House of Lords
House of Commons

Joint Committee on Statutory Instruments

Twenty-second Report of Session 2010-12

Drawing special attention to:

Tunisia (Restrictive Measures) (Overseas Territories) Order 2011 ***(S.I. 2011/748)***
Child Trust Funds (Amendment) Regulations 2011 ***(S.I. 2011/781)***
Immigration and Nationality (Cost Recovery Fees) Regulations 2011 ***(S.I. 2011/790)***
Accounts and Audit (England) Regulations 2011 ***(S.I. 2011/817)***
Libya (Restrictive Measures) (Overseas Territories) Order 2011 ***(S.I. 2011/1080)***

Ordered by the House of Lords to be printed 18 May 2011
Ordered by the House of Commons to be printed 18 May 2011

HL Paper 150
HC 354-xxii
Published on 24 May 2011
by authority of the House of Lords
and the House of Commons
London: The Stationery Office Limited
£0.00

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, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons)*; Allan Roberts, Nicholas Beach and Peter Milledge *(Lords)*.

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Instruments reported

At its meeting on 18 May 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 five 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. 2011/748: Reported for requiring elucidation and defective drafting

Tunisia (Restrictive Measures) (Overseas Territories) Order 2011 (S.I 2011/748)

1.1 **The Committee draws the special attention of both Houses to this Order on the grounds that in one respect it calls for elucidation and in another respect it is defectively drafted.**

1.2 This Order applies to specified British overseas territories and places controls on dealing with certain funds connected with Tunisia, and some of the controls relate to relevant institutions. Article 2(1) defines the terms used, and "relevant institution" is defined there as including the person responsible for carrying out in the territory the functions of a monetary authority. Article 12(2)(d) permits disclosure of information provided to the Governor pursuant to a request made pursuant to Schedule 4 "to the Financial Services Authority of the United Kingdom or to the monetary authority of any other country or territory". As the Order contains no explanation of what is meant by a "monetary authority", the Committee asked the Foreign and Commonwealth Office to indicate its meaning and where the meaning was explained.

1.3 In a memorandum printed at Appendix 1, the Department states that "the term "monetary authority" means the authority which controls the money supply of a currency, has the right to set interest rates and put in place other parameters relating to the control and supply of money". Officials in the Treasury understand that the term is a commonly used one which does not require specific definition. With regard to article 12(2)(d), the Department considers that it will be relatively easy to identify the particular monetary authority of a specific country or territory: the European Central Bank, for example is the monetary authority for countries for whom the Euro is their currency".

1.4 The Committee accepts the Department's explanation of the adequacy of clarity of the undefined expression as it is used in the definition of "relevant institution" in article 2(1) . It is less certain about the Department's explanation as regards article 12(2)(d), however. For a start, unlike the expression in article 2(1), it is not confined to territories covered by the Order. Next, the provision appears to be referring to a body which has functions equivalent to those exercised in the United Kingdom by the Financial Services Authority. Finally, the Committee notes that the equivalent provision in another instrument reported in this Report, article 23(2)(d) of the Libya (Restrictive Measures) (Overseas Territories) Order 2011 (S.I. 2011/1080), the expression used is "to the Financial Services Authority or to any equivalent authority of any other country or territory". All this leads the Committee

to suspect a possibly inadvertent effect, and whether or not that was the case could have been clarified, had the memorandum addressed the issue.

1.5 **In view of the above, the Committee reports the use of the expression "monetary authority" as calling for elucidation, provided in the case of article 2(1) by the Department's memorandum, but not satisfactorily so provided in the case of article 12(2)(d).**

1.6 Article 3 of the Order is headed "Publicly available list of listed persons". Paragraph (1) requires the Governor to maintain a list and cause it to be published in the Gazette of the territory. Paragraph (2) provides that "except where this Order provides otherwise, expressions used in [Council Regulation (EU) No. 101/2011] which are also used in this Order have the same meaning in this Order as they have in the Regulation".

1.7 The Department acknowledges in its memorandum that paragraph (2) of article 3 should have appeared instead in article 2 (interpretation). It does not offer to amend this Order, for it considers that the location of the provision will not change its effect (an interpretation the Committee shares), but it plans to take note of the point in future sanctions orders **The Committee accordingly reports article 3(2) for defective drafting, acknowledged in principle by the Department.**

2 S.I. 2011/781: Reported for requiring elucidation

Child Trust Funds (Amendment) Regulations 2011 (S.I 2011/781)

2.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that in one respect they call for elucidation.**

2.2 Regulation 4(b) amends regulation 33A of the Child Trust Funds Regulations 2004 by inserting paragraph (2A) specifying information which must be provided to the Board in a form specified by the Board. This information includes (a) the name, address and unique identifier of the local authority making the return.

2.3 The Committee asked Her Majesty's Revenue and Customs to explain the meaning of "unique identifier", why it is not explained, and the purpose of the inclusion of the expression. In a memorandum printed at Appendix 2, the Department provides a very full explanation in response. The Committee is satisfied that local authorities obliged to comply will, by a combination of the Regulations and the Departmental website, be left in no difficulty as to how to comply with their obligations. The Committee accordingly reports regulation 4(b) for calling for the elucidation provided by the Department.

2.4 The Department ends its memorandum by offering to include in a later amending instrument a provision clarifying the meaning of "unique identifier" if the Committee considers that doing so would assist readers of the amended Regulations. The Committee welcomes this offer and invites the Department to make such an amendment, for the benefit of readers more generally, when a suitable occasion arises.

3 S.I. 2011/790: Reported for defective drafting and failing to confirm to accepted legislative practice

Immigration and Nationality (Cost Recovery Fees) Regulations 2011 (S.I 2011/790)

3.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two respects and fail to conform to accepted legislative practice in another respect.**

3.2 Regulation 2 defines expressions used in the instrument. A definition of "the former nationality Acts" appears twice (under "former" and "the" in alphabetical order). In a memorandum printed at Appendix 3, the Home Office admits that this was an error.

3.3 Regulation 3(1)(g) refers in sub-paragraphs (i) to (vi) to various expressions which are not explained in this instrument. The Department explains that the expressions are used in the immigration rules which set out the categories of applicants for leave to remain and considers that their meanings will be readily available to those making the relevant applications. It acknowledges, however, that the expressions should have been defined in this instrument.

3.4 The Department undertakes to correct these errors at the next available opportunity, and **the Committee accordingly reports regulations 2 and 3(1)(g) for defective drafting, acknowledged by the Department.**

3.5 This instrument was made on 14 March, laid before Parliament on 16 March, and came into force on 6 April. Regulation 4(1) refers to a person who makes an application to which regulation 9(1)(a) of the Immigration and Nationality (Fees) Regulations 2011 applies. That instrument could not be made unless a draft had been laid before and approved by a resolution of each House. A draft of that instrument was seen by and cleared by the House of Lords Merits of Statutory Instruments Committee on 15 March and by this Committee on 16 March, was subsequently approved by both Houses and was made on 1 April. At the time of making this instrument therefore, the other instrument not only did not exist but had not undergone any parliamentary scrutiny. The Committee asked why these Regulations were made without any recognition of the contingency that the draft affirmative instrument might not be approved.

3.6 The Department apologises for any apparent discourtesy to Parliament, assures the Committee that none was intended, and explains that, had the affirmative instrument not been made, an urgent amendment would have been made to this instrument. It also explains the time constraints it faced in making the two instruments come into force on 6 April without this instrument breaking the 21-day rule.

3.7 The Committee considers it conceptually incomplete for instruments to be made which refer to other legislation which does not exist, and would discourage Departments from doing so. While it accepts that the Home Office was aware of the risks it was taking and that it would have made an urgent amendment had that proved necessary, it considers that a better approach in the circumstances would have been to desist from making this instrument until the affirmative one had been made, even though that would entail a breach of the 21-day rule. The expected text could have been made available for

information along with the draft affirmative instrument to mitigate the effect of that breach, and such a course would have been consistent with the Department's aim of making the Regulations more user friendly than they would have been if contingency provisions had been included, without the conceptual shortfall that was unavoidable in the approach the Department adopted.

3.8 **The Committee accordingly reports regulation 4(1) for what was, fortunately, an apparently harmless failure to conform to accepted legislative practice.**

4 S.I. 2011/817: Reported for defective drafting

Accounts and Audit (England) Regulations 2011 (S.I 2011/817)

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

4.2 Regulation 2(1) includes definitions of "relevant body", "larger relevant body" and "smaller relevant body". A larger relevant body is a relevant body which is not a smaller relevant body. A smaller relevant body means a body which is not a local authority for the purposes of Part I (capital finance etc and accounts) of the Local Government Act 2003, which: (a) for an established body, meets the qualifying condition for the year concerned, or for either of the two immediately preceding years; (b) for a newly established body, meets the qualifying condition for its first or second year, the qualifying condition being that the body's gross income or gross expenditure (whichever is higher) is not more than £6.5 million. No explanation is given of what is meant by an established body or a newly established body.

4.3 In a memorandum printed at Appendix 4, the Department for Communities and Local Government states that it considers that it is clear what is meant by these expressions: an established body is one where there are three years of income and expenditure information, and a newly established body is one where there is only one or two years of income and expenditure information because the body has only been in existence for that period of time. The Department adds that the Committee's point was not picked up by any of the people consulted on a draft of the regulations.

4.4 The Committee, while accepting the Department's explanation as a likely one as to how the provision would be interpreted, cannot accept the Department's assertion that the meaning is clear. Although it is true that an established body must have been in existence for long enough to have income and expenditure information in respect of three years, there is nothing in the definition which means that a newly established body (which - given the expression used - could be a type of established body) must necessarily have no more than two years of income and expenditure information. The fact that consultees did not query the provision may well be because they would have known in advance what the provision was intended to mean, and so did not query whether it did indeed convey that meaning. The Committee's starting assumption is that concepts in legislation should fit together where possible, and in this case the inclusion of terminology presumably useful in

Departmental literature does not justify exclusion of the relatively minor definitional extra material that could have made the concepts work without any ambiguity. **The Committee accordingly reports regulation 2(1) for defective drafting.**

4.5 Regulation 7(6) requires the Common Council of the City of London, in relation to certain specified accounts, to prepare for each year, in accordance with proper practices in relation to accounts, a statement of accounts including certain information in relation to capital expenditure incurred in *the period*, and (in respect of other information) corresponding amounts for *the immediately preceding period*.

4.6 It is apparent from the Department's memorandum that "the period" means "the year". This instrument is a consolidating one and it was decided not to alter terminology except where clarification was thought necessary. Although the remainder of this instrument refers to "the year", the Code of Practice on Local Authority Accounting in the United Kingdom, which is a source of proper practices under the legislation, refers to "the period".

4.7 Although the Committee recognises that those responsible for compiling the Common Council's accounts will be familiar with the Code of Practice and will know what is intended by "the period", it has indicated previously that it expects the same terminology to be used for the same meaning in legislation—see for example the Committee's 1st Report of Session 2006-07 (S.I. 2006/2084). It would be inconsistent with that approach for the Committee to accept that a code of practice should so govern the terminology as to call for an avoidable mismatch. **The Committee accordingly reports regulation 7(6) for defective drafting.**

5 S.I. 2011/1080: Reported for requiring elucidation and unexpected use of an enabling power

Libya (Restrictive Measures) (Overseas Territories) Order 2011 (S.I 2011/1080)

5.1 **The Committee draws the special attention of both Houses to this Order on the grounds that in one respect it calls for elucidation and in another respect it makes an unexpectedly limited use of the enabling power.**

5.2 Article 2(1) of this Order defines expressions used in the instrument. "Relevant institution" is defined as including the person responsible for carrying out in the territory the functions of a monetary authority. As the Order contains no explanation of what is meant by a "monetary authority", the Committee asked the Foreign and Commonwealth Office to identify its meaning and where the meaning was explained.

5.3 In a memorandum printed at Appendix 5, the Department states that "the term "monetary authority" means the authority which controls the money supply of a currency, has the right to set interest rates and put in place other parameters relating to the control and supply of money". Officials in the Treasury understand that the term is a commonly used one which does not require specific definition.

5.4 The Committee accepts the Department's explanation of the adequacy of clarity of the undefined expression as it is used in the definition of "relevant institution" and of why it was not defined, **and reports the use of the expression "monetary authority" as calling for the elucidation provided by the Department's memorandum.**

5.5 Article 26 specifies how a notice required to be given to a person by the Governor under article 14(4)(b) or 15(5)(a) is to be given. Those provisions require notice to be given to a person where, respectively, a direction is given that that person is to be treated as a designated person for the purposes of the Order, and the Governor grants, varies or revokes a licence relating to dealings with such a person.

5.6 The Committee asked the Department why article 26 does not also apply to a notice to be given under article 9(4)(a), which is notice of the grant, variation or revocation of a licence to disapply certain provisions of the Order. The Department states that article 26 need not refer to such a notice as the notices under article 9(4)(a) are to do with the sanctions regime on restricted goods and armed mercenary personnel, whereas the notices under articles 14(4)(b) and 15(5)(a) are to do with the regime for freezing funds and economic resources. The Department does acknowledge that it may be desirable to apply the requirement to all three types of notice for reasons of treating all such notices in a similar manner, and thanks the Committee for drawing the matter to its attention.

5.7 The Committee considers it odd that care should be taken to specify the manner in which notices may be given in two out of three (similar) circumstances but not in the third. The reader of the Order may be led to wondering whether less or more stringent rules as to service apply to a notice under article 9(4)(a) that those set out in article 26. This could have been avoided if article 26 had been expressed to apply to all three types of notice, and it appears from the memorandum that the lack of reference to article 9(4)(a) in the first place may have been an oversight.

5.8 **The Committee accordingly reports article 26 for making an unexpectedly limited use of the enabling power in not referring also to notices under article 9(4)(a).**

Instruments not reported

At its meeting on 18 May 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.	Contracting Out (Local Authorities Social Services Functions) (England) Order 2011
Draft S.I.	Distribution of Dormant Account Money (Apportionment) Order 2011

Instruments subject to annulment

S.I. 2011/1133	Cross-Border Mediation (EU Directive) Regulations 2011
S.I. 2011/1135	Fruit Juices and Fruit Nectars (England) (Amendment) Regulations 2011
S.I. 2011/1150	Electricity (Individual Generation Exemptions) Order 2011
S.I. 2011/1169	Multiplex Licence (Broadcasting of Progammes in Gaelic) (Revocation) Order 2011
S.I. 2011/1182	National Health Service (Primary Dental Services) (Miscellaneous Amendments) Regulations 2011
S.I. 2011/1191	Legal Services Commission (Number of Commissioners) Order 2011

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2010/495	Work and Families Act 2006 (Commencement No. 4) Order 2010
S.I. 2011/1081	Child Abduction and Custody (Parties to Conventions) (Amendment) (No. 2) Order 2011
S.I. 2011/1108	Irish Sailors and Soldiers Land Trust Act 1987 (Dissolution) Order 2011
S.I. 2011/1159	Equality Act 2010 (Guidance on the Definition of Disability) Appointed Day Order 2011
S.I. 2011/1171	Civil Partnerships (Registration Provisions) (Amendment) Order 2011
S.I. 2011/1172	Registration of Marriages (Amendment) Regulations 2011

Appendix 1

S.I. 2010/748: memorandum from the Foreign Office

Tunisia (Restrictive Measures) (Overseas Territories) Order 2011 (SI 2011/748)

The Joint Committee on Statutory Instruments has requested the Foreign and Commonwealth Office to submit a memorandum on the following points:

> '(1) What is the meaning of "monetary authority" in the definition of "relevant institution" in article 2(1) and in article 12(2)(d) and where is this explained?
>
> (2) Why is paragraph (2) of article 3 in that article instead of in article 2?'

As regards the question at point (1) above, the term "monetary authority" means the authority which controls the money supply of a currency, has the right to set interest rates and put in place other parameters relating to the control and supply of money. Having consulted officials in the Treasury, it is their understanding that the term is a commonly used term which accordingly does not require specific definition. The term, moreover, was not defined in previous examples of statutory instruments to do with sanctions, such as The Burma (Restrictive Measures) (Overseas Territories) Order 2009. In our view, it is unnecessary to define the term and, with reference to article 12(2)(d), it will be relatively easy to identify the particular monetary authority of a specific country or territory. The European Central Bank, for example, is the monetary authority for countries for whom the Euro is their currency.

As regards the question at point (2) above, this was an oversight due to the rapidity with which the Order had to be prepared. We do not think this point changes the substance of the Order or has any practical consequences for individuals or entities but we agree that the better approach would have been to insert paragraph (2) of Article 3 in Article 2. We will take note of this point in drafting future sanctions orders and are grateful to the Committee for pointing it out.

Foreign and Commonwealth Office
10 May 2011

Appendix 2

S.I. 2010/781: memorandum from HMRC

Child Trust Funds (Amendment) Regulations 2011 (SI 2011/781)

1. The Joint Committee has requested a memorandum to be submitted on the following point–

> *"Explain the meaning of 'unique identifier" in the new regulation 33A(2A)(a) as inserted by regulation 4(b), why it is not explained, and the purpose of the inclusion of the expression."*

2. Regulation 3 of the Child Trust Funds (Amendment) Regulations 2011 ("the amending Regulations") omits regulation 33 of the Child Trust Funds Regulations 2004 (SI 2004/1450) ("the principal Regulations") and regulation 4(b) of the amending Regulations inserts a new regulation 33A(2A) into the principal Regulations. Regulation 33 of the principal Regulations formed part of the original enactment of the principal Regulations in 2004 and regulation 33A was inserted by the Child Trust Funds (Amendment No. 2) Regulations 2004 (SI 2004/3382) but with retrospective effect from 6 April 2005 when the child trust funds regime first came into operation.

3. The unique identifier of the local authority is a number generated by HMRC for tax purposes and allocated to each local authority in the UK. It is used as an administrative convenience for both the local authority and HMRC and has been a feature of the principal Regulations since their origin in 2004. The unique identifier is listed for every local authority, for the purposes of the principal Regulations, in an annex to guidance issued by HMRC to local authorities for the completion of monthly returns to be made to HMRC as part of the child trust funds regime[a]. In order to assist in the understanding of the use of the term in what is currently regulation 33A(2A) of the principal regulations, it is considered useful to set out in some detail to the legislative context of regulation 33A and the role of the local authority in relation to child trust funds.

4. Regulation 33 of the principal Regulations (prior to its omission) related to information which was provided on a monthly basis by local authorities to HMRC in relation to children who were "looked after" (in England, Wales and Northern Ireland) or who are "looked after and accommodated" (in Scotland) by a local authority. This information[b] was required to ensure that HMRC could fulfil its obligations imposed by section 6(1) and section 6(4)(b) of the Child Trust Funds

[a] Further more detailed information in relation to the unique identifier is set out in paragraphs 10 to 12 below.

[b] The information is listed in regulation 33(3) and includes at sub-paragraph (c) "the unique identifier for the local authority".

Act 2004 (2004 c.6) to apply for a child trust fund to be opened for every looked after or looked after and accommodated child.

5. Child trust funds opened by HMRC for a looked after or a looked after and accommodated child, were, where there was no-one, or no-one who was appropriate, with parental responsibility for the child other than the local authority, subsequently managed on the child's behalf by the Official Solicitor (or, in Scotland, by the Accountant of Court).

6. Regulation 33A of the principal Regulations sets out the conditions which were to be satisfied for the Official Solicitor (or the Accountant of Court) to manage child trust funds and imposed a duty on local authorities to identify relevant children and deliver a form containing relevant information in relation to the child to HMRC. HMRC would then pass on the child's details to the Official Solicitor who would then assume management of the child's child trust fund. The information to be passed to HMRC for the purposes of regulation 33A was to form part of the monthly return required to be delivered by local authorities to HMRC under regulation 33 of the principal Regulations[c].

7. Section 1 of the Savings Accounts and Health in Pregnancy Grant Act 2010 (2010 c. 36) ended eligibility for child trust funds for children born after 2 January 2011. Following the ending of child trust eligibility for children born after 2 January 2011 it was considered inappropriate for local authorities still to be required to make monthly returns of information for looked after or looked after and accommodated children to HMRC and so regulation 3 of the amending Regulations omitted regulation 33 from the principal Regulations.

8. However, so that the Official Solicitor (or the Accountant of Court) could still assume the management of child trust funds for certain categories of looked after or looked after and accommodated children, local authorities are still required to provide information relating to such children eligible for a child trust fund to HMRC so that their details could be passed on to the Official Solicitor (or the Accountant of Court). However, as previously the information was included in the monthly return made to HMRC by local authorities under regulation 33 of the principal Regulations, it was, after the omission of regulation 33, necessary to import the requirements in relation to the report to be delivered to HMRC into regulation 33A, including the list of information required for each child, as was previously contained in regulation 33(3) of the principal Regulations.

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[c] Prior to 7 April 2011 and the coming into effect of the amending Regulations, regulation 33A(1) of the principal Regulations which provided:

"(1) Every local authority shall be under a duty to-

(a) identify any child born after 31st August 2002 and under 16, who falls within the circumstances specified in paragraph (2) and, for each child,

(b) deliver a form (as part of the return required by regulation 33(2) or (4), as the case may be) in accordance with paragraph (3)(a).".

9. New regulation 33A(1)(b)[d] requires the local authority to deliver information to HMRC *"in a form specified by the Board containing the information specified in paragraph (2A) for each child"*. The form specified by the Board (HMRC) is form CTF15. Regulation 33A(2A) of the principal Regulations amalgamates the information required to be delivered by a local authority for every relevant child which was contained in regulation 33(3) and regulation 33A(3)(a) of the principal Regulations (as they existed prior to 7 April 2011) and repeats in new sub-paragraph (2A)(a) of regulation 33A the information which was required in relation to the relevant local authority submitting the return as was contained in regulation 33(3)(a) to (c), including the requirement for the return to state the local authority's unique identifier.

10. Form CTF15, being the form specified by the Board as that on which the local authority is required to make a return under regulation 33A(1)(b) of the principal Regulations, is accompanied by notes on the completion of that form which can be found at www.hmrc.gov.uk/ctf/ctfnotes.pdf. The notes to CTF15 specify that the unique identifier, if unknown, can be found by looking at further guidance issued by HMRC to local authorities required to make a return to HMRC under regulation 33A of the principal Regulations ("Guidance"). Every local authority's unique identifier is listed in an annex to the Guidance.

11. The provision of the unique identifier number by each local authority to HMRC as part of its return is to provide administrative convenience to the local authority and also to HMRC. In practice the local authority will send, as part of its monthly return, one cover sheet (a form CTF15) containing specific information and listing each child for whom a return is made and then also, for each separate child so listed, another form (a CTF15(child)) containing the information relevant to that particular child. The CTF15(child) only contains the local authority's unique identifier and no other details pertaining to the local authority and so is easier for the local authority to complete for each separate child without having to set out relevant information pertaining to the local authority in full for each child separately.

12. In summary, therefore, when considering the principal Regulations (which require a local authority to make a return to HMRC of certain information on a form specified by HMRC), the local authority will need to look at the form specified by HMRC (the CTF15) and the notes and guidance issued by HMRC for completion of the form. As mentioned, the Guidance makes clear what the unique identifier is and also what the unique identifier is for each authority.

13. Accordingly, it was considered unnecessary to define the term "unique identifier" for the purposes of the amendments to the principal Regulations made by the amending Regulations. When the principal Regulations were considered together

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[d] As substituted by regulation 4(a) of the amending Regulations.

with the form specified by HMRC for the purposes of regulation 33A (the CTF15) and the accompanying notes and guidance, it appeared clear as to what was meant by the "unique identifier" for these purposes. The term has been used since 2004 without amplification (see former regulation 33(3)(c)) and, as far as HMRC is aware, local authorities have found no difficulty completing the monthly returns required by the principal Regulations including identifying and recording their unique identifier.

14. If, after consideration of the above points, the Joint Committee considers that it would assist readers if the principal Regulations defined the term "unique identifier" or otherwise made reference to the Guidance issued by HMRC, the least disruptive approach for achieving such clarification would appear to be to make such provision as part of subsequent regulations amending the principal Regulations. It is envisaged that amendments to the principal Regulations will be required to be made later this year.

HM Revenue & Customs
10 May 2011

Appendix 3

S.I. 2010/790: memorandum from the Home Office

Child Trust Funds (Amendment) Regulations 2011 (SI 2011/790)

1. This Memorandum has been prepared by the Home Office at the request of the Joint Committee on Statutory Instruments ("the Committee") in a letter dated 4 May 2011.

2. The Committee requested a memorandum on the following points:

(1) Why, in regulation 2, does the definition of "the former nationality Acts" appear twice?

(2) What are the expressions used in regulation 3(g)(i) to (vi) intended to cover, and why are none of them defined?

(3) Given that this instrument was made on 14 March, why does regulation 4(1) refer to the Immigration and Nationality (Fees) Regulations 2011 (which were made on 1 April and a draft of which was not cleared by the Committee until 16 March) without any recognition of the possibility that they might not be approved?

3. The Home Office accepts that the definition of "the former nationality Acts" appears twice and apologises for this oversight. This error does not affect the operation of the statutory instrument and will be corrected at the next available opportunity.

4. The expressions used in regulation 3(g)(i) to (vi) are expressions used in the immigration rules which set out the categories of applicants for leave to remain. It is under the immigration rules that the applications are made and the Home Office takes the view that the meanings of these expressions are readily available to those making the relevant applications. Any person who relies on the fee exemptions set out in regulation 3(g) will have made their application for limited leave to remain under the immigration rules in which these expressions are explained. The expressions used in regulation 3(g)(i) to (vi) are formally defined or are explained in the relevant part of the immigration rules. The Home Office however accepts that these expressions should also be defined in the fees regulations and apologises for the omission of these definitions. The Home Office undertakes to correct them at the next available opportunity. As the committee may be aware, the fees regulations are updated at least annually.

5. As the committee may recall, there were problems in the drafting and parliamentary passage of the Immigration and Nationality (Fees) Regulations 2011. The timing of these two sets of regulations was critical to the finances of the UK Border Agency. Time was therefore very short at the time of laying these regulations before parliament. Had the affirmative resolution regulations not been approved then a different course of action would have been taken with these negative resolution regulations. Amendments would have been made urgently. However, given the administrative burden in producing and laying statutory instruments the Home Office could not delay preparation of the negative regulations without risk of breaching the 21 day rule for the laying of negative resolution statutory instruments. The Home Office apologises for any apparent discourtesy and assures the Committee that none was intended and that no presumption was made. Difficult decisions were made and the Home Office hopes that the resulting regulations are more user friendly now than they would have been had they contained contingency provisions or been amended very shortly after they had been made.

6. Should the committee have any further questions the Home Office will be happy to answer them.

Home Office
10.5.2011

Appendix 4

S.I. 2010/817: memorandum from the Department for Communities and Local Government

Accounts and Audit (England) Regulations 2011 (SI 2011/817)

1. The Committee has requested a memorandum on the following points:

   (1) What is meant by 'established body' and 'newly established body' in the definition of 'smaller relevant body' in regulation 2(1), and why is that not explained?
   (2) What is the meaning of 'period' in regulation 7(6), and why is that not explained?

2. In relation to the first point, we consider that it is clear what is meant by established body and newly established body from the definition of smaller relevant body when it is read as a whole. An established body is one where there are 3 years of income and expenditure information; a newly established body is one where there is only 1 or 2 years of income and expenditure information because the body has only been in existence for that period of time.

3. This point was not picked up by any of the consultees, who included technical consultees such as the Audit Commission and the Chartered Institute of Public Finance and Accountancy.

4. On the second point, these regulations were a consolidation, and regulation 7(6) follows the wording used previously. The decision was taken to change terminology and language only where it was considered that clarification was necessary.

5. Regulation 7(6) requires that the Common Council of the City of London must prepare a statement of accounts for each year including certain comparative information in respect of the preceding period, in accordance with proper practices in relation to accounts. 'Proper practices', by virtue of section 21(2)(b) of the Local Government Act 2003, is a reference to accounting practices which are contained in a code of practice or other document which is identified for the purposes of this provision by regulations made by the Secretary of State. Regulation 31 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146), identifies the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom as a source of proper practices under section 21.

6. The 2010/11 edition of the Code of Practice includes the following provisions on comparative information:

3.4.2.27 A local authority shall present a complete set of financial statements (including comparative information) annually.

3.4.2.28 Except when the Code permits or requires otherwise, a local authority shall disclose comparative information in respect of the previous period for all amounts reported in the current period's financial statements.

7. When read in conjunction with the Code of Practice, as these Regulations must be, our view is that it is clear that 'period' refers to an accounting year, and that term can only mean the period covered by the accounts which are also referred to in that regulation. The language of the regulation reflects the language of the Code, and in our view does not require definition. Again, we had no comments or queries from consultees regarding this point, including the City of London.

Department for Communities and Local Government
10th May 2011

Appendix 5

S.I. 2010/1080: memorandum from the Foreign and Commonwealth Office

Libya (Restrictive Measures) (Overseas Territories) Order 2011 (SI 2011/1080)

The Joint Committee on Statutory Instruments has requested the Foreign and Commonwealth Office to submit a memorandum on the following points:

'(1) What is the meaning of "monetary authority" in the definition of "relevant institution" in article 2(1) and where is this explained?

(2) Should article 26(1) include a reference to a notice to be given under article 9(4)(a)?'

As regards the question at point (1) above, the term "monetary authority" means the authority which controls the money supply of a currency, has the right to set interest rates and put in place other parameters relating to the control and supply of money. Having consulted officials in the Treasury, it is their understanding that the term is a commonly used term which accordingly does not require specific definition. The term, moreover, was not defined in previous examples of statutory instruments to do with sanctions, such as The Burma (Restrictive Measures) (Overseas Territories) Order 2009. In our view, it is unnecessary to define the term and it will be relatively easy to identify the particular monetary authority of a specific country or territory. The European

Central Bank, for example, is the monetary authority for countries for whom the Euro is their currency.

As regards the question at point (2) above, in our view article 26(1) need not refer to a notice to be given under article 9(4)(a). It may be desirable to do so for reasons of treating such notices in a similar manner to the notices to be given to a person by the Governor under articles 14(4)(b) or 15(5)(a), but we do not consider it essential, particularly as the notices under article 9(4)(a) are to do with the sanctions regime on restricted goods and armed mercenary personnel, whereas the notices under articles 14(4)(b) and 15(5)(a) are to do with the regime for freezing funds and economic resources. We are grateful, however, to the Committee for drawing this to our attention.

Foreign and Commonwealth Office
May 2011