

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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10th Report of Session 2014–15

**Education (Independent School  
Standards) (England) (Amendment)  
Regulations 2014**

Includes 6 Information Paragraphs on 10 Instruments

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## *Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)*

### *Historical Note*

In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012–3 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
  - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
  - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).
- (2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
  - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
  - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
  - (c) that it may inappropriately implement European Union legislation;
  - (d) that it may imperfectly achieve its policy objectives;
  - (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation;
  - (f) that there appear to be inadequacies in the consultation process which relates to the instrument.
- (3) The exceptions are—
  - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
  - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
  - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

Baroness Andrews	Lord Eames	Baroness Stern
Lord Bichard	Rt Hon. Lord Goodlad ( <i>Chairman</i> )	Lord Plant of Highfield
Lord Borwick	Baroness Hamwee	Lord Woolmer of Leeds
Lord Bowness	Baroness Humphreys	

### *Registered interests*

Information about interests of Committee Members can be found in Appendix 3.

### *Publications*

The Committee’s Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

### *Information and Contacts*

If you have a query about the Committee’s work, or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020–7219 8821; fax 020–7219 2571; email [seclegscrutiny@parliament.uk](mailto:seclegscrutiny@parliament.uk).

### *Statutory instruments*

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

# Tenth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

**A. Education (Independent School Standards) (England) (Amendment) Regulations 2014 (SI 2014/2374)**

*Date laid: 8 September*

*Parliamentary Procedure: negative*

*Summary: These Regulations require proprietors of independent schools actively to promote the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. The Department for Education consulted on the changes made by the Regulations over six weeks, from 23 June to 4 August of this year. We have received a number of comments from respondents to that consultation complaining about the inadequacy of the consultation period. We are not persuaded that the Department handled the process effectively.*

**These Regulations are drawn to the special attention of the House on the ground that there appear to be inadequacies in the consultation process which relates to the instrument.**

1. The Department for Education (DfE) has laid these Regulations, which change the requirements on independent schools in relation to the standard for the spiritual, moral, social and cultural (SMSC) development of pupils. They require that proprietors actively promote “the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs” (rather than promoting principles which encourage pupils to respect them); and also that they ensure that other relevant principles are actively promoted in order, for example, to encourage respect for and tolerance of other people, and respect for democracy and English law.
2. In the Explanatory Memorandum (EM) which accompanies the Regulations, DfE says that the instrument is part of a wider programme to reform the basis on which independent schools in England are regulated by the Secretary of State. The Department refers to two other instruments which make changes to support this reform: the Independent Inspectorates (Education and Boarding Accommodation) Regulations 2014 (SI 2014/2158); and the Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 (SI 2014/1977). We drew the latter instrument to the special attention of the House in our 9th Report of this Session.

3. DfE states that the changes made by these Regulations were subject to a six-week consultation from 23 June to 4 August, and that 1,462 responses were received.<sup>1</sup> The Department notes that 909 responses were in support of a campaign that claimed the effect of the changes would be, amongst other things, to introduce new values, extend the equality agenda, discriminate against Christianity, and undermine religious freedoms. The Department says that these claims are not correct; and that the fundamental British values are not new, but were defined in the Government's 2011 Prevent Strategy and have been part of the Independent School Standards since the beginning of 2013. DfE says that it has not made any changes to the proposed revision to the SMSC standard as a result of the consultation. As a matter of general comment, we note with regret that these Regulations carry forward the practice of embedding in legislation the description of democracy, the rule of law, individual liberty and mutual respect and tolerance as "fundamental British values", which colours statutory provision with political declaration.
4. A number of the independent school respondents to the DfE consultation process copied their comments to this Committee earlier this summer:<sup>2</sup> common to all of them was concern about the timing of the consultation process. One such comment, typical of others, was that "the time given to respond was woefully inadequate. The document was published on 23 June, very close to the end of term, with both response dates during August and implementation on 1 September, i.e. before schools return from their summer break. This has made liaison with governors and senior managers in order to provide a properly considered response impossible."<sup>3</sup>
5. Given that there is no acknowledgement in the EM of consultation respondents' concern about the timing of the exercise, and that (contrary to the statement in the EM) the Government's summary of the consultation had not been published in September, we asked the Department for Education for further information about its reasons for holding that exercise when it did. We are publishing the Department's response as Appendix 1.
6. The Department has stated to us that "the fact that so many organisations and individuals were able to respond in the timescales suggests to us that there was in fact sufficient time for consultees to put together considered and cogent responses to the matters raised". **We do not agree.**
7. In its response to us, the Department says that, while a period of six weeks was allowed for consultation on these changes, the public debate about actively promoting fundamental British values had begun two weeks before, on 9 June, when the Secretary of State made his statement to Parliament. **In our view, this fails to do justice to the concern felt by the schools affected, about the need for sufficient time to consider such changes and to prepare for their implementation which, as stated in the**

<sup>1</sup> The consultation document of June 2014 can be seen at:

<https://www.gov.uk/government/consultations/proposed-new-independent-school-standards>. Although the Department for Education states in the Explanatory Memorandum that the Government response to the consultation process can be found there, that response had not in fact been published by the last week of October.

<sup>2</sup> These included: Bethany School; Cranleigh School; Manchester High School for Girls; the North London Collegiate School; the Schools of King Edward VI in Birmingham; St Dunstan's College; Walhampton School; the Yehudi Menuhin School; and the Girls' Schools Association.

<sup>3</sup> Comment by Danny Boswell, Bursar, Walhampton School.

**consultation document of 23 June, would be “taking effect from September 2014”.**

8. Moreover, in the EM itself, the Department acknowledges that a significant number of respondents disagreed with the changes made in the Regulations, but says that “analysis of the related comments revealed that this was because of misunderstanding the effect or raising issues that were not part of the consultation”. **We see it as incumbent upon a Government Department to ensure that the effect of proposed changes is made clear at the outset of any consultation, and that affected parties have enough time to draw on the knowledge and views of those who will have to implement the changes. We are not persuaded that the Department for Education did so in this case: the speed with which it has progressed the proposed changes is unlikely to have helped respondents to overcome any misunderstandings.**

## **INSTRUMENTS OF INTEREST**

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**Draft Immigration Act 2014 (Bank Accounts) Regulations 2014**

**Draft Immigration Act 2014 (Bank Accounts) (Amendment) Order 2014**

**Draft Immigration Act 2014 (Bank Accounts) (Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014**

9. HM Treasury (HMT) has laid these instruments with Explanatory Memoranda (EM) and impact assessments. HMT states that the Government have sought to ensure that known illegal migrants are not able to access banking products or services in the UK. In particular, section 40 of the Immigration Act 2014 (“the 2014 Act”) prohibits banks and building societies from opening current accounts for “disqualified persons” (“the section 40 prohibition”). Such persons are expected to be identified by banks and building societies by carrying out checks of the credentials of applicants for current accounts with a specified anti-fraud organisation or data-matching authority.
10. The purpose of the draft Immigration Act 2014 (Bank Accounts) Regulations 2014 is to enable the Financial Conduct Authority to make arrangements for monitoring and enforcing compliance with the section 40 prohibition. Both the draft Immigration Act 2014 (Bank Accounts) (Amendment) Order 2014 and the draft Immigration Act 2014 (Bank Accounts) (Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014 serve to enable HMT to specify by way of further order persons or bodies with respect to whose accounts the section 40 prohibition is not to apply. HMT states that these two instruments are designed to ensure that the section 40 prohibition is appropriately targeted to current accounts to be operated (or that are operated) by or for charities, consumers or micro-enterprises.
11. In the EM, HMT states that it undertook informal consultation with the banking sector both prior to the introduction of the 2014 Act, and also in relation to implementation of the Act and the drafting of the secondary legislation. The latter consultation has prompted the Government to make this secondary legislation, to provide greater clarity on the types of current accounts that should be captured by the section 40 prohibition. We obtained further information from HMT, which we are publishing at Appendix 2.

**Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (8939)**

**Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part**

**Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part**

12. These three treaties are part of a new generation of Association Agreements seeking to deepen political and economic links between Eastern Partnership countries and the EU. In particular they seek to establish an enhanced framework for cooperation based on political association, democratic

principles, human rights and the rule of law. The Foreign and Commonwealth Office (FCO) states that they go further than previous agreements and are comprehensive, including detailed commitments and timelines. They include core reforms in a number of key areas, for example, public governance, justice and economic growth as well as providing for enhanced cooperation in some 28 key sector policy areas including energy, transport and environmental protection to support these countries through a gradual approximation with the EU acquis and, where relevant, international norms and standards. All three treaties cover the same range of issues but the Ukrainian one is further reaching in its free trade measures than the others. The full texts, including several supplementary volumes on specific trade tariffs, are available on the FCO website in electronic form <https://www.gov.uk/government/collections/european-union-series-2013>.

**Consumer Credit (Information Requirements and Duration of Licences and Charges) (Amendment) Regulations 2014 (SI 2014/2369)**

13. The Department for Energy and Climate Change (DECC) has laid these Regulations with an Explanatory Memorandum (EM). DECC says that the instrument amends Regulations made in 2007<sup>4</sup> which prescribe the information and forms of wording to be included in statements that creditors must give to debtors under the Consumer Credit Act 1974, in the context of such statements given in relation to Green Deal plans. DECC explains that, under such plans, energy efficiency improvements made to a property can be paid for over time through instalments added to the electricity bill for the property. It describes this as a unique type of unsecured credit agreement, under which instalments are paid by the person who is the bill payer at the time the instalment is due, and are paid not to the creditor, but to a third party electricity supplier.
14. In amending the 2007 Regulations, the instrument provides that, where a subsequent electricity bill payer becomes the debtor under the agreement, any statement given to that person must not show payments made by a previous bill payer, and must be based on the assumption that the previous bill payer paid all instalments as they fell due. This is intended to ensure that statements to a new debtor will not include arrears built up by a previous bill payer.
15. We have previously commented on the extent and complexity of the secondary legislation implementing the Green Deal scheme (under the Energy Act 2011). In relation to the draft Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014, for example, we noted that the EM to that Order included a list of 11 other instruments relating to the Green Deal; we commented that we saw a need for the Department to tackle the issue of complexity at source, by simplifying the scheme and the attendant legislation.<sup>5</sup> We published subsequent correspondence on the issue with the Minister of State for

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<sup>4</sup> The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 (SI 2007/1167).

<sup>5</sup> See 2nd Report, Session 2014–15, HL Paper 7, paragraph 52 : <http://www.publications.parliament.uk/pa/ld201415/ldselect/ldsecleg/7/7.pdf>

Energy,<sup>6</sup> in which the Minister recognised the importance of making the Green Deal as simple as possible to keep down cost and complexity for business and consumers. The latest Regulations may serve to simplify arrangements for bill payers, but they add further to the proliferation of secondary legislation surrounding the Green Deal.

#### **Power Purchase Agreement Scheme Regulations 2014 (SI 2014/2511)**

16. In July, we drew six affirmative SIs to the House's attention, which related to the Government's programme of Electricity Market Reform.<sup>7</sup> One of the main elements of this programme are Contracts for Difference (CFDs), intended by the Government to provide long-term revenue stabilisation to low-carbon generating plant, allowing investment to come forward at a lower cost of capital and therefore at a lower cost to consumers.
17. In evidence which we took from the Rt Hon. Michael Fallon, MP, then Minister of State for Energy, the Minister stated that there would be further secondary legislation dealing with arrangements for the off-taker of last resort (OLR). These Regulations, laid by the Department for Energy and Climate Change (DECC), provide for such arrangements, by way of an OLR scheme which offers eligible renewable CFD generators a guaranteed "backstop" route to market for their power: DECC refers to this as a backstop power purchase agreement (PPA). In the accompanying Explanatory Memorandum, DECC states that financiers are likely to require generators to have long-term PPAs with creditworthy off-takers in order to remove risks associated with long-term route-to-market costs. The Department says that the OLR scheme will help independent renewable generators to play a full role in the market under CFDs.

#### **Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (SI 2014/ 2604)**

18. These Rules replace the 2005 rules of procedure for Immigration and Asylum cases and harmonise them as far as is feasible with tribunal procedure rules which apply in other chambers (as part of a larger project to simplify procedures). The instrument also amends the timetable for certain stages of a "Fast track" case but there is a balance to be struck between presenting the case efficiently and keeping someone in detention longer than is necessary. Two days has been found to be too short to prepare cases properly; the instrument allows for a 6 day period to be piloted as well as the 3 day period that will operate initially. The outcome will be reviewed in 2015–16.

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<sup>6</sup> See 4th Report, Session 2014–15, HL Paper 16, Appendix 1:  
<http://www.publications.parliament.uk/pa/ld201415/ldselect/ldsecleg/16/16.pdf>

<sup>7</sup> See 6th Report, Session 2014–15, HL Paper 27:  
<http://www.publications.parliament.uk/pa/ld201415/ldselect/ldsecleg/27/27.pdf>



**Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Amendment) Regulations 2014 (SI 2014/2696)**

19. In its report on “Adoption: Post-Legislative Scrutiny”, the Select Committee on Adoption Legislation of this House recommended that the Government amend the Adoption and Children Act 2002, which enables adopted persons once they reach the age of 18 to obtain information in relation to their adoption and facilitate contact between such persons and their relatives, in order to bring within its scope the direct descendants of adopted persons.<sup>8</sup> In the Explanatory Memorandum (EM) to these Regulations, the Department for Education (DfE) says that, during the passage of the Children and Families Act 2014, the Government introduced a clause to extend access to intermediary services (which are able to obtain information about an adoption) to “persons with a prescribed relationship” to the adopted person. The Government committed to define “persons with a prescribed relationship” in regulations, after undertaking public consultation about the definition.
20. DfE says that the consultation was held between 10 April and 29 May. A large majority of respondents (88%) felt that the direct descendants (children and grandchildren) of adopted adults should be able to access intermediary services; around half of respondents felt that access should be extended to other relatives. However, views with respect to other relatives were less clear-cut, and there was a strong response that the law should not discriminate on the basis of legal relationships alone, but instead allow intermediary services to consider each case on its individual merits.
21. DfE explains that, in the light of the consultation, these Regulations extend intermediary services to all other relatives of an adopted person.<sup>9</sup> The Department adds, however, that, since this change would open up intermediary services to a wider range of relatives, the Regulations provide for adopted persons to retain a strong degree of control over their own personal information and history. They require an intermediary agency to obtain the consent of an adopted person before contact or information-sharing is facilitated between persons with a prescribed relationship and birth relatives, unless the adopted person has died, or lacks capacity.

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<sup>8</sup> See 2nd Report, Session 2012–13, HL Paper 127:

<http://www.publications.parliament.uk/pa/ld201213/ldselect/ldadopt/127/127.pdf>

<sup>9</sup> This is defined in the Regulations as anyone who is related to the adopted person by blood (including half-blood), marriage or civil partnership (but who does not already have access to intermediary services), or by virtue of their adoption. It therefore includes, but is not limited to, the children, grandchildren and great grandchildren of an adopted person.

## 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 subject to affirmative approval

Immigration Act 2014 (Bank Accounts) Regulations 2014

Immigration Act 2014 (Bank Accounts) (Amendment) Order 2014

Immigration Act 2014 (Bank Accounts) (Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014

### Instruments subject to annulment

8939 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

8942 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part

8943 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part

SR 2014/224 Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014

SI 2014/2369 Consumer Credit (Information Requirements and Duration of Licences and Charges) (Amendment) Regulations 2014

SI 2014/2378 Gas and Electricity Regulated Providers (Redress Scheme) (Amendment) Order 2014

SI 2014/2418 Public Interest Disclosure (Prescribed Persons) Order 2014

SI 2014/2445 Ukraine (European Union Financial Sanctions) (No.3) (Amendment) Regulations 2014

SI 2014/2475 Immigration (Control of Entry through Republic of Ireland) (Amendment) Order 2014

SI 2014/2511 Power Purchase Agreement Scheme Regulations 2014

SI 2014/2523 Safety of Sports Grounds (Designation) Order 2014

SI 2014/2557 Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) (Amendment) Regulations 2014

- SI 2014/2580 Motor Vehicles (Driving Licences) (Amendment) (No.2) Regulations 2014
- SI 2014/2587 Electricity Act 1989 (Exemption from the Requirement for an Interconnector Licence) (Amendment) Order 2014
- SI 2014/2591 Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014
- SI 2014/2604 Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014
- SI 2014/2632 Financial Services and Markets Act 2000 (Consumer Credit) (Transitional Provisions) (No. 4) Order 2014
- SI 2014/2651 Teachers' Pensions (Miscellaneous Amendments) (No. 2) Regulations 2014
- SI 2014/2652 Teachers' Pension Scheme (Amendment) Regulations 2014
- SI 2014/2660 Rail Vehicle Accessibility (Non-Interoperable Rail System) (Blackpool Tramway) Exemption Order 2014
- SI 2014/2665 Gambling (Licensing and Advertising) Act 2014 (Transitional Provisions) (Amendment) (No.2) Order 2014
- SI 2014/2667 National Health Service (Exemptions from Charges, Payments and Remission of Charges) Amendment and Transitional Provisions Regulations 2014
- SI 2014/2676 Road Vehicles (Registration and Licensing) (Amendment) (No. 2) Regulations 2014
- SI 2014/2687 Social Fund Cold Weather Payments (General) Amendment Regulations 2014
- SI 2014/2696 Adoption Information and Intermediary Services (Pre-Commencement Adoptions) (Amendment) Regulations 2014
- SI 2014/2697 Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2014
- SI 2014/2704 Offender Management Act 2007 (Dissolution of Probation Trusts) Order 2014
- SI 2014/2712 Agricultural Holdings (Units of Production) (England) Order 2014
- SI 2014/2715 Mobile Roaming (European Communities) (Amendment) Regulations 2014

## APPENDIX 1: EDUCATION (INDEPENDENT SCHOOL STANDARDS) (ENGLAND) (AMENDMENT) REGULATIONS 2014 (SI 2014/2374)

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**Information from the Department for Education about the consultation process in relation to the Education (Independent School Standards) (England) (Amendment) Regulations 2014 (SI 2014/2374)**

*Q: Why did the Department for Education fix the timing of the consultation process between 23 June and 4 August? Why, before launching the consultation process, did DfE not take account of the difficulties that this timing would pose for schools, as voiced by many respondents? Why could DfE not have allowed a timetable for consultation responses and implementation which would better have met the wishes of schools?*

A: The timing and duration of the consultation reflect the importance of the issues the new regulations are intended to address, not least those resulting from the publication of the Ofsted reports into the Birmingham schools at the centre of the “Trojan Horse” allegations, and the need to act quickly. In his statement to Parliament on 9 June 2014 the Secretary of State said:

“...today’s [Ofsted] reports make action urgent. ...

We already require independent schools, academies and free schools to respect British values.

Now we will consult on new rules that will strengthen this standard further, so that all schools actively promote British values...The steps we are taking today are those we consider necessary to protect our children from extremism – and protect our nation’s traditions of tolerance and liberty...we will put the promotion of British values at the heart of what every school has to deliver for children.”

The consultation on the proposed changes was launched on 23 June 2014, with deadlines for response of 4 August 2014, in respect of changes to Parts 2 and 4 of the existing Standards, and 18 August 2014, in respect of other changes. So a period of 6 weeks was given for responses on changes to Parts 2 and 4, and a period of 8 weeks for responses on all other changes. However, it is important to recognise that the public debate concerning the requirement to “actively promote” fundamental British values had begun two weeks before, when the Secretary of State made his statement to Parliament on 9 June.

That attracted a great deal of comment in the media, but to make sure that schools were aware when we launched the consultation, the Department emailed individual independent schools to notify them when it was launched. This message encouraged schools to submit comments and set out the planned timing for the introduction of the new regulations: it did not say the new regulations would take effect from 1 September.

The Department received 1,462 responses by the first deadline of 4 August and this included a large number of high-quality consultation responses, including 98 responses from independent schools, 58 responses from faith groups, and 13 responses from independent school associations. It is correct that some responses, including from schools, commented on the timing with which responses were required, but they invariably also provided high quality comments to the questions raised in the consultation. The fact that so many organisations and individuals were able to respond in the timescales suggests to us that there was in fact

sufficient time for consultees to put together considered and cogent responses to the matters raised.

**DfE, 24 September 2014**

## APPENDIX 2: DRAFT IMMIGRATION ACT 2014 (BANK ACCOUNTS)

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### Additional Information from HM Treasury

*Q1: The EM for the draft Immigration Act 2014 (Bank Accounts) (Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014 says: “The present instrument is the second of two designed to ensure that the prohibition in section 40 of the Act is appropriately targeted at accounts to be operated (or accounts that are operated) by or for “retail banking customers”– that is, “charities”, “consumers” or “micro-enterprises”, as defined in the instrument.” Could you clarify why “charities” and “micro-enterprises” are specified here, as well as “consumers”?*

A1: The orders include the requirement for banks to undertake a status check on current accounts for “banking customers”. Banking customers are defined as a consumer, micro-enterprise (fewer than 10 employees and a turnover less than €2m); and a charity (with an annual income of less than £1m). By including micro-enterprises and charities within the provisions, the act ensures that illegal migrants do not find obvious ways to avoid the prohibition (for example by registering – and seeking to open a current account – as a sole trader). This definition is also already in common usage in the banking sector, and it is set out in the FCA’s existing Banking Conduct of Business Sourcebook (BCOBS). Using this definition therefore also ensures consistency with the distinction the FCA already makes between the conducts of banks and building societies with respect to such retail banking customers and other customers such as large corporations.

*Q2: The Immigration Act 2014 received Royal Assent on 14 May 2014. In the EMs to these SIs, HMT states: “The Government undertook informal consultation with the banking sector prior to the introduction of the Immigration Act, and further informal consultation with the banking sector on the implementation of the Act and on the drafting of this instrument. It is a specific result of the informal consultation with the banking sector on the implementation of the Act that the Government is making this instrument at this time, to provide greater clarity on the types of current accounts that should be captured by the section 40 prohibition.” Given that the Act has so recently been agreed, and that consultation with the banking sector must have taken place so recently, why has HMT found it necessary to amend the Act only two months after Royal Assent? Does HMT consider that its consultation processes need to be improved in the light of this experience?*

A2: The Government is improving the way it consults by adopting a more proportionate and targeted approach, so that the type and scale of engagement is proportional to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focusing on real engagement with key groups rather than following a set process. The Government always seeks to keep its consultation processes under review to ensure that the views of all relevant stakeholders are adequately captured. In this instance, the banking sector did not raise these issues until the second round of consultation, and once the Bill had already been brought forward.

*Q3: CIFAS is the anti-fraud organisation to which the Home Office will send data about individuals who are known to be in the UK unlawfully – hence “disqualified persons”. Is the sequence of data-flow: (1) Home Office identifies disqualified persons; (2) HO sends relevant data to CIFAS; (3) CIFAS updates its register; (4) bank checks on any individual with CIFAS? If so, how up-to-date will the CIFAS data be, and how often will it be updated?*

A3: The sequence is correct. The Home Office shares and administers data (adding, amending and deleting records) with CIFAS on a weekly basis (every 7 days). The data supplied consists of those who have no right to be in the UK, have exhausted their appeal rights and are at the end of the immigration process. The data is collated based on a detailed specification to ensure data quality and integrity.

**11 August and 16 October 2014**

### APPENDIX 3: INTERESTS AND ATTENDANCE

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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 Parliamentary Archives.

For the business taken at the meeting on 21 October 2014 Members declared no interests.

#### **Attendance:**

The meeting was attended by Baroness Andrews, Lord Bichard, Lord Borwick, Lord Bowness, Lord Eames, Lord Goodlad, Baroness Hamwee, Baroness Humphreys, Baroness Stern and Lord Woolmer of Leeds.