

HOUSE OF LORDS

Merits of Statutory Instruments Committee

30th Report of Session 2007-08

Drawing special attention to:
**Draft Social Security (Lone Parents and
Miscellaneous Amendments) Regulations
2008**

Correspondence:
**Social Security (Miscellaneous
Amendments) (No. 4) Regulations 2008**

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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 Kingsmill CBE
The Lord Crisp KCB	The Lord Lucas
The Baroness Deech DBE	The Baroness Maddock
The Viscount Eccles CBE	The Lord Rosser
The Lord Filkin CBE (<i>Chairman</i>)	The Baroness Thomas of Winchester
The Lord James of Blackheath CBE	

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Publications

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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

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

Thirtieth Report

INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.

Draft Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008

Summary: Currently, a lone parent may be entitled to Income Support (IS) solely on the ground that they are responsible for a child aged under 16. These Regulations propose to lower the entitlement threshold immediately to include only lone parents whose youngest child is under 12 and then to phase in further extensions of the requirement so that, from 26 October 2009, only those whose youngest child is under 10 will be eligible and from 25 October 2010 only those whose youngest child is under 7. Parents of children above the threshold age will instead be required to claim Jobseeker's Allowance which is conditional on a person being willing to take up work and actively seeking employment. The Government's policy intention is clearly stated and these Regulations seek to implement it. However, some clarification is required about the practicalities of how the system will operate and whether the proposed pace of implementation is feasible, particularly in how it relates to the roll-out of "wrap-around childcare". The proposals, particularly in relation to younger children, those with special needs and those being educated at home, are contentious and the House may be interested in finding out more about how official discretion will be applied and how the DWP proposals may be reconciled with the DCSF's policy objectives.

These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

1. These draft Regulations have been laid by the Department for Work and Pensions (DWP) under provisions of the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995 and the Welfare Reform Act 2007. They are laid with an Explanatory Memorandum (EM) and an Impact Assessment (IA). We commend this supporting documentation which presents its case in a more thorough way than the DWP material on which we commented in our 28th Report. In addition a report has been produced by the Social Security Advisory Committee (SSAC), a statutory consultee, which comments on the proposals (Command Paper Cm 7480).
2. Currently, a lone parent may be entitled to Income Support (IS) solely on the ground that they are responsible for a child aged under 16 who is a member of their household. Since October 2005, most lone parents who claim IS have been required to participate in Work Focused Interviews every six months to prepare for employment in the future. However, they are

currently not required to look for paid work in order to claim IS and any work-related training is voluntary.

3. These Regulations propose to amend the Income Support (General) Regulations 1987 (SI 1987/1967) so that only lone parents with a youngest child aged under 12 will be entitled to IS. They also propose to phase in further extensions of the requirement so that, from 26 October 2009, only those whose youngest child is under 10 will be eligible for IS and from 25 October 2010 only those whose youngest child is under 7. These parents will instead be required to claim Jobseekers Allowance which is conditional on a person being willing to take up and actively seeking employment.
4. The Regulations also provide for certain exemptions so that, for example, lone parents with a disability premium who cease to be entitled to IS due to these Regulations may claim Employment and Support Allowance (ESA). They also amend the Jobseeker's Allowance Regulations 1996 (SI 1996/207) to allow additional discretion for officials when determining whether lone parents had just cause for leaving employment, good cause for failing to take up paid employment or to comply with a jobseeker's direction, and their eligibility for hardship payments. Where employment is refused without good cause sanctions will apply.
5. The Government say that the policy objective is to increase lone parent employment and reduce child poverty. The EM offers evidence from a number of pieces of research in support of this objective. For example, it states that the current approach, based solely on voluntary participation, has helped to increase the lone parent employment rate by 11.6 percentage points to 56.3 per cent. In its response to the SSAC, the Government stated that *"58 per cent of children in non-working lone parent families live in poverty, compared to 19 per cent of children of lone parents working part-time and 7 per cent of those working full-time"* (Command Paper page 4 paragraph 20).
6. The ability to cut poverty through further increasing lone parent employment rates is however closely connected with the provision of adequate childcare. The SSAC report points out that the target date for providing "wrap around care" is only 2010 and there are currently some significant gaps in provision, notably during school holidays (Command Paper page 24 paragraph 5.11). Some of the assumptions are based on similar programmes in other countries but those with the lowest lone parent poverty rates (eg Scandinavia, Netherlands, see Command Paper page 111) tend to be those which are reputed to have the best childcare provision. The SSAC report also questions whether the "better off in work" calculations take a sufficiently broad overview of potential impacts (see, for example, Command Paper page 24 paragraph 5.10, dealing with loss of free school meals and free prescriptions).
7. The IA explains, with costings, the impact of the change on the staff of Jobcentre Plus and on claimants. We note from the Equality Impact Assessment (included in the IA) the different impacts on women and people from ethnic minorities claiming benefit as a lone parent and what Jobcentre Plus aims to do to address this. We are particularly concerned to note that those lone parents who have also been claiming disability premium on IS will be financially worse off under the new arrangements despite the measures in the Regulations to mitigate this (IA page 10 *Risk of negative impact*).
8. The EM responds to criticisms of the proposal by saying that Jobcentre Plus staff will have extra discretion so that a lone parent will not be penalised if

appropriate and affordable childcare is not available (paragraph 7.10). Paragraph 7.16 of the EM says that detailed guidance on both regulatory and operational changes will be provided to Jobcentre Plus staff and decision makers on the application of the Jobseeker's Allowance regime to parents. **However the House may wish to press for more details on what the guidance will say on how discretion should be exercised and how the DWP intend to ensure that it is exercised consistently in different parts of the country.** Given that the first stage of the change is proposed to come into effect on the day after the affirmative Regulations are made, **the House may also wish to inquire about the timetable for delivering training to staff so that the first lone parent claimants receive the full range of support and discretion which the Department propose to offer.**

9. The ability of the Department to deliver the levels of service and the increased numbers of interviews required through Jobcentre Plus staff that the programme of change will demand is one of the key questions raised by the SSAC report. They suggest that the initial stage be evaluated before implementation is extended to other groups. The Government response (Command Paper page 7) indicates that, although they will not go that far, they are willing to modify the timetable for implementation to deal only with new claims from November 2008 and leave the conversion of continuing claims from those with children aged 12-15 to 2009. An Annex setting out their revised proposals is set out at page 12 of the Command Paper and has been transposed by Schedule 1 of the Regulations.
10. The SSAC report expresses concern about who should determine whether childcare arrangements are suitable (Command Paper page 25 paragraph 5.13). A number of representations received by the Committee have also highlighted concerns that parents may be penalised under the Jobseeker's Allowance regime for refusing a job because there is no suitable childcare available for their child. Issues raised include lack of local availability of such care (particularly for children with special needs or in rural areas), its cost in relation to the amount the parent will earn from the employment proposed and who is to judge if it is suitable for the individual child involved. A number of the submissions we received questioned whether these Regulations would put the ultimate decision into the hands of a member of Jobcentre Plus staff, in conflict with the Government's policy objective as stated in the December 2004 Paper *Choices for Parents; the best start for Children* which has as a central principle: "*The legitimate expectations of families that they should be in control of the choices they make in balancing work and family life*"¹. Submissions also quoted a statement in correspondence from John Hutton MP, when Secretary of State for Work and Pensions, that said: "*We have been very clear that we are not proposing to force lone parents into work, not cut lone parent benefits – this would be wrong in principle and damaging to the health and well-being of children. It is a matter of individual choice for each lone parent as to whether they look to move into work or continue to claim benefits*"².

¹ *Choices for Parents; the best start for Children* (December 2004), paragraph 1.4, as quoted in submission from the Action for Home Education Group (AHEd)

² Letter from John Hutton MP to Tom Clarke MP, 20 February 2007

11. The Committee also received a number of representations from people who educate their children at home³. These emphasized that their decision to do so was not simply a lifestyle choice but responded to special needs, disability or bullying which meant their child was not catered for effectively within the mainstream school system. They argued that they should be exempted from the requirement to make themselves available for work as a condition of receiving benefit, as the requirement to work was in conflict with section 7 of the Education Act 1996 which explicitly places a duty on the parent to provide their child with full-time education “*either by regular attendance at school or otherwise*”. In correspondence DWP Ministers have made it clear that it is not their intention to provide such an exemption⁴. **The House may wish to explore how the DWP proposals may be reconciled with the DCSF’s policy objective.**

Conclusion

12. The Government’s policy intention is clearly stated and these Regulations seek to implement it. However, some clarification is required about the practicalities of how the system will operate and whether the proposed pace of implementation is feasible. The proposals, particularly in relation to younger children, those with special needs and those being educated at home, are contentious and the House may be interested in finding out more about how official discretion will be applied.

OTHER INSTRUMENTS OF INTEREST

Draft International Criminal Court (Remand Time) Order 2008

13. This Order is necessary to comply with the requirements of the International Criminal Court Act 2001, Part 2 of which sets out an expedited procedure for the arrest and surrender of persons suspected of war crimes or crimes against humanity. In cases of urgency the ICC may request the provisional arrest of a person alleged to have committed such a crime. The Order specifies that, pending receipt of a warrant issued under section 2 of the Act, a British court may on any single occasion remand a person for a maximum period of 18 days, up to a total of 60 days. This follows the precedents set by the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 and United Nations (International Tribunal) (Rwanda) Order 1996.

³ These submissions are not reprinted but are available on request from the Committee Secretariat or The Parliamentary Archives (020-7219 3074). They were received from Jill Anderson; Lord Avebury representing ACERT; Lord Avebury forwarding an exchange of correspondence between himself, AHed and DWP Ministers; Shena Deuchars; Mrs. Lexie Devine, Home Educator; Susan Flindt; S Goacher; Debra Jameson forwarded by Jane Crowe; Linda Kennedy; Clare Murton, Home Educator; Fiona Nicholson of Education Otherwise; Mrs B Stark Chair of AHed; Annette Taberner of Education Otherwise

⁴ Letter from Stephen Timms MP, DWP Minister, to Lord Avebury, 25 September 2008 “the Government does recognise (sic) the right of a parent to choose to home educate their child(ren). However, Government do not provide the funding to do so. Lone parents who are claiming IS and are also home educating their child(ren) receive their benefit solely on their status as lone parents and not as home educators. We are therefore treating lone parents who home educate in the same way as any other lone parent who claims IS solely on the basis of being a lone parent and requiring them to look for work when their youngest child reaches the new relevant age threshold if they are able.”

Draft Local Elections (Ordinary Day of Elections in 2009) Order 2008

14. The Department for Communities and Local Government (DCLG) have laid this Order, which moves the ordinary day of elections to county, district and parish councils in England in 2009 to the same day as the date of the poll for the European Parliamentary election – i.e., from Thursday 7 May to Thursday 4 June 2009. DCLG carried out consultation on the proposal between May and August 2008, and state that over 76% of those who responded were in favour of moving the ordinary day of elections in this way, although some (22%) placed conditions on their support. DCLG's Explanatory Memorandum (EM) says that the Electoral Commission stated their support for moving local elections, since this would be less confusing for voters and candidates than holding two separate polls within a short space of time. However, the EM does not bring out the point made in DCLG's summary of consultation responses (on the Department's website) that, despite its support in this case, the Commission generally wishes to see the combination of elections minimised. The summary document acknowledges that the Commission has recommended that there should be research on the effect of the combination of polls; while welcoming this recommendation, DCLG have said that the Government are not best placed to undertake such research.

National Health Service (Directions by Strategic Health Authorities to Primary Care Trusts Regarding Arrangements for Involvement) Regulations 2008 (SI 2008/ 2496); and***National Health Service (Directions by Strategic Health Authorities to Primary Care Trusts Regarding Arrangements for Involvement) (No 2) Regulations 2008 (SI 2008/2677)***

15. The National Health Service (Directions by Strategic Health Authorities to Primary Care Trusts (PCT) Regarding Arrangements for Involvement) Regulations 2008 (SI 2008/ 2496) were laid on 23 September to allow SHAs to discharge all or part of the PCTs' duty to involve service users, for example through such mechanisms as LINKs. There are times when allowing aggregation is more efficient or cost effective; however, without this modification PCTs would be in breach of their statutory duty. Unfortunately the instrument was laid prematurely and had to be revoked and replaced by National Health Service (Directions by Strategic Health Authorities to Primary Care Trusts Regarding Arrangements for Involvement) (No 2) Regulations 2008 (SI 2008/2677) which were laid on 10 October. We remind the Department of Health of the recommendation in our report *The Management of Secondary Legislation: follow-up*⁵ that:

Departments need to take a more active approach to ensure that senior policy officials systematically check the material they intend to lay before Parliament for efficacy, accuracy and completeness.

⁵ 13th Report (HL Paper 70) paragraph 9

Nursing and Midwifery Council (Constitution) Order 2008 (SI 2008/2553)

General Medical Council (Constitution) Order 2008 (SI 2008/2554)

16. These Orders conclude for the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC) the changes envisaged in the White Paper *Assuring independence: the governance and accountability of the professional regulators*. From 1 January 2009 both organisations will have a revised constitution. From that date the GMC will consist of 24 members, made up of 12 lay and 12 professional members and the Nursing and Midwifery Council of 14 members, made up of 7 lay and 7 professional members. All members of these Councils will be appointed by the Privy Council, although in practice this function will be delegated to the Appointments Commission.
17. The changes to the size and composition of the Council have been controversial in both professions with a majority who responded to the consultation preferring to retain a professional majority and, particularly among nurses, a representational function for their particular constituency. However this is contrary to the Government's policy that the Councils should regulate the profession on behalf of the public and not allow purely professional concerns to dominate their work. Accordingly, the Government have not changed their proposals to reflect these concerns.

Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Code A) Order 2008 (SI 2008/2638)

18. This Order introduces a pilot scheme with the potential to make more effective use of police time. PACE Code A currently requires officers to make a full record of any occasion where they have stopped someone to give account of themselves and to give that person a copy immediately. The pilot scheme will simplify the data recorded and allow the officer to give the stopped person a receipt only at the time and notify them of how to access the report. It will be limited to officers operating from in the following force areas: Leicestershire, Staffordshire, Surrey, West Midlands, Essex, Greater Manchester, Lancashire, Merseyside, Nottinghamshire, South Wales, Thames Valley and West Yorkshire. The pilot scheme evaluation will consider the impact on police accountability and police bureaucracy and whether the protections for the individual set out in Code A are maintained. We welcome the initiative which arose out of Parliamentary debates on what became section 11 of the Criminal Justice Act 2003 and has been considered by the Commons' Home Affairs Select Committee.

Legal Services Act 2007 (Prescribed Charity) Order 2008 (SI 2008/2680)

19. Section 194 of the Legal Services Act 2007 enables the court to make, in civil proceedings where a party has received pro-bono (free of charge) legal representation, an order against another party to make a payment to the charity in respect of the pro bono representation. This provision removes the anomaly whereby an unsuccessful party in a case where the successful party was represented on a pro bono basis could benefit from the courts' inability to order that unsuccessful party to pay a sum (equivalent to costs), due to the operation of the indemnity principle. It will create a more level playing field in these cases by making both parties liable for costs or a payment equivalent

to costs. The sums awarded in these cases will go, not to the lawyers providing the pro bono representation, but to a single charity, prescribed by this Order as the Access to Justice Foundation. This charity will administer and distribute the monies received to voluntary organisations that provide free of charge legal support for individuals and communities.

SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO. 4) REGULATIONS 2008 (SI 2008/2424)

20. We sought further information from the Department for Work and Pensions about the Social Security (Miscellaneous Amendments) (No. 4) Regulations 2008 (SI 2008/2424), which we drew to the special attention of the House in our 28th Report⁶. The correspondence is printed at the Appendix.

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

Immigration and Nationality (Fees) (Amendment No. 3) Regulations 2008

International Criminal Court (Remand Time) Order 2008

Judicial Appointments Order 2008

Local Elections (Ordinary Day of Elections in 2009) Order 2008

Wool Textile Industry (Export Promotion Levy) (Revocation) Order 2008

Instrument requiring affirmative approval

SI 2008/2766 Landsbanki Freezing (Amendment) Order 2008

Instruments subject to annulment

SI 2008/2496 National Health Service (Directions to Strategic Health Authorities to Primary Care Trusts Regarding Arrangements for Involvement) Regulations 2008

SI 2008/2553 Nursing and Midwifery Council (Constitution) Order 2008

SI 2008/2554 General Medical Council (Constitution) Order 2008

SI 2008/2558 National Information Governance Board Regulations 2008

SI 2008/2570 Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008

⁶ 28th Report (HL Paper 171)

- SI 2008/2593 National Health Service (Charges for Drugs and Appliances) Amendment Regulations 2008
- SI 2008/2598 Genetically Modified Organisms (England) (Amendment) Regulations 2008
- SI 2008/2599 Hydrocarbon Oil and Bioblend (Private Pleasure-flying and Private Pleasure Craft) (Payment of Rebate etc.) Regulations 2008
- SI 2008/2600 Hydrocarbon Oil (Supply of Rebated Heavy Oil) (Payment of Rebate) Regulations 2008
- SI 2008/2624 Social Security (Contributions) (Amendment No. 5) Regulations 2008
- SI 2008/2638 Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Code A) Order 2008
- SI 2008/2639 Statutory Auditors and Third Country Auditors (Amendment) (No. 2) Regulations 2008
- SI 2008/2648 Veterinary Medicines (Amendment) Regulations 2008
- SI 2008/2656 Child Support (Consequential Provisions) (No. 2) Regulations 2008
- SI 2008/2667 Social Security (Miscellaneous Amendments) (No. 5) Regulations 2008
- SI 2008/2673 Financial Services and Markets Act 2000 (Consequential Amendments) Order 2008
- SI 2008/2677 National Health Service (Directions to Strategic Health Authorities to Primary Care Trusts Regarding Arrangements for Involvement) (No.2) Regulations 2008
- SI 2008/2678 National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2008
- SI 2008/2680 Legal Services Act 2007 (Prescribed Charity) Order 2008

Instrument subject to annulment (Northern Ireland)

- SR 2008/401 Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 2008

APPENDIX: SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO. 4) REGULATIONS 2008 (SI 2008/2424)

Letter from the Chairman to the Rt Hon. James Purnell MP, Secretary of State for Work and Pensions

1. I am writing to express the Committee's continuing concern about the variable quality of the material DWP is producing in support of its secondary legislation. This has two main elements: the Department's approach to public consultation and the quality of the Explanatory Memoranda laid before Parliament. The Social Security (Miscellaneous Amendments) (No 4) Regulations 2008 (SI 2008/2424), on which the Committee reported this week, is a case which illustrates both elements.

Consultation

2. This Committee sees a wide range of the secondary legislation produced by your Department and has been struck by the variable nature of its approach to consultation. In some policy areas it appears excellent (for example the mesothelioma exercise described in SI 2008/2365 or the approach demonstrated in SI 2008/1735 on statutory sick pay), however in pensions and benefit matters consultation often appears to be non-existent. In respect of Social Security (Miscellaneous Amendments) (No 4) Regulations 2008 (SI 2008/2424) there is no mention made of consultation by DWP in the Explanatory Memorandum, and only a passing reference to informal consultation with Help the Aged and Age Concern in the equality impact assessment included in the Command Paper⁷.

3. These Regulations also illustrate a trend, that has concerned us in a number of recent DWP Explanatory Memoranda, which implies that, because the Social Security Advisory Committee (SSAC) has not asked for the legislation to be formally referred to it, there is no need for consultation at all⁸. Since our Secretariat raised the issue with officials the wording has been modified⁹ but we remain concerned that the SSAC's role as a "critical friend" is being perceived as an alternative to conducting a proper public consultation exercise.

4. We stressed the importance we place on consultation in our report "The Management of Secondary Legislation: follow up"¹⁰: "*The analysis of a consultation exercise is not an afterthought but should drive policy.*" (paragraph 13) and we feel most value is gained when consultation seeks views on proposals in the process of formulation rather than at the final stage.

5. Our Follow-up report also made specific reference to the standing exemption from consultation included in some DWP primary legislation¹¹, which we find inconsistent with the overarching Government policy, which aims to standardise consultation practice across Government and to set a benchmark for best practice as laid down in the BRE Code of Conduct on Consultation.

⁷ Command Paper 7469 page 56 para 4.2

⁸ For example SI 2008/759 EM para 7.6 - The Department has formally consulted the Social Security Advisory Committee concerning the Regulations. The Committee has given its approval to proceed without public consultation.

⁹ For example SI 2008/2265 EM para 7.7 - No formal consultation has taken place. The Social Security Advisory Committee have considered the proposed amendments and agreed that they need not be formally referred to it.

¹⁰ 13th Report, session 2007-08 (HL Paper 70) paragraph 13

¹¹ *Ib id.* paragraph 14

Quality of Explanatory Memoranda

6. In several of our reports in session 2006-07 we raised a number of instances where the Explanatory Memoranda (EM) provided by DWP failed to give adequate detail to enable the House to give proper consideration to an instrument¹². When your officials gave evidence to our Inquiry in November 2007, we raised these issues with them and they undertook to ensure that EMs were helpful and free standing (13th report session 2007-08, Qs 70-71) but the quality still remains variable.

7. In relation to the Social Security (Miscellaneous Amendments) (No 4) Regulations 2008 (SI 2008/2424) given the strength of the opposition to the proposal expressed in the response to the SSAC consultation exercise, we would have expected the EM laid before Parliament to give a clearly expressed justification of why the approach chosen was necessary and what the consequences would be. The EM provided reads more like a press notice and is rather vague. To facilitate the House's scrutiny of the proposal our report has attempted to fill the void by presenting a synthesis of the various facts and arguments from a range of published documents. While our report explicitly recognises that Governments are sometimes faced with difficult choices, it remains Parliament's duty to weigh up the rationale for the course of action proposed to see if it has the balance of public interest right. The EM provided with SI 2424 was not sufficiently informative to facilitate this.

8. The Committee would be grateful for your views on this particular example, but also more broadly, for any action you can take to ensure that the material your Department provides to assist Parliament in its scrutiny of secondary legislation more consistently meets the required standards.

8 October 2008

Letter from the Rt Hon. James Purnell MP, Secretary of State for Work and Pensions, to the Chairman

1. Thank you for your letter dated 8 October, regarding the handling of secondary legislation in DWP. I am grateful to you for letting me know about the Committee's concerns, and I'm sorry to learn that the Committee was unhappy with our approach on SI 2008/2424 in particular.

2. You express concern that the Explanatory Memorandum (EM) to this SI makes no mention of any consultation by the Department. I agree it would have been useful if the memorandum had said more about this. My Department held informal discussions with Age Concern and Help the Aged to help ensure that the interests of pensioners were represented when the policies were being formulated. With specific regard to the proposals relating to the reduction in Housing Benefit/Council Tax Benefit period, we also invited welfare rights and similar organisations to send details of case studies and information on the impact of the proposals. This was in addition to our statutory requirement to consult the Local Authority Associations, which we followed. We also took account of the SSAC consultation exercise and report, which gave evidence of potential hardship to some people which could result from these changes. In response to this, we decided to relax the new provisions as they affect people of working age.

3. With regard to the Explanatory Memorandum to these regulations, I regret that the Committee finds it unsatisfactory. We have identified the learning points from this

¹² For example SI 2007/2868 mentioned in our 32nd report of 2006-07, SI 2007/2582 in our 31st report and SI 2006/3188 in our 5th report.

particular case and will ensure that all future material supporting Statutory Instruments will take these higher standards on board.

4. You express concern that the Department may seek to use referral to the SSAC as a substitute for its own proper consultation. We will always take a departmental view as to what public consultation arrangements are appropriate for a particular policy proposal. We take into account any consultations undertaken by SSAC, which functions as a statutory body independent of the Department.

5. More widely, you express concern about the rule which exempts regulations made within six months of commencement of the relevant primary power from the general statutory requirement to refer amending regulations to the SSAC. The purpose of the exemption, as your Committee is aware, is to allow the Department to implement new legislation quickly by avoiding the need to mount a statutory consultation with the SSAC. The Government has taken the view that it would not be right to delay the implementation of major reforms to the social security system by building in a statutory requirement to consult the SSAC in these circumstances. Such a requirement could delay the implementation of major reforms by approximately six months if the SSAC decided to seek formal referral of such regulations.

6. A recent pilot whereby the SSAC had sight of draft regulations statutorily exempted through the operation of the six months rule is currently being jointly evaluated by the SSAC and DWP. The primary aim of the pilot was to better acquaint the SSAC with the content of new regulations, however, we have undertaken to consider any implications for the SSAC's future functions that the pilot may have raised.

7. In other areas, our work on consultation and engagement has been praised by stakeholders, in particular the process we put in place around Lone Parent Regulations. We aim to take lessons from this success, as well as from the issues you have raised in relation to SI 2008/2424.

8. Thanks again for your letter. I hope the above has gone some way to address your concerns. My Department remains committed to consultation and we aim to build on the successful engagement processes we have undertaken.

14 October 2008