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<sup>13</sup> Social Fund (Applications and Miscellaneous Provisions) Regulations SI 2008/2265

the volume of such applications has doubled to 2.8 million. Although such loans must be eventually repaid, the drain on the Social Fund is substantial and there is a need to restore balance, accordingly the new regulations allow the Secretary of State to require a claimant to make their application in person. The stated intention is to require this where it is their third or subsequent application in a rolling 12 month period. The interview requirement will not apply where the loan is to replace a piece of household equipment e.g. a washing machine or where the loan is meant to tide a claimant over for the initial period while their claim is assessed and paid (alignment), but it will be used for claims for living expenses, which can simply be requested because the claimant has spent their allowance before the end of the fortnight it is meant to cover. The DWP hope that the requirement to attend an interview will deter spurious claims and will allow them to signpost claimants to sources of advice on money management.

***Weights and Measures (Metrifcation Amendments) Regulations 2009 (SI 2009/3045)***

***Units of Measurement Regulations 2009 (SI 2009/3046)***

26. These instruments implement, in part, the amendments made by Directive 2009/3/EC (“the Directive”) relating to the use of units of measurement. The main change is that they remove a deadline of 31 December 2009 that applied to the use of imperial units of measurement where they were used as supplementary indicators alongside metric units (e.g. in dual labelling). The UK Government had actively sought this change in negotiations on the Directive. Removing the deadline will allow imperial units to be used alongside metric units without time limit. The Directive also removes any requirement for the UK to end the use of certain imperial units as primary indicators for some specific purposes e.g. the mile for road traffic signs, and the pint for the sale of draught beer. However, this amendment requires no change to UK law as the UK has not set any deadlines to end the use of these units.

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

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**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 Charities Act 2006 (Changes in Exempt Charities) Order 2009

Draft Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2009

Draft General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010

Draft Pharmacy Order 2009

### Instruments subject to annulment

SI 2009/2984 School Organisation (Establishment and Discontinuance of Schools) (England) (Amendment) Regulations 2009

SI 2009/3020 Plant Health (Forestry) (Amendment) (No. 2) Order 2009

SI 2009/3021 Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2009

SI 2009/3022 Companies Act 2006 (Amendment of Section 413) Regulations 2009

SI 2009/3023 Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Order 2009

SI 2009/3030 Health Service Branded Medicines (Control of Prices and Supply of Information) Amendment Regulations 2009

SI 2009/3033 Social Fund (Applications and Miscellaneous Provisions) Amendment Regulations 2009

SI 2009/3040 Administrative Justice and Tribunals Council (Listed Tribunals) (Amendment) Order 2009

SI 2009/3045 Weights and Measures (Metrication Amendments) Regulations 2009

SI 2009/3046 Units of Measurement Regulations 2009

SI 2009/3048 Private Security Industry Act 2001 (Designated Activities) (Northern Ireland) Order 2009

SI 2009/3049 Health and Social Care Act 2008 (NHS Blood and Transplant Periodic Review) Regulations 2009

## APPENDIX 1: FLOOD RISK REGULATIONS 2009 (SI 2009/3042)

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### Correspondence from the Local Government Association

The Flood Risk Regulations 2009 initially made up part of the Draft Flood and Water Management Bill which went out to consultation over the spring of 2009.

In the LGA's response to the consultation we welcomed the draft Bill and its intention to give local authorities the lead role in flood risk management. However we expressed concern that the new responsibilities and burdens councils would have to undertake as a result of the legislation would need to be funded by DEFRA.

The Flood Risk Regulations 2009, which are being considered now as secondary legislation, require lead local flood authorities to, amongst other things, prepare preliminary flood assessment reports, identify flood risk areas, prepare flood hazard and risk maps and prepare flood risk management plans in relation to each flood risk area.

Local authorities are ready and willing to take the lead on flood risk management in their local areas. We believe though that the cost of the lead role generally has been underestimated by DEFRA and projected 'savings' from better flood risk management are not actual savings but possible future cost avoidance. The LGA has asked for a much clearer evidence base for the presumed cost savings for local authorities in managing local flood risk. We are pleased that DEFRA has commissioned new research on costs and benefits but we would have wanted to see this analysis undertaken before the Regulations were submitted as Secondary Legislation.

November 2009

### Further information from the Department for Environment, Food and Rural Affairs

*Q1. Paragraph 4.3 of the EM. How do you intend to achieve this consolidation?*

**A1.** We propose to prepare a consolidation Bill following standardisation of the various Acts which the Flood and Water Management Bill relates to, using proposed powers to make pre-consolidation amendments. We do not yet have any definite timeframe for this but hope to do it once we have put in place the secondary legislation which standardises this legislation.

*Q2. Will these Regulations be undermined if the Flood and Water Management Bill doesn't receive Royal Assent before the end of the session?*

**A2.** No. The Regulations are designed to be stand alone.

*Q3. Are the Local Authorities content with the roles they have been assigned by these Regulations?*

**A3.** We have consulted both CLG and LGA both of whom raised no concerns other to ensure that any new burdens are funded. The Flood Risk Regulations 2009 are unlikely to place significant additional burdens on local authorities as they will be able to rely on information gathered for strategic flood risk assessments and surface water management plans to meet most of its provisions. We will, however, review the process for meeting Floods Directive requirements after the first cycle to determine whether in practice any additional work was undertaken.

*Q4. How will the new requirements be funded?*

**A4.** For the Environment Agency, any additional Floods Directive costs will be met from future Grant In Aid from Defra.

However, the Directive includes transitional provisions that allow Member States to present existing flood risk assessments, where equivalent to the requirements of the Directive, instead of carrying out new ones. The EA is therefore unlikely to need to carry out significant additional

work for the Directive, but it will primarily be a matter of co-ordinating and reporting on existing assessments.

For local authorities Defra is committed to fully funding new burdens, and will keep the situation under review.

No additional burdens have been identified for the Floods Directive but this will be kept under review as implementation takes place. If it becomes clear that local authorities have incurred additional costs in fulfilling their responsibilities under the EU Floods Directive, Defra will provide the extra funds in full.

Funding levels for the current financial year and next year have already been announced. Funding from 2011/12 will be determined as part of the next Government spending review. For further details please refer to the funding fact sheet (link below).

<http://www.defra.gov.uk/environment/flooding/documents/policy/fwmb/factsheet-la-funding.pdf>

November 2009

## APPENDIX 2: PLANT HEALTH (FORESTRY) (AMENDMENT) (NO2) ORDER 2009 (SI 2009/3020)

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### Information from the Forestry Commission

You asked me to respond to two questions.

#### *Definition of “the Directive” – ambulatory reference*

You asked whether by amending the Order so as to make references to “the Directive” ambulatory there is a risk that future substantive amendments to that Directive would also take effect in Great Britain without the need for further amendments to the Order.

In response to this question I can confirm that the majority of the references to “the Directive” within the Order are to the technical Annexes of that Directive. As such any future changes implemented through the ambulatory reference are, in practice, likely to be technical rather than substantive.

The remainder of the references to the “Directive” are found in article 38 and article 2 (which sets out certain definitions, for example of “lot” and “consignment”), so it is to this extent only the ambulatory reference covers substantive matters.

We note that:

- the European Commission has recently launched a review of the EU Plant Health regime with a view to the adoption of a new Directive that will replace the current one, possibly by 2012. This would of course require new domestic implementing legislation. If there were to be any substantive changes of policy significance these are likely to be negotiated as part of this review.
- the Forestry Commission is represented on the Standing Committee on Plant Health as part of the UK delegation and therefore has an opportunity from the earliest stage to scrutinise proposals made by the European Commission. The Forestry Commission would seek to ensure that any concerns are addressed and that stakeholders are fully consulted as part of that process.
- transparency is important and so if a substantive change in the law were to be brought in through the use of an ambulatory reference the Forestry Commission would take appropriate steps to publicise that change, in order to draw it to the attention of people likely to be affected.

The Forestry Commission is mindful of the costs incurred in making legislative change. In considering the various factors set out above, we have concluded that overall the balance was in favour of amending the definition of “the Directive” in the way set out in SI 2009/3020 and that this is an appropriate case to rely on paragraph 1A of Schedule 2 to the European Communities Act 1972.

#### *Amendments to the Schedules*

You also asked whether the other changes described in paragraphs 7.2 and 7.3 of the Explanatory Memorandum were simply for reasons of clarity and not representing any change in policy. I can confirm that the reasons are purely for clarity.

November 09

### APPENDIX 3: INTERESTS

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://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 1 December 2009, Members declared the following interests on an instrument drawn to the special attention of the House and on two other instruments of interest:

***Rail Passengers' Rights and Obligations (Exemptions) Regulations 2009 (SI 2009/2970)***

Lord Methuen: member of the All Party Rail Group.

Lord Rosser: member of the All Party Rail Group and in receipt of a Transport Salaried Staffs' Association union pension.

***Draft Charities Act 2006 (Changes in Exempt Charities) Order 2009***

***Draft Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2009***

Lord Hart of Chilton: member, strategy and development committee of the Victoria and Albert Museum.