



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Thirty-sixth Report of
Session 2017–19**

Drawing special attention to:

Civil Procedure (Amendment No. 3) Rules 2018 (S.I. 2018/975)

Riot Compensation (Amendment) Regulations 2018 (S.I. 2018/982)

Income-related Benefits (Subsidy to Authorities) Amendment Order 2018 (S.I. 2018/985)

Environment Agency (Teggsnose Reservoir and Langley Bottoms Reservoir) Drought Order 2018 (S.I. 2018/1007)

Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 (S.I. 2018/1025)

Common Agricultural Policy Basic Payment and Support Schemes (England) (Amendment) Regulations 2018 (S.I. 2018/1026)

*Ordered by the House of Lords
to be printed 31 October 2018*

*Ordered by the House of Commons
to be printed 31 October 2018*

**HL 216
HC 542-xxxvi**

Published on 2 November 2018
by authority of the House of Lords
and the House of Commons

Joint Committee on Statutory Instruments

Current membership

House of Lords

[Baroness Bloomfield of Hinton Waldrist](#) (*Conservative*)

[Lord Lexden](#) (*Conservative*)

[Baroness Meacher](#) (*Crossbench*)

[Lord Morris of Handsworth](#) (*Labour*)

[Lord Rowe-Beedoe](#) (*Crossbench*)

[Lord Rowlands](#) (*Labour*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

House of Commons

[Derek Twigg MP](#) (*Labour, Halton*) (Chair)

[Dan Carden MP](#) (*Labour, Liverpool, Walton*)

[Vicky Foxcroft MP](#) (*Labour, Lewisham, Deptford*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Julia Lopez MP](#) (*Conservative, Hornchurch and Upminster*)

[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 Jeanne Delebarre (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

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 2026; the Committee's email address is: jcsi@parliament.uk.

Contents

Instruments reported	3
1 S.I. 2018/975: Reported for defective drafting	3
Civil Procedure (Amendment No. 3) Rules 2018	3
2 S.I. 2018/982: Reported for defective drafting	4
Riot Compensation (Amendment) Regulations 2018	4
3 S.I. 2018/985: Reported for defective drafting	5
Income-related Benefits (Subsidy to Authorities) Amendment Order 2018	5
4 S.I. 2018/1007: Reported for defective drafting	5
Environment Agency (Teggsnose Reservoir and Langley Bottoms Reservoir) Drought Order 2018	5
5 S.I. 2018/1025: Reported for requiring elucidation	6
Timber and Timber Products and FLEGT (EU Exit) Regulations 2018	6
6 S.I. 2018/1026: Reported for requiring elucidation	6
Common Agricultural Policy Basic Payment and Support Schemes (England) (Amendment) Regulations 2018	6
Instruments not reported	8
Annex	8
Appendix 1	10
S.I. 2018/975	10
Civil Procedure (Amendment No. 3) Rules 2018	10
Appendix 2	12
S.I. 2018/982	12
Riot Compensation (Amendment) Regulations 2018	12
Appendix 3	13
S.I. 2018/985	13
Income-related Benefits (Subsidy to Authorities) Amendment Order 2018	13
Appendix 4	14
S.I. 2018/1007	14
Environment Agency (Teggsnose Reservoir and Langley Bottoms Reservoir) Drought Order 2018	14
Appendix 5	15
S.I. 2018/1025	15
Timber and Timber Products and FLEGT (EU Exit) Regulations 2018	15

Appendix 6	17
S.I. 2018/1026	17
Common Agricultural Policy Basic Payment and Support Schemes (England) (Amendment) Regulations 2018	17

Instruments reported

At its meeting on 31 October 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 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. 2018/975: Reported for defective drafting

Civil Procedure (Amendment No. 3) Rules 2018

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

1.2 These Rules amend the Civil Procedure Rules 1998. One amendment inserts a new Rule 5.6 which states:

“(1) Any document placed before the court in civil proceedings in or having a connection with Wales may be in the English or Welsh language.

(2) It is the responsibility of any party if acting in person or of that party’s legal representative to inform the court as soon as practicable if documents in the Welsh language will or may be placed before the court, so that appropriate arrangements can be made.”

The Committee asked the Ministry of Justice to explain what is intended to be covered by “having a connection with” Wales and “appropriate arrangements”.

1.3 In a memorandum printed at Appendix 1, the Department states that the words “having a connection with Wales” are taken from section 22(2) of the Welsh Language Act 1993, that the phrase is not defined in that Act and that it was not considered appropriate to define it in the new Rule. The Department further states that the reference to “appropriate arrangements” derives from the longstanding Practice Direction Relating to the Use of the Welsh Language in Cases in the Civil Courts in Wales and that it was considered appropriate to leave the definition of “appropriate arrangements” open rather than restrict the arrangements to case management and listing arrangements (as stated in the Practice Direction).

1.4 This case illustrates the principle that expressions that are sufficiently certain in one legislative context may not be so in another.

1.5 In this case, section 22(2) of the 1993 Act was setting parameters for vires of rules of court: its use of the phrase “proceedings in or having a connection with Wales” was presumably predicated on the assumption that when the power came to be exercised by rules of court, they would define the class of proceedings within that phrase to which they applied by reference to objectively ascertainable criteria. Rules of court are legislation, conferring enforceable rights and duties in the same way as any other legislation, albeit in a specific procedural context; and it is therefore important that they are drafted in a way that allows them to be construed with clarity and applied with certainty.

1.6 Similarly, phrases that are eminently suitable for Practice Directions and other quasi-legislation do not necessarily translate into justiciable law in subordinate legislation. If it was decided to move the provision about the treatment of documents from the Practice Direction into the rules, clear and certain language should have been used to describe the process. The Committee believes that the most appropriate approach in this context would probably have been to omit the words “so that appropriate arrangements can be made” altogether, so that the legislative proposition was confined to a duty to notify the court, with the post-notification handling left to the Practice Direction or administrative discretion to determine.

1.7 **The Committee accordingly reports Rule 5.6 for defective drafting in two respects.**

2 S.I. 2018/982: Reported for defective drafting

Riot Compensation (Amendment) Regulations 2018

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 These Regulations amend entitlements to compensation under the Riot Compensation Act 2016.

2.3 As a result of regulation 2(3) of these Regulations, regulation 4 of the 2017 Regulations will now read as follows:

“No person may make more than one section 1 claim in relation to each of the following—

- a) property at a single postal address,
- b) property which does not fall within sub-paragraph (a).”

The Committee asked the Home Office to explain what regulation 4(b) is intended to achieve.

2.4 In a memorandum printed at Appendix 2, the Department explains that new regulation 4(b) is intended to cover “common parts of a building in respect of which there is no single postal address for the building as a whole”, for instance in a building containing office units or flats that each have their own postal address, as well as property in motor vehicles or otherwise entirely outside premises. The Department adds that “if there were no regulation 4(1)(b), there would be a policy inconsistency of a claim consolidation requirement that only applies in respect of claims for property at a single postal address (regulation 4(1)(a)) but not in respect of claims for the common parts of a property for which there is no single postal address”.

2.5 The Committee understands the policy intention, but does not consider that the amendments made by these Regulations have achieved it with sufficient clarity. In particular, there is nothing in new regulation 4(b) to limit the consolidation of claims to common parts of a single building, and on its face regulation 4 would require consolidation of claims in respect of all common parts (even if of more than one building) and of all vehicles (wherever located). This does not appear to have been the Department’s intention, **and the Committee accordingly reports regulation 2 for defective drafting.**

3 S.I. 2018/985: Reported for defective drafting

Income-related Benefits (Subsidy to Authorities) Amendment Order 2018

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

3.2 This Order amends provisions relating to the calculation and payment of housing benefit subsidy to local authorities. The amendments made by Schedule 2 grant an additional subsidy to authorities that administer “VEP alerts” to cover the costs they incur by doing so.

3.3 The Order defines VEP alerts as “alerts given by the Secretary of State to authorities with a view to enabling authorities to prevent fraud and error arising from real time identification of changes of income”. The Committee asked the Department for Work and Pensions to explain the circumstances in which fraud and error could arise from real time identification of changes of income. In a memorandum printed at Appendix 3, the Department acknowledges that the definition wrongly suggests that fraud and error arise from the real time identification of changes of income, and that it is therefore defectively drafted. **The Committee accordingly reports Schedule 2 for defective drafting, acknowledged by the Department.**

4 S.I. 2018/1007: Reported for defective drafting

Environment Agency (Teggsnose Reservoir and Langley Bottoms Reservoir) Drought Order 2018

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

4.2 This Order reduces the amount of water that United Utilities Water Limited is obliged to discharge every day from the Teggsnose and Langley Bottoms reservoirs into the River Bollin, to protect nearby flora and fauna from the effects of the summer drought.

4.3 Article 1(b) commences the Order on 13 September 2018, which was the day on which it was made. By virtue of section 4(a) of the Interpretation Act 1978, the result of article 1(b) is that the Order came into effect on the beginning of the day on which it was made, and was therefore retrospective by a few hours.

4.4 In a voluntary memorandum printed at Appendix 4, the Department for Environment, Food and Rural Affairs acknowledges that it was not intended that the Order should have retrospective effect and that the commencement provision was defectively drafted. **The Committee is grateful for the voluntary memorandum, and accordingly reports article 1(b) for defective drafting, acknowledged by the Department.**

5 S.I. 2018/1025: Reported for requiring elucidation

Timber and Timber Products and FLEGT (EU Exit) 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 make prospective amendments under the European Union (Withdrawal) Act 2018 to ensure that legislation relating to imported timber is operable after the UK leaves the EU. The amendments include technical changes being made to remedy deficiencies in two EU regulations, which will form part of retained EU law after exit day. One such change is to omit a redundant Annex 1, along with references to it, from the EU regulations; another is to amend or omit references to the European Commission and its administrative processes.

5.3 In the Explanatory Memorandum, the Department for Exiting the European Union lists corrections that are not included in this instrument but will be made separately. The Committee asked the Department to explain why some references to Annex 1 and to the Commission were retained in the EU regulations but did not seem to be among the intended future corrections.

5.4 In a memorandum printed at Appendix 5, the Department confirms that it intends to substitute the Articles containing references to the Commission in other regulations that are currently being drafted. The Department explains that the same regulations will create a power for the Secretary of State to insert a new Annex 1, which will be effected once an agreement has been concluded with a timber exporting country and the affirmative regulations are in force; this will restore meaning to the reference.

5.5 It is not clear to the Committee why Annex 1 was omitted rather than simply being depopulated for the time being, but it is grateful for the Department's clarification that these empty references will soon be corrected and **accordingly reports these Regulations for elucidation, as provided in the Department's memorandum.**

6 S.I. 2018/1026: Reported for requiring elucidation

Common Agricultural Policy Basic Payment and Support Schemes (England) (Amendment) Regulations 2018

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

6.2 These Regulations transpose a Commission Implementing Decision that permits specified derogations from the conditions relating to greening payments under the common agricultural policy. These derogations were made to compensate for the effects of a severe summer drought that has reduced the availability of fodder for livestock in affected areas.

6.3 The Decision includes express limits on the derogations to ensure that they apply no farther or longer than is strictly necessary: it requires the derogations to be limited to areas formally recognised by the competent authorities as having been affected by the

drought with the result that there is a shortage of fodder or a delay in sowing green cover. As the Regulations do not expressly incorporate such limits, the Committee asked the Department for Environment, Food and Rural Affairs to explain how they comply with this aspect of the Decision.

6.4 In a memorandum printed at Appendix 6, the Department explains that the drought and its effects, and therefore the need for the derogation, were not limited to specific parts of England. Meteorological data for the summer period and stakeholder discussion led by England's competent authority made clear that the negative impact on grass growth and consequent shortage of fodder for livestock had been felt throughout the country. The whole area of England was therefore recognised as having been affected by the drought for the purposes of the Decision. As a consequence, the derogations were applied to that whole area. **The Committee accordingly reports these Regulations for elucidation, as provided in the Department's memorandum.**

Instruments not reported

At its meeting on 31 October 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 instruments requiring affirmative approval

Draft S.I.	Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018
Draft S.I.	Investigatory Powers Tribunal Rules 2018
Draft S.I.	Misuse of Drugs Act 1971 (Amendment) Order 2018
Draft S.I.	Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018
Draft S.I.	Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018
Draft S.I.	Infrastructure Planning (Water Resources) (England) Order 2018
Draft S.I.	Timeshare, Holiday Products, Resale and Exchange Contracts (Amendment etc.) (EU Exit) Regulations 2018

Instruments subject to annulment

S.I. 2018/1044	M1 Motorway (Junctions 23A to 25) (Variable Speed Limits) (Amendment) Regulations 2018
S.I. 2018/1047	Safety of Sports Grounds (Designation) (Amendment) (No. 2) Order 2018
S.I. 2018/1048	Plant Health (Forestry) (Amendment) (England and Scotland) Order 2018
S.I. 2018/1056	Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (No. 2) Regulations 2018
S.I. 2018/1059	Lambeth College (Designated Institution in Further Education) Order 2018
S.I. 2018/1072	Police, Fire and Crime Commissioner for Northamptonshire (Fire and Rescue Authority) Order 2018
S.I. 2018/1083	Public Lending Right Scheme 1982 (Amendment) (EU Exit) Regulations 2018
S.I. 2018/1086	Return of Cultural Objects (Revocation) (EU Exit) Regulations 2018

Draft Instruments subject to negative procedure

- Draft S.I.** Bath and North East Somerset (Electoral Changes) Order 2018
- Draft S.I.** Leeds (Electoral Changes) (Amendment) Order 2018
- Draft S.I.** South Somerset (Electoral Changes) Order 2018
- Draft S.I.** Windsor and Maidenhead (Electoral Changes) Order 2018

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2018/1060** North Korea (United Nations Sanctions) (Amendment) (No. 2) Order 2018
- S.I. 2018/1062** European Communities (Designation) (No. 2) Order 2018

Instrument not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2018/1073** Antarctic Act 1994 (Guernsey) (Amendment) Order 2018

Appendix 1

S.I. 2018/975

Civil Procedure (Amendment No. 3) Rules 2018

1. By a letter dated 17 October 2018, the Committee sought a memorandum on the following points:

In the new rule 5.6, explain what is intended to be covered by “having a connection with” Wales and “appropriate arrangements”.

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

3. The new rule 5.6 inserted into the Civil Procedure Rules 1998 by rule 4 of the Civil Procedure (Amendment No. 3) Rules 2018 (referred to hereafter as “the Amendment Rules”) is part of a package of amendments intended to provide underpinning for the principles provided for in the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011 concerning the status and use of the Welsh language in legal proceedings. The new rule 1.5 inserted by rule 3 of the Amendment Rules makes provision to reinforce the Welsh language principles by stating that nothing in the overriding objective undermines those principles (so that, for example, arguments about cost, etc., should not be used to raise barriers to the use of the Welsh language in proceedings where mandated by the Welsh Language Act 1993). The new rule 5.6 concerns the slightly different, although related, issue of the use of documents in the Welsh language.

4. The use of documents in the Welsh language is addressed by section 22(2) of the Welsh Language Act 1993, which makes clear that any power to make rules of court (so including the power to make Civil Procedure Rules) includes power to make provision as to the use, “in proceedings in or having a connection with Wales”, of documents in the Welsh language. The new rule 5.6 uses the same formulation (in the same way as new rule 1.5 uses the formulation of section 22(1) concerning the use of the Welsh language “in any legal proceedings in Wales”) The Welsh Language Act 1993 itself does not define “having a connection with Wales”, and it was not considered appropriate to seek to define it in the rules. It is, however, from its context in section 22(2) of the 1993 Act, capable of embracing proceedings which (for example) are not being held in Wales but concern matters which took place in Wales; and it is for that reason that the rule requires the court to be notified so that “appropriate arrangements” may be made. The reference to “appropriate arrangements” derives from the longstanding Practice Direction Relating to the Use of the Welsh Language in Cases in the Civil Courts in Wales, paragraph 1.3 of which provides—

“In every case in which it is possible that the Welsh language may be used by any party or witness or in any document which may be placed before the court, the parties or their legal representatives must inform the court of that fact so that appropriate arrangements can be made for the management and listing of the case.”

5. The “appropriate arrangements” envisaged by the new rule 5.6 will include arrangements for case management and listing, and may in majority of cases be limited to such arrangements; but there may be other arrangements which the court might, in the exercise of its general powers to further the overriding objective, consider it appropriate to take, and it was considered appropriate to leave “appropriate arrangements” open rather than restrict them to case management and listing arrangements.

Ministry of Justice

22 October 2018

Appendix 2

S.I. 2018/982

Riot Compensation (Amendment) Regulations 2018

1. By letter dated 17 October 2018, the Joint Committee on Statutory Instruments has requested a memorandum on the following point:

Given the definitions in s. 2(3)(a)(i) to (iii) of the 2016 Act, explain what new regulation 4(1)(b) is intended to include and exclude, by reference to examples.

2. In the context of property falling within section 2(3)(a) of the 2016 Act, new regulation 4(1)(b) is intended to include the common parts of a building in respect of which there is no single postal address for the building as a whole.

3. For example, a residential (or office) building may have no single postal address for the building as a whole but contain a number of flats (or office units), each with its own single postal address. In these circumstances, regulation 4(1)(b) would require a person to consolidate into a single claim their claims in respect of the common parts of the building, so mirroring the consolidation requirement in regulation 4(1)(a) in respect of property at a single postal address.

4. If there were no regulation 4(1)(b), there would be a policy inconsistency of a claim consolidation requirement that only applies in respect of claims for property at a single postal address (regulation 4(1)(a)) but not in respect of claims for the common parts of a property for which there is no single postal address.

5. Regulation 4(1)(b) is therefore intended to include any property which does not fall within the scope of regulation 4(1)(a). As such, it also includes property falling within section 2(3)(b) of the 2016 Act (property contained in specified motor vehicles etc which was being used, or was intended for use, in connection with a business carried on by the claimant).

6. We hope that this Memorandum helps the Committee and are, of course, happy to provide any further assistance that the Committee requires.

Home Office

22 October 2018

Appendix 3

S.I. 2018/985

Income-related Benefits (Subsidy to Authorities) Amendment Order 2018

1. In its letter to the Department of 17th October 2018, the Committee requested a memorandum on the following point:

Explain the circumstances in which real time identification of changes of income could lead to fraud and error in housing benefit payments, as suggested by the definition of VEP alerts in paragraph 1 of new Schedule 1ZB.

2. The Department’s response to the Committee’s point is set out below.

3. New Schedule 1ZB to the Income-related Benefits (Subsidy to Authorities) Order 1998 (S.I.1998/562) (inserted by Schedule 2 to this Order) gives additional subsidy payments to local authorities administering housing benefit which participate in the Verify Earnings and Pensions Service (“the Service”). Schedule 1ZB contains the following definition-

““VEP alerts” means alerts given by the Secretary of State to authorities with a view to enabling authorities to prevent fraud and error arising from real time identification of changes of income.”

4. These alerts are intended to help the local authorities to prevent fraud and error in housing benefit claims by enabling them to verify details of housing benefit claimants’ earnings and pensions.

5. It was not intended that the definition should suggest that the fraud and error arises from the real time identification of changes of income. However, because the word “from” immediately follows the word “arising”, the Department accepts that that definition, read literally, would be read in that way. Accordingly, the Department recognises that the provision is defectively drafted.

6. In reality, the definition should not give rise to any practical issues for local authorities administering the Service. They will continue to use the alerts given by the Secretary of State so that fraud or error may be identified by them, so that they are then able to deal with those claims in the appropriate manner without undue delay. The Department will therefore review and amend the definition when it next amends the Order.

Department for Work and Pensions

23 October 2018

Appendix 4

S.I. 2018/1007

Environment Agency (Teggsnose Reservoir and Langley Bottoms Reservoir) Drought Order 2018

1. The Department for Environment, Food and Rural Affairs submits this voluntary memorandum in relation to the Environment Agency (Teggsnose Reservoir and Langley Bottoms Reservoir) Drought Order 2018 (“the Order”).
2. The Order modifies the effect of the Macclesfield Corporation Act 1939 (“the Act”) for a limited period. The Act requires United Utilities Water Limited (“the Company”) to release ‘not less’ than a certain volume of water per day from the Teggsnose and Langley Bottoms reservoirs into the River Bollin. The Order reduces the minimum volume of water required to be released while it is in force.
3. The Order was made on 13th September and was expressed to come into force on the same day. In the absence of anything to indicate the contrary, it therefore purports to have retrospective effect by virtue of sections 4(a) and 23(1) of the Interpretation Act 1978 (c. 30).
4. The Department did not intend the Order to be retrospective in effect. The Order was made a day later than intended owing to an internal error. To note, we understand that the Company took no action to reduce the rate at which water was released from the reservoirs during the 13th September. The Department apologises to the Committee for the error and the purported retrospective effect of the Order, for which there is no provision that clearly authorised it.

Department for Environment, Food and Rural Affairs

21 September 2018

Appendix 5

S.I. 2018/1025

Timber and Timber Products and FLEGT (EU Exit) Regulations 2018

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

(1) Taking into account the list of future amendments at paragraph 7.2 of the Explanatory Memorandum, explain the reasoning for keeping Article 15 of Regulation (EU) 995/2010 in its current form.

(2) Taking into account the amendment made by regulation 4(10) and the list of future amendments at paragraph 7.2 of the Explanatory Memorandum, explain why the reference to Annex I has been retained in Article 3 of Regulation (EU) 995/2010, and why the reference to the Commission has been retained in Article 11 of Council Regulation (EC) No. 2173/2005.

2. In response to the first point, the Department intends to substitute Article 15 of Regulation (EU) No. 995/2010 with a provision which confers a regulation-making power on the Secretary of State. The Department is currently in the final stages of preparing EU Exit Regulations subject to the affirmative procedure which will make this substitution (“Defra’s EU Exit affirmative SI”) and which are drafted to come into force on exit day.

3. In response to the second point:

- At the time that the Timber and Timber Products and FLEGT (EU EXIT) Regulations 2018 were made, the Department thought it likely that a partnership agreement, as newly defined in Article 2(3) of Council Regulation (EC) No. 2173/2005 (by regulation 4(3)(c)), would be negotiated with Indonesia before exit day. The Department remains confident that such an agreement will be concluded on or before exit day. However, on the day on which these Regulations were made, there was no such agreement (as newly defined) in existence. Accordingly, the Department decided to omit the entry relating to Indonesia from Annex 1 of Council Regulation (EC) No. 2173/2005 and, rather than leave an empty Annex in that Regulation, the entire Annex was omitted (by regulation 4(10) of these Regulations).
- In order to ensure that an imminent future partnership agreement with Indonesia could be “re-instated” in a fresh Annex 1, Defra’s EU Exit affirmative SI will substitute Article 10(1) of Council Regulation (EC) No. 2173/2005 so that that provision will provide: “The Secretary of State may, by regulations, insert an Annex 1 into this Regulation listing the partner countries and their designated licensing authorities.”. As soon as the partnership agreement is concluded and once Defra’s EU Exit affirmative SI is in force (subject to Parliament’s approval), the Secretary of State will make Regulations under this new power, so as to insert a new Annex 1 in Council Regulation (EC) No. 2173/2005, listing

Indonesia as a partner country for the purposes of that Regulation. Accordingly, it was not considered necessary to omit the reference to Annex 1 in Article 3 of that Regulation, since the Annex is very likely to be “re-instated” through regulations using the new power under Article 10(1) as soon as possible after exit day, and it is considered that the provision will simply “beat the air” for a short time in the interim.

- Articles 11 and 11a of Council Regulation (EC) No. 2173/2005 are being substituted, in their entirety, in Defra’s EU Exit affirmative SI, which as previously mentioned will come into force on exit day. The references to the Commission are accordingly being omitted in that SI. Instead, new Articles 11 and 11a will confer regulation-making powers on the Secretary of State.

Department for Environment, Food and Rural Affairs

23 October 2018

Appendix 6

S.I. 2018/1026

Common Agricultural Policy Basic Payment and Support Schemes (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 how the instrument complies with Article 3 of the Commission Implementing Decision, namely that the derogations be limited to areas formally recognised by the competent authorities as having been affected by the drought with the result that there is a shortage of fodder or a delay in sowing green cover.

2. Stakeholder discussions led by the competent authority for England (the Rural Payments Agency) considered the question of areas affected by the drought in considering how the derogation should be applied. These discussions concluded that the drought, and therefore the need for the derogation, was not limited to particular parts of England. Meteorological data for the summer period showed that all of England was affected by the prolonged period of dry weather and the negative impact on grass growth and consequent shortage of fodder for livestock was felt throughout the country. The outcome of the discussions was that the whole area of England was therefore recognised as being an area of the United Kingdom affected by the drought, resulting in shortage of fodder and delay in sowing green cover and it was agreed that Defra policy officials would take forward the legislation on this basis. The derogation was therefore applied to England.

Department for Environment, Food and Rural Affairs

23 October 2018