House of Lords
House of Commons
Joint Committee on Statutory Instruments

Sixteenth Report of Session 2010-11

Drawing special attention to:

Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011 ***(Draft S.I.)***

Legal Services Act 2007 (Levy) (No. 2) Rules 2010 ***(S.I. 2010/2911)***

Iran (European Union Financial Sanctions) Regulations 2010 S.I. ***(2010/2937)***

Somalia (Asset-Freezing) Regulations 2010 S.I. ***(2010/2956)***

Public Health (Aircraft and Ships) (Isle of Man) Order 2010 ***(S.I. 2010/2982)***

Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 ***(S.I. 2010/3015)***

Water Supply (Water Quality) (Amendment) Regulations 2011 ***(S.I. 2011/14)***

Civil Procedure (Amendment) Rules 2011 ***(S.I. 2011/88)***

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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 74, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

i. that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
ii. that its parent legislation says that it cannot be challenged in the courts;
iii. that it appears to have retrospective effect without the express authority of the parent legislation;
iv. that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
v. that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
vi. that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
vii. that its form or meaning needs to be explained;
viii. that its drafting appears to be defective;
ix. any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jennifer Steele (*Committee Assistant*). Advisory Counsel: Peter Davis and Peter Brooksbank (*Commons)*; Allan Roberts, Nicholas Beach and Peter Milledge *(Lords)*.

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2026; the Committee's email address is: jcsi@parliament.uk.

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Report

Instruments reported

At its meeting on 16 February 2011 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to seven of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda are published as appendices to this report.

1 Draft S.I: Reported for defective drafting

Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011 (Draft S.I.)

1.1 **The Committee draws the special attention of both Houses to this draft Order on the ground that in one respect it is defectively drafted.**

1.2 The Schedule to the draft Order contains provisions which must be included in the initial obligations code under section 124C or 124D of the Communications Act 2003. Paragraph 3 of the Schedule makes provision about the payment of fees to OFCOM by qualifying copyright owners and qualifying internet service providers. Paragraph 3(3) requires OFCOM to set the fees with a view to securing certain specified matters. Under paragraph (a), this includes that, for each notification period, the fees are sufficient to meet, but do not exceed, the total annual amount of the qualifying costs.

1.3 The reference in paragraph 3(3)(a) of the Schedule to "the total annual amount of the qualifying costs" is not defined. Since the first notification period is not required to be a period of 12 months, the Committee asked the Department to explain what was meant by those words. In a memorandum printed at Appendix 1, the Department have explained that the drafting in this instance is defective and it should refer to the total amount of the qualifying costs to be incurred in the notification period. **The Committee accordingly reports paragraph 3(3)(a) of the Schedule for defective drafting acknowledged by the Department.**

2 S.I. 2010/2911: Reported for defective drafting

Legal Services Act 2007 (Levy) (No. 2) Rules 2010 (S.I. 2010/2911)

2.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in two respects.**

2.2 The Rules deal with levies to meet expenditure of bodies including the Legal Services Board. Rule 2 imposes a levy "for the purpose of raising an amount corresponding to the aggregate of" two classes of expenditure, and provides in paragraph (3) that the expenditure "may include estimated expenditure". The Committee questioned the intention of the words "may include". In a memorandum printed at Appendix 2, the

Ministry of Justice says "... in any given financial year the Legal Services Board ... needs to use estimated expenditure to calculate the sums due ... The extent to which estimated expenditure is used in the calculation is governed in practice by the extent to which the leviable amount cannot be determined by actual figures at the time when the calculations are made. ... 'May include' in rule 2(3) therefore means that, where it is necessary to do so for the purposes of ensuring the correct amount is levied in accordance with the Treasury's rules, the matters referred to in rule 2(3) may be taken into account in making the necessary calculations." The memorandum also explains the circumstances in which expenditure is to be taken into account in practice.

2.3 Section 174(3) of the enabling Act says: "The provision made in the levy rules for determining the amount of the levy payable in respect of a particular period may require account to be taken of estimated as well as actual expenditure and receipts". One would expect, therefore, that if this provision were to be relied on, the rules would contain specific requirements as to circumstances governing the use of estimates. For the rules simply to say that the expenditure to be recovered "may include estimated expenditure" (without any indication of circumstances) is different from imposing a clear requirement to use estimates in the circumstances identified in the memorandum. In the Committee's opinion rule 2(3) therefore amounts to an unclear provision, a possible interpretation of which would involve conferring an unauthorised discretionary power. Taking account of the detailed explanation in the Department's memorandum of how the levy is intended to be calculated, and comparing it with the generality of the enabling powers, the Committee is satisfied that the intended overall result is *intra vires*; but the Committee feels that the result would have been expected to be achieved by a specific requirement on the face of the rules. **Accordingly, the Committee reports rule 2 for defective drafting.**

2.4 Rule 8 provides that "If payment is not made by a leviable body in accordance with the requirements of rule 7, the Board is entitled to charge interest on any amount unpaid ...". The Committee asked how the decision whether or not to charge interest is to be taken, and what the *vires* were for conferring the discretion to make that decision. In its memorandum the Department says "The use of the word "entitled" in rule 8 is intended to provide for the [Legal Services Board] to charge interest where the levy is not paid in accordance with the rules. The vires is conferred by section 174(7) of the 2007 Act. Rule 8 is not intended to confer a discretion on LSB." The Committee notes that section 174(7) allows the rules to "provide that if the whole or any part of an amount of the levy payable under the levy rules is not paid by the time when it is required to be paid under the rules, the unpaid balance from time to time carries interest ...". So rule 8 might have been expected simply to provide for unpaid sums to carry interest. The Committee accepts the Department's assurance that there was no intention to confer a discretion; but that makes it difficult to understand why the rule departs from the language of the Act and uses the expression "entitled", which suggests some kind of discretionary power. In the Committee's opinion the choice of language is, at least, unnecessarily confusing. **The Committee accordingly reports rule 8 for defective drafting.**

3 S.I. 2010/2937 and S.I. 2010/2956: Reported for requiring elucidation

Iran (European Union Financial Sanctions) Regulations 2010 (S.I. 2010/2937)
Somalia (Asset-Freezing) Regulations 2010 (S.I. 2010/2956)

3.1 **The Committee draws the special attention of both Houses to these two instruments on the ground that their form calls for elucidation in one respect.**

3.2 Regulation 8 of each of these instruments deals with circumstances in which amounts may be credited to banking and other accounts that have been frozen in order to comply with European Union sanctions. Paragraph (3) requires institutions that make credits to frozen accounts to inform the Treasury. The Committee asked what sanction was available to enforce that requirement. In a memorandum printed at Appendix 3, the Treasury explained that an express sanction was not required because the Financial Services Authority had sufficient supervisory powers to cover compliance. Following receipt of that memorandum the Committee asked whether the FSA was able to exercise the same kind of supervision in relation to financial institutions registered in EEA States other than the United Kingdom, and if not what other routes for enforcing compliance were available. In a further memorandum printed at Appendix 3, the Department said: "Under section 2(d) of the Financial Services and Markets Act 2000, one of the Financial Services Authority's regulatory objectives is the reduction of financial crime." There follows an identification of statutory provisions indicating who is covered by those regulatory objectives, and those covered include the institutions in question. Then there is a passage from the FSA Handbook of Rules and Guidance calling for those covered (among other things) to maintain adequate procedures sufficient to secure compliance with regulatory obligations. Finally the further memorandum states: "The Treasury is responsible for implementing and administering international financial sanctions legislation and works with regulators and other bodies to ensure a robust and proportionate approach to compliance with and enforcement of financial sanctions." These statements establish that the FSA and the Treasury have responsibilities that include aiming to enforce the requirement at regulation 8(3); but they do not identify precisely what mechanisms are available for meeting those responsibilities, though the Committee accepts that the mechanisms are likely to be sufficient. **The Committee accordingly reports regulation 8(3) of each of these instruments as requiring elucidation largely but not completely provided in the Department's memoranda.**

4 S.I. 2010/2982: Reported for defective drafting

Public Health (Aircraft and Ships) (Isle of Man) Order 2010 (S.I. 2010/2982)

4.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

4.2 Article 4 of this Order applies the Public Health (Ships) Regulations 1979 (as they apply in relation to England) to the Isle of Man with modifications, including those set out in Schedule 2. Paragraph 1(b) of Schedule 2 modifies regulation 2(1) by substituting a new definition of "arrival".

4.3 In a memorandum printed at Appendix 4, the Ministry of Justice confirms that words (italicised in the memorandum) have been omitted from the new definition, and states that the Isle of Man Government will seek to correct the definition as soon as possible by means of an amending Order in Council, at which point they will further consider the formulation. **The Committee accordingly reports paragraph 1(b) of Schedule 2 for defective drafting, acknowledged by the Department.**

5 S.I. 2010/3015: Reported for defective drafting

Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 (S.I. 2010/3015)

5.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in one respect.**

5.2 Rule 24(2) revokes rules 1(2) and 22(3) of the Compulsory Purchase (Inquiries Procedure) Rules 2007. The 2007 Rules make provision in respect of England broadly equivalent to that made in respect of Wales by this instrument, and rule 1(2) specifies where those rules apply.

5.3 In a memorandum printed at Appendix 5, the Wales Office gives an explanation which the Committee interprets as admitting that rule 1(2) of the 2007 Rules should have been amended or replaced rather than simply revoked. **The Committee accordingly reports rule 24(2) of this instrument for defective drafting, apparently acknowledged by the Department.**

6 S.I. 2011/14: Reported for failure to comply with *Statutory Instrument Practice*

Water Supply (Water Quality) (Amendment) Regulations 2011 (S.I. 2011/14)

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with *Statutory Instrument Practice*.**

6.2 The sole function of these Regulations is to correct errors in S.I. 2010/994. In a memorandum printed at Appendix 6 the Wales Office acknowledges that these Regulations should have been made available free of charge to all known recipients of the earlier instrument, and should have borne an italic headnote to that effect, in accordance with paragraphs 3.4.11 and 3.4.14 of *Statutory Instrument Practice*. The memorandum explains the arrangements being made to rectify the position. **The Committee accordingly reports these Regulations for a failure to comply with S*tatutory Instrument Practice*, acknowledged by the Department.**

7 S.I. 2011/88: Reported for defective drafting

Civil Procedure (Amendment) Rules 2011 (S.I. 2011/88)

7.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in one respect.**

7.2 Rule 4(g) amends the Civil Procedure Rules 1998 by substituting a new rule 6,7, which deals with service of proceedings on a solicitor or European Lawyer within the United Kingdom or in any other EEA state. Paragraph (2) of the new rule states, among other matters, that where a solicitor in Scotland or Northern Ireland or an EEA state other than the United Kingdom, acting for the defendant, has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within any other EEA state, the claim form must be served at the business address of that solicitor.

7.3 In a memorandum printed at Appendix 7, the Ministry of Justice confirms the Committee's suspicion that this provision had been intended to include a reference to a business address in Scotland or Northern Ireland as well as in another EEA state, and states that it proposes to ask the Civil Procedure Rule Committee to make an amending instrument. **The Committee accordingly reports rule 4(g) for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 16 February 2011 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Draft Instruments requiring affirmative approval

Draft S.I.	Data Protection (Subject Access Modification) (Social Work) (Amendment) Order 2011
Draft S.I.	Greater Manchester Combined Authority Order 2011
Draft S.I.	Guaranteed Minimum Pensions Increase Order 2011
Draft S.I.	Licensing Act 2003 (Royal Wedding Licensing Hours) Order 2011
Draft S.I.	Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2011
Draft S.I.	Marine Licensing (Licence Application Appeals) Regulations 2011
Draft S.I.	Marine Licensing (Notices Appeals) Regulations 2011
Draft S.I.	Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2011
Draft S.I.	Occupational Pension Schemes (Levy Ceiling) Order 2011
Draft S.I.	Pension Protection Fund (Pension Compensation Cap) Order 2011
Draft S.I.	Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2011
Draft S.I.	Renewables Obligation (Amendment) Order 2011
Draft S.I.	Social Security (Contributions) (Amendment No. 2) Regulations 2011
Draft S.I.	Social Security (Contributions) (Re-rating) Order 2011
Draft S.I.	Social Security (Reduced Rates of Class 1 Contributions, Rebates and Minimum Contributions) Order 2011
Draft S.I.	Social Security Benefits Up-rating Order 2011
Draft S.I.	Waste (England and Wales) Regulations 2011

Instruments subject to annulment

S.I. 2011/134	Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011
S.I. 2011/135	Uplands Transitional Payment Regulations 2011

S.I. 2011/145	Export Control (Liberia) Order 2011
S.I. 2011/146	Export Control (Somalia) Order 2011
S.I. 2011/154	Education (School Day and School Year) (England) (Amendment) Regulations 2011
S.I. 2011/169	Occupational Pension Schemes (Levy Ceiling – Earnings Percentage Increase) Order 2011
S.I. 2011/177	Inshore Fisheries and Conservation (Miscellaneous Amendments) Order 2011

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2011/159	Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Educational Recording Agency Limited) (Amendment) Order 2011
S.I. 2011/200	Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No. 5) Order 2011

Appendix 1

Draft S.I. : memorandum from the Department for Culture, Media and Sport

Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011 (Draft S.I.)

The Joint Committee on Statutory Instruments wrote to the Department on 2 February 2011 and requested a memorandum on two points:

1. *Are paragraphs 3 to 5 of the Schedule, in so far as they require payments to be made by internet service providers, subject to the requirements of Article 12(1) of Directive 2002/20/EC on the authorisation of electronic communications networks and services? If so, explain how the provisions are compatible with those requirements. If not, explain why the provisions are not subject to the requirements of Article 12(1).*

The Department considers that the obligations imposed on internet service providers by virtue of paragraphs 3 to 5 of the Schedule to the draft Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2011 (the Order) do not fall within the scope of Directive 2001/20/EC (the Authorisation Directive).

The Authorisation Directive is one of the 'Specific Directives' referred to in Article 1(3) of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the Framework Directive). That Article provides that the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue 'general interest objectives, in particular relating to content regulation and audio-visual policy'. Reduction of online copyright infringement and facilitation of targeted enforcement action by copyright owners would, in our view, be covered by this. We note that the Commission has recognised in its Communication 'Principles and guidelines for the Community's audio-visual policy in the digital age' referred to in Recital (6) of the Framework Directive that copyright protection and the taking of measures against piracy is a central element of audiovisual policy. The Department agrees with this statement.

The costs with which the Order deals with are not in our view administrative charges within the meaning of Article 12(1) of the Authorisation Directive. Recital (30) provides that administrative charges may be imposed on internet service providers (ISPs) in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities. The costs which ISPs will bear by virtue of the Order relate to a scheme which is distinct from those activities.

2. *What is meant by "the total annual amount of the qualifying costs" in paragraph 3(3)(a) of the Schedule, both as it relates to the first notification period (referred to in paragraph (a) of the definition of "notification period" in article 2) and as it relates to subsequent notification periods?*

The Department thanks the Committee for flagging up this point and acknowledges that the drafting is defective. The wording in paragraph 3(3)(a) of the Schedule should have referred to the total amount of the qualifying costs to be incurred in that notification period. The Department is carefully considering with Ministers what action to take in the light of this comment and may wish to submit a further memorandum to the Committee on the point.

Department for Culture, Media and Sport

8 February 2011

Appendix 2

S.I. 2010/2911: memorandum from the Ministry of Justice

Legal Services Act 2007 (Levy) (No. 2) Rules 2010 (S.I. 2010/2911)

1. By a letter dated 26 January 2011, the Committee sought a memorandum on the points set out in this memorandum. The Ministry of Justice's response to the Committee's query is set out below each question.

   Explain—

   a) What is meant by "may include" in rule 2(3);

2. The operation of rule 2(3) of the Legal Services Act 2007 (Levy)(No.2) Rules 2010 ("the Rules") depends on the fixed framework in which the amount of "leviable Board expenditure" and "leviable OLC expenditure" will be determined in accordance with section 173(6) to (8) of the Legal Services Act 2007 ("The Act").

3. By section 173(1) the Board must impose a levy equal to the amounts set out in those subsections. Her Majesty's Treasury require that a levy should be payable within the year that the expenditure which the levy is intended to recoup occurs. This therefore means that in any given financial year the Legal Services Board ("LSB") needs to use estimated expenditure to calculate the sums due, issue

payment notices and collect payment from the leviable bodies by the end of that financial year. The vires contained in section 174(3) (a) permits provision to be made in the levy rules that account be taken of estimated as well as actual expenditure and receipts. The extent to which estimated expenditure is used in the calculation is governed in practice by the extent to which the leviable amount cannot be determined by actual figures at the time when the calculations are made. As the LSB is not permitted to recoup more or less than the total leviable amount in a year, the LSB needs to be able to make an adjustment in the subsequent year. Where the amount estimated was less than the actual leviable amount for that financial year the shortfall will be the difference between the two sums. If there is no shortfall the amount recoverable under rule 2 will not include provision of the kind referred to in rule 2(3)(b). "May include" in rule 2(3) therefore means that, where it is necessary to do so for the purposes of ensuring the correct amount is levied in accordance with the Treasury's rules, the matters referred to in rule 2(3) may be taken into account in making the necessary calculations.

b) Who is to determine whether and to what extent estimated expenditure or shortfalls are to be included;

4. As explained in paragraph 3 above, the extent to which estimated expenditure is used in relation to a particular year depends upon the extent to which the amount of the levy can be calculated from the financial information available on the date of the calculation. The estimate will therefore be the difference between the figures which can be established from the most up-to-date records and the expected amount of the Levy based on the budgets of the 2 bodies concerned. Paragraph 25 of Schedule 1 to the Act provides for the LSB to keep proper accounts that comply with any directions given by the Lord Chancellor, with the approval of the Treasury. The accounts are examined and certified by the Auditor General. Similar provision is made in relation to the Office for Legal Complaints ("OLC") by paragraph 26 of Schedule 15 to the Act. These accounts are used by the LSB to determine the precise leviable amount which should have been payable in the previous year, thereby determining whether the estimated amounts were in excess of the total amount levied or whether there was a shortfall.

c) How the determination is to be given effect;

5. As is explained above, the amount leviable under the rules by the LSB is constrained by the provisions of the Act. In each year for which a levy is to be paid the total levy will be the total of the known expenditure of the relevant bodies, the estimated expenditure for the period where the actual expenditure is not known and the shortfall between those 2 sums in respect of the previous period for which the levy was payable.

d) The vires for this provision.

6. Section 173(1) of the Act together with section 174(3)(a) and the power in section 174(2) to make rules specifying the rate and time for paying the levy, provide the vires for rule 2(3) of the Rules. The power to make the provision in rule 2(3)(b) arises from the power in section 174(3)(a) to require estimated as well as actual expenditure and receipts to be taken into account in determining the amount payable in a particular period. The effect of section 173(1) together with the operation of rule 2(1) of these rules is to require the LSB to provide for the imposition of a fixed sum in each 12 month period. Therefore where the amount to be levied is estimated in whole or part (section 174(3)(a)) additional rules are necessary to deal with the situation where there is a difference between the sum raised in any period and the actual expenditure and receipts for that period. Rule 2(3)(b) deals with this expressly by giving the LSB the power to deal with the deficit found to be due in one year by including it in the calculations for the following year

Explain how the decision whether or not to charge interest is to be taken under rule 8, and what the vires are for conferring the discretion to make that decision.

7. The use of the word "entitled" in rule 8 is intended to provide for the LSB to charge interest where the levy is not paid in accordance with the rules. The vires is conferred by section 174 (7) of the 2007 Act. Rule 8 is not intended to confer a discretion on LSB..

Ministry of Justice
4th February 2011

Appendix 3

S.I. 2010/2937 and S.I. 2010/2956: memoranda from HM Treasury

Iran (European Union Financial Sanctions) Regulations 2010 (S.I. 2010/2937) Somalia (Asset-Freezing) Regulations 2010 (S.I. 2010/2956)

First memorandum from HM Treasury

1. By letter dated 19 January 2011, the Committee sought a memorandum on the following points:

   Explain what the sanction is for breach of regulation 8(3) and why it is not expressly provided for in the Regulations.

2. As the same point arises in relation to both S.I. 2010/2937 and S.I. 2010/2956, this Memorandum deals with both instruments.

3. Regulation 8(3), in each instrument, imposes a requirement on the financial sector to report to HM Treasury if it credits a frozen account with payments due under contracts pre-dating the freezing of the account, or other funds transferred to the account. Such credits do not contravene the prohibitions in the Regulations on making funds available to a designated person or dealing with frozen funds.

4. Regulation 8(3) in each instrument reflects the equivalent provision in section 16 of the Terrorist Asset-Freezing etc. Act 2010, which similarly does not carry a criminal penalty.

5. The financial sector is subject to a wider regulatory regime in respect of its compliance with financial sanctions legislation. The policy objective is not to criminalise the financial sector for a failure to report activity which does not itself constitute a breach of any prohibitions. Instead, breach of the reporting requirement would be considered in the context of the financial institution's systems and controls for sanctions compliance, and can be addressed by the Financial Services Authority in its supervisory capacity.

HM Treasury

25 January 2011

Further memorandum from HM Treasury

1. By letter dated 2 February 2011, the Committee sought a memorandum on the following points:

> Further to the explanation of Financial Services Authority supervision given in paragraph 5 of the memorandum of 25th January 2011, explain by reference to relevant statutory provisions-
>
> (a) whether and if so how the Authority is able to exercise the same kind of supervision in relation to "relevant institutions" within paragraph (b) of the definition in regulation 2(1), and
>
> (b) what other supervisory mechanisms (if any) are available in relation to those institutions and how they could be engaged.

2. Under section 2(d) of the Financial Services and Markets Act 2000, one of the Financial Services Authority's regulatory objectives is the reduction of financial crime.

3. Section 6(1) of the 2000 Act provides:

"The reduction of financial crime objective is: reducing the extent to which it is possible for a business carried on-

(a) by a regulated person….

to be used for a purpose connected with financial crime".

4. Section 6(5) defines "regulated person" as an authorised person, a recognised investment exchange or a recognised clearing house. Under section 31(1)(b) of the 2000 Act, "authorised person" is defined as including an EEA firm qualifying for authorisation under Schedule 3.

5. This includes those firms falling within paragraph (b) of the definition in regulation 2(1) of the Somalia and Iran Regulations – i.e. an EEA firm falling within paragraph 5(b) of Schedule 3 to the 2000 Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits..

6. Accordingly, the Authority's reducing financial crime objective applies in relation to those "relevant institutions" falling within paragraph (b) of regulation 2(1) as it does in relation to other relevant institutions.

7. The Authority's Handbook of Rules and Guidance requires that "Authorised firms should establish, implement and maintain adequate policies and procedures sufficient to ensure compliance with regulatory obligations and countering the risk that the firm might be used to further financial crime." This applies in relation to all authorised firms, including those falling within paragraph (b) of regulation 2(1).

8. The Treasury is responsible for implementing and administering international financial sanctions legislation and works with regulators and other bodies to ensure a robust and proportionate approach to compliance with and enforcement of financial sanctions.

HM Treasury
8 February 2011

Appendix 4

S.I. 2010/2982: memorandum from Ministry of Justice

Public Health (Aircraft and Ships) (Isle of Man) Order 2010 (S.I. 2010/2982)

1. By a letter dated 2 February 2011, the Committee sought a memorandum on the following point:

   Is some text missing after sub-paragraph (c) in the definition of "Arrival" in paragraph 1(b) of Schedule 2? If so, what is it, and if not, explain the meaning of the definition.

2. The Ministry of Justice's response to the Committee's query is set out below.

3. The Ministry has consulted the Isle of Man Government, and it is accepted that there is an omission in the definition. The missing text should have produced a definition to the effect that:

   " "arrival", in relation to a ship, means the entry within the limits of jurisdiction of the Isle of Man of a ship which has not during its voyage or since it last -

   (a) called at a port outside the Isle of Man;

   (b) met with an offshore installation; or

   (c) met with a ship which has proceeded from a foreign port,

   been subjected elsewhere in the Island to measures provided for in these regulations, apart from any measure which may have been applied there to any person, baggage or cargo landed from the ship, and "arrives" shall be construed accordingly;. "

4. The Isle of Man Government will seek to correct the definition of "arrival" as soon as possible by means of an amending Order in Council, and in doing so will give further consideration to what might be the most appropriate formulation. The amended text may not, therefore, be exactly the same as that indicated above.

5. The amending Order in Council will be issued free of charge.

Ministry of Justice
8th February 2011

Appendix 5

S.I. 2010/3015: memorandum from the Wales Office

Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 (S.I. 2010/3015)

1. In its letter to the Wales Office of 2 February 2011, the Joint Committee requested a memorandum on the following point:

   Explain the intended purpose and effect of the revocation by Rule 24(2) of rule 1(2) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 instead of just the words "Subject to rule 22(3)" in that provision.

2. The Welsh Assembly Government responds as follows;

   Following the initial drafting of the Compulsory Purchase (Inquiries Procedure) (Wales) Rules, a problem regarding the application of rule 1(2) of the Compulsory Purchase (Inquiries Procedures) Rules 2007 was brought to our attention by Bob Segall of the DCLG. The rule did not appear to apply to inquiries held in relation to the granting of certificates under s. 19 of the Acquisition of Land Act 1981. It was felt by DCLG that the opportunity could be taken to address this in the Wales Rules by amending rule 1(2) in the 2007 Rules. However, it appears that whilst the whole wording of rule 1(2) was revoked, there was an oversight in that it was not replaced with another wording such as that appearing as rule 1(2) in the Welsh rules.

Wales Office
8 February 2011

Appendix 6

S.I. 2011/14: memorandum from the Wales Office

Water Supply (Water Quality) (Amendment) Regulations 2011 (S.I. 2011/14)

1. In its letter to the Wales Office of 2 February 2011, the Joint Committee requested a memorandum on the following point:

   Given that the sole purpose of this instrument is to correct errors in S.I. 2009/994, why does it not bear a headnote stating that it is being made available free of charge to all known purchasers of that instrument, as required by paragraph 3.4.14 of Statutory Instrument Practice?

2. The Welsh Assembly Government responds as follows;

   The Welsh Assembly Government recognises that copies of this instrument should have been made available free of charge to all known recipients of S.I 2009/994(W.99). Known purchasers of this instrument (S.I. 2011/14(W.7)) will be refunded by The Stationery Office. The Stationery Office will add the appropriate headnote to any future reprint of the instrument. The Welsh Assembly Government apologise for this error.

Wales Office
8 February 2011

Appendix 7

S.I. 2011/88: memorandum from the Wales Office

Civil Procedure (Amendment) Rules 2011 (S.I. 2011/88)

1. In its letter dated 2nd February 2011, the Joint Committee on Statutory Instruments ("the Committee") requested a memorandum on the following point:

   The new rule 6.7(2), as substituted by rule 4(g) of this instrument, does not provide for the case where a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed to accept service of the claim form on behalf of the defendant at a business address in Scotland or Northern Ireland. Is this an accidental omission? If not, explain the lack of consistency between the treatment of solicitors in England and Wales and other EEA states on the one hand, and in Scotland and Northern Ireland on the other.

2. The Ministry of Justice's response to the Committee's query is set out below.

3. Rule 6.7 did not previously make explicit provision in relation to service at the business address in Scotland or Northern Ireland of a solicitor acting for the defendant, but made provision for service at such an address in an EEA State, which would include the United Kingdom outside England and Wales (service within England and Wales being covered under service "within the jurisdiction"). When amending rule 6.7 to include provision for service at the business address of a European lawyer outside the United Kingdom, the Civil Procedure Committee (CPRC) also included provision to deal explicitly with service at the business address of the defendant's solicitor in Scotland or Northern Ireland. Unfortunately, it appears that the second limb of that provision (covering the case where the solicitor notifies the claimant that the solicitor is instructed to accept service) was not carried

through in the amendment. This will not render service at the solicitor's business address in such a case ineffective; but it will not have the effect of requiring service to be at that address.

4. The Ministry is grateful to the Committee for drawing attention to this omission, and will ask the CPRC to agree to amend rule 6.7(2) to rectify the position. The CPRC next meets on 4th March; and it is planned that a statutory instrument to amend the Civil Procedure Rules 1998 (CPR) will be made approximately a month after that meeting. The amendment to rule 6.7 could therefore be incorporated in that instrument; but failing that, there is to be a further 'scheduled' instrument amending the CPR, to be made at the end of July, coming into force on the common commencement date of 1st October. Should the CPRC require further time to consider the proposed amendment to rule 6.7(2), the amendment could be made in this later instrument instead.

Ministry of Justice
7th February 2011