



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Fifth Report
of Session 2017–19**

Drawing special attention to:

Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017 (S.I. 2017/155)

Freight Containers (Safety Convention) Regulations 2017 (S.I. 2017/325)

Wireless Telegraphy (Mobile Communication Services on Aircraft) (Exemption) Regulations 2017 (S.I. 2017/669)

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701)

Antarctic (Amendment) Regulations 2017 (S.I. 2017/706)

Recreational Craft Regulations 2017 (S.I. 2017/737)

European Union Financial Sanctions (Amendment of Information Provisions) Regulations 2017 (S.I. 2017/754)

National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017 (S.I. 2017/756)

Co-ordination of Regulatory Enforcement Regulations 2017 (S.I. 2017/835)

Petroleum and Offshore Gas Storage and Unloading Licensing (Amendment) Regulations 2017 (S.I. 2017/855)

Employers' Duties (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/868)

Loans for Mortgage Interest Regulations (Northern Ireland) 2017 (S.R. 2017/176)

*Ordered by the House of Lords
to be printed 6 December 2017*

*Ordered by the House of Commons
to be printed 6 December 2017*

**HL 47
HC 542-v**

Published on 8 December 2017
by authority of the House of Lords
and the House of Commons

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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, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach and John Crane (Lords).

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Instruments reported

At its meeting on 6 December 2017 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 twelve 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. 2017/155: Reported for requiring elucidation

Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017

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

1.2 These Regulations amend the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (“the 2009 Regulations”) in relation to non-domestic rating lists compiled on or after 1 April 2017. They provide a check, challenge and appeals procedure in relation to challenging a rateable value.

1.3 Regulation 16 inserts regulation 13A(2) into the 2009 Regulations in relation to appeals on valuation, with a formula that focuses on reasonableness. The Committee asked the Department for Communities and Local Government to explain the use of reasonableness as a criterion, given that the enabling power in section 55(5)(b) of the Local Government Finance Act 1988 refers to the accuracy of a non-domestic rating list and not its reasonableness.

1.4 In a memorandum printed at Appendix 1, the Department asserts that a ground of appeal based on the reasonableness of that valuation is consistent with both Schedule 6 to the 1988 Act (which makes it clear that determination of rateable value is based on estimate of rental value) and the statutory duty of the valuation officer to maintain an accurate list. The Department adds that although the power in section 55(5)(b) of the 1988 Act enables provision about appeals about the accuracy of the list, section 55(5A) of the Act allows regulations to include provision about the grounds on which an appeal can be made and is not limited to accuracy.

1.5 On balance, the Committee is satisfied that the Department has a reasonable argument to support casting a ground of appeal on the basis that the valuation for the hereditament is not reasonable. **The Committee accordingly reports regulation 16 as requiring elucidation, provided by the Department.**

2 S.I. 2017/325: Reported for defective drafting and for requiring elucidation

Freight Containers (Safety Convention) Regulations 2017

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 and require elucidation in another respect.

2.2 These Regulations give effect to The International Convention for Safe Containers 1972 (“the Convention”) which the UK ratified in 1978. They revoke the Freight Containers (Safety Convention) Regulations 1984 which previously gave effect to the Convention, and replace them with regulations giving effect to the current version of the Convention, which has been amended several times since 1984. The Convention is aimed at maintaining a high level of safety in the transport and handling of containers by providing internationally acceptable test procedures and related strength requirements.

2.3 The Committee asked the Department for Work and Pensions to explain the inclusion of two sets of paragraphs (a) and (b) in the definition of “container” in regulation 2. In a memorandum printed at Appendix 2, the Department accepts that it ought to have labelled the paragraphs in the definition of “container” differently so that (a) and (b) did not appear twice in the same definition. **The Committee accordingly reports regulation 2 for defective drafting, acknowledged by the Department.**

2.4 The Committee also asked the Department to explain whether regulation 5(1)(b)(ii) is intended to give the Health and Safety Executive the power to invalidate approvals issued by other persons and, if so, how effect is given to that intention. In its memorandum the Department confirms that regulation 5(1)(b)(ii) is intended to have that effect. The mechanism for withdrawing approvals is set out in the “Green Guide” (which is referred to in the Explanatory Note). The Department adds that it is not the intention to allow the Health and Safety Executive to withdraw approvals issued by other contracting States, as this is not permitted under the Convention. **The Committee accordingly reports regulation 5 for requiring elucidation, provided by the Department.**

3 S.I. 2017/669: Reported for failure to comply with proper legislative practice

Wireless Telegraphy (Mobile Communication Services on Aircraft) (Exemption) Regulations 2017

3.1 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.

3.2 These Regulations are drafted by OFCOM and refer to standards published by the European Telecommunications Standards Institute (ETSI) in the Official Journal of the European Union which wireless telegraphy apparatus must comply with.

3.3 The Committee asked OFCOM to explain why hard copies of the ETSI standards referred to in the Regulations are not made available for inspection. In a memorandum

printed at Appendix 3, the Department apologises for the oversight and intends to correct this omission shortly by way of correction slip. The Committee agrees that this change can properly be done by correction slip.

3.4 The Committee has repeatedly stressed its concern that documents given a significance by subordinate legislation should be available to those who do not have access (or ready access) to the internet and **accordingly reports the Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

4 S.I. 2017/701: Reported for defective drafting

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

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

4.2 These Regulations transpose Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (MiFID II) and contain provisions to give effect to Regulation (EU) No. 600/2014 of the European Parliament and Council on markets in financial instruments (MiFIR).

4.3 The instrument contains several drafting errors and the Committee asked HM Treasury to explain the reasons for the apparent errors.

4.4 In a memorandum printed at Appendix 4 (which specifies the errors complained of), the Department acknowledges the errors. The Committee notes that an amending instrument will be made to correct these errors in the near future. **The Committee accordingly reports the Regulations for defective drafting, acknowledged by the Department.**

5 S.I. 2017/706: Reported for failure to comply with proper legislative practice

Antarctic (Amendment) Regulations 2017

5.1 **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.**

5.2 These Regulations update the internationally recognised descriptions of the places that have been designated under the Antarctic Treaty System as Antarctic Specially Protected Areas or Historic Sites and Monuments. Schedule 1 to the Regulations describes restricted areas where a permit is required for entry. For each area co-ordinates are given together with a description of the boundaries of the area and then a reference to a map or maps of the area published at certain pages of Command Papers.

5.3 The Committee asked the Foreign and Commonwealth Office to explain why: (1) an address is not given where hard copies of the maps can be inspected; and (2) a website address for the maps is not given.

5.4 In a memorandum printed at Appendix 5, the Department acknowledges, with respect to the first question, that the Regulations could have included reference to the fact that hard copies of the Command Papers are available for inspection free of charge at the Parliamentary Archives and will include this information in future revisions of the instrument. With respect to those maps that have not been reproduced in Command Papers, hard copies of the relevant Reports of the Antarctic Treaty Consultative Meeting are not generally available. The Department will give further thought to how to approach this issue in future revisions of these Regulations.

5.5 In relation to the second question, the Department recognises that a weblink could have been provided for each Command Paper and will include this information in future revisions of the Regulations.

5.6 The Committee has repeatedly stressed its concern that documents given a significance by subordinate legislation should be available both to citizens who do not have access (or ready access) to the internet and to citizens who do have such access. **The Committee accordingly reports the Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

6 S.I. 2017/737: Reported for defective drafting

Recreational Craft Regulations 2017

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

6.2 These Regulations implement the revised EU Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft. The Committee asked the Department for Business, Energy and Industrial Strategy to explain four issues:

(1) Why regulation 14(2) does not state who is responsible for complying with the obligation in that regulation.

6.3 In a memorandum printed at Appendix 6, the Department asserts the view that even though regulation 14(2) does not specifically mention the manufacturer, it is clear from the surrounding provisions that the obligation rests with the manufacturer without the need to state who is responsible for the obligation in that paragraph. The Committee does not agree. The duty in paragraph 14(1) is expressly placed on the manufacturer. Paragraph (2) deals with the case where it is not possible to comply with the duty under paragraph (1) and it poses an alternative duty. It is not inevitable that the alternative duties will be placed on the person obliged to comply with the original duty, and as a matter of good drafting practice it is essential that the recipient of each legislative duty is made clear either by express provision or by necessary implication. The Committee notes that the Regulations themselves acknowledge this in regulations 13 and 21, where the provision imposing an alternative duty expressly states on whom the duty is imposed, despite the fact that in both cases it is the same as the person on whom the original duty is imposed. **The Committee accordingly reports Regulation 14(2) for defective drafting.**

(2) Whether the obligation in regulation 32(3) arises when the product is placed on the market or made available on the market.

6.4 In a memorandum printed at Appendix 6, the Department explains that the word “placed” is a typographical error and should be removed from the phrase “the distributor has made available placed on the market” in regulation 32(3). The Department asserts that since distributor is defined by reference to being a person who makes a product available on the market, it is clear that regulation 32(2) should refer to products made available on the market. The Department intends to remove the word “placed” by correction slip. The Committee does not agree that this change can properly be made by correction slip: making products available and placing them on the market are different concepts, each of which has a distinct meaning; even where it is reasonably obvious in the context which intention is the more appropriate. The legislative intent must be achieved by the text of the instrument made in the proper way, and not by later editorial adjustments made by civil servants. If the Department are clear that the meaning is obvious despite the typographical error, they may be prepared to leave the instrument in its present form; if, however, they believe that it requires amendment, only an amending instrument is appropriate to achieve that. **The Committee reports Regulation 32(3) for defective drafting, acknowledged by the Department.**

(3) Why contraventions of regulations 18 and 19 in relation to importers are not made offences under regulation 73 (especially given that similar contraventions in relation to distributors in regulations 27 and 28 are made offences under that regulation).

6.5 In a memorandum printed at Appendix 6, the Department is grateful to the Committee for pointing this out and intends to amend regulation 73 to include regulations 18 and 19 when a suitable opportunity arises. The Department also points out that until such opportunity arises, the regulations do contain provisions which help to ensure both that only compliant products are placed on the market by the importer and that action can be taken if the importer does not comply with its duties. **The Committee reports Regulation 73 for defective drafting, acknowledged by the Department.**

(4) Whether the amendments to primary legislation in paragraphs 2(h), (j), (k)(ii)(bb), (l)(ii) to (iv) and (vi) to (viii) of Schedule 13 are correct given that they refer to the Recreational Craft Regulations 2016.

6.6 In a memorandum printed at Appendix 6, the Department acknowledges that the references should refer to the Recreational Craft Regulations 2017 and intends to correct these errors by correction slip. The Committee agrees that these changes can properly be made by correction slip. **The Committee reports Schedule 13 for defective drafting, acknowledged by the Department.**

7 S.I. 2017/754: Reported for requiring elucidation

European Union Financial Sanctions (Amendment of Information Provisions) Regulations 2017

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

7.2 These Regulations extend existing enforcement provisions set out in UK financial sanctions statutory instruments (which currently apply only to financial institutions) to auditors, casinos, dealers in precious metals or stones, estate agents, external accountants, independent legal professionals, tax advisers and trust or company service providers. These businesses and professions will commit an offence if they fail to comply with the reporting obligations set out in the statutory instruments to which the enforcement provisions are being extended.

7.3 The Committee received a letter from several law firms in relation to these Regulations expressing substantial concerns about the Regulation's significantly increased reporting obligations on legal professionals (and others) which, in their view are unprecedented and go beyond those mandated by the EU measures underlying them. The Committee asked HM Treasury to explain the basis on which the Department is satisfied that these Regulations do not impose requirements in excess of those imposed by EU law in this area.

7.4 In a memorandum printed at Appendix 7, the Department explains that it is satisfied that these Regulations do not impose requirements in excess of those imposed by EU law in this area. Section 2(2)(a) of the European Communities Act 1972 (the "Act") empowers the Treasury to make regulations "*for the purpose of implementing any [EU obligation] of the United Kingdom, or enabling any such obligation to be implemented....*"

7.5 EU financial sanctions regulations are directly applicable in the UK. All relevant EU financial sanctions regulations state that "natural and legal persons, entities and bodies shall supply immediately any information which would facilitate compliance with this Regulation..... to the competent authority of the Member State...." (see Article 29 Council Regulation (EU) 36/2012). They also contain standard text regarding enforcement, which reads "Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive" (see Article 33 Council Regulation (EU) 36/2012).

7.6 The Department explains that it made these Regulations in the exercise of its mandate to lay down rules on penalties applicable to infringements of the relevant EU financial sanctions regulations, to extend the enforceability of the already existing reporting obligation imposed by the directly applicable EU financial sanctions regulations. The effect of these Regulations is to extend the enforceability of the reporting obligation to a wider group of businesses and professions. **The Committee notes the Department's explanation and reports the Regulations for requiring elucidation, provided by the Department.**

8 S.I. 2017/756: Reported for requiring elucidation

National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017

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

8.2 These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 2015 (the “Charging Regulations”) to extend the obligation to charge for NHS-funded services provided in respect of overseas visitors to include secondary and community services provided by other non-NHS providers.

8.3 The definition of a “relevant body” that is now required to identify and charge patients not eligible for free care has been extended to a list of bodies and then a catch all “(d) any other person providing relevant services.” “Relevant services” is defined in regulation 2 of the Charging Regulations and means, subject to some exceptions, “accommodation, services or facilities which are provided, or whose provision is arranged under the [National Health Service Act 2006]”. The Committee asked the Department of Health to clarify which persons are intended to be covered by the wording “any other person providing relevant services” in the definition of “relevant body” in regulation 2(3), in particular, whether public health services that are commissioned by local authorities such as public mental health services, drug treatment services and other services provided by voluntary sector organisations are intended to be covered.

8.4 In a memorandum printed at Appendix 8, the Department explains that the intention is that paragraph (d) of the definition of “relevant body” should capture any body other than an NHS foundation trust, NHS trust or a local authority that is providing relevant services. This would include private and voluntary sector organisations if they are providing relevant services. If the services are “relevant services”, it does not matter whether the services were commissioned by a local authority or by an NHS body, the intention is that the provider of those services will fall within paragraph (d).

8.5 The Department further explains that the question of whether particular services (including mental health and substance abuse services) are chargeable to non-exempt overseas visitors depends on the contractual arrangements governing the provision of the services and the nature of the services, as providers must consider, on a service-by-service basis, whether the services are relevant services within the definition set out in the Charging Regulations. There was no policy intention to provide a complete exemption for mental health or substance abuse services. So it is intended that voluntary sector organisations that are commissioned by local authorities to provide relevant services are to be covered by the wording “any other person providing relevant services” and the Department considers that the amendment in regulation 2(3) of these Regulations achieves that intention. **Accordingly the Committee reports the Regulations for requiring elucidation, provided by the Department.**

9 S.I. 2017/835: Reported for defective drafting

Co-ordination of Regulatory Enforcement Regulations 2017

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

9.2 Primary Authority is a statutory scheme under which a local authority can provide regulatory advice and guidance to a business. These Regulations set out which types of enforcement action fall within the scope of the scheme and set out the process for dealing with disputes relating to proposed enforcement action.

9.3 Regulation 7(2) sets out the information that must be included in applications made, to the Secretary of State, for the reference of a dispute for determination. Regulation 7(2) is split into three sections according to who is making the reference. Regulation 7(2)(b) sets out the information required from a regulated person making a reference. As drafted, the regulated person is required to provide information as to why the enforcement action is “not inconsistent” with primary authority advice that the regulated person has received. The Committee asked the Department for Business, Energy and Industrial Strategy to explain the meaning of “not inconsistent” as it seemed to the Committee that the regulated person would be required to provide information as to why the enforcement action is contrary to primary authority advice that the regulated person has received rather than consistent with it.

9.4 In a memorandum printed at Appendix 9, the Department explains that the inclusion of the word “not” is clearly a typographical error and as such would look to rectify the error by correction slip. The Committee notes that this is a typographical error, but as deleting “not” changes the meaning of regulation 7(2)(b)(iv)(aa) does not agree that this change is properly done by correction slip. This change is a substantive change to the text and the Committee does not consider that correction slips can properly be used to make substantive changes. **The Committee accordingly reports the regulation 7(2)(b)(iv)(aa) for defective drafting, acknowledged by the Department.**

10 S.I. 2017/855: Reported for an unjustifiable delay in laying them before Parliament

Petroleum and Offshore Gas Storage and Unloading Licensing (Amendment) Regulations 2017

10.1 **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.**

10.2 The Regulations amend the model clauses to be incorporated in seaward production licences. Seaward production licences provide an exclusive right to exploit the petroleum resources of a specified area in UK territorial waters.

10.3 The Regulations were made on 9 August 2017 but were not laid before Parliament until 25 August 2017. The Department for Business, Energy and Industrial Strategy was asked to explain the significant interval between making and laying.

10.4 In a memorandum printed at Appendix 10, the Department explains that the delay was due to the fact that the Impact Assessment had not been cleared by the Regulatory Policy Committee. The Department accepts that the statutory instrument should have been laid as soon as possible after it was made (and apologises to the Committee for the delay) but does not believe that the delay resulted in any negative impact upon the industry or other stakeholders.

10.5 The Committee repeats what it said in its Seventeenth Report of Session 2014–15 (in relation to S.I. 2014/2821), its Twelfth Report of Session 2015–16 (in relation to S.I. 2015/1776) and its Twenty-Sixth Report of Session 2016–17 (in relation to S.I.s 2017/66 and 2017/112) 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. Once the Regulations had been made and had therefore become law (whether or not yet in force) it was the Department's duty to arrange for laying before Parliament and publication without delay; the fact that the Department wished to clear a related document with a committee does not provide any reason why Parliament and the public should be left in ignorance of law that has already been made. The Committee repeats 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. **The Committee accordingly reports the Regulations for unjustifiable delay in laying before Parliament, acknowledged by the Department.**

11 S.I. 2017/868: Reported for failure to comply with proper legislative practice

Employers' Duties (Miscellaneous Amendments) Regulations 2017

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

11.2 These Regulations ensure the Employers' Duties (Implementation) (Amendment) Regulations 2017 work as originally intended, to apply the automatic enrolment duties for post staging employers from 1 October 2017 as set out in the government response to the consultation on the draft Employers' Duties (Implementation) (Amendment) Regulations 2017 published on 10 March 2017.

11.3 The Committee asked the Department for Work and Pensions why the free issue procedure (referred to in paragraph 4.7.6 of Statutory Instrument Practice 5th Edition) was not used. In a memorandum printed at Appendix 11, the Department acknowledges that this was an oversight for which it apologises. The Committee is grateful to the Department for undertaking to take steps to refund all known purchasers of the instrument. **The Committee reports the Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

12 S.R. 2017/176: Reported for defective drafting

Loans for Mortgage Interest Regulations (Northern Ireland) 2017

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

12.2 These Regulations enable help to be provided to benefit claimants who are homeowners in respect of their liability to make owner-occupier payments (principally mortgage interest) in the form of interest-bearing loan payments.

12.3 The italic cross headings state that the instrument comes in to force on 20th October 2017 but regulation 1(2) states that the Regulations come in to operation on 6th April 2018 (for the purposes of regulations 18 to 21) and for all other purposes on 20th October 2017. The Committee asked the Department for Work and Pensions to explain the inconsistency.

12.4 In a memorandum printed at Appendix 12, the Department apologises for this inconsistency and explains that it will seek to use a correction slip to amend the italic cross headings at the earliest opportunity. The Committee agrees that this change can properly be made by correction slip (this being inert material). **The Committee accordingly reports the italic cross headings for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 6 December 2017 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.	Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018
Draft S.I.	Environmental Protection (Microbeads) (England) Regulations 2017

Instruments subject to annulment

S.I. 2017/378¹	Housing and Planning Act 2016 (Consequential Provisions) (England) Regulations 2017
S.I. 2017/930	Immigration Act 2014 (Current Accounts) (Freezing Orders: Code of Practice) Regulations 2017
S.I. 2017/931	Immigration Act 2016 (Consequential Amendments) Regulations 2017
S.I. 2017/944	Proscribed Organisations (Name Change) (No. 2) Order 2017
S.I. 2017/947	Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) (Amendment) Regulations 2017
S.I. 2017/959	NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) (Amendment) Order 2017
S.I. 2017/960	NHS Counter Fraud Authority (Investigatory Powers and Other Miscellaneous Amendments) Order 2017
S.I. 2017/978	Adoption and Children Act Register (Search and Inspection) Regulations 2017
S.I. 2017/979	Transfer of Functions (Secretary of State for Digital, Culture, Media and Sport) Order 2017
S.I. 2017/986	Democratic People's Republic of Korea (European Union Financial Sanctions) (Amendment) (No. 4) Regulations 2017
S.I. 2017/987	Social Security (Qualifying Young Persons Participating in Relevant Training Schemes) (Amendment) Regulations 2017
S.I. 2017/995	Social Security and Child Support (Care Payments and Tenant Incentive Scheme) (Amendment) Regulations 2017

1 The Committee asked the Department for Communities and Local Government why these Regulations state that they apply to England only but include reference to Wales. The Department rightly explained that the reference to Wales is included only to ensure that a provision that formerly applied to England and Wales now operates only in relation to Wales: so the substantive effect of the amendment is confined to England.

S.I. 2017/999	Democratic People’s Republic of Korea (European Union Financial Sanctions) (Amendment) (No. 5) Regulations 2017
S.I. 2017/1008	Electronic Communications Code (Transitional Provisions) Regulations 2017
S.I. 2017/1011	Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Secondary Legislation) Regulations 2017
S.I. 2017/1012	Conservation of Habitats and Species Regulations 2017
S.I. 2017/1013	Conservation of Offshore Marine Habitats and Species Regulations 2017
S.I. 2017/1020	Jobseeker’s Allowance (Schemes for Assisting Persons to Obtain Employment) (Amendment) Regulations 2017
S.I. 2017/1032	Healthy Start Scheme and Welfare Food (Miscellaneous Amendments) Regulations 2017
S.I. 2017/1033	Family Procedure (Amendment No. 3) Rules 2017
S.I. 2017/1034	Non-Contentious Probate (Amendment) Rules 2017
S.I. 2017/1035	Court of Protection Rules 2017
S.I. 2017/1049	General Medical Council (Miscellaneous Amendments) Order of Council 2017
S.I. 2017/1064	Central Securities Depositories Regulations 2017
S.I. 2017/1071	United Nations and European Union Financial Sanctions (Linking) (Amendment) (No. 2) Regulations 2017
S.I. 2017/1073	Infrastructure Planning (Compulsory Acquisition) (Amendment) (No. 2) Regulations 2017
S.I. 2017/1076	Coroners and Justice Act 2009 (Alteration of Coroner Areas) (No. 2) Order 2017
S.I. 2017/1084	Teachers’ Pensions Schemes (Miscellaneous Amendments) Regulations 2017
S.I. 2017/1086	Traffic Signs (Amendment) (England and Wales) Regulations and General Directions 2017
S.I. 2017/1090	General Anti-Abuse Rule Procedure (Amendment) Regulations 2017
S.I. 2017/1094	Venezuela (European Union Financial Sanctions) Regulations 2017

Draft Instruments subject to negative procedure

Draft S.I.	Kingston upon Hull (Electoral Changes) Order 2017
Draft S.I.	Ribble Valley (Electoral Changes) Order 2017
Draft S.I.	Surrey Heath (Electoral Changes) Order 2017

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2017/929	Immigration Act 2016 (Commencement No. 5) Regulations 2017
S.I. 2017/936	Neighbourhood Planning Act 2017 (Commencement No. 2) Regulations 2017
S.I. 2017/942	Energy Act 2016 (Commencement No. 4 and Transitory Provision) Regulations 2017
S.I. 2017/952	Welfare Reform Act 2012 (Commencement No. 17, 19, 22, 23 and 24 and Transitional and Transitory Provisions (Modification)) Order 2017
S.I. 2017/991	Criminal Finances Act 2017 (Commencement No. 2 and Transitional Provisions) Regulations 2017
S.I. 2017/1028	Criminal Finances Act 2017 (Commencement No. 3) Regulations 2017
S.I. 2017/1055	Technical and Further Education Act 2017 (Commencement No. 2 and Transitional Provision) Regulations 2017
S.I. 2017/1069	Wales Act 2017 (Commencement No. 3) Regulations 2017
S.I. 2017/1087	Cultural Property (Armed Conflicts) Act 2017 (Commencement) Regulations 2017

Appendix 1

S.I. 2017/155

Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017

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

Given that section 55(5)(b) of the Local Government Finance Act 1988 refers to the accuracy of a non-domestic rating list, explain the source of the power to make the provision in regulation 13A(2) inserted into the 2009 Regulations by regulation 16 which, in relation to appeals on valuation, focuses on reasonableness rather than accuracy.

2. The power in section 55(5) of the Local Government Finance Act 1988 (“the Act”) enables regulations to be made providing for a person who has proposed an alteration to a list (“the proposer”) to appeal to a valuation tribunal where there is disagreement between the proposer and a valuation officer about the accuracy of the list.

3. Section 55(5A) of the Act provides that the regulations may include provision about the grounds on which an appeal may be made.

4. A non-domestic rating list shows:

- a) the rateable value of a hereditament; and
- b) other information about the hereditament.

5. Regulation 4(1) of S.I. 2009/2268 sets out the grounds for making a proposal to alter a list in relation to a hereditament.

- a) The grounds in regulation 4(1)(a) to (d) relate to the accuracy of the rateable value shown in the list.
- b) The ground in regulation 4(1)(e) relates to the accuracy of either the rateable value or other information shown in the list.
- c) The grounds in regulation 4(1)(f) to (o) relate to the accuracy of other information shown in the list.

6. Regulation 13A(1) (inserted by regulation 16 of S.I. 2017/155) sets out the circumstances in which, for the purposes of making an appeal, there is disagreement between the proposer and a valuation officer about the accuracy of a list. For example, there is disagreement about the accuracy of a list if the valuation officer has decided under regulation 13 not to alter the list according to the proposal. In those circumstances, the proposer may appeal on the grounds set out in regulation 13A(2).

7. If a proposal to alter a list was on the ground that the rateable value was inaccurate (see regulation 4(1)(a) to (e) of S.I. 2009/2268) and there is disagreement between the proposer and the valuation officer about the accuracy of the list (as set out in regulation 13A(1)), the proposer may appeal on the ground in regulation 13A(2)(a).

8. If a proposal to alter a list was on the ground that the list was inaccurate in any other respect (see regulation 4(1)(e) to (o)) and there is disagreement between the proposer and the valuation officer about the accuracy of the list (as set out in regulation 13A(1)), the proposer may appeal on the ground in regulation 13A(2)(b).

9. In regulation 13A(2)(a), “valuation” means the rateable value as determined under Schedule 6 to the Act. Paragraph 2(1) of that Schedule provides that:

The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions-

- a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
- b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
- c) the third assumption is that the tenant undertakes to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

10. Schedule 6 to the Act makes it clear that the determination of a rateable value is based on the valuation officer’s estimate of the rent at which the hereditament might reasonably be expected to let. The rateable value is a value equal to the estimated amount of rent if the hereditament were to be let on a specified date on the open market. A ground of appeal based on the reasonableness of that valuation is consistent with both Schedule 6 and the statutory duty of the valuation officer to maintain an accurate list.

11. While section 55(5) of the Act enables regulations to provide for an appeal only where there is disagreement about the accuracy of a list, section 55(5A) does not require the grounds of appeal to be cast in terms of accuracy. This issue arose in the debate in the House of Lords on S.I. 2017/155.

[https://hansard.parliament.uk/Lords/2017-09-11/debates/ACF7145E-22C1-4A2A-A110-2B24431DCD4E/Non-DomesticRating\(AlterationOfListsAndAppeals\)\(England\)\(Amendment\)Regulations2017](https://hansard.parliament.uk/Lords/2017-09-11/debates/ACF7145E-22C1-4A2A-A110-2B24431DCD4E/Non-DomesticRating(AlterationOfListsAndAppeals)(England)(Amendment)Regulations2017)

Department for Communities and Local Government

21 November 2017

Appendix 2

S.I. 2017/325

Freight Containers (Safety Convention) Regulations 2017

1. In its letter to the Department of 17th November 2017, the Committee requested a memorandum on the following points:

(1) Explain the inclusion of two paragraphs (a) and (b) in the definition of “container” in regulation 2.

(2) Explain whether regulation 5(1)(b)(ii) is intended to give the Health and Safety Executive the power to invalidate approvals issued by other persons and, if so, how effect is given to that intention.

2. The Department’s response to the Committee’s points is outlined below.

3. The Health and Safety Executive and Government Legal Department prepared the Regulations.

4. The definition of “container” in regulation 2 comprises two lists. The first, listed (a) to (d), describes the features which the article of transport equipment must have in order to come within the definition of a container. The second, listed at the second paragraphs (a) and (b), is to give two examples of equipment that is also a container within this definition.

5. In the Freight Containers (Safety Convention) Regulations 1984 [SI 1984/1890], which the 2017 Regulations replace, the examples part of the definition of “container” in regulation 2 was given as one long set of fullout words after paragraph (d). Splitting them into paragraphs (a) and (b) was intended to bring clarity to the definition and make it easier to read. As the examples are different to the features in the first list it would not have been appropriate to continue the sequence and use (e) and (f), for example. The Department accepts that it ought to have labelled them differently so that (a) and (b) did not appear twice in the same definition. The 2017 Regulations do not contain cross references to any particular paragraph in the definition of container in regulation 2, so the existence of two paragraphs (a) and (b) should not cause difficulties in practice.

6. In relation to the Committee’s second point, regulation 5(1)(b)(ii) is intended to give the Health and Safety Executive the power to invalidate approvals issued by other persons pursuant to 5(1)(a)(ii). The mechanism for withdrawing approvals is set out in the “Green Guide” (the latest version of which is available online: <http://www.hse.gov.uk/pubns/dis8-draft.pdf>) at paragraphs 37 and 38. It was never the intention to allow HSE to withdraw approvals issued by other contracting states as this is not permitted under the convention (Article iv, paragraph 5 and paragraph 8 of CSC.1/138). HSE authorised officers may only exercise control over containers which appear to be unsafe or fail to carry a valid safety approval plate (paragraph 38 Green Guide). The authorised officer role is set out in Official Guidance for inspectors.

Department for Work and Pensions

22 November 2017

Appendix 3

S.I. 2017/669

Wireless Telegraphy (Mobile Communication Services on Aircraft) (Exemption) Regulations 2017

1. In its letter to the Office of Communications (Ofcom) of 22 November 2017, the Joint Committee on Statutory Instruments (JCSI) has requested a memorandum on the following point:

Explain why hard copies of the ETSI standards referred to in the Regulations are not made available for inspection.

2. Ofcom understands that, by this point, the JCSI is referring to the fact that a user of this statutory instrument may not have access to the internet, and it therefore seeks Ofcom's explanation for not following the usual practice for Explanatory Notes to contain an address where hard copies of documents referred to in the instrument can be obtained on request.

3. This instrument contains references to ten different standards published by the European Telecommunications Standards Institute (ETSI) in order to give effect to corresponding EU obligations of the United Kingdom contained in the Commission Implementing Decision 2016/2317/EU. That Decision refers to the ETSI standards. The ETSI standards are regularly updated and have multiple versions. The Official Journal of the European Union (OJEU) makes it clear which is the most recent and relevant version of each ETSI standard.

4. Ofcom therefore mentions in footnotes to the instrument the correct versions of the ETSI standards as determined by the OJEU. The correct versions of the ETSI standards themselves are, however, available to the public from ETSI on their website or in hard copies by contacting the ETSI Secretariat at 650 Route des Lucioles, 06921 Sophia-Antipolis CEDEX, France (Tel: +33 4 92 94 42 00). Ofcom intends to correct this omission shortly by way of a correction slip. Ofcom apologises for this oversight.

Office of Communications

28 November 2017

Appendix 4

S.I. 2017/701

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

1. This memorandum responds to the Committee’s request for a memorandum on the points set out below:

- a) in regulations 9(5), 10(2) and (3), the omission to state which Act the paragraph and sections referred to are part of
- b) in regulations 12(1)(b)(ii), 15 (definition of ‘third country firm registered with ESMA’) and 46(2)(a), the omission to state whether the Article referred to is part of the markets in financial instruments regulation or part of the markets in in financial instruments directive;
- c) the repetition of “a notice” in regulation 25(6);
- d) the repetition of “the matter” in regulation 40(4)(d);
- e) the repetition of “of the markets” in Schedule 2, paragraph 42(4) (inserted 2(b)(ii)); and
- f) the use of XXXX in Schedule 2, paragraph 48(a) and Schedule 4, paragraphs 9(2)(c) and 9(5)(c).

2. These errors are regrettably due to oversight in the drafting process, in part due to the length and complexity of the instrument. The Treasury apologises for any inconvenience this has caused. An amending instrument is due to be laid in the near future which will correct these errors.

HM Treasury

27 November 2017

Appendix 5

S.I. 2017/706

Antarctic (Amendment) Regulations 2017

1. In its letter to the Foreign and Commonwealth Office of 17 November 2017, the Joint Committee requested a memorandum on the following points:

In relation to the maps of each restricted area in Schedule 1, explain why (1) an address is not given where hard copies of the maps can be inspected and (2) a website address is not given.

Response

2. With respect to the first point raised by the Committee, this is not a service offered by the Foreign and Commonwealth Office. We recognise, however, that the regulations could have included a reference to the fact that hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London, SW1A 0PW. We will include this information in future revisions of the regulations. With respect to those maps that have not been reproduced in Command Papers, hard copies of the relevant Reports of the Antarctic Treaty Consultative Meeting are not generally available, although they can be ordered via Amazon. We will give further thought to how to approach this issue in future revisions of these regulations, recognising that the most effective way to do so is to ensure that details of all Antarctic Specially Protected Areas are included in Command Papers.

3. With respect to the second point raised by the Committee, all of the Command Papers referred to in the regulations are available on www.gov.uk/publications. We recognise that a weblink could have been provided for each Command Paper, and will include this information in future revisions of the regulations. The Foreign and Commonwealth Office anticipates that the Command Paper containing the Measures adopted at the Thirty-ninth Antarctic Treaty Consultative Meeting will be laid before Parliament shortly, providing an early opportunity to include this information in the regulations.

Foreign and Commonwealth Office

28 November 2017

Appendix 6

S.I. 2017/737

Recreational Craft Regulations 2017

1. In its letter to the Department of Business, Energy and Industrial Strategy of 22 November 2017, the Joint Committee requested a memorandum on the following points:

Explain:

(1) Why regulation 14(2) does not state who is responsible for complying with the obligation in that regulation;

(2) Whether the obligation in regulation 32(3) arises when the product is placed on the market or made available on the market;

(3) Why contraventions of regulations 18 and 19 in relation to importers are not made offences under regulation 73 (especially given that similar contraventions in relation to distributors in regulations 27 and 28 are made offences under that regulation); and

(4) Whether the amendments to primary legislation in paragraphs 2(h), (j), (k)(ii)(bb), (l)(ii) to (iv) and (vi) to (viii) of Schedule 13 are correct given that they refer to the Recreational Craft Regulations 2016.

(1) why regulation 14(2) does not state who is responsible for complying with the obligation in that regulation

2. Regulation 14 provides:

Duty to provide information

14.—(1) Before placing a product on the market, a manufacturer must ensure that the product is labelled with—

- a. the manufacturer's name;
- b. their registered trade name or registered trade mark; and
- c. an address, which is the single point at which they can be contacted.

(2) Where it is not possible to provide the information referred to in paragraph (1) on the product that information must be provided—

- a. on the packaging;
- b. or in a document accompanying the product.

3. The Department considers that given that regulation 14(1) clearly places the obligation to label the product on the manufacturer and that regulation 14(2) is an exception to the general rule in regulation 14(1), it is sufficiently clear from that context that the manufacturer is responsible for complying with the obligation in regulation 14(2). Furthermore, the regulation is in a set of regulations under the sub-heading "Manufacturers". The Department is, therefore, of the view that even though regulation

14(2) does not specifically mention the manufacturer, it is clear from the surrounding provisions that the obligation rests with the manufacturer, without the need to state who is responsible for the obligation in that paragraph.

(2) Whether the obligation in regulation 32(3) arises when the product is placed on the market or made available on the market;

4. Regulation 32(3) provides:

(3) The distributor must, at the request of the enforcing authority, co-operate with the authority on any action taken to eliminate the risks posed by a product that the distributor has made available placed on the market.

5. The expression “distributor” is defined in regulation 2 (interpretation) as follows:

““distributor” means a person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;”

6. Since the distributor is defined by reference to being a person who makes a product on the market and therefore not one who places a product on the market, it is clear from this that regulation 32(2) should refer to products made available on the market.

7. The Department is grateful to the Joint Committee for drawing its attention to this error. The word “placed” should be removed. The Department will explore with the Registrar of Statutory Instruments whether this word can be removed by way of correction slip. If this is not possible, the Department will amend this error when a suitable opportunity arises.

(3) Why contraventions of regulations 18 and 19 in relation to importers are not made offences under regulation 73 (especially given that similar contraventions in relation to distributors in regulations 27 and 28 are made offences under that regulation);

8. The Department is again grateful to the Joint Committee for drawing this to the Department’s attention. We intend to amend regulation 73 to include regulations 18 and 19 when a suitable opportunity arises.

9. The Joint Committee may wish to note that until such opportunity arises, there are provisions which will help to ensure both that only compliant products are placed on the market by the importer and that action can be taken if the importer does not comply with the duties placed on the importer.

10. Regulation 20 places a duty on the importer not to place a product on the market where the importer believes that the product is not in conformity with the essential requirements. Regulation 73 provides that breach of regulation 20 is a criminal offence. Regulation 24 places a duty on the importer to take action in respect of a product the importer has placed on the market which the importer considers is not in conformity with Part 2 of the Regulations. Breach of regulation 24 is also a criminal offence.

11. Furthermore, there is provision in regulation 71 that where an enforcing authority finds that there has been non-compliance with the requirements in regulation 18 or 19 (amongst others) it must require the importer to remedy the non-compliance within

a reasonable period prescribed by the enforcing authority, where the product does not present a risk. Indeed regulation 71(2) provides that no other proceedings can be commenced under the Regulations until the period prescribed has elapsed. If the non-compliance persists, the enforcing authority must restrict or prohibit the product being made available on the market or ensure that the product is recalled or withdrawn from the market. The purpose of the provision in regulation 71(2) is to give the importer (and other economic operators to which the regulation applies) time to correct non-compliance before commencing criminal proceedings.

12. In the case of a product presenting a risk, where an enforcing authority finds that a product is not in conformity with Part 2 of the Regulations, the enforcing authority must without delay require a relevant economic operator (which can include the importer) to take corrective action to bring the product into conformity within a prescribed period, withdraw the product within a prescribed period or recall the product within a prescribed period. If the economic operator does not do so, the enforcing authority must take appropriate measures to prohibit the product being made available or ensure that the product is recalled or withdrawn.

(4) Whether the amendments to primary legislation in paragraphs 2(h), (j), (k)(ii)(bb), (l)(ii) to (iv) and (vi) to (viii) of Schedule 13 are correct given that they refer to the Recreational Craft Regulations 2016.

13. Again the Department is grateful to the Joint Committee for drawing these errors to the Department's attention. The references are clearly not correct and should refer to the Recreational Craft Regulations 2017. The Department will explore with the Registrar of Statutory Instruments whether the references to "2016" can be replaced with "2017" by way of correction slip. If this is not possible, the Department will amend this error when a suitable opportunity arises.

Department for Business, Energy and Industrial Strategy

28 November 2017

Appendix 7

S.I. 2017/754

European Union Financial Sanctions (Amendment of Information Provisions) Regulations 2017

1. The Committee have asked:

Explain the basis on which the Department is satisfied that these regulations do not impose requirements in excess of those imposed by EU law in this area.

2. Section 2(2)(a) of the European Communities Act 1972 empowers the Treasury to make regulations “*for the purpose of implementing any [EU obligation] of the United Kingdom, or enabling any such obligation to be implemented....*”

3. All relevant EU financial sanctions Regulations state “*natural and legal persons, entities and bodies shall supply immediately any information which would facilitate compliance with this Regulation..... to the competent authority of the Member State....*” (see Article 29 Council Regulation (EU) 36/2012).

4. All relevant EU Regulations also contain standard text regarding enforcement, which reads “*Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive*” (see Article 33 Council Regulation (EU) 36/2012).

5. EU financial sanctions Regulations are, via section 2(1) of the 1972 Act, directly applicable in the UK.

6. The Treasury has created the AIP Regulations, in the exercise of their mandate to lay down rules on penalties applicable to infringements of the relevant EU Regulations, to extend the *enforceability* of the *already existing* reporting obligation imposed by the directly applicable EU financial sanctions Regulations.

7. The Department is therefore satisfied that these regulations do not impose requirements in excess of those imposed by EU law in this area.

HM Treasury

27 November 2017

Appendix 8

S.I. 2017/756

National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017

1. In its letter to the Department of 22nd November 2017, the Committee requested a memorandum on the following point:

Clarify which persons are intended to be covered by the wording “any other person providing relevant services” in the definition of “relevant body” in regulation 2(3), in particular, whether public health services that are commissioned by local authorities such as public mental health services, drug treatment services and other services provided by voluntary sector organisations are intended to be covered.

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

3. The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017 (“the Amendment Regulations”) amended the National Health Service (Charges to Overseas Visitors) Regulations 2015 (“the Charging Regulations”) to, amongst other things:

- extend the class of bodies that are “relevant bodies” to include non-NHS bodies providing “relevant services”; and
- remove an exemption that applied in relation to services provided outside of a hospital setting otherwise than at, or by staff employed to work at, or under the direction of, a hospital,² so that all services that are “relevant services” will be chargeable, unless one of the remaining exemptions in the Charging Regulations applies.

4. The Explanatory Memorandum to the Amendment Regulations (paragraph 7.10) explains that the amendments referred to above sought to standardise the charging rules following a consultation on the proposed amendments to the Charging Regulations. The intention behind the Amendment Regulations was to ensure all secondary and community care provided under the National Health Service Act 2006 (“the 2006 Act”), with the exception of those services that are expressly exempted from charge in the Charging Regulations, are chargeable to non-exempt overseas visitors, wherever, and by whomever, they are provided. The removal of the part-exemption for out-of-hospital care and the addition of non-NHS providers to the scope of the Charging Regulations were measures designed to close respective loopholes. The changes intended to add parity in the system and to ensure that all overseas visitors are subject to the same charging regime, wherever the relevant services are delivered.

² Relevant services provided by staff employed to work at, or under the direction of, a hospital were already chargeable under the Charging Regulations.

5. Regulation 2 of the Charging Regulations (as amended) sets out the definition of “relevant body”. Paragraph 7.11 of the Explanatory Memorandum to the Amendment Regulations explains that the definition of relevant body will bring into scope non-NHS providers from 23 October 2017.
6. The obligation to make and recover charges in respect of relevant services provided to overseas visitors is set out in regulation 3(1) of the Charging Regulations and applies to the relevant body providing relevant services rather than the body commissioning the services.
7. The definition of “relevant services” as defined in regulation 2 was not changed by the Amendment Regulations as it remained in line with policy intentions. The definition is now used in the context of all out-of-hospital care provided under the 2006 Act due to the widening in scope of the settings where charging can apply.
8. The intention is that paragraph (d) of the definition of “relevant body” should capture any body other than an NHS foundation trust, NHS trust or a local authority that is providing relevant services. This would include private and voluntary sector organisations if they are providing relevant services. Indeed it was the policy intention to expand the scope of the Charging Regulations to cover a wide range of non-NHS providers, but when doing so the Amendment Regulations did explicitly exempt palliative care services (by the insertion of regulation 9(g)) where they are provided by registered charities or community interest companies (i.e. hospices) and also NHS 111 services (by the insertion of regulation 9(aa)) as these were not considered to be appropriate for charging. Provided that the services are “relevant services”, it does not matter whether the services were commissioned by a local authority or by an NHS body, the intention is that the provider of those services will fall within paragraph (d).
9. The question of whether particular services (including mental health and substance abuse services) are chargeable to non-exempt overseas visitors depends on the contractual arrangements governing the provision of the services and the nature of the services, as providers must consider, on a service-by-service basis, whether the services are relevant services within the definition set out in the Charging Regulations and then whether the service falls within any specific exempt service set out in regulation 9 of the Charging Regulations. There was no policy intention to provide a complete exemption for mental health or substance abuse services. There is detailed guidance published to assist providers with implementing the overseas visitors charging regime. In all cases only services provided, or whose provision is arranged, under the 2006 Act are capable of being relevant services.
10. In summary, voluntary sector organisations that are commissioned by local authorities to provide relevant services are intended to be covered by the wording “any other person providing relevant services”. The Department considers that the amendment in regulation 2(3) of the Amendment Regulations achieves this intention.

Department of Health

28 November 2017

Appendix 9

S.I. 2017/835

Co-ordination of Regulatory Enforcement Regulations 2017

1. In its letter to the Department of Business, Energy and Industrial Strategy of 22 November 2017, the Joint Committee requested a memorandum on the following point:

In regulation 7(2)(b)(iv)(aa) explain the meaning of “not inconsistent”.

2. The Department accepts that, in this regulation, there has been a typographical error and the word “not” should be omitted. The Department thanks the Committee for highlighting this error.

3. This regulation sets out the information that must be included in applications made, to the Secretary of State, for the reference of a dispute for determination. Regulation 7(2) sets out the information required from the party making this reference. It is split into three sections according to who is making the reference. Regulation 7(2)(b) sets out the information required from a ‘regulated person’ making a reference. In this case the party would provide information as to why the enforcement action is contrary to primary authority advice that the regulated person has received.

4. Regulation 7(2)(b) replaces regulation 3(2)(b) of the Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 (S.I. 2009/670). The determination procedure has been in place since this time. Statutory Guidance and a further guide are available, for users, regarding determinations.

5. The inclusion of the word “not” is clearly a typographical error and, as such, we would look to treat this as a minor amendment.

6. The Department will submit a correction slip in order to rectify this mistake or, if this is not felt to be acceptable, will aim to rectify on the next available opportunity.

Department for Business, Energy and Industrial Strategy

24 November 2017

Appendix 10

S.I. 2017/855

Petroleum and Offshore Gas Storage and Unloading Licensing (Amendment) Regulations 2017

1. The Committee, by letter (sent by email) dated 22 November 2017, asked the Department to submit a memorandum to explain the following point:

Explain the significant interval between making and laying.

2. These regulations amend the Model Clauses to be incorporated in Seaward Production Licences so as to implement the Oil and Gas Authority's 'Innovate' model for licences issued in the 30th Seaward Licensing Round onwards. They also make minor amendments to other Regulations related to petroleum licensing.

3. There was an administrative error in that the Statutory Instrument was submitted for laying whilst the associated Impact Assessment was still with the Regulatory Policy Committee for final clearance ahead of publication. As the Impact Assessment was not included in the bundle, despite being referred to in the Explanatory Note and Explanatory Memorandum, the Statutory Instrument was withdrawn by the Registrar before it was laid. In the expectation that the Impact Assessment would be cleared imminently, and to avoid a delay between laying the Statutory Instrument and the Impact Assessment, the Department waited to lay the Statutory Instrument until the final Impact Assessment was ready. With hindsight, this was the wrong decision as it resulted in a delay of just over two weeks between making the Statutory Instrument and laying it.

4. The Department accepts that the Statutory Instrument should have been laid as soon as possible after it was made. Moreover, at the point that the issue with the Impact Assessment was identified, the Department should have considered whether delay could have been avoided by laying the Impact Assessment in draft, or laying the Statutory Instrument without the Impact Assessment.

5. Whilst the delay in laying the Statutory Instrument was clearly regrettable, the Department does not believe that it resulted in any negative impact upon industry or other stakeholders. The Statutory Instrument was laid on 25 August, allowing 21 days before coming into force on 15 September. Furthermore, the 30th Seaward Licensing Round did not close for applications until 21 November 2017, and information about the model clauses that would be used in any licences awarded was available throughout the application window.

6. Nevertheless, the Department apologises for the delay and will seek to ensure this doesn't occur in future. We hope that the above explanation and acknowledgement of error will assist the Committee.

Department for Business, Energy and Industrial Strategy

28 November 2017

Appendix 11

S.I. 2017/868

Employers' Duties (Miscellaneous Amendments) Regulations 2017

1. In its letter to the Department of 22nd November 2017, the Committee requested a memorandum on the following point:

Given the purpose of this instrument is to ensure that the Employers' Duties (Implementation) (Amendment) Regulations 2017 work as originally intended, explain why the free issue procedure has not been used.

2. The Department's response to the Committee's point is set out below.
3. This was an oversight for which the Department apologises. As the Committee helpfully points out, the free issue procedure should have been used.
4. Steps are being taken with a view to refunding all known purchasers of the instrument.

Department for Work and Pensions

28 November 2017

Appendix 12

S.R. 2017/176

Loans for Mortgage Interest Regulations (Northern Ireland) 2017

1. In its letter to the Department of 22nd November 2017, the Committee requested a memorandum on the following point:

Explain the inconsistency between the commencement date in the preamble and the date in regulation 1(2)(a).

2. The Department's response to the Committee's point is set out below.
3. The Department apologises for this inconsistency and will seek to use a correction slip to amend the preamble at the earliest opportunity.

Department for Work and Pensions

28 November 2017