



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Second Report
of Session 2015-16**

Drawing special attention to:

Registration of Marriages Regulations 2015 (S.I. 2015/207)

National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238)

Apprenticeships (Modifications to the Specification of Apprenticeship Standards for England) Order 2015 (S.I. 2015/303)

Special Constables (Amendment) Regulations 2015 (S.I. 2015/461)

Misuse of Drugs Act 1971 (Temporary Class Drug) (No. 2) Order 2015 (S.I. 2015/1396)

Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Draft S.I.)

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Joint Committee on Statutory Instruments

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Lord Mackay of Drumadoon (*Crossbench*)
Baroness Mallalieu (*Labour*)
Baroness Meacher (*Crossbench*)
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Mr Ian Liddell-Grainger (*Conservative, Bridgwater and West Somerset*)

Powers

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 Amelia Aspden (*Commons Clerk*), Jane White (*Lords Clerk*) and Liz Booth (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons*); Nicholas Beach, Peter Milledge and John Crane (*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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Instruments reported

At its meeting on 21 July 2015 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 six 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. 2015/207: Reported for failure to comply with proper legislative practice

Registration of Marriages Regulations 2015 (S.I. 2015/207)

1.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper legislative practice in one repeated respect.**

1.2 The Regulations consolidate earlier regulations about registration of marriages, with substantive amendments. Schedule 1 prescribes forms for various purposes. The text in about half of the forms as printed is so small as to be unlikely to be legible by most users. The Committee asked the Home Office, in consultation with the Statutory Instrument Registrar, to explain. In a memorandum printed at Appendix 1, the Department apologises and explains that the problem arose as a result of conversion from landscape to portrait pagination during printing. The Department adds that it has arranged with the Statutory Instrument Registrar for the Regulations to be re-printed and for the forms to be re-sized (in landscape form) to make them easier to read, and for one of the forms to be re-typeset to make it clearer, and the Committee notes that this has now been done; even so, it has observed that there are slight inconsistencies in the English and Welsh versions.

1.3 **The Committee accordingly reports Schedule 1 for failure to comply with proper legislative practice, acknowledged by the Department.**

2 S.I. 2015/238: Reported for defective drafting

National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238)

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 The Regulations replace earlier regulations and provide for the making and recovery of charges for certain services provided under the National Health Service Act 2006 to certain persons not ordinarily resident in the United Kingdom.

2.3 Regulation 9 provides for no charge to be made for treatment of conditions connected with female genital mutilation; and regulation 8 defines the phrase “female genital mutilation” for that purpose. The definition covers: mutilation which constitutes an offence under the Female Genital Mutilation Act 2003; mutilation which was performed before that Act commenced and would have constituted an offence under that Act had it

been in force; and mutilation performed outside the United Kingdom which did not constitute an offence under that Act but would have done so had it been performed in the United Kingdom. That apparently excludes mutilations performed outside the United Kingdom and before the coming into force of the 2003 Act, and the Committee asked the Department of Health to explain the exclusion.

2.4 In a memorandum printed at Appendix 2, the Department acknowledges that the exclusion was an error of drafting, apologises for it and thanks the Committee for pointing it out. The Department confirms that the intention was that women and girls on whom genital mutilation was performed outside the UK and before the coming into force of the Female Genital Mutilation Act 2003 should also benefit from the exemption provided by regulation 9. It undertakes to correct the Regulations at the earliest opportunity (and to use the opportunity to remove an unnecessary definition from regulation 8 at the same time).

2.5 The Committee accordingly reports regulation 8 for defective drafting, acknowledged by the Department.

3 S.I. 2015/303: Reported for failure to comply with proper legislative practice

Apprenticeships (Modifications to the Specification of Apprenticeship Standards for England) Order 2015 (S.I. 2015/303)

3.1 The Committee draws this Order to the attention of both Houses on the ground that it fails to comply with proper legislative practice in one respect.

3.2 The Order brings a modified specification of apprenticeship standards for England into effect, for the purposes of section 14 of the Apprenticeships, Skills, Children and Learning Act 2009. The Order operates by reference to a document entitled “Specification of Apprenticeship Standards for England (SASE)”, and the footnotes and the Explanatory Note explain that the document was published by the Secretary of State on 12th February 2015 with unique reference number BIS/15/14 and that it can be found on the government website at a specified address.

3.3 The Committee asked the Department for Business, Innovation and Skills to explain why only an electronic address is provided for the document, having regard to recent observations of the Committee (in particular the Sixteenth Report of Session 2013-14 when reporting S.I. 2013/2232 and the Nineteenth Report of Session 2014-15 when reporting S.I. 2014/3120) about the desirability of instruments stating where access may be gained to a hard copy of documents referred to in them. The Committee also asked the Department to explain why the matter was not referred to in the Explanatory Memorandum as likely to be of interest to the Committee.

3.4 In a memorandum printed at Appendix 3, the Department acknowledges the failure to provide details of hard copy access as an error and thanks the Committee for identifying it. The Department acknowledges the importance of including information about how to access hard copies of documents referred to in statutory instruments, apologises for the oversight on this occasion and reassures the Committee that it intends to correct the error at the earliest opportunity. The Department adds that until the correction is effected the

relevant official whose contact details are given in the Explanatory Memorandum will be able to provide hard copies free of charge to any enquirer.

3.5 The Committee accordingly reports the Order for failure to comply with proper legislative practice, acknowledged by the Department.

4 S.I. 2015/461: Reported for defective drafting

<i>Special Constables (Amendment) Regulations 2015 (S.I. 2015/461)</i>
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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 The Regulations make amendments of the Special Constables Regulations 1965 (S.I. 1965/536). Regulation 3 amends regulation 1B of those Regulations (inserted by the Special Constables (Amendment) Regulations 2012) to enable DNA samples to be taken from serving special constables as well from special constables when first appointed.

4.3 Regulation 3(c) substitutes for the existing paragraph (3) of regulation 1B a new version of paragraph (3) (which requires the destruction of a sample within 6 months of its being taken) and a new paragraph (3A) which provides that the information obtained from a sample is generally to be destroyed within 12 months of the time when the special constable ceases to be a special constable for “that police area”. It goes on to specify two exceptions: namely, where the special constable becomes a member of the police force (in which case the information is to be kept in accordance with the similar provisions relating to members of police forces) and where the person becomes a special constable for another police area or is appointed as a member of another police force (in which case the information is to be kept by that police force).

4.4 The Committee asked the Home Office to explain why, in the light of the words “that police area” (which the Committee assumed was meant to refer to the police area for which the special constable was acting when the sample was taken), the obligation to destroy information obtained from a sample appears not to apply in a case where a special constable ceases to be a special constable after having been appointed a special constable for a different police area subsequent to the taking of the sample.

4.5 In a memorandum printed at Appendix 4, the Department states that the intention was that, in such a case, the effect of paragraph (3A) would be that the information is required to be destroyed within 12 months of the time when the person finally ceases to be a special constable and asserts that the words “that police area” refer to the police area that the person was serving in before ceasing to be a special constable (so that the usual rule applies). The Committee accepts that that is the intended policy outcome but is not convinced that it is what the wording of paragraph (3A) actually secures. In fact, the reference to “that” police area is, in the Committee’s view, somewhat confusing given that no police area is mentioned in the provisions of regulation 1B that precede paragraph (3A) and the possibility that a special constable will “move” police areas is not acknowledged until after that reference. The Committee consider that the reference is at best otiose and at worst confusing since, if it is read (as it can well be) as a reference to the police area for which the special constable was acting when the sample was taken, it leaves it unclear what is to happen in the case of a special constable who ceases to be a special constable after

having moved to another police area once the sample has been taken. The Committee additionally observes that, when addressing the Committee's concerns on this point, the Department might like to consider the similar (though not identical) provisions introduced into the Police Regulations 2003 (S.I. 2003/527) by the Police (Amendment) Regulations 2015 (S.I. 2015/455).

4.6 The Committee accordingly reports regulation 3(c) for defective drafting.

5 S.I. 2015/1396: Reported for unjustifiable delay in the laying of it before Parliament

Misuse of Drugs Act 1971 (Temporary Class Drug) (No. 2) Order 2015 (S.I. 2015/1396)

5.1 The Committee draws this Order to the special attention of both Houses on the ground that there appears to have been unjustifiable delay in the laying of it before Parliament.

5.2 The Order specifies certain substances and products as drugs subject to temporary control under section 2A of the Misuse of Drugs Act 1971. It was made on 17th June 2015 and came into force on 27th June. By virtue of section 2A(10), an order under that section must be laid before Parliament after being made, and it ceases to have effect at the end of the period of 40 days beginning with the day on which it was made, unless before the end of that period it is approved by resolution of each House. This Order was laid before Parliament on 25th June.

5.3 The Committee asked the Home Office to explain the eight days' delay between the making of the Order and its laying before Parliament. In a memorandum printed at Appendix 5 the Home Office explains that the delay was deliberate. It had been found in the past that retailers of substances falling within the scope of an order of this kind would exploit the period between its publication (on its being laid before Parliament) and its coming into force by disposing, rapidly and at heavily discounted prices, of their stocks of any substance to which the order would apply; and the Home Office wished to avoid this happening again.

5.4 The Committee understands the public safety concerns that led the Home Office to seek to minimise any publicity for the provisions introducing controls on further substances and products, prior to their coming into force. But, although the memorandum observes that the period within which this Order must be approved will extend (quite fortuitously, the Committee notes) well beyond 40 calendar days, it does not explain why the Home Office did not take steps to minimise the period between making and laying. (The memorandum does not, for instance, explain why the Order could not have been made on 24th June, and laid before Parliament the following day, so that the 40-day period would not begin more than a day before the text of the Order became available to Members.)

5.5 The decision by the Home Office to allow eight days to elapse before it laid the Order before Parliament has in effect reduced by one week the period potentially available to Members of each House to examine it during the 40-day approval period. The deliberate

curtailment of that opportunity to consider the Order cannot, in the Committee's view, be justified even by the considerations advanced in the memorandum.

5.6 The Committee accordingly reports the Order for unjustifiable delay in laying it before Parliament.

6 Draft S.I.: Reported for doubtful *vires*, defective drafting and unexpectedly limited use of powers

Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Draft S.I.)

6.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that there is a doubt whether they are *intra vires* in two respects, that they are defectively drafted in two other respects, and that in another respect they make an unexpectedly limited use of powers.

6.2 The draft Regulations are to be made under powers conferred by section 150 of the Energy Act 2013. Section 150(1) allows the Secretary of State to make regulations imposing duties on residential landlords for the purposes of ensuring that, during any period when premises are occupied under a tenancy, the premises are equipped with smoke and carbon monoxide alarms, and checks are made to ensure that the alarms remain in proper working order. Regulation 4(1)(a) gives effect to the first of these two purposes by requiring relevant landlords to ensure that premises are fitted with smoke and carbon monoxide alarms during any period when the premises are occupied under a tenancy. Regulation 4(1)(b) is intended to give effect to the second. However, it does not require checks to ensure that an alarm remains in proper working order during any period when premises are occupied under a tenancy. Instead, it requires a relevant landlord to ensure that an alarm is in proper working order only on the day on which the tenancy begins. The Committee asked the Department for Communities and Local Government to explain this apparent discrepancy.

6.3 In its memorandum printed at Appendix 6, the Department states that section 150(1)(b) confers a wide power, and that any regulations will be within the scope of that power provided that they require at least one check to be carried out during any period when the premises are occupied under a tenancy. The Committee does not agree with this description of the powers conferred by section 150(1)(b). Section 150(1)(b) refers to "checks" being made to ensure that an alarm "remains" in proper working order. The Committee considers the most natural construction of section 150(1)(b) is that the purpose of the regulations is to secure that checks are made to ensure that a required alarm remains in proper working order during the whole of the period that the premises are occupied under a tenancy. The Department acknowledges that this is not the purpose of regulation 4(1)(b) which is limited to requiring a check to ensure that the alarm is in proper working order only on the day on which a tenancy begins. **Accordingly, the Committee reports regulation 4(1)(b) on the grounds that there is a doubt whether it is *intra vires*.**

6.4 Section 150(3)(b) of the Energy Act 2013 allows regulations to include provision for the enforcement of any duty imposed by the regulations. Regulation 5 is made under section 150(3)(b). It requires a local housing authority to serve a remedial notice where it considers that a landlord is in breach of one or more of the duties under regulation 4(1).

The local housing authority must specify in the notice the remedial action which they consider should be taken. Since regulation 5 is made in reliance on section 150(3)(b), any remedial action would have to be limited to what is necessary to enforce the breach of the duty under regulation 4(1).

6.5 The duty under regulation 4(1)(b) is time limited in that it requires action to be taken by the first day on which a tenancy begins. This means that the duty is effectively spent after the end of the first day of the tenancy, because it is no longer possible to comply with the duty after that date. Given this background the Committee was unsure how it would ever be possible for a breach of the duty under regulation 4(1)(b) to be susceptible to remedial action. If in practice a breach of that duty can never be remedied, then in the view of the Committee it must be inappropriate to require remedial action with respect to such a breach. Any remedial action could only ever be directed at the enforcement of a separate requirement and not the breach of the duty under regulation 4(1)(b).

6.6 In its memorandum, the Department acknowledges that enforcement action under regulation 5 will not ensure compliance with the duty under regulation 4(1)(b). Instead, the Department explains that the enforcement action would ensure that the ongoing effect of the failure to carry out the appropriate check is stopped and remedied by the landlord. The Committee is not persuaded by this explanation. Since the enforcement action relates to a failure to do something which does not form part of the duty imposed under regulation 4(1)(b), the Committee does not consider that it can properly be described as the enforcement of a duty imposed by the regulations. It follows that making provision for such enforcement cannot fall within the scope of section 150(3)(b).

6.7 The Department offers a second reason why a remedial notice under regulation 5 might be considered as appropriate for a breach of the duty under regulation 4(1)(b). Since a landlord must comply with a remedial notice under regulation 5 to avoid a penalty charge notice being imposed under regulation 8, the Department states that regulation 5 can be viewed as a means of enforcing a breach of the duty under regulation 4(1)(b) through the imposition of a penalty charge. Again, the Committee is not convinced. Even though a breach of the duty under regulation 4(1)(b) might in some cases be a precondition to the taking of action which eventually leads to the imposition of a penalty charge, the penalty charge is not imposed for the breach of the duty but for the failure to comply with the remedial notice. It cannot therefore be regarded as enforcement action in relation to the breach of the duty under regulation 4(1)(b).

6.8 Accordingly, the Committee reports regulation 5(1) on the grounds that there is a doubt whether it is *intra vires*, in so far as it provides for the taking of remedial action in respect of a breach of the duty under regulation 4(1)(b).

6.9 Regulation 1(2) provides for the draft Regulations to apply to England only. This is despite the fact that Part 6 of the draft Regulations makes amendments to paragraph 1 of Schedule 4 to the Housing Act 2004, with the amendments applying both to England and to Wales. In its memorandum the Department accepts that regulation 1(2) is inconsistent with the amendments made by Part 6. **Accordingly the Committee reports regulation 1(2) on the grounds that it is defectively drafted, acknowledged by the Department.**

6.10 Where a local housing authority issues a remedial notice under regulation 5, the landlord on whom it is served is required under regulation 6(1) to take the remedial action specified in the notice within 28 days beginning with the day on which the notice is served. Regulation 14 allows a notice issued under regulation 5 to be suspended. Nothing is said in

the draft Regulations about the effect of suspension on the duty under regulation 6(1) to take the remedial action within 28 days. There is nothing to indicate whether, once the suspension comes to an end, the days on which the notice is suspended are to be discounted for the purposes of calculating the 28 day period. The Committee asked the Department whether the draft Regulations are intended to have the effect of postponing the period for compliance in these circumstances and (if so) how that effect is achieved.

6.11 The Department does not directly answer the Committee's questions in its memorandum. The Department acknowledges that, where a notice under regulation 5 is suspended and the suspension comes to an end, there is no provision to re-activate the period of compliance. But it does not say whether it considers the suspension will have had the effect of postponing the period for compliance. The implication is that it would not because the memorandum suggests that, if a local housing authority revoked the suspension of a notice and the compliance period had run out or was shortly to run out, the Department would expect the authority to act reasonably and re-issue the notice. In the view of the Committee, if the Department considers that this is what should happen, then provision should have been included in the draft Regulations to give effect to that, rather than relying on the discretion of local housing authority. **Accordingly, the Committee reports regulation 14 on the grounds that it is defectively drafted.**

6.12 Section 28 of the Small Business, Enterprise and Employment Act 2015 ("the 2015 Act") applies where a Minister makes secondary legislation which includes regulatory provision within the meaning of section 32 of that Act. In those circumstances, section 28(2) imposes a duty on the Minister to include a review provision in the secondary legislation, or to publish a statement that it is not appropriate in the circumstances to make provision for a review. This requirement applies to secondary legislation made on or after 1 July 2015, and therefore will apply to the draft Regulations. Since there is no review provision in the draft Regulations, the Committee asked the Department whether it considered that the draft Regulations include regulatory provision; and, if so, why the draft Regulations do not include a review provision.

6.13 The Department has acknowledged in its memorandum that the draft Regulations make regulatory provision within the meaning of section 32 of the 2015 Act; that this is a case where it would be appropriate to include a review provision; and that, since the draft Regulations are to be made after 1 July 2015, this is a case where the Minister is under a duty to include a review provision. If the draft Regulations are approved by Parliament and made, the Department commits to amending the Regulations at the earliest opportunity to include a review provision. It explains that a review provision was not included because the draft Regulations were laid before Parliament on 16 March whereas the 2015 Act was enacted on 26 March. However, the Department has not explained why, given that the commencement regulations bringing sections 28 to 32 into force on 1 July 2015 were made on 20 May, they did not at that time arrange for the draft Regulations to be withdrawn and re-laid with a review provision inserted. The Committee considers that this would have been the correct course, instead of inviting each House to approve draft Regulations that are known to be defective and which will, once made, require amendment to secure compliance with the Secretary of State's statutory duty.

6.14 **Accordingly, the Committee reports the draft Regulations on the grounds that, in the absence of a review provision under section 28(2)(a) of the 2015 Act, they make an unexpectedly limited use of powers, in effect acknowledged by the Department.**

Instruments not reported

At its meeting on 21 July 2015 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.** Armed Forces Act (Continuation) Order 2015
- Draft S.I.** Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015

Instruments subject to annulment

- S.I. 2015/96** National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2015
- S.I. 2015/128** Elections (Policy Development Grants Scheme) (Amendment) Order 2015
- S.I. 2015/198** Charities (People's Dispensary for Sick Animals) Order 2015
- S.I. 2015/219** Cattle Identification (Amendment) Regulations 2015
- S.I. 2015/235** Public Processions (Electronic Communication of Notices) (Northern Ireland) Order 2015
- S.I. 2015/241** M3 Motorway (Junctions 2 to 4a) (Variable Speed Limits) Regulations 2015
- S.I. 2015/300** Food Protection (Emergency Prohibitions) (Lead in Ducks and Geese) (England) (Revocation) Order 2015
- S.I. 2015/302** Elections (Policy Development Grants Scheme) (Amendment) (No. 2) Order 2015
- S.I. 2015/315** Merchant Shipping (Fees) Regulations 2015
- S.I. 2015/316** Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment and Revocation) Rules 2015
- S.I. 2015/325** Civil and Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015
- S.I. 2015/326** Criminal Legal Aid (General) (Amendment) Regulations 2015
- S.I. 2015/339** Jobseeker's Allowance (Extended Period of Sickness) Amendment Regulations 2015
- S.I. 2015/341** Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2015
- S.I. 2015/349** Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015
- S.I. 2015/353** Non-Domestic Rating (Designated Area) Regulations 2015
- S.I. 2015/354** Non-Domestic Rating (Northern Line Extension) Regulations 2015
- S.I. 2015/377** Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015

- S.I. 2015/378** Delegation of Functions (Strategic Highways Companies) (England) Regulations 2015
- S.I. 2015/393** Rail Vehicle Accessibility (Non-Interoperable Rail System) (London Underground Northern Line 95TS Vehicles) Exemption Order 2015
- S.I. 2015/400** Professional Standards Authority for Health and Social Care (Fees) Regulations 2015
- S.I. 2015/403** Road Vehicles (Registration and Licensing) (Amendment) Regulations 2015
- S.I. 2015/405** M275 and M27 Motorway (Speed Limit and Bus Lane) Regulations 2015
- S.I. 2015/408** M1 Motorway (Junctions 39 to 42) (Variable Speed Limits) Regulations 2015
- S.I. 2015/415** National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2015
- S.I. 2015/416** National Health Service (Primary Dental Services and General Ophthalmic Services) (Miscellaneous Amendments and Transitional Provision) Regulations 2015
- S.I. 2015/417** National Health Service (Charges, Payments and Remission of Charges) (Up-rating, Miscellaneous Amendments and Transitional Provision) Regulations 2015
- S.I. 2015/430** Ship Recycling Facilities Regulations 2015
- S.I. 2015/431** Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015
- S.I. 2015/435** Dorset and Wiltshire Fire and Rescue Authority (Combination Scheme) Order 2015
- S.I. 2015/437** Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations 2015
- S.I. 2015/441** Salmon and Migratory Trout (Prohibition of Fishing and Landing) (England) Order 2015
- S.I. 2015/443** Insolvency (Amendment) Rules 2015
- S.I. 2015/444** Food (Scotland) Act 2015 (Consequential Provisions) Order 2015
- S.I. 2015/445** Police Pensions Regulations 2015
- S.I. 2015/446** Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2015
- S.I. 2015/447** Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2015
- S.I. 2015/454** Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015
- S.I. 2015/460** Reserve Forces (Call-out and Recall) (Financial Assistance) (Amendment) Regulations 2015
- S.I. 2015/462** Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015
- S.I. 2015/465** Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015

S.I. 2015/466	Armed Forces Pension Scheme and Early Departure Payments Scheme (Amendment) Regulations 2015
S.I. 2015/469	Ecodesign for Energy-Related Products and Energy Information (Amendment) Regulations 2015
S.I. 2015/474	Pedal Cycles (Construction and Use) (Amendment) Regulations 2015
S.I. 2015/477	Renewable Heat Incentive Scheme (Amendment) (No. 2) Regulations 2015
S.I. 2015/480	Local Government (Transparency Requirements) (England) Regulations 2015
S.I. 2015/494	Smaller Authorities (Transparency Requirements) (England) Regulations 2015
S.I. 2015/495	Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015
S.I. 2015/497	Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) (Amendment) Order 2015
S.I. 2015/499	Social Security (Overpayments and Recovery) Amendment Regulations 2015
S.I. 2015/548	Court of Protection (Amendment) Rules 2015
S.I. 2015/555	Personal Injuries (Civilians) Scheme (Amendment) Order 2015
S.I. 2015/561	Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015
S.I. 2015/564	Immigration (Biometric Registration) (Objection to Civil Penalty) (Amendment) Order 2015
S.I. 2015/565	Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2015
S.I. 2015/568	Armed Forces (Transitional Provisions) Pensions Regulations 2015
S.I. 2015/595	Town and Country Planning (Development Management Procedure) (England) Order 2015
S.I. 2015/611	Firearms (Variation of Fees) Order 2015
S.I. 2015/619	Local Government (Prohibition of Charges at Household Waste Recycling Centres) (England) Order 2015
S.I. 2015/625	Police Appeals Tribunals (Amendment) Rules 2015
S.I. 2015/626	Police (Conduct) (Amendment) Regulations 2015
S.I. 2015/627	Planning (Hazardous Substances) Regulations 2015

S.I. 2015/630	Police Federation (Amendment) Regulations 2015
S.I. 2015/645	Asylum Support (Amendment) Regulations 2015
S.I. 2015/659	Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015
S.I. 2015/660	Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015
S.I. 2015/671	Pensions Increase (Review) Order 2015
S.I. 2015/704	Misuse of Drugs (Designation) (England, Wales and Scotland) Order 2015
S.I. 2015/710	Criminal Legal Aid (Contribution Orders) (Amendment) Regulations 2015
S.I. 2015/719	Motor Vehicles (Driving Licences) (Amendment) (No. 3) Regulations 2015
S.I. 2015/742	Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015
S.I. 2015/751	Animals, Water and Sea Fisheries (Miscellaneous Revocations) Order 2015
S.I. 2015/755	Local Government Pension Scheme (Amendment) Regulations 2015
S.I. 2015/759	Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) Order 2015
S.I. 2015/775	Carbon Accounting (2013–2017 Budgetary Period) Regulations 2015
S.I. 2015/785	Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015
S.I. 2015/786	Railways Infrastructure (Access and Management) (Amendment) Regulations 2015
S.I. 2015/797	Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) (Amendment) Order 2015
S.I. 2015/807	Town and Country Planning General (Amendment) (England) Regulations 2015
S.I. 2015/809	Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2015
S.I. 2015/842	Companies (Disclosure of Address) (Amendment) Regulations 2015

S.I. 2015/858	Anti-social Behaviour (Designation of the City of London Corporation) Order 2015
S.I. 2015/881	Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
S.I. 2015/884	Borough of Rotherham (Scheme of Elections) Order 2015
S.I. 2015/888	Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) (Amendment) (England and Wales) Regulations 2015
S.I. 2015/889	Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2015
S.I. 2015/892	Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015
S.I. 2015/899	Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2015
S.I. 2015/900	Education (National Curriculum) (Miscellaneous Amendments) (England) Order 2015
S.I. 2015/902	Education (Information) (Miscellaneous Amendments) (England) Regulations 2015
S.I. 2015/912	International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015
S.I. 2015/915	National Health Service (Amendments to Primary Care Terms of Service relating to the Electronic Prescription Service) Regulations 2015
S.I. 2015/919	Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2015
S.I. 2015/925	Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2015
S.I. 2015/934	Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2015
S.I. 2015/939	Smoke-free (Vehicle Operators and Penalty Notices) (Amendment) Regulations 2015
S.I. 2015/940	Export Control (Amendment) (No. 2) Order 2015
S.I. 2015/944	Asylum Support (Amendment No. 2) Regulations 2015
S.I. 2015/950	Agriculture (Model Clauses for Fixed Equipment) (England) Regulations 2015

- S.I. 2015/952** Motor Cars (Driving Instruction) (Amendment) Regulations 2015
- S.I. 2015/958** Traffic Management Permit Scheme (England) (Amendment) Regulations 2015
- S.I. 2015/968** Deregulation Act 2015 (Poisons and Explosives Precursors) (Consequential Amendments, Revocations and Transitional Provisions) Order 2015

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2015/224** Inspectors of Education, Children’s Services and Skills Order 2015
- S.I. 2015/425** Clean Neighbourhoods and Environment Act 2005 (Commencement No. 6 and Saving) (England and Wales) Order 2015
- S.I. 2015/650** London North West Healthcare National Health Service Trust (Originating Capital) Order 2015
- S.I. 2015/674** Finance Act 2013, Schedule 21 (Appointed Day) Order 2015
- S.I. 2015/676** Pensions Act 2011 (Commencement No. 6) Order 2015
- S.I. 2015/678** NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Amendment Order 2015
- S.I. 2015/693** General Osteopathic Council (Indemnity Arrangements) Rules Order of Council 2015
- S.I. 2015/698** Electricity (Connection Standards of Performance) Regulations 2015
- S.I. 2015/699** Electricity (Standards of Performance) Regulations 2015
- S.I. 2015/735** General Dental Council (Overseas Registration Examination Regulations) Order of Council 2015
- S.I. 2015/740** Welfare Reform Act 2012 (Commencement No. 23 and Transitional and Transitory Provisions) (Amendment) Order 2015
- S.I. 2015/771** Prisons (Property) Act 2013 (Commencement) Order 2015
- S.I. 2015/808** Social, Responsibility and Heroism Act 2015 (Commencement and Transitional Provision) Regulations 2015
- S.I. 2015/813** Crime and Courts Act 2013 (Commencement No. 12) Order 2015
- S.I. 2015/820** Serious Crime Act 2015 (Commencement No. 1) Regulations 2015
- S.I. 2015/863** Immigration (Variation of Leave) (Revocation) Order 2015

- S.I. 2015/874** Immigration Act 2014 (Commencement No. 5) Order 2015
- S.I. 2015/885** Parliamentary Elections (Returning Officer's Charges) (Northern Ireland) Order 2015
- S.I. 2015/983** Policing and Crime Act 2009 (Commencement No. 10, Transitional Provision and Savings) Order 2015
- S.I. 2015/1359** Planning (Hazardous Substances) (Amendment) Regulations 2015

Appendix 1

S.I. 2015/207: memorandum from the Home Office

Registration of Marriages Regulations 2015 (S.I. 2015/207)

1. Following its meeting on 25 March 2015, the Committee asked the Home Office to:

Explain (with such assistance as may be needed from the Statutory Instrument Registrar, to whom this is copied) why text in about half the forms in Schedule 1 is so small as to appear unlikely to be legible.

2. The Home Office apologises that some of the forms in this instrument are difficult to read because of the size of the font. Forms 1 to 5(w) and 11 to 12(w) in Schedule 1 were originally in landscape form, but were inserted into the instrument during printing in portrait form, which has reduced the size of the font and made the forms difficult to decipher.
3. The Home Office has arranged with the SI Registrar for the instrument to be re-printed and the forms to be re-sized (in landscape form) to make them easier to read. We have also arranged for form 15(w) to be re-typeset to make it clearer. The corrected re-print will be issued as soon as possible and made available on the legislation.gov.uk website.

Home Office
14 April 2015

Appendix 2

S.I. 2015/238: memorandum from the Department of Health

National Health Service (Charges to Overseas Visitors) Regulations 2015 (S.I. 2015/238)

1. In its letter to the Department of 25th March 2015, the Committee requested a memorandum on the following point:

Explain why it appears from regulations 8 and 9 that mutilations performed outside the United Kingdom and before the coming into force of the Female Genital Mutilation Act 2003 are not exempt from charges in the same way as other equivalent mutilations.

2. The Department's response to the Committee's point is outlined below.
3. The Department apologises for this error in the drafting of regulation 8 and is grateful to the Committee for pointing it out. The intention was that women and girls on whom genital mutilation was performed outside the UK and before the coming into force of the Female Genital Mutilation Act 2003 should also benefit from the exemption provided by regulation 9. The Regulations will be corrected at the earliest opportunity.
4. At the same time the definition of "girl" will be removed from regulation 8 as it is unnecessary.

Department of Health
13 April 2015

Appendix 3

S.I. 2015/303: memorandum from the Department for Business, Innovation and Skills

Apprenticeships (Modifications to the Specification of Apprenticeship Standards for England) Order 2015 (S.I. 2015/303)

1. The Committee requested a memorandum to address the following points:

Given recent observations of the Committee (see in particular its Sixteenth Report of last Session when reporting S.I. 2013/2232 and the Nineteenth Report of the present Session when reporting S.I. 2014/3120) about the desirability of instruments stating where access may be gained to a hard copy of documents referred to in them, explain why footnote (b) and the Explanatory Note provide only an electronic address for viewing the Apprenticeship Standards documents; and why paragraph 3 of the Explanatory Memorandum indicates that there are no matters of interest to the Committee.

Response:

2. The Department for Business, Innovation and Skills ("BIS") would like to thank the Committee for identifying this error. BIS recognises the importance of including information about how to access hard copies of documents referred to in statutory instruments. We would like to apologise for the oversight on this occasion and reassure the

Committee that we intend to correct this error at the earliest opportunity. Until the correction is effected the relevant official whose contact details are given in the Explanatory Memorandum will be able to provide hard copies free of charge to any enquirer.

Department for Business, Innovation and Skills

14 April 2015

Appendix 4

S.I. 2015/461: memorandum from the Home Office

Special Constables (Amendment) Regulations 2015 (S.I. 2015/461)

1. At its meeting on 25 March, the Committee requested a memorandum on the following point:

Explain why, in the light of the words “for that police area” near the start of sub-paragraph (b) of new paragraph (3A) inserted by regulation 3(c), the routine obligation to destroy information derived from personal samples imposed by new paragraph (3A) after a special constable’s appointment ends appears not to apply to such information in a case where a special constable ceases to be a special constable after having been appointed a special constable for a different police area.

2. The Department understands the Committee to be querying whether, in the case of a special constable who is appointed as a special constable for a different police area (and whose DNA profile is transferred to the new force under paragraph (3A)(b)), there will be an obligation to destroy information derived from their personal sample (‘DNA profile’) where the person subsequently ceases to be a special constable.
3. The Department’s intention in amending regulation 1B of the Special Constables Regulations 1965 was to give Chief Constables a general power to require Special Constables to provide a DNA sample that could be turned into a DNA profile to be held on a database of DNA profiles from Special Constables (“the central elimination database”). These profiles will then be checked against unmatched profiles from crime scenes in order to rule out any profiles left by Special Constables at crime scenes in the course of their duties. New paragraph (3A)(b) of regulation 1B maintains the previous position that the DNA profile of a special constable transferring to another force is not be deleted, but instead is transferred to the receiving force, which avoids the inconvenience and cost of a

fresh sample needing to be taken from the special constable by the receiving force.

4. The Department's view is that, when a special constable transfers to a new force and subsequently ceases to be a special constable altogether, the effect of paragraph (3A) is that the new force is required to delete the special constable's DNA profile within 12 months. The clear intention behind paragraph (3A) is that when a special constable ceases to be a special constable, their DNA profile is to be destroyed within 12 months unless they become a police officer in their current force or a special constable (or police officer) in another force. In the Department's view the words "for that police area" in the third line of paragraph (3A), must refer to the police area that the special constable was serving in at the point of ceasing to be a special constable. Accordingly, where the special constable transferred from another police area (and their DNA profile was therefore transferred to the new force under paragraph (3A)(b)) the new force would be required to delete the special constable's DNA profile within 12 months from the point of the special constable ceasing to be a special constable for that area (unless the special constable transferred again to a different police area or became a police officer in the same or a different force).
5. Paragraph (3A) maintains the position in the Special Constables Regulations 1965 as they stood before the coming into force of the instrument to which this memorandum relates. In practice, the 1965 Regulations have been applied by police forces in line with the interpretation outlined above. In addition, Home Office guidance to police forces will re-emphasise the intended effect of these provisions. Accordingly, the Department is satisfied that paragraph (3A) has the effect intended and will be applied as such in practice.

Home Office
15 April 2015

Appendix 5

S.I. 2015/1396: memorandum from the Home Office

<p><i>Misuse of Drugs Act 1971 (Temporary Class Drug) (No. 2) Order 2015 (S.I. 2015/1396)</i></p>

1. At its meeting on the 15th July, the Committee requested a memorandum on the following point:

Given that (if it is to remain in force) this instrument will require approval by each House within 40 days of the day on which it was made, explain why the Order,

which was made on 17 June 2015, was not laid before Parliament until 25 June 2015.

2. The Department understands the Committee to be querying why there was a delay between the date of making and the date on which the Order was laid. Although the Order was on made on 17 June, there were public safety reasons for not laying it earlier than the 25th June.
3. Temporary Control Drug Orders bring under temporary control substances which, until the order has been made, are legal to supply etc. These Orders do not, however, criminalise simple possession of the substance(s) made subject to temporary control. Given this it follows that prior to such Orders coming into force retail outlets (commonly termed 'Head Shops') and individual suppliers often possess significant quantities of these substances. Previous experience with this type of Order has shown that an extended period between the laying of an order and the order coming into force leads to heavy discounting by sellers, particularly online retailers. The net result is that users are able to stockpile (prior to the legislative change), with heightened risk to the safety of the public.
4. This was found to be the case with the five methylphenidate-based compounds subjected to an Order in April. In that instance, although there was only a two day gap between the laying of the order and the coming into force date, online retailers immediately slashed their prices by in some cases up to 95%. The Department is also aware that these retailers offered next day courier delivery to enable them to dispose of stocks. Users were also encouraged to stockpile ahead of control, safe in the knowledge that simple possession in these circumstances is not an offence.
5. The limited window approach is one supported by the Advisory Council on the Misuse of Drugs (the Council). It is the Council which raises public health concerns around the availability and misuse of these substances, particularly in the areas where they are known to be injected. The Council deliberately withholds formal publication of its recommendations until an Order is laid so as to assist in preventing stockpiling by users.
6. At the time the Order was made the Committee was not sitting and would not have been able to consider the Order. This means that the delay in laying the Order has realistically had no detrimental effect in terms of the progression of the Parliamentary process for approving the Order.
7. It is additionally worth noting that the 40 day period does not include any period in which Parliament is in recess. This means that the 40 day period will not end until September (which is when the Department anticipates the required debates will happen).

8. In terms of the future and how best to approach the potential conflict between the need to protect public safety and keep Parliament informed, it is perhaps worth noting that the Psychoactive Substances Bill (currently before the House of Lords) will, if approved, greatly reduce the future need for such Orders.
9. The Department trusts that this explanation provides clarity and reassurance as to why the approach taken with regard to this particular instrument was felt necessary and proportionate.

Home Office
16 July 2015

Appendix 6

Draft S.I.: memorandum from the Department for Communities and Local Government

Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Draft S.I.)

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

Explain why regulation 1(2) provides for the draft Regulations to apply to England only, given that the amendments made by Part 6 are drafted so as to apply to both England and Wales.

2. While the amendments made by Part 6 to paragraph 1 of Schedule 4 to the Housing Act 2004 will only change the conditions which must be included in a licence of a house in England, the Department acknowledges that the amendments will apply to both England and Wales. This is the intended result.
3. The Department accepts that regulation 1(2) is inconsistent with this but considers that the intended application of the amendments will be clear to any reader of the amended version of Schedule 4 to the Housing Act 2004.

Explain why, in the light of section 150(1)(b) of the Energy Act 2013, regulation 4(1)(b) is limited to requiring checks to be made for the purpose of ensuring that an alarm is in proper working order on the day on which a new tenancy begins, and does not make provision for checks to ensure that the alarm remains in proper working order during any other period when the premises are occupied under the tenancy.

4. The Department considers that section 150(1)(b) confers a wide power for the regulations to prescribe the timing of any check. The regulations could make

provision for a single check or regular checks throughout the tenancy. The Department does not accept that the regulations must make provision for the latter.

5. In the Department's view, any regulations will be within the scope of the power conferred by section 150(1)(b) provided they require at least one check to be made "during any period when the premises are occupied under a tenancy" to ensure the alarm is still in working order. It is, therefore, acceptable for the regulations to require checks to be made for the purpose of ensuring that an alarm is in working order on the day on which a new tenancy begins. The checks do not need to guarantee that the alarm will be in working order throughout the tenancy.

Explain how it is within the powers conferred by section 150(3)(b) of the Energy Act 2013 for regulation 5 to apply in respect of a breach of the duty imposed by regulation 4(1)(b).

6. Section 150(3)(b) of the Energy Act 2013 states that the regulations may make provision for the enforcement of any duty imposed by the regulations. The Department accepts that any enforcement action in respect of a breach of the duty under regulation 4(1)(b) cannot undo the fact that the landlord failed to check the alarm at the start of the tenancy. The enforcement action can, however, ensure that the ongoing effect of that failure to check (i.e. a non-working alarm) is stopped and remedied by the landlord. The Department, therefore, considers it within the powers conferred by section 150(3)(b) for regulation 5 to provide for enforcement action to be taken in respect of a breach of the duty imposed by regulation 4(1)(b).
7. In addition, the landlord must comply with the remedial notice under regulation 5 in order to avoid a penalty charge being imposed under regulation 8. Regulation 5 is, therefore, also part of the process by which a breach of the duty under regulation 4(1)(b) is enforced through the imposition of a penalty charge.

Where a notice under regulation 5 is suspended under regulation 14(1) and subsequently the suspension comes to an end, what effect does that have on the requirement under regulation 6(1) to take remedial action within the period specified in regulation 5(2)(d)? If the draft Regulations are intended to have the effect of postponing the period for compliance in those circumstances, explain how that effect is achieved.

8. Where a notice under regulation 5 is suspended, the period for compliance will be suspended accordingly. If the suspension comes to an end, the Department acknowledges that there is no express provision made to re-activate the period for compliance. However, if the local housing authority decides to do so once the compliance period has run out or is shortly about to, the Department would

expect the authority to act reasonably and reissue the notice to start a new 28 day compliance period.

Are the draft Regulations considered to make regulatory provision within the meaning of section 32 of the Small Business, Enterprise and Employment Act 2015?

(a) If not, explain the reasons for this view.

(b) If they are, explain why the draft Regulations do not include a review provision of the kind required by section 28(2)(a) of that Act.

(c) If the answer to paragraph (b) is that this is a case to which section 28(2)(b) applies, explain how the Minister intends to comply with the requirement under that provision to publish a statement.

9. The Department considers that the draft Regulations make regulatory provision within the meaning of section 32 of the Small Business, Enterprise and Employment Act 2015.
10. A review provision is not currently included as the Department laid the draft Regulations on 16 March 2015 before the Small Business, Enterprise and Employment Act 2015 received Royal Assent. The Department, however, acknowledges that, as of 1 July 2015, Ministers of the Crown are under a statutory duty to include a review provision in secondary legislation that regulates business, or else publish a statement that it is not appropriate in the circumstances to do so.
11. If the draft regulations are approved by Parliament and made, the Department commits to amending the regulations at the earliest suitable opportunity to include a review clause. The Impact Assessment for the draft Regulations committed the Department to carrying out a review within 2 years of the Regulations coming into force.

Department for Communities and Local Government
17 July 2015