House of Lords
House of Commons

Joint Committee on Statutory Instruments

Twenty-First Report of Session 2017–19

Drawing special attention to:

Plant Health (Export Certification) (England) (Amendment) Order 2018 **(S.I. 2018/286)**

Plant Health etc. (Fees) (England) Regulations 2018 **(S.I. 2018/289)**

Personal Injuries (Civilians) Scheme (Amendment) Order 2018 **(S.I. 2018/290)**

Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018 **(S.I. 2018/321)**

National Health Service (Dental Charges) (Amendment) Regulations 2018 **(S.I. 2018/336)**

Investigatory Powers (Disclosure of Statistical Information) Regulations 2018 **(S.I. 2018/349)**

Natural Mineral Water, Spring Water and Bottled Drinking Water (England) (Amendment) Regulations 2018 **(S.I. 2018/352)**

Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018 **(S.I. 2018/434)**

Education (Student Support) (Amendment) (No. 2) Regulations 2018 **(S.I. 2018/443)**

Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018 **(S.I. 2018/437)**

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Joint Committee on Statutory Instruments

Current membership

House of Lords

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Lord Lexden (*Conservative*)

Baroness Meacher (*Crossbench*)

Lord Morris of Handsworth (*Labour*)

Lord Rowe-Beddoe (*Crossbench*)

Lord Rowlands (*Labour*)

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Sir Robert Syms MP (*Conservative, Poole*)

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. 73, 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 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 Mike Winter (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

Contacts

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Instruments reported

At its meeting on 2 May 2018 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 ten 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. 2018/286: Reported for requiring elucidation

Plant Health (Export Certification) (England) (Amendment) Order 2018

1.1 **The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.**

1.2 This instrument increases the hourly fees payable for services in respect of applications for phytosanitary certificates for the export of plant material to third countries to satisfy the requirements of those countries' phytosanitary regulations. The increase in the hourly fee for export and pre-export certification services is above inflation.

1.3 The Committee asked the Department for Environment, Food and Rural Affairs to summarise the objections made to the proposed fee increases in the consultation responses referred to in paragraph 8 of the Explanatory Memorandum and, in particular – (a) to identify whether any consultees asserted that the new fees are above reasonable cost recovery rates; and (b) to explain whether the new fees include a significant element of cross-subsidisation and, if so, identify the ***vires*** for that.

1.4 In a memorandum printed at Appendix 1, the Department explains that the increase in fees is to correct a significant under-recovery of the costs of providing export certification services and that no consultees asserted that the new fees are above reasonable cost recovery rates. Consultees' objections mainly related to the timing of the fee changes given the uncertainties around the UK's exit from the EU. The Department also confirms that the new fees do not include a significant element of cross-subsidisation. **The Committee accordingly reports this Order for requiring the elucidation provided by the Department's memorandum.**

2 S.I. 2018/289: Reported for requiring elucidation

Plant Health etc. (Fees) (England) Regulations 2018

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

2.2 This instrument specifies fees payable to the Secretary of State in relation to inspection of imported plants and plant material, seed potato certification, plant passporting, plant health licensing, certification of fruit-propagating material and sampling and testing of potatoes imported from Egypt and the Lebanon. Certain of the fee increases are above inflation.

2.3 The Committee asked the Department for Environment, Food and Rural Affairs to summarise the objections made to the proposed fee increases in the consultation responses referred to in paragraph 8 of the Explanatory Memorandum and, in particular – (a) to identify whether any consultees asserted that the new fees are above reasonable cost recovery rates; and (b) to explain whether the new fees include a significant element of cross-subsidisation and, if so, identify the ***vires*** for that.

2.4 In a memorandum printed at Appendix 1, the Department explains that the new fees are set to recover the eligible costs of providing the services and that no consultees asserted that the new fees are above reasonable cost recovery rates. In the case of plant passporting services, the increase in fees is to correct a significant under-recovery of the costs of providing plant passporting services for many years. Consultees' objections again mainly related to the timing of the fee changes given the uncertainties around the UK's exit from the EU. The Department also confirms that the new fees do not include a significant element of cross subsidisation. **The Committee accordingly reports the Regulations for requiring the elucidation provided by the Department's memorandum.**

3 S.I. 2018/290: Reported for failure to comply with proper legislative practice and for unjustifiable delay in laying it before Parliament

Personal Injuries (Civilians) Scheme (Amendment) Order 2018

3.1 **The Committee draws the special attention of both Houses to this Order on the grounds that it fails to comply with proper legislative practice in one respect and there appears to have been unjustifiable delay in laying it before Parliament.**

3.2 This Order amends the Personal Injuries (Civilians) Scheme 1983, which makes provision for the payment of pensions and allowances to, or in respect of, civilians who were killed or injured during the 1939–1945 World War.

3.3 There was a delay of 20 days between signature by the Ministry of Defence and the Treasury and a delay of 16 days between the making of this instrument and laying it before Parliament. The Committee asked the Ministry of Defence to explain the delays. In a memorandum printed at Appendix 2, the Department explains that the delays occurred because it continued to follow a set timetable for obtaining signatures and laying, even when earlier stages occurred more quickly than expected. The Department apologises for the delay at both stages and undertakes to review its internal procedures to ensure that these delays are not repeated. The Committee is grateful for this undertaking and stresses the importance of communication between Departments to eliminate significant delays between signatures. In relation to the delay in laying before Parliament, the Committee repeats what it said in its Seventeenth Report of Session 2017–19 (in relation to S.I. 2018/68): that it is difficult to imagine why it could have been necessary to postpone such a simple administrative step as laying before Parliament. The statutory arrangements for laying before Parliament remain part of the required formal measures by which publicity is assured. As previously stated, the Committee considers that, as a general rule and in the absence of exceptional circumstances, a delay of 10 calendar days or more will amount to an unjustifiable delay.

3.4 **The Committee accordingly reports this Order for failure to comply with proper legislative practice and unjustifiable delay in laying before Parliament, acknowledged by the Department.**

4 S.I. 2018/321: Reported for unjustifiable delay in laying it before Parliament

Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018

4.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that there appears to have been unjustifiable delay in laying them before Parliament.**

4.2 These Regulations update domestic law relating to the investigation of air accidents and incidents primarily to make it consistent with directly applicable EU law.

4.3 There was a delay of 10 days between the making of this instrument and laying it before Parliament and the Committee asked the Department for Transport to explain the delay. In a memorandum printed at Appendix 3, the Department apologises for the delay and assures the Committee that its drafting lawyers and their support staff have been made aware of what the Committee considers to be an unjustifiable delay. The Committee repeats what it says in relation to S.I. 2018/290 above in relation to delay in laying before Parliament and **accordingly reports these Regulations for unjustifiable delay in laying before Parliament, acknowledged by the Department.**

5 S.I. 2018/336: Reported for requiring elucidation

National Health Service (Dental Charges) (Amendment) Regulations 2018

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

5.2 These Regulations implement an above-inflation uplift to charges which can be recovered from a patient, who is not exempt, for the provision of dental treatment by a provider of primary dental services.

5.3 The Committee asked the Department of Health and Social Care to explain whether the increased charges involve an element of cross-subsidisation which means that a patient receiving treatment could pay more than the cost of providing the treatment to that patient.

5.4 In a memorandum printed at Appendix 4, the Department explains that the level of patient charges is nationally set and is not directly linked to the amount paid to dentists for the provision of NHS dental services which is locally negotiated by NHS England. Therefore, it is not possible to say with any certainty what proportion of the gross cost of NHS dental treatment provided to an individual fee paying patient is represented by the NHS dental charge payable by the patient in respect of that treatment. The Department goes on to say that analysis based on national data and using appropriate assumptions suggests that, at a national level, NHS dental charges payable by individual patients do not

exceed the total cost of NHS treatment provided to those patients and in general there is not full cost recovery in respect of any NHS treatment provided to any fee-paying patients. **The Committee accordingly reports the Regulations for requiring the elucidation provided by the Department's memorandum.**

6 S.I. 2018/349: Reported for defective drafting

Investigatory Powers (Disclosure of Statistical Information) Regulations 2018

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

6.2 These Regulations set out the circumstances in which a telecommunications operator or postal operator may make a disclosure consisting of statistical information in relation to warrants under the Investigatory Powers Act 2016.

6.3 Regulation 6 specifies a description of statistical information that may be disclosed in relation to which a telecommunications operator has provided assistance in giving an effect to an interception warrant (regulation 6(2)(b)). Regulation 8 states that disclosure must be in respect of a particular reporting period of six months and disclosure is in respect of that period if, in the case of a disclosure of statistical information specified by regulation 6, the postal operator or telecommunications operator provided assistance as mentioned in regulation 6(2)(b) during the reporting period (regulation 8(2)(c)). The Committee asked the Home Office to explain the inclusion of "postal operator" in regulation 8(2)(c) but not in regulation 6(2)(b).

6.4 In a memorandum printed at Appendix 5, the Department explains that the omission of "postal operator" from regulation 6(2)(b) is an error and that it is the Department's intention to amend the instrument before it comes into force, by inserting the words "postal operator or" before the words "telecommunications operator" in regulation 6(2)(b). **The Committee accordingly reports regulation 6(2)(b) for defective drafting, acknowledged by the Department.**

7 S.I. 2018/352: Reported for failure to comply with proper legislative practice

Natural Mineral Water, Spring Water and Bottled Drinking Water (England) (Amendment) Regulations 2018

7.1 **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 respect.**

7.2 These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007 to implement two EU directives relating to radioactive substances in water and the quality of water intended for human consumption and introduce an enforcement regime based on improvement notices. The Regulations refer to several British Standards and ISO (International Organization for Standardization) Standards in order to comply with the UK's obligation to implement the

relevant EU Directives. The Explanatory Note refers to where digital and hard copies of the standards can be purchased but there is no indication where free copies are available for inspection. The Committee asked the Department for Environment, Food and Rural Affairs to explain.

7.3 In a memorandum printed at Appendix 6, the Department asserts that it was not possible to include a reference to open and freely available standards in the Regulations and undertakes that if the Department receives any enquiry in relation to the accessibility of any of the standards, the Department will make copies of the relevant standards available for inspection free of charge.

7.4 The Committee is grateful for this undertaking given the importance the Committee attaches to the free accessibility of documents referred to in legislation but does not understand why a reference to consulting the standards free of charge could not have been included in the Explanatory Note (which is the preferable approach). **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

8 S.I. 2018/434 and S.I. 2018/443: Reported for failure to comply with normal legislative practice

Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018; and Education (Student Support) (Amendment) (No. 2) Regulations 2018

8.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with normal legislative practice.**

8.2 The Education (Student Support) (Amendment) Regulations 2018 (S.I. 2018/136) amend the Education (Student Support) Regulations 2011 to ensure that new eligible students starting pre-registration courses in dental profession subjects or postgraduate pre-registration courses may receive support under those Regulations. S.I. 2018/434 revokes S.I. 2018/136 and S.I. 2018/443 re-enacts it in the same form. The explanation given by the Department for the revocation and re-enactment is that it was not possible for the Government to accommodate time for debate within S.I. 2018/136's praying period and that it is a matter of Parliamentary convention that where a reasonable request for debate has been made, time should be allowed for debate.

8.3 In respect of the decision to revoke and re-enact S.I. 2018/136 in precisely the same terms, the Committee asked the Department if it wanted to add any further explanation. In a memorandum printed at Appendix 7, the Department confirms its position that it proceeded with this course of action to ensure that debate on the regulations could take place.

8.4 The Committee has no objection to the procedure followed in the circumstances of this case, and accepts that the purpose of the revocation and re-enactment was to allow an opportunity for debate. In principle, however, a continuous cycle of revocation and re-enactment could be used not to permit Parliamentary scrutiny but to evade it; and the process is confusing for those users of secondary legislation who are not aware of the Parliamentary circumstances. This is not, therefore, a process that should be allowed to

become routine or accepted except where, as in this case, it is generally accepted as a helpful way of facilitating scrutiny. **The Committee accordingly reports these Regulations for failure to comply with normal legislative practice, to which the Committee takes no exception on the particular facts of this case.**

9 S.I. 2018/437: Reported for doubt as to whether they are intra *vires* and for requiring elucidation

Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

9.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that there is doubt as to whether they are intra *vires* in one respect and that they require elucidation in another respect.**

9.2 These Regulations introduce enforcement provisions in England, Wales and Northern Ireland for the marketing of fish and aquaculture products contained in Regulation (EU) 1379/2013 and its accompanying legislation.

9.3 Regulation 9(5) deals with the service of documents under the Regulations and provides that for the purposes of that regulation and section 7 of the Interpretation Act 1978, "proper address" in relation to specified categories of person is a particular physical address and an email address.

9.4 Section 7 of the Interpretation Act 1978 provides that where legislation "authorises or requires any document to be served by post … then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post." The Committee asked the Department for Environment, Food and Rural Affairs to explain the intended effect of the reference to section 7 in regulation 9(5).

9.5 In a memorandum printed at Appendix 8, the Department refers to the Committee's Nineteenth Report of Session 2017–19 in relation to S.I. 2018/230. The Department disagrees with the Committee's view in that report that the most likely meaning of the term "properly addressing" in section 7 is as a reference to addressing in a manner that can reasonably be processed by the postal system, and not to the selection of which address to use. The Department asserts that the natural interpretation of "properly addressing" is that it includes both the use of a correct address for the addressee and addressing in a manner that can reasonably be processed by the postal system. The Department goes on to assert that it is not the purpose of regulation 9(5) to limit the effect of section 7 but rather to inform consideration of whether the letter has been properly addressed for the purposes of section 7; it asserts that the regulation does not imply any intention to limit the words "properly addressing" in section 7 to refer only to the address specified in regulation 9(5) as the proper address; other addresses may equally be sufficient to enable the letter to be considered as "properly addressed". That is, however, simply inconsistent with the clear meaning of regulation 9(5) when it states: "For the purposes of … section 7 of the Interpretation Act 1978(1) … "proper address" means …". The Committee maintains its view in its Nineteenth Report of Session 2017–19 in relation to S.I. 2018/230 that an attempt to specify a particular address as the "proper address" raises a doubt as to ***vires***.

The Committee reiterates that it is undesirable to have the effect of section 7 apparently understood in different ways in different places in legislation and repeats its invitation to the Statutory Instrument Hub of the Government Legal Department to consider this provision. **The Committee accordingly reports regulation 9(5) on the ground that there is a doubt as to whether it is intra *vires*.**

9.6 Regulation 10 deals with appeals in England and Wales in relation to a compliance notice and regulation 11 deals with similar appeals in Northern Ireland. Regulation 11 contains a time limit; the appeal must be made within 28 days of notification of the decision to be appealed. Regulation 10 contains no time limit. The Committee asked the Department to explain (by reference, if appropriate, to relevant First-tier Tribunal rules) whether it is intended that there should be a time limit on the bringing of appeals under regulation 10. In its memorandum, the Department explains that the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 apply to appeals made under regulation 10. Rule 22(1)(b) contains the same 28-day limit as is stated in regulation 11 for Northern Ireland. **The Committee accordingly reports regulation 10 for requiring the elucidation provided in the Department's memorandum.**

Instruments not reported

At its meeting on 2 May 2018 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 instrument requiring affirmative approval

Draft S.I.	Offshore Environmental Civil Sanctions Regulations 2018

Instruments subject to annulment

S.I. 2018/406	Public Service Vehicles (Registration of Local Services) (Franchising Schemes Transitional Provisions and Amendments) (England) Regulations 2018
S.I. 2018/423	Franchising Schemes (Service Permits) (England) Regulations 2018
S.I. 2018/439	Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018
S.I. 2018/451	Poisons Act 1972 (Explosives Precursors) (Amendment) Regulations 2018
S.I. 2018/465	Higher Education (Basic Amount and Higher Amount) (England) (Amendment) Regulations 2018
S.I. 2018/466	School Information (England) (Amendment) Regulations 2018
S.I. 2018/472	Education (Student Support) (Amendment) (No. 3) Regulations 2018
S.I. 2018/479	Civil Procedure (Amendment No. 2) Rules 2018
S.I. 2018/482	Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018
S.I. 2018/489	Local Land Charges Fees (England) Rules 2018

Instrument subject to annulment (Northern Ireland)

S.R. 2018/92	Universal Credit (Persons Required to Provide Information, Miscellaneous Amendments and Saving and Transitional Provision) Regulations (Northern Ireland) 2018

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2018/421 Tonnage Tax (Exception of Financial Year 2018) Order 2018

S.I. 2018/456 Policing and Crime Act 2017 (Commencement No. 8) Regulations 2018

S.I. 2018/462 Income Tax (Limited Exemptions for Qualifying Childcare Vouchers and other Childcare) (Relevant Day) Regulations 2018

S.I. 2018/467 Finance Act 2017, Paragraph 3 of Schedule 11 (Appointed Day) Regulations 2018

S.I. 2018/468 Finance Act 2009, Sections 101 and 102 and Schedules 55 and 56 (Soft Drinks Industry Levy) (Appointed Day) Order 2018

Appendix 1

S.I. 2018/286 and S.I. 2018/289

Plant Health (Export Certification) (England) (Amendment) Order 2018; and Plant Health etc. (Fees) (England) Regulations 2018

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following points in relation to the above SIs:

> *Summarise the objections made to the proposed fee increases in the consultation responses referred to in paragraph 8 of the Explanatory Memorandum and, in particular – (a) identify whether any consultees asserted that the new fees are above reasonable cost recovery rates; and (b) explain whether the new fees include a significant element of cross-subsidisation and, if so, identify the* ***vires*** *for that.*

2. The proposals outlined in the consultation on changes to fees for statutory plant health services provided by the Animal and Plant Health Agency in England and Wales stemmed from a fundamental review of the methodology for calculating the cost of providing these services and the associated fee structures, which the Department initiated in 2015. The review was in response to, and supported by stakeholders on the government-business taskforces for these services. Set up in 2012, the purpose of these taskforces is to help the Department develop more efficient plant health services with simple and transparent charges.

3. The review's aims were to:

- ensure that the cost methodology included all eligible costs and provided a long-term, robust basis for charging for services, which was consistent with delivering the Government's objective of full-cost recovery; and
- improve the simplicity, transparency and fairness of the charges, as well as looking for different ways to recover the costs of services so that fees were aligned more closely to the cost of delivering the service to individual customers.

4. With regard to the changes to the fee structures covered by the Plant Health (Export Certification) (England) (Amendment) Order 2018 (S.I. 2018/286), there was a negative response overall to the proposals outlined in the consultation. That response was not unexpected, given the proposed increase in fees was to correct a significant under-recovery of the costs of providing export certification services.

5. Several exporters questioned the timing of the fee changes, given the current uncertainties around the UK's exit from the EU and what they saw as the inconsistency of increasing fees and costs to exporters at the same time as encouraging UK exports. The Department decided to press ahead with implementation so that it could fix the under-recovery of costs – any delay in moving to full-cost recovery for these services would require funding to be found from other plant health activities to bridge the gap, with negative implications for the publicly- funded work on surveillance and eradication.

6. Respondents were also critical of the proposal for a new fee for the laboratory testing of export samples, particularly consignments of seeds, where the testing requirements specified by the importing country are more stringent than for routine export-related laboratory testing. Whilst the Department intends charging for this bespoke seed testing in the future, it concluded that it needs to do further work on how the fees are structured and so implementation of those fees has been postponed until we have better data on costs from 2017/18.

7. The new fees are set to recover the eligible costs of providing export certification services, which is consistent with the principles in the Treasury's Managing Public Money. No consultees asserted that the new fees are above reasonable cost recovery rates. The new fees do not include a significant element of cross-subsidisation.

8. The Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289) prescribes fees for the following statutory services:

- Inspection of imported plants and plant material
- Sampling and testing of potatoes imported from Egypt and the Lebanon
- Seed potato certification
- Plant passporting
- Plant health licensing
- Certification of fruit-propagating material

There was a very limited response to the consultation from businesses using import inspection services. The main trade body, which represents 900 large-scale importers, supported the changes. Another trade body, which represents mainly small or micro businesses felt that fees should take account of risk factors associated with larger, high-risk consignments. Although the Department has no wish to adversely affect such trade, from a biosecurity perspective the risk of introducing harmful organisms is not mitigated by the size of the business or the volume of material imported. The type of commodity imported and its origin are the key risk factors.

9. On seed potato certification, the limited responses the Department received were generally negative, particularly around the proposed fees for dealing with paper-based applications and for the issue of labels. The Department did not expect this negative response as the October 2016 meeting of the Industry Taskforce was largely supportive of the proposals and this sector had been supportive of simplifying the fees. The Department decided to proceed as proposed in the consultation, including with regard to the proposed charges for labels and paper-based applications, as the new fees are more aligned with the costs of the services provided to individual customers. A couple of respondents said they preferred the charging arrangements in place in Scotland but fees there are not set to recover full-cost and label charges are in fact cheaper in England for bulk consignments.

10. On plant passporting services, there was a negative response overall, which was not unexpected, given the proposed increase in fees to correct the previous significant under-recovery of the costs of providing plant passporting services over many years. Similar comments to those made by some exporters around the timing of the fee changes given the current uncertainties around the UK's exit from the EU were also made by some businesses using plant passporting services.

11. The remaining three services had very few responses, which were either supportive or uncontroversial.

12. The new fees are set to recover the eligible costs of providing export certification services which is consistent with the principles in the Treasury's Managing Public Money. No consultees asserted that the new fees are above reasonable cost recovery rates. The new fees do not include a significant element of cross-subsidisation.

Department for Environment, Food and Rural Affairs

24 April 2018

Appendix 2

S.I. 2018/290

Personal Injuries (Civilians) Scheme (Amendment) Order 2018

1. The Joint Committee on Statutory Instruments (JCSI) requested a memorandum in response to the following point in relation to the above mentioned instrument:

> *Explain the significant delays between signature by the Ministry of Defence and the Treasury, and between the making and laying of this instrument.*

2. The Department accepts that the instrument could have been signed and laid earlier and apologises to the Committee for the delay at both these stages. This occurred when the Department continued to follow a set timetable for obtaining signatures and laying, even when earlier stages occurred more quickly than expected. When this occurred, the Department accepts that it should have adjusted the timetable and progressed the later stages accordingly. The Department will review its internal procedures to ensure that these delays are not repeated.

Ministry of Defence

24 April 2018

Appendix 3

S.I. 2018/321

Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018

1. By a letter dated 18th April 2018, the Joint Committee on Statutory Instruments requested a memorandum on the following point:

Explain the significant delay between the making and laying of this instrument.

2. The Committee will note that this instrument was made marginally earlier than its letter of 7th March requesting a memorandum on the same point in relation to SI 2018/68, which was also laid on the 10th day after making. Accordingly the Department hopes that the Committee will consider the Department's response in that context.

3. The Department continues to plan and manage the laying of SIs in a systematic way and can assure the Committee that drafting lawyers and their support staff have been referred to the Committee's exhortation in its seventeenth Report of Session 2017–19 and its reaffirmation of what it considers to be an unjustifiable delay.

4. The Department endeavours to maintain its obligation to lay instruments as soon as possible after making and draws the Committees attention to the four instruments that have recently been laid in a timely fashion. The Department can only repeat its apology for this further lapse.

Department for Transport

24 April 2018

Appendix 4

S.I. 2018/336

National Health Service (Dental Charges) (Amendment) Regulations 2018

1. In its letter to the Department of 18th April 2018, the Committee requested a memorandum on the following point:

> *Explain whether the increased charges involve an element of cross-subsidisation which means that a particular patient receiving treatment could pay more than the cost of providing the treatment to that patient.*

2. The Department's response to the Committee's point is outlined below.

3. It is not possible to say with any certainty what proportion of the gross cost of NHS dental treatment provided to an individual fee paying patient is represented by the NHS dental charge payable by the patient in respect of that treatment. This is because the level of patient charges is nationally set and is not directly linked to the amount paid to dentists for the provision of NHS dental services (known as the "contract value") which is locally negotiated by NHS England.

4. However, the analysis the Department is able to make based on national data and using appropriate assumptions suggests that, at a national level, NHS dental charges payable by individual patients do not exceed the total cost of NHS treatment provided to those patients. While the percentage of the overall cost of treatment which the charge represents will vary by reference to the particular Band in which the relevant treatment falls, in general there is not full cost recovery in respect of any NHS treatment provided to any fee paying patients. This is because the cost to the NHS of providing a particular treatment is calculated by reference to the contract value, plus any additional payments specified in the statement of financial entitlement such as business rates, employers' superannuation payments, sickness, maternity, or paternity allowances less any recoveries for under delivered activity.

5. Furthermore, the amount paid to dentists in respect of NHS dental treatment provided to patients under the contract is independent of the fee-paying status of patients, so for a significant proportion of patients (children and charge-exempt adults) charging does not directly contribute at all to the cost of their treatment.

Department of Health and Social Care

23 April 2018

Appendix 5

S.I. 2018/349

Investigatory Powers (Disclosure of Statistical Information) Regulations 2018

1. By letter of 18 April 2018, the Committee has requested a memorandum on the following point:

> *Explain the inclusion of "postal operator" in regulation 8(2)(c) but not in regulation 6(2)(b).*

2. Regrettably, the omission of "postal operator" from regulation 6(2)(b) is an error. Regulation 6(2)(b) should refer to "communications in relation to which the postal operator or telecommunications operator has provided assistance to an intercepting authority in accordance with section 41(2) of the Act."

3. S.I. 2018/349 is not yet in force. It is the Department's intention to amend the instrument before it comes into force, to insert the words "postal operator or" into regulation 6(2)(b).

4. By operation of regulation 1, S.I. 2018/349 comes into force on the day on which section 58(8) of the Investigatory Powers Act 2016 comes into force. The intention is that said provision will come into force at the same time as various other provisions of that Act. Before those provisions are brought into force it will be necessary to make a set of regulations making consequential amendments to other secondary legislation. The Department considers that those consequential amendment regulations will be an appropriate vehicle to correct the error in S.I. 2018/349.

Home Office

23 April 2018

Appendix 6

S.I. 2018/352

Natural Mineral Water, Spring Water and Bottled Drinking Water (England) (Amendment) Regulations 2018

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

> *Explain why an address where hard copies of the British Standards and ISO standards referred to in the Regulations can be consulted free of charge is not given.*

2. In preparing the Explanatory Note, Defra took into account the guidance contained in paragraphs 3.17.2 to 3.17.4 of the fifth edition of Statutory Instrument Practice (November 2017) and, in compliance with those, identified where copies of the British and ISO Standards could be obtained from.

3. It was not possible to include a reference to open and freely available standards in the Regulations as recommended by paragraph 3.17.3 of Statutory Instrument Practice. It was necessary to refer to the specified Standards in order to comply with the UK's obligation to implement Commission Directive (EU) 2015/1787 amending Annex II and III to Council Directive 98/83/EC on the quality of water intended for human consumption (OJ No. L 260, 7.10.2015, p. 6).

4. If the Department receives any enquiry in relation to the accessibility of any of the Standards, the Department will make copies of the relevant Standards available for inspection free of charge.

Department for Environment, Food and Rural Affairs

24 April 2018

Appendix 7

S.I. 2018/434 and S.I. 2018/443

Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018

Education (Student Support) (Amendment) (No. 2) Regulations 2018

1. Thank you for providing the Department with an opportunity to submit a memorandum on the following point:

> *a. In respect of the decision to revoke and re-enact S.I. 2018/136 in precisely the same terms, does the Department want to add anything to the Explanatory Memoranda and the letter from Sam Gyimah MP of 27 March 2018 to the Chairs of the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee in relation to these two statutory instruments?*

2. Further to the information provided in the Explanatory Memorandum, a point of order was raised by Angela Rayner (26 March 2018, HC Deb (2018) 638 c,547), which called for the Government to provide time after recess for a binding motion on early day motion 937. The Speaker suggested it was "open to a Government to withdraw a particular statutory instrument while wishing to preserve the intention to give effect to the policy contained therein, and to table another statutory instrument."

3. Following that, the Government proceeded with this course of action to ensure that the subsequent debate on the regulations could take place on an annulment motion, which is binding on the Government.

Department for Education

24 April 2018

Appendix 8

S.I. 2018/437

Sea Fish (Marketing Standards) (England and Wales and Northern Ireland) Regulations 2018

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

> *(1) Explain what the effect of the reference to section 7 of the Interpretation Act 1978 is intended to be in regulation 9(5), and how effect is given to that intention.*
>
> *(2) Explain (by reference, if appropriate, to relevant First-Tier Tribunal rules) whether it is intended that there should be a time limit on the bringing of appeals under regulation 10 (as there is for regulation 11).*

2. In relation to point (1), it is the Department's view that the definition of "proper address" in regulation 9(5) provides the necessary context to inform consideration of whether a notice has been "properly" addressed for the purposes of the application of section 7 of the Interpretation Act 1978. Section 7 provides that where legislation "authorises or requires any document to be served by post…then … the service is deemed to be effected by properly addressing … a letter containing the document…".

3. The Department has considered the points made by the Committee in its Nineteenth Report of 20th April 2018, in relation to S.I. 2018/230, and addresses those points in paragraphs 4 to 7 below in so far as they have a bearing in relation to regulation 9(5) of these Regulations.

4. The Committee states, in paragraph 2.6 of its Report, that where legislative provisions dealing with service of documents make provision in relation to section 7 of the Interpretation Act, it suspects that this reflects a misunderstanding of the effect of section 7:

> *"The Department appears to be assuming that "properly addressing" is a reference to the notion of a "proper address" for service, as in a particular address that is to be selected where there is a choice. The Committee is not convinced, not least because were that the case one would expect to find provision specifying the proper address for the purposes of section 7 in almost all provisions dealing with service to which section 7 applies."*

The Department considers that, while the absence of such provision in many cases may be an indication of how the Interpretation Act may have been interpreted by certain drafters of secondary legislation, it is not necessarily an indication as to the proper interpretation of the Interpretation Act. It may also be that in many cases no consideration was given to the point.

5. The Committee goes on to state in paragraph 2.6 of its Report:

> *"In the Committee's view, the most likely meaning of the term "properly addressing" in section 7 is as a reference to addressing in a manner that can reasonably be processed by the postal system, and not to the selection of which address to use".*

It appears to the Department that the natural interpretation of "properly addressing" in section 7 is that it includes both the use of a correct address for the addressee and addressing in a manner that can reasonably be processed by the postal system. (There is indeed some overlap between these two things: for example, the use of an incorrect postcode might occasion difficulty for the postal system in processing the address.) Clearly, service could not have been effected at the address to which the letter was addressed, or at all, if that address was an incorrect address for the addressee. The Department agrees with the Committee that it is less clear that the phrase "properly addressing" in section 7 goes to the selection of a particular address in a case where there is a choice between a number of addresses, each of which is a correct address for the addressee. That does not mean, however, that there is no overlap between the focus of section 7 and that of a provision specifying the "proper address", in so far as (in the Department's view) section 7 also relates to the use of a correct address.

6. Finally paragraph 2.6 of the Report states:

> *"In so far as the Department asserts that this provision restricts the application of section 7 to cases where a particular address is chosen, the committee is not satisfied that in the absence of express* ***vires*** *it is open to subordinate legislation to impose a limitation on the effect of a provision of an Act in this way".*

It is not the purpose of the provision in regulation 9(5) of the instant Regulations to limit the effect of section 7. The purpose of regulation 9(5) is rather to indicate, in relation to each specified category of person, two types of address (a particular physical address and an email address) that are to be treated as a proper address. For the purposes of the application of section 7, the specifying of a proper address provides an assurance on this point for the server of the notice: the use by the server of the notice of an address stated by the Regulations to be a "proper address", or "the proper address", will inform consideration of whether the letter has been "properly" addressed for the purposes of section 7. The Department is of the view that there is no suggestion in this of any limitation being placed on the effect of section 7: it does not imply any intention to limit the words "properly addressing" in section 7 so as to refer only to the use of the address identified by regulation 9(5) as the "proper address". For the purposes of section 7 (and absent any provision of the kind contained in regulation 9(1)), it is possible that other addresses may equally be sufficient to enable the letter to be considered to be "properly" addressed; but (leaving aside the rule in regulation 9(1) and focusing solely on the application of section 7) a person who serves a notice by addressing it to the address stated by the relevant regulations to be a proper address may reasonably expect that the use of that address will be considered an adequate address for the purposes of the question of whether the notice was "properly" addressed for the purposes of section 7; and the expectation is the stronger where the regulations specify in an exclusive way a particular address as the proper address.

7. Regulation 9(1) (as read with regulation 9(5)) contains a rule which, as it is entitled to be, is more prescriptive and restrictive than that in section 7 as regards the correctness of the address, as well as providing additional means of effective service that are not dealt with by section 7. The Department appreciates that consequently the more exclusive rule in regulation 9(1) (as read with regulation 9(5)) might at first sight be considered to have displaced section 7, if the latter were only concerned with the correctness of the address, so that it would have no relevance. The Department does not consider this to be the case, however, because of the additional ambit of "properly addressing" in section 7, as mentioned by the Committee. Section 7 still has potential application, because the correctness of the address is not the only criterion in considering whether the notice is "properly" addressed for the purposes of section 7. There may be other criteria, such as the legibility, positioning and prominence of the address, the completeness of the address and the inclusion of a postcode, that may be relevant even where the choice of address complies with regulation 9(1) (as read with regulation 9(5)), and that may therefore still be of relevance in relation to the question of whether by virtue of section 7 service is deemed to be effected.

8. In relation to point (2), the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) apply to appeals made under regulation 10. Rule 22(1)(b) of those Rules would apply so that a person wishing to appeal a decision in relation to a compliance notice must start proceedings by sending or delivering a notice to the Tribunal so that it is received within 28 days of the date on which notice of the decision was sent. The Department liaised with the Ministry of Justice in the creation of the appeals procedure for compliance notices in these Regulations to ensure consistency with the Rules.

9. In respect of appeals in Northern Ireland, regulation 11(3) specifically provides that an appeal must be made within 28 days of notification of the decision to be appealed. In Northern Ireland, an appeal must be made to a court of summary jurisdiction and the applicable appeal procedure is set out under Part 7 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) which, in contrast to the First-Tier Tribunal Rules, does not specify a time limit for bringing an appeal.

Department for Environment, Food and Rural Affairs

24 April 2018