



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Nineteenth Report
of Session 2010-11**

Drawing special attention to:

Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2011 (S.I. 2011/235)

Promotion of the Use of Energy from Renewable Sources Regulations 2011 (S.I. 2011/243)

Food Labelling (Declaration of Allergens) (England) Regulations 2011 (S.I. 2011/402)

Marine Licensing (Register of Licensing Information) Regulations 2011 (S.I. 2011/424)

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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*).

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Instruments reported

At its meeting on 30 March 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 four 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 S.I. 2011/235: Reported for defective drafting

Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2011 (S.I. 2010/235.)

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

1.2 This Order specifies new, increased, rates of retired pay, pensions, gratuities and allowances payable under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006. In particular, article 2(c) substitutes for the Table in Part 4 of Schedule 1 to the 2006 Order the Table set out in Schedule 3 to this Order.

1.3 Paragraph 6 of the new Table specifies the rate of invalidity allowance payable under article 13 of the 2006 Order. It sets out three different levels of payment in heads (a) (the highest), (b) and (c) (the lowest). Head (a) applies if any of three conditions is fulfilled, condition (ii) being that on the relevant date the member was under the age of 35. Head (b) applies if any of three conditions is fulfilled, condition (i) being that on the relevant date the member was under the age of 45. Head (c) is expressed to apply only if heads (a) and (b) do not apply. In the case of a member who was under the age of 35 on the relevant date, it appears that either the amount specified in head (a) is payable or the amount specified in head (b) is payable, or both amounts are payable.

1.4 In a memorandum printed at Appendix 1, the Ministry of Defence explains that head (b) is intended to apply only where head (a) does not apply, and adds that wording similar to that used here has been used consistently since 1983 and has not given rise to a challenge. It claims that the provision impliedly determines entitlement to the allowance on the basis of precedence and that any other interpretation would be perverse and inequitable by either over- or under-compensating a person, and accordingly a person covered by head (a) will be paid in accordance with that provision but will not also be paid in accordance with head (b).

1.5 The Department nonetheless undertakes to deal with the matter in all future uprating instruments to avoid any possible ambiguity.

1.6 The Committee welcomes the Department's undertaking, but does not agree that its analysis of the instrument as drafted is necessarily correct. There is nothing in the 2006 Order or the enabling Act to say that a person who is eligible for two similar payments must be paid the higher only. **The Committee accordingly reports paragraph 6 of Schedule 3 to this Order for defective drafting, the possibility of which is acknowledged by the Department.**

2 S.I. 2011/243: Reported for defective drafting

Promotion of the Use of Energy from Renewable Sources Regulations 2011 (S.I. 2010/243.)

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

2.2 Regulation 4(1) requires the Secretary of State to introduce measures effectively designed to ensure that the average renewable share for an indicative target period (other than one to which paragraph (2) applies) is at least the percentage specified in the Schedule in relation to that period. The indicative target periods and their respective percentages are (a) 2011–2012, 4%; (b) 2013–2014, 5.4%; (c) 2015–2016, 7.5%; and (d) 2017–2018, 10.2%.

2.3 Paragraph (2) applies in relation to an indicative target period (“the relevant period”) if the relevant period is period (b), (c) or (d) and the average renewable share for the immediately preceding target period is less than the specified percentage for that earlier period.

2.4 Paragraph (3)(a) provides that, where paragraph (2) applies and the relevant period is 2013–2014, the Secretary of State must introduce adequate and proportionate measures to ensure that, within a reasonable period of time, the average renewable share for the two year period immediately preceding *the date on which the calculation is made* equals or exceeds 5.4%. Paragraph (3)(b) and (c) respectively make similar provision in respect of the succeeding target periods and percentages. There is nothing specific on what “the calculation” refers to.

2.5 In consequence, in the absence of any indication of what was meant by “the date on which the calculation is made”, the Committee had considerable difficulty in understanding the intended effect of regulation 4(3). The only calculation previously suggested in the text that appeared to be applicable was that by means of which it had become apparent that the percentage target for the previous period had not been met, but that would result in the provision requiring the impossible.

2.6 In a memorandum printed at Appendix 2, the Department of Energy and Climate Change provides a helpful explanation of the intended operation of regulation 4(3). It also explains that the calculation referred to is intended to be a calculation which shows that the percentage target in question has been achieved or bettered for a two year period, which itself is, in effect, required to be completed without unreasonable delay but has no fixed start or end date.

2.7 It therefore appears to the Committee that the inclusion of a reference to the date of a calculation is not only superfluous but also gives a misleading surface impression of a link to a prior provision that does not represent the policy. A target for a continuous two year period of uncertain commencement and termination is either met or not, irrespective of the date on which this is known. So, had the provision omitted any reference to a calculation date, the Committee might at most have reported it for requiring the elucidation provided by the Department’s memorandum. **However, as regulation 4(3) does include the superfluous and misleading reference discussed above, the Committee reports it for defective drafting.**

3 S.I. 2011/402: Reported for defective drafting

Food Labelling (Declaration of Allergens) (England) Regulations 2011 (S.I. 2010/402.)

3.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted.

3.2 The Food Labelling (Declaration of Allergens) (England) Regulations 2008 amended the Food Labelling Regulations 1996 by imposing additional requirements in relation to allergens. Regulation 2(6) of the 2008 Regulations inserted an extra transitional provision in the 1996 Regulations—regulation 50(15)—which provided that in any proceedings for an offence under the material offence provision (regulation 44(1)(a)) it would be a defence to prove that —

- (a) the food concerned was sold before 31st May 2009 or marked or labelled before that date; and
- (b) the matters constituting the alleged offence would not have constituted an offence under the Regulations if the amendments made by regulation 2 of the Food Labelling (Declaration of Allergens) (England) Regulations 2008 had not been in operation when the food was sold.

3.3 Regulation 2 of these Regulations substitutes a new regulation 50(15), which provides that in any proceedings for an offence under regulation 44(1)(a) it shall be a defence to prove that —

- (a) (i) in the case of wine in which lysozyme (produced from egg) is used, or in which albumin (produced from egg) or a milk (casein) product has been used as a fining agent, the food concerned was sold before 30th June 2012 or marked or labelled before that date, or
- (ii) in the case of any other food, the food concerned was sold before 31st May 2009 or marked or labelled before that date; and
- (b) the matters constituting the alleged offence would not have constituted an offence under these Regulations if the amendments made by regulation 2 of the Food Labelling (Declaration of Allergens) (England) Regulations 2011 had not been in operation when the food was sold.

3.4 In a memorandum printed at Appendix 3, the Food Standards Agency accepts that the reference in the new regulation 50(15)(b) should be to the amendments made by the 2008 Regulations and undertakes to make a corrective amendment at the next available opportunity and in the meantime to draw the attention of enforcement authorities to the error. **The Committee accordingly reports regulation 2 for defective drafting, acknowledged by the Department.**

4 S.I. 2011/424: Reported for defective drafting

Marine Licensing (Register of Licensing Information) Regulations 2011 (S.I. 2010/424)

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

4.2 Regulation 2(1)(b) states that in these Regulations a reference to an application is a reference to an application for a marine licence, but *in regulations 4 to 12* does not include an application submitted and subsequently withdrawn.

4.3 As the only references in the instrument to an application are in the above provision, in regulations 4 to 12, and in the heading to two of the regulations, the Committee asked the Department for Environment, Food and Rural Affairs why the italicised words had been included. In a memorandum printed at Appendix 4, the Department claims that “*In order to provide a category of application to which the exception can relate, the term “application” in the phrase “an application submitted and subsequently withdrawn”, has to have a generic meaning which is wider than the category of application falling within the exception. If the exception to regulation 2(1)(b) had instead read “other than an application submitted and subsequently withdrawn”, it would be purporting in that phrase to use “application” in a wider sense than the sense in which the regulation defined.*”

4.4 The Committee, while appreciating the care for exactness that underlay the drafting, is nonetheless unconvinced by this reply. Assuming the Department wished to ensure there could be no surface change of meaning within the same definitional provision, a better solution would have been the use of a different term of art both as the definition and elsewhere in the Regulations—e.g. “a reference to a *decided application* is a reference to an application for a marine licence other than one submitted and subsequently withdrawn”, with the italicised term then used elsewhere.

4.5 However, that approach was not taken and, without the reference to regulations 4 to 12, the provision could sensibly be read only as meaning “other than an application which has been submitted and subsequently withdrawn but would be treated as an application if that were not the case”, and the effect would be as desired.

4.6 In contrast, as the provision is drafted, the mention of regulations 4 to 12 misleads the reader into expecting other provisions to cover withdrawn applications. **The inclusion of the reference to regulations 4 to 12 therefore has to be regarded as otiose, and the Committee accordingly reports regulation 2(1)(b) for defective drafting.**

Instruments not reported

At its meeting on 30 March 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.** Greenhouse Gas Emissions Trading Scheme (Nitrous Oxide) Regulations 2011
- Draft S.I.** Ministerial and other Salaries Act 1975 (Amendment) Order 2011
- Draft S.I.** Pensions Appeal Tribunals Act 1943 (Armed Forces and Reserve Forces Compensation Scheme) (Rights of Appeal) Regulations 2011
- Draft S.I.** Pensions Appeal Tribunals Act 1943 (Time Limit for Appeals) (Amendment) Regulations 2011
- Draft S.I.** Social Security (Electronic Communications) Order 2011
- Draft S.I.** Taxation of Equitable Life (Payments) Order 2011

Instruments subject to annulment

- S.I. 2011/463** Seed Marketing Regulations 2011
- S.I. 2011/464** Seeds (National Lists of Varieties) (Amendment) Regulations 2011
- S.I. 2011/518** National Health Service (Charges for Drugs and Appliances) Amendment Regulations 2011
- S.I. 2011/519** National Health Service (Dental Charges) Amendment Regulations 2011
- S.I. 2011/544** Accession (Immigration and Worker Registration) (Revocation, Savings and Consequential Provisions) Regulations 2011
- S.I. 2011/550** Town and Country Planning (Mayor of London) (Amendment) Order 2011
- S.I. 2011/552** Care Standards Act 2000 (Enforcement of Care Standards) (Notification) (England) Regulations 2011
- S.I. 2011/553** Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2011
- S.I. 2011/554** Pension Protection Fund (Revaluation Amendments) Regulations 2011
- S.I. 2011/556** Marine and Coastal Access Act 2009 (Commencement No. 5, Consequential and Transitional Provisions) Order 2011
- S.I. 2011/560** West Northamptonshire Development Corporation (Planning Functions) (Amendment) Order 2011

- S.I. 2011/561** Local Government Pension Scheme (Benefits, Membership and Contributions) (Amendment) Regulations 2011
- S.I. 2011/562** Local Elections (Parishes and Communities) (England and Wales) (Amendment) Rules 2011
- S.I. 2011/563** Local Elections (Principal Areas) (England and Wales) (Amendment) Rules 2011
- S.I. 2011/564** Marine Licensing (Application Fees) Regulations 2011
- S.I. 2011/582** Arrangements for Placement of Children by Voluntary Organisations and Others (England) Regulations 2011
- S.I. 2011/583** Children's Homes (Amendment) Regulations 2011
- S.I. 2011/584** Childcare (Exemptions from Registration) (Amendment) Order 2011
- S.I. 2011/589** Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011
- S.I. 2011/591** National Health Service Pension Scheme (Amendment) Regulations 2011
- S.I. 2011/602** Education (Head Teachers' Qualifications) (England) (Amendment) Regulations 2011
- S.I. 2011/603** Marine and Coastal Access Act 2009 (Transitional and Savings Provisions) Order 2011
- S.I. 2011/605** Libya (Asset-Freezing) Regulations 2011
- S.I. 2011/614** Teachers' Pensions (Miscellaneous Amendments) Regulations 2011
- S.I. 2011/615** Civil Contingencies Act 2004 (Contingency Planning) (Amendment) Regulations 2011
- S.I. 2011/625** Conservation of Habitats and Species (Amendment) Regulations 2011
- S.I. 2011/627** Marine Licensing (Delegation of Functions) Order 2011
- S.I. 2011/628** Gender Recognition (Application Fees) (Amendment) Order 2011
- S.I. 2011/630** Driver and Vehicle Licensing Agency Trading Fund (Revocation) Order 2011
- S.I. 2011/634** Social Security (Deferral of Retirement Pensions) Regulations 2011
- S.I. 2011/651** Tribunal Procedure (Amendment) Rules 2011
- S.I. 2011/671** Pension Protection Fund (Prescribed Payments and Investment Costs - (Amendment) Regulations 2011
- S.I. 2011/672** Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011
- S.I. 2011/673** Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011
- S.I. 2011/674** Social Security (Miscellaneous Amendments) Regulations 2011

- S.I. 2011/677** Digital Switchover (Disclosure of Information) Act 2007 (Prescription of Information) (Amendment) Order 2011
- S.I. 2011/678** Additional Statutory Paternity Pay (General) (Amendment) Regulations 2011
- S.I. 2011/679** Social Security (Claims and Payments) Amendment Regulations 2011
- S.I. 2011/680** National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) (Amendment) Regulations 2011
- S.I. 2011/685** National Lottery etc. Act 1993 (Amendment of Section 23) Order 2011
- S.I. 2011/686** Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2011
- S.I. 2011/688** Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011
- S.I. 2011/690** Further Education Teachers' Qualifications (England) (Amendment) Regulations 2011
- S.I. 2011/696** Environment Agency (Levies) (England and Wales) Regulations 2011
- S.I. 2011/709** National Insurance Contributions Credits (Miscellaneous Amendments) Regulations 2011
- S.I. 2011/713** Firearms (Electronic Communications) Order 2011
- S.I. 2011/719** Police Act 1997 (Criminal Records) (Amendment) Regulations 2011
- S.I. 2011/721** Tax Credits (Miscellaneous Amendments) Regulations 2011
- S.I. 2011/723** Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2011
- S.I. 2011/724** National Assistance (Sums for Personal Requirements) Amendment (England) Regulations 2011
- S.I. 2011/725** Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2011
- S.I. 2011/726** Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2011
- S.I. 2011/728** Education (Free School Lunches) (Prescribed Tax Credits) (England) (Amendment) Order 2011
- S.I. 2011/730** Education (Residential Trips) (Prescribed Tax Credits) (England) (Amendment) Regulations 2011
- S.I. 2011/731** Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011
- S.I. 2011/735** (c)Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011
- S.I. 2011/758** Sea Fishing (Penalty Notices) (England) Order 2011
- S.I. 2011/761** London Insolvency District (Central London County Court) Order 2011
- S.I. 2011/765** Aviation Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2011

- S.I. 2011/776** Former Equality Commissions' Codes of Practice (Employment, Equal Pay and Rights of Access for Disabled Persons) (Revocation) Order 2011
- S.I. 2011/780** Divorce and Dissolution etc. (Pension Protection Fund) Regulations 2011
- S.I. 2011/784** Education (Student Loans) (Repayment) (Amendment) Regulations 2011
- S.I. 2011/785** Insolvency (Amendment) Rules 2011
- S.I. 2011/786** Social Security (Deferral of Retirement Pensions) (Amendment) Regulations 2011

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2011/621** Immigration (Designation of Travel Bans) (Amendment No. 2) Order 2011
- S.I. 2011/646** Closure of Prisons Order 2011

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2011/462** Horserace Betting and Olympic Lottery Act 2004 (Commencement No. 4) Order 2011
- S.I. 2011/601** Data Protection Act 1998 (Commencement No. 3) Order 2011
- S.I. 2011/624** National Health Service Trusts (Originating Capital) Order 2011
- S.I. 2011/650** Air Navigation (Dangerous Goods) (Amendment) Regulations 2011
- S.I. 2011/662** Finance (No. 3) Act 2010, Schedule 2 (Appointed Day) Order 2011
- S.I. 2011/663** Offshore Installations (Safety Zones) Order 2011
- S.I. 2011/664** Pensions Act 2008 (Commencement No. 9) Order 2011
- S.I. 2011/682** Welfare Reform Act 2009 (Commencement No. 4) Order 2011
- S.I. 2011/689** Alder Hey Children's NHS Foundation Trust (Transfer of Trust Property) Order 2011
- S.I. 2011/694** Flood and Water Management Act 2010 (Commencement No. 3 and Transitional Provisions) Order 2011
- S.I. 2011/703** Finance (No. 3) Act 2010, Schedules 10 and 11 (Income Tax Self Assessment and Pension Schemes) (Appointed Days) Order 2011
- S.I. 2011/705** Planning Act 2008 (Commencement No.6) Order 2011
- S.I. 2011/717** Police Act 1997 (Criminal Records and Registration) (Jersey) (Amendment) Regulations 2011
- S.I. 2011/718** Police Act 1997 (Criminal Records and Registration) (Guernsey) (Amendment) Regulations 2011
- S.I. 2011/720** Legal Services Act 2007 (Commencement No. 10) Order 2011

S.I. 2011/777 Finance (No. 3) Act 2010, Schedule 13 (Record Keeping, Time Limits and Information and Inspection Powers) (Appointed Day and Transitional Provision) Order 2011

Appendix 1

S.I. 2010/235: memorandum from the Ministry of Defence

<p><i>Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2011 (S.I 2010/235.)</i></p>
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1. The Joint Committee on Statutory Instruments requested a memorandum in response to the following point made in relation to the above mentioned instrument —

“In the table set out in Schedule 3, is head (b) of item 6 intended to apply only where head (a) does not apply? If so, why is that not expressly specified?”

2. It is the statutory intent that head (b) should only apply where head (a) does not, it is however submitted that it is unnecessary to expressly make provision to this effect.

3. The provision re-enacts the wording used in all annual uprating instruments of the principal instrument since 2006. Moreover, the wording also replicates that used since 1983 in the annual uprating instruments of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983.

4. The construction of the provision has never been the subject of challenge: It impliedly determines entitlement to the allowance on the basis of precedence and any other interpretation would be perverse and inequitable (by either over or under compensating a person). Accordingly, a person who falls within a description at head (a) will be paid at the higher rate. However a person who also falls under a description at (b) is not entitled to receive the middle rate in addition to *or* as an alternative to the higher rate.

5. Although the instrument is not one that is subject to parliamentary procedure, the observation made by the Committee is noted and to avoid any possible ambiguity, all future uprating instruments will expressly deal with the point raised.

Ministry of Defence
14th March 2011

Appendix 2

S.I. 2010/243: memorandum from the Department of Energy and Climate Change

Promotion of the Use of Energy from Renewable Sources Regulations 2011 (S.I. 2010/243.)

1. In its letter to the Department of Energy and Climate Change of 9 March 2011, the Joint Committee requested a memorandum on the following point:

Explain (if possible with one or more illustrative examples) how regulation 4(3) is intended to operate, and in particular explain what is meant by “the date on which the calculation is made” and why the term appears not to be linked to any definition.

2. The Renewable Energy Directive (“the Directive”) requires the UK to meet a target of obtaining a 15% share of energy from renewable sources by 2020. In order to ensure progress towards meeting that target article 3(2) of that Directive sets a series of interim targets for the average renewables share over a series of fixed two year periods which are set out in Part B of Annex 1 to the Directive.

3. Article 4(4) of the Directive applies when an interim target is missed, and requires the Member State to set out adequate and proportionate measures to rejoin, within a reasonable timetable, the indicative trajectory in Part B of Annex 1 to the Directive. The reference to the indicative trajectory in Part B of Annex 1 to the Directive is a reference to the series of interim targets. Article 4(4) was introduced to provide some flexibility in relation to future interim targets, once one target has been missed. In the absence of this, because the targets are all averages, once one had been missed it could be even more challenging to meet future targets, starting from a lower base. The requirement to set out measures to rejoin that indicative trajectory, within a reasonable timetable, means that the two year period over which the average renewables share is to be calculated, is no longer tied to the dates given in Part B of Annex 1 to the Directive.

4. Regulation 4(3) has implemented these provisions of the Directive by requiring the Secretary of State, when an interim target is missed, to introduce measures to reach, within a reasonable period of time, the percentage average renewables share specified by the Directive as the next interim target. In regulation 4(3), the phrase “the date on which the calculation is made” is intended to refer to a date in the future at the end of the reasonable period of time, which will be specified in the revised National Renewable Energy Action Plan provided to the Commission.

5. The phrase immediately follows the reference to the average renewables share and is used to set an end date for the two year period for which the average renewables share is to be calculated. Establishing a percentage figure for the average renewables share over any period of time will always involve a calculation. The phrase is intended to refer to

the calculation of the average renewables share at the end of the reasonable period of time.

Illustrative example

6. The target set by regulation 4(1) for the average renewables share for the period 1 January 2011 to 31 December 2012 is 4%. On the basis of the illustrative figures given in the table below, this target was missed as the average renewables share over that period was only 2.55%. Therefore, regulations 4(2) and 4(3) apply, so that during the period 1 January 2013 to 31 December 2014 the Secretary of State would be required to introduce adequate and proportionate measures to ensure that, within a reasonable period of time, the average renewables share (when calculated for an immediately preceding two year period) equals or exceeds 5.4%.

Period (historic)	Gross final consumption of energy from renewable sources (units)	Gross final consumption of energy from all energy sources (units)	Average renewables share over the preceding 2 year period (%)
Jan 2011 to Dec 2011	2.0	100	-
Jan 2012 to Dec 2012	3.1	100	2.55% (for the 2 years preceding 31 Dec 2012)

7. The Secretary of State would need to reach a view on what is a reasonable period of time, and would need to plan accordingly. So, for example, the Secretary of State might plan on the basis that, with adequate and proportionate measures, 3 years is a reasonable period of time to achieve an average renewables share of at least 5.4% (calculated for a 2 year period). An illustrative projected timetable is set out in the table below, showing that the average renewables share would reach and exceed 5.4% over the 2 year period ending on 31 December 2015.

Period (projected)	Gross final consumption of energy from renewable sources (units)	Gross final consumption of energy from all energy sources (units)	Average renewables share over the preceding 2 year period (%)
Jan 2013 to Dec 2013	4.5	100	3.8% (for the 2 years preceding 31 Dec 2013)
Jan 2014 to Dec 2014	5.1	100	4.8% (for the 2 years preceding 31 Dec 2014)
Jan 2015 to Dec 2015	6.7	100	5.9% (for the 2 years preceding 31 Dec 2015)

8. Article 4(4) of the Directive would require the Secretary of State to submit a revised National Renewable Energy Action Plan to the Commission by 30 June 2013, setting out the Secretary of State's plans and timetable. The Commission would evaluate the revised National Renewable Energy Action Plan and may issue recommendations.

9. Note that the example given above and all the figures contained within it are purely illustrative.

Department of Energy and Climate Change
15 March 2011

Appendix 3

S.I. 2010/402: memorandum from the Food Standards Agency

<i>Food Labelling (Declaration of Allergens) (England) Regulations 2011 (S.I. 2010/402.)</i>

1. In its letter of 9th March 2011, the Joint Committee requested a memorandum on the following point:

Explain how this instrument (which appears to replicate an unnoticed error in S.I. 2009/2801) has the effect stated in the Explanatory Note and Explanatory memorandum. In particular, should the reference to the amendments made by regulation 2 of S.I. 2011/402 have been a reference to the amendments made by paragraphs (1) to (5) and (7) of regulation 2 of S.I. 2008/1188?

2. The Food Standards Agency accepts the Committee's point that the reference should be to amendments made by S.I. 2008/1188 and acknowledges the drafting error, for which it apologises. A corrective amendment will be made at the next available opportunity. In the interim, the Food Standards Agency will draw the enforcement authorities' attention to the error and to correct form of the defence.

Food Standards Agency
15th March 2011

Appendix 4

S.I. 2010/424: memorandum from the Department of Environment, Food and Rural Affairs

<i>Marine Licensing (Register of Licensing Information) Regulations 2011 (S.I. 2010/424)</i>

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following point:

Explain the inclusion of the words “in regulations 4 to 12” in regulation 2(1)(b) given that the remaining operative provisions do not refer to an application.

2. The words “in regulations 4 to 12” were included for the following reason. Regulation 2(1)(b) provides that “a reference to an application is a reference to an application for a marine licence, but in regulations 4 to 12 does not include an application submitted and subsequently withdrawn.” In order to provide a category of application to which the exception can relate, the term “application” in the phrase “an application submitted and subsequently withdrawn”, has to have a generic meaning which is wider than the category of application falling within the exception. If the exception to regulation 2(1)(b) had instead read “other than an application submitted and subsequently withdrawn”, it would be purporting in that phrase to use “application” in a wider sense than the sense in which the regulation defined it.

Department for Environment, Food and Rural Affairs
10th March 2011