



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Eleventh Report of Session 2017–19

Drawing special attention to:

Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2017 (S.I. 2017/1160)

Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189)

Magistrates' Courts (Adult Protection and Support Orders) Rules 2017 (S.I. 2017/1199)

Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200)

Radio Equipment Regulations 2017 (S.I. 2017/1206)

Fishing Boats Designation (England) (Amendment) Order 2017 (S.I. 2017/1219)

Road Vehicles (Construction and Use) (Amendment etc.) (No. 2) Regulations 2017 (S.I. 2017/1251)

Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2017 (S.I. 2017/1261)

Magistrates' Courts (Freezing and Forfeiture of Terrorist Money in Bank and Building Society Accounts) Rules 2017 (S.I. 2017/1290)

Magistrates' Courts (Detention and Forfeiture of Cash) (Amendment) Rules 2017 (S.I. 2017/1291)

Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017 (S.I. 2017/1293)

Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (Amendment) Rules 2017 (S.I. 2017/1295)

Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017 (S.I. 2017/1297)

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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 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 31 January 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 eleven 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. 2017/1160: Reported for defective drafting

Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2017

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

1.2 These Regulations amend the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 dealing with applications by parents for 30 hours of free childcare.

1.3 Regulations 3(2)(c) and (3) make textual amendment of earlier regulations. The Committee suspected that the amendments were defective, and asked the Department for Education to confirm that "14" should be substituted for "31" in both places in which it occurs in relation to the amendment made by regulation 3(2)(c) and that the phrase "in both places it occurs," should be deleted in relation to the amendment made by regulation 3(3).

1.4 In a memorandum printed at Appendix 1, the Department confirms that the changes identified by the Committee should be made and undertakes to rectify the errors at the earliest possible opportunity. **The Committee accordingly reports regulation 3(2)(c) and (3) for defective drafting, acknowledged by the Department.**

2 S.I. 2017/1189: Reported for failure to comply with proper legislative practice

Higher Education (Fee Limit Condition) (England) Regulations 2017

2.1 **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.**

2.2 These Regulations provide that tuition fees for certain courses of higher education cannot exceed a limit to be set out in separate regulations. Regulation 3 prescribes the higher education providers by reference to those "registered in the 'Approved (fee cap)' part of the register" established and maintained by the Office for Students (OfS). There is no indication in the instrument where this register is available and the Committee asked the Department for Education to explain.

2.3 In a memorandum printed at Appendix 2, the Department explains that the register does not yet exist. The obligation to create the register, and the related powers of the OfS to

enter higher education providers in the different parts of the register come into force at the same time as these Regulations (1 April 2018). From that date the OfS will begin to receive and assess applications for registration from higher education providers. The Department understands that the OfS will fulfil its obligation to make the register publicly available by publishing the register on its website as soon as the register is populated with the names of providers in different registration categories, including the “Approved (fee cap)” category. It is anticipated that the register will be complete by the end of September 2018.

2.4 The Department acknowledges that it would have been helpful had the Explanatory Memorandum, or a footnote to the Regulations themselves, contained the above information about the accessibility of the register and related timings; and the Committee’s view is that it is preferable for information of this kind, without which a reader cannot understand the full effect of the legislation, should be included at least in a footnote to the regulations themselves. The Department undertakes to provide this information in subsequent regulations that refer to the register, and to give further consideration as to how that information can readily be made available to readers of these Regulations. **The Committee accordingly reports the regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

2.5 It is unusual to refer in legislation to a document that does not yet exist, and the result will be that for an indeterminate period the provisions of the Regulations will simply “beat the air”. However, the Committee is satisfied that the sequence set out in the Department’s memorandum is within the reasonably contemplated legislative intent.

3 S.I. 2017/1199: Reported for defective drafting

Magistrates’ Courts (Adult Protection and Support Orders) Rules 2017

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

3.2 These Rules make provision for applications in the magistrates’ court for Adult Protection and Support Orders under section 127 of the Social Services and Well-being (Wales) Act 2014. They were made on 30 November and laid before Parliament on 4 December. The commencement provision states “These Rules come into force on 1st December 2017, or, if later, on the 21st day after the day on which they are laid before Parliament.” The Committee asked the Ministry of Justice to explain the reference to 1st December 2017 in rule 1(2) given that by the time the Rules were signed, it was already clear that reliance would be placed on the later day in that rule. In a memorandum printed at Appendix 3, the Department acknowledges that this was an error and undertakes to take care that this error is not repeated in future instruments. **The Committee accordingly reports rule 1(2) for defective drafting, acknowledged by the Department.**

4 S.I. 2017/1200: Reported for failure to comply with normal legislative practice and for defective drafting

Control of Mercury (Enforcement) Regulations 2017

4.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two related respects and fail to comply with normal legislative practice in one respect.**

4.2 These Regulations designate competent authorities and set offences and penalties for the enforcement of Regulation (EU) 2017/852 dealing with the control of mercury.

4.3 In England and Wales, an enforcing authority may determine the amount of a civil penalty in respect of failure to comply with a relevant provision. Regulation 10(7)(d) states that a civil penalty notice must state the payment period which must not be less than 28 days from the day the civil penalty notice is given. An enforcing authority can also issue a costs recovery notice which (regulation 13(7)) “must be paid ...within the period...of 28 days beginning with the day on which the costs recovery notice is given”. Regulation 10(11) allows an appeal against a civil penalty notice and regulation 13(11) allows an appeal against a costs recovery notice. Regulation 15(2) states that a civil penalty notice or costs recovery notice which is the subject of an appeal is suspended pending the decision of the Tribunal. The Committee asked the Department for Environment, Food and Rural Affairs to explain (i) whether regulations 10(7)(d) and 13(7) should be expressly subject to regulation 15(2) and (ii) whether regulation 15(2) should also cover the withdrawal of the appeal.

4.4 In a memorandum printed at Appendix 4, the Department asserts in relation to point (i) that it can readily be inferred from the sequence of propositions in regulations 10(7)(d), 10(11) and 15 (which clearly implies that it contains further detail about the situation where there is an appeal) that regulation 10(7)(d) in the case of civil penalty notices is subject to regulation 15(2). The Department asserts that the same argument applies in the case of costs recovery notices (regulations 13(7), 13(11) and 15). The Committee does not deny this, but it misses the point: it is undoubtedly the case that regulation 15 extends the period specified under regulation 10, and therefore regulation 10, which prescribes the information to be given to the recipient of a notice, ought to require the notice to draw attention to the suspensive effect of regulation 15, in the same way as it requires the notice to specify how payment can be made and that there is a right of appeal. The same applies to regulation 13. Otherwise the notices will be giving a misleading impression of the period available for payment in cases where the right of appeal is exercised. This could easily have been avoided by requiring the notices to include a reference to the suspensive effect of regulation 15, and in the Committee’s opinion that should have been done. **Accordingly, the Committee reports regulations 10 and 13 for defective drafting; the Committee also hopes that the Department will use some kind of editorial note to the standard form for notices under these Regulations to inform the recipient of a notice that the period specified in it is suspended where the right of appeal is exercised.**

4.5 In relation to point (ii), the Department asserts that regulation 15(2) does not need to cover the withdrawal of the appeal because when an appeal is withdrawn there is no longer an appeal and it therefore follows that there is no longer a decision of the Tribunal pending. Again, the Committee does not dissent, but notes that it is normal drafting

practice in provisions of this kind to define pending as the period until an appeal is determined or withdrawn, and that the normal practice is designed to avoid doubt and confusion. **The Committee accordingly reports regulation 15(2) for failure to comply with normal legislative practice.**

5 S.I. 2017/1206: Reported for defective drafting

Radio Equipment Regulations 2017

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

5.2 These Regulations implement Directive 2014/53/EU about the supply of radio equipment. Regulation 66 deals with penalties. Paragraph (1) provides for a fine or imprisonment on summary conviction, while paragraph (2) provides for a fine alone. The Committee asked the Department for Business, Energy and Industrial Strategy to explain why regulation 66(2) applies to failures to cooperate with the authorities on the part of manufacturers (regulation 16) and distributors (regulation 35) but does not apply to failures on the part of importers (regulation 29).

5.3 In a memorandum printed at Appendix 5, the Department acknowledges this error and undertakes to amend the Regulations to make the penalties consistent for all economic operators at the earliest appropriate opportunity. On the assumption that the omission amounts to a failure to achieve full transposition of the EU legislation, the Committee expects that the Department will make an early opportunity to correct the error. **The Committee accordingly reports regulation 66(2) for defective drafting, acknowledged by the Department.**

6 S.I. 2017/1219: Reported for failure to comply with proper legislative practice

Fishing Boats Designation (England) (Amendment) Order 2017

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

6.2 This Order makes corrections to the Fishing Boats Designation (England) Order 2015. The Committee asked the Department for Environment, Food and Rural Affairs to explain why the free issue procedure was not used. In a memorandum printed at Appendix 6, the Department acknowledges that the procedure applies, apologises for the omission and undertakes to contact the SI Registrar with a view to making free copies available.

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

7 S.I. 2017/1251: Reported for failure to comply with proper legislative practice

Road Vehicles (Construction and Use) (Amendment etc.) (No. 2) Regulations 2017

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

7.2 These Regulations give effect to the requirements relating to emissions which are contained in the nineteenth edition of the “In Service Exhaust Emission Standards for Road Vehicles” booklet. Regulation 2 substitutes the new publication for the existing one, citing the ISBN number and that it is published by the Department for Transport. Other than this no website address or address where a hard copy is available is given in the instrument itself. The Committee asked the Department for Transport to explain why accessibility information is not given.

7.3 In a memorandum printed at Appendix 7, the Department accepts that it should have made clear where electronic and hard copies are available, and adds that it is taking steps to remind its drafting lawyers of the importance the Committee attaches to the accessibility of documents given an importance by legislation, and particularly the availability of hard copies for those without access to the internet. **The Committee accordingly reports the Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

7.4 (The Department also explains that to avoid the possibility of the incorrect edition of the publication being downloaded and used in testing, the nineteenth edition of the emissions publication is not currently available online but, in accordance with previous practice, the eighteenth edition will be replaced on gov.uk by the nineteenth edition immediately before the instrument comes into force.)

8 S.I. 2017/1261: Reported for defective drafting

Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2017

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

8.2 This Order makes provision for adding employments and offices to Schedule 1 to the Superannuation Act 1972 enabling people to be members of the pension schemes made under section 1 of the Act. Article 6(2) of the Order appears to add two Welsh offices to the list of “Other Bodies” rather than to the list of “Offices” in Schedule 1 to the Act; the Committee asked the Cabinet Office for an explanation.

8.3 In a memorandum printed at Appendix 8, the Department acknowledge that the Welsh offices should have been added at the appropriate place in the list of “Other Offices” and undertakes to make retrospective correction when it next makes an order that updates the list. **The Committee accordingly reports article 6(2) for defective drafting, acknowledged by the Department.**

9 S.I. 2017/1293: Reported for requiring elucidation

Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017

9.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they require elucidation in one respect (in addition to the ground on which they are reported in the next paragraph).**

9.2 These Rules provide for court procedure to underpin the operation of sections 303B–303Z in Chapter 3A of Part 5 of the Proceeds of Crime Act 2002 (POCA) relating to the seizure, detention and forfeiture of certain listed types of personal or moveable property that are the proceeds of unlawful conduct or intended for use in such conduct.

9.3 Section 303X of POCA provides that the Director of Public Prosecutions can agree to appear in proceedings on behalf of certain law enforcement agencies (including a constable). Rule 10 makes provision in respect of notifying the court in these circumstances but includes “an immigration officer” in the list. Since immigration officers are not listed in section 303X, the Committee asked the Ministry of Justice to explain the inclusion.

9.4 In a memorandum printed at Appendix 9, the Department explain that immigration officers are able to access the powers in Chapter 3A of Part 5 of POCA as a result of the operation of section 24(1) of the UK Borders Act 2007 (as amended by the Criminal Finances Act 2017) which provides that Chapters 3 to 3B of Part 5 of POCA apply in relation to an immigration officer as they apply in relation to a constable. The relevant amendments to section 24 come into force at the same time as these Rules. The Department further explain that during the drafting of the Rules, it was determined that referring to an immigration officer specifically in Rule 10 would aid clarity, for both law enforcement and court officers who will use the Rules. **The Committee accordingly reports Rule 10 for requiring the elucidation provided by the Department.**

10 S.I. 2017/1290: Reported for defective drafting

Magistrates' Courts (Freezing and Forfeiture of Terrorist Money in Bank and Building Society Accounts) Rules 2017

S.I. 2017/1291: Reported for defective drafting

Magistrates' Courts (Detention and Forfeiture of Cash) (Amendment) Rules 2017

S.I. 2017/1293: Reported for defective drafting and for requiring elucidation

Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017

S.I. 2017/1295: Reported for defective drafting

Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (Amendment) Rules 2017

10.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in six related respects.**

10.2 These Rules create magistrates' court rules to underpin provisions in the Anti-Terrorism, Crime and Security Act 2001 and the Proceeds of Crime Act 2002 relating to freezing, detention and forfeiture of cash or assets.

10.3 Paragraphs 7.4 of the Explanatory Memorandum for S.I. 2017/1291 and 7.6 of the Explanatory Memorandum for S.I. 2017/1295 state that references to “designated officers” in the court rules have been removed, and replaced with references to actions being taken by “the court”, to provide a less prescriptive approach to court procedure. The Committee asked the Ministry of Justice to explain whether the references to “designated officer” in the following rules should be removed:

- i. S.I. 2017/1290: Rules 5(4) and 7.
- ii. S.I. 2017/1291: Rule 5(c) (inserted paragraph 3A).
- iii. S.I. 2017/1293: Rule 17(6)(b).
- iv. S.I. 2017/1295: Rules 8 (inserted rule 7B) and 11 (inserted rule 9F(6)(b)).

10.4 In a memorandum printed at Appendix 10, the Department accepts that those references were retained in error and should be removed or amended (depending on the precise context) so as to operate as references to “the court” and undertakes to make such amendments at the next suitable opportunity. **The Committee accordingly reports the rules referred to in (i) to (iv) above for defective drafting, acknowledged by the Department.**

11 S.I. 2017/1297: Reported for requiring elucidation and for defective drafting

Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017

11.1 The Committee draws the special attention of both Houses to these Rules on the ground that they require elucidation in one respect and are defectively drafted in two related respects.

11.2 These Rules prescribe the procedure to be followed for applications to magistrates' court for orders under Chapter 3B of Part 5 of the Proceeds of Crime Act 2002 (POCA) which makes provision for forfeiture of money held in bank and building society accounts, where the money derives from, or is intended for use in, unlawful conduct.

11.3 Section 303Z19 of POCA provides that the Director of Public Prosecutions can agree to appear in proceedings under Chapter 3B on behalf of certain law enforcement agencies (including a constable). Rule 7 makes provision in respect of notifying the court in these circumstances but includes "an immigration officer" in the list. Since immigration officer is not listed in section 303Z19, the Committee asked the Ministry of Justice to explain the inclusion. The Committee also asked the Department whether the references to "Chapter 3A" in rules 2(d) and 7 should be to "Chapter 3B".

11.4 In a memorandum printed at Appendix 11, the Department gives the same explanation as in relation to S.I. 2017/1293 (reported in paragraphs 9.1–9.4), and the **Committee accordingly reports Rule 7 for requiring the elucidation provided by the Department.**

11.5 With regard to the cross-reference, the Department acknowledges that the references to "Chapter 3A" in rules 2(d) and 7 are erroneous, and should instead refer to "Chapter 3B", and mentions the possibility of a correction slip. The Committee is of the opinion that this would be a proper use of a correction slip, on the grounds that the error is sufficiently confusing to be worth correcting, and there can be no doubt at all about what the reference should have been. **The Committee accordingly reports Rules 2(d) and 7 for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 31 January 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

Instrument requiring affirmative approval

S.I. 2018/60 Andrey Lugovoy and Dmitri Kovtun Freezing Order 2018

Draft instruments requiring affirmative approval

Draft S.I. Enhanced Partnership Plans and Schemes (Objections) Regulations 2018

Draft S.I. Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018

Instruments subject to annulment

S.I. 2017/1280 Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017

S.I. 2017/1283 Transfer of Functions (International Development) Order 2017

S.I. 2017/1301 Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017

S.I. 2017/1305 Council Tax Reduction Schemes (Amendment) (England) Regulations 2017

S.I. 2017/1306 Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017

S.I. 2017/1309 Town and Country Planning (Permission in Principle) (Amendment) Order 2017

S.I. 2017/1310 Apprenticeships (Miscellaneous Provisions) Regulations 2017

S.I. 2017/1311 Export Control (Syria and Libya Sanctions) (Amendment) Order 2017

S.I. 2018/4 Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2018

S.I. 2018/8 Homes and Communities Agency (Transfer of Property etc.) Regulations 2018

S.I. 2018/11 M32 Motorway (Bus Lane and Speed Limit) Regulations 2018

S.I. 2018/15 Plant Health (Fees) (England) (Amendment) Regulations 2018

S.I. 2018/17 Public Lending Right Scheme 1982 (Commencement of Variation) Order 2018

S.I. 2018/21	Advanced Quality Partnership Schemes (England) Regulations 2018
S.I. 2018/22	Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018
S.I. 2018/29	Aerosol Dispensers (Amendment) Regulations 2018
S.I. 2018/30	Asylum Support (Amendment) Regulations 2018
S.I. 2018/39	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2018
S.I. 2018/42	Nuclear Installations (Prescribed Sites and Transport) Regulations 2018

Draft Instruments subject to negative procedure

Draft. S.I.	Rotherham (Electoral Changes) Order 2018
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Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2017/1217	Children and Social Work Act 2017 (Commencement No. 2) Regulations 2017
S.I. 2017/1275	Inspectors of Education, Children's Services and Skills (No. 5) Order 2017

Appendix 1

S.I. 2017/1160

Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2017

1. In its letter to the Department for Education of 17 January 2018, the Joint Committee requested a memorandum on the following point:

Confirm that "14" should be substituted for "31" "in both places it occurs" in relation to the amendment made by regulation 3(2)(c) and whether ", in both places it occurs," should be deleted in relation to the amendment made by regulation 3(3).

2. The Department agrees that the words "in both places it occurs" should be included at regulation 3(2)(c) and should be deleted from regulation 3(3). The Department thanks the Joint Committee for identifying this error, which will be rectified at the earliest possible opportunity.

Department for Education

23 January 2018

Appendix 2

S.I. 2017/1189

Higher Education (Fee Limit Condition) (England) Regulations 2017

1. The Committee has asked for a Memorandum from the Department for Education as follows:

Explain where the "Approved (fee cap)" part of the register referred to in regulations 2 and 3 is available.

2. This Memorandum has been prepared by the Department for Education. The Department is grateful to the Committee for the opportunity to provide a further explanation, and apologises that the status of the "Approved (fee cap)" part of the register is not sufficiently clear.

3. The register in question is the register required to be established and maintained by the Office for Students ("the OfS") under section 3 of the Higher Education and Research Act 2017 ("the Act"). The register does not yet exist. The obligation to create the register, and the related powers of the OfS to enter higher education providers in the register and to

divide the register into different parts, come into force at the same time as these regulations i.e. 1st April 2018.¹ From that date the OfS will begin to receive and assess applications for registration from higher education providers.

4. As to the Committee’s specific question, the OfS is required by section 3(9) of the Act to make the information contained in the register publicly available. We understand that the OfS will fulfil this obligation by publishing the register on its website as soon as the register is populated with the names of providers in different registration categories, including the “Approved (fee cap)” category. As soon as applications are approved the names of those providers will be entered on the register. It is anticipated, on current timings, that the register will be complete by the end of September 2018. The register will be available to prospective students as a tool for them to use when considering where to study.

5. The Department acknowledges that it would have been helpful had the Explanatory Memorandum for the regulations, or a footnote to the regulations themselves, contained the above information about the accessibility of the register and related timings. The Department therefore undertakes to provide this information provided in this manner in respect of other regulations that refer to the register in a similar way (for example, planned regulations under section 9 of the Act). It will also give further consideration as to how that information can readily be made available to readers of these regulations.

6. The Department acknowledges that it is unusual to refer in regulations to a document that does not yet exist. However, it believes that it is necessary to do so for the reasons set out in more detail below.

7. The first reason is that applicants for registration need to know before they make an application the consequences of applying for registration in each category of the register. As a result of the provision made by these regulations, providers entered by the OfS in the “Approved (fee caps)” part of the register will be subject to a condition of registration that requires its tuition fees to be subject to financial limits that will be prescribed in regulations to be made at a later date. Breach of that condition may lead to the imposition of sanctions, including monetary penalties, by the OfS.

8. Secondly, in order to fulfil its duty to create and maintain the register and to start considering applications for registration from 1st April 2018 the OfS itself will need to know which categories of provider has been prescribed by regulations. That is because, when registering providers after that date, the OfS needs to be clear about the providers on which it must impose mandatory fee limits as a condition of registration.

9. We hope that the Committee finds this memorandum helpful and is, of course, happy to provide any further assistance that the Committee requires.

Department for Education

23 January 2018

1 The OfS was established on 1 January 2018 by the Higher Education and Research Act 2017 (Commencement No. 1) Regulations 2017 – S.I. 2017/788. The intention to split the register into three categories: “Registered Basic”, “Approved” and “Approved (fee cap)” was set out in the consultation which the government conducted on behalf of the OfS: “Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education” issued on 19 October 2017.

Appendix 3

S.I. 2017/1199

Magistrates' Courts (Adult Protection and Support Orders) Rules 2017

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

Explain the reference to 1st December 2017 in rule 1(2) given that by the time the rules were signed, it was already clear that reliance would be placed on the later day in that rule.

2. This was an error and the Ministry of Justice apologises. It will take care to ensure that this error is not repeated in future instruments.

Ministry of Justice

23 January 2018

Appendix 4

S.I. 2017/1200

Control of Mercury (Enforcement) Regulations 2017

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

Explain whether (i) regulations 10(7)(d) and 13(7) should be expressly subject to regulation 15(2) and (ii) regulation 15(2) should also cover the withdrawal of the appeal.

Background to regulations 10, 13 and 15

2. Regulations 10 and 13 deal with civil penalty notices and costs recovery notices respectively. Each of these kinds of notice is appealable. Regulation 15 sets out further provision about appeals.

3. A person to whom a civil penalty notice or costs recovery notice is given must pay the amount referred to in the notice within a specified period (see regulations 10(7)(d) and 13(7)). The counting of days (for the purposes of determining the payment period) is “suspended” if one of those kinds of notice is appealed (see regulation 15(2)) and the counting resumes:

- a) if the appeal is withdrawn, when the appeal is withdrawn, or
- b) when the Tribunal hands down its decision.

4. Regulation 15(2) refers to a civil penalty notice or costs recovery notice which is the subject of an appeal being suspended pending the decision of the Tribunal but does not refer to the withdrawal of the appeal.

Point (i)

5. The Committee has asked whether regulations 10(7)(d) and 13(7) should be expressly subject to regulation 15(2).

6. The Department's view is that regulations 10(7)(d) and (9), 13(7) and (11) and 15, when read together, set out the policy sufficiently clearly, and that it follows that regulations 10(7)(d) and 13(7) do not, in order to make the drafting sufficiently clear, need to expressly be subject to regulation 15(2).

7. In the case of civil penalty notices, regulation 10(1) refers to the giving of a civil penalty notice. Paragraph (7)(d) contains the proposition that the civil penalty must be paid within a period of not less than 28 days which must be stated in the civil penalty notice. Paragraph (9) contains the proposition that a civil penalty notice is appealable. Regulation 15 deals (as the heading expressly states) with further provision about appeals. Regulation 15(2) contains the proposition that if a notice is appealed it is suspended pending the decision of the Tribunal.

8. The Department's view is that it can readily be inferred from the sequence of the propositions and the heading to regulation 15 (which clearly implies that it contains further detail about the situation where there is an appeal) that regulation 10(7)(d) is subject to regulation 15(2). It would have been possible to take an alternative drafting approach to cross-refer to the effect of regulation 15(2), but it is not necessary to do so.

9. The same argument applies in the case of costs recovery notices (see regulations 13(7) and (11)).

Point (ii)

10. The Committee asks whether regulation 15(2) should also cover the withdrawal of the appeal.

11. The Department's view is that regulation 15(2) does not, in order to make the drafting sufficiently clear, need to cover the withdrawal of the appeal.

12. Regulation 15(2) refers to the suspension of civil penalty notices and costs recovery notices pending the decision of the Tribunal. When an appeal is withdrawn there is no longer an appeal and it follows that there is no longer a decision of the Tribunal pending. As there is no longer a decision pending, it follows that the suspension in regulation 15(2) no longer applies. As the suspension no longer applies, it can be readily inferred that the counting of the days for the purposes of the payment period in regulation 10(7)(d) and 13(7) resumes.

Department for Environment, Food and Rural Affairs

23 January 2018

Appendix 5

S.I. 2017/1206

Radio Equipment Regulations 2017

1. In a letter dated 17 January 2018 the Joint Committee requested the Department for Business, Energy Industrial Strategy to provide a memorandum on the following point in the Radio Equipment Regulations 2017 (S.I. 2017/1206):

Explain why regulation 66(2) covers regulations dealing with cooperation with the authority concerned in relation to manufacturers (regulation 16) and distributors (regulation 35) but not importers (regulation 29).

2. The Department is grateful to the Committee for drawing this error to its attention and will seek to correct it and amend the Regulations to make these penalties consistent for all economic operators, at the earliest appropriate opportunity.

Department of Business, Energy Industrial Strategy

22 January 2017

Appendix 6

S.I. 2017/1219

Fishing Boats Designation (England) (Amendment) Order 2017

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

As this Order is correcting minor technical errors, explain why the free issue procedure was not used.

2. The reason why the Department did not use the free issue procedure was that it did not consider that the amendments fell within the scope of that procedure, on the basis that they were largely changes in policy intention; in other words, it did not consider that they corrected errors of such a kind as to attract the procedure for the free issue of a correcting instrument.

3. The Department has now reconsidered and agrees with the Committee on reflection that the amendments do correct earlier mistakes of a kind to which the procedure applies. The Department regrets that it did not use the free issue procedure on this occasion. It apologises for this omission and will contact the SI Registrar to make the financial arrangements necessary to enable free copies to be made available.

Department for Environment, Food and Rural Affairs

23 January 2018

Appendix 7

S.I. 2017/1251

Road Vehicles (Construction and Use) (Amendment etc.) (No. 2) Regulations 2017

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

Explain why a website address or an address where a hard copy of the emissions publication (referred to in regulation 2(2)) is available is not given in this instrument.

2. In its seventh Report of 2017–19, printed on 20th December 2017, the Committee reported S.I. 2017/943 for failure to comply with proper legislative practice. The basis for doing so was that despite the Explanatory Memorandum setting out where hard copies of the relevant Codes of Practice were available, this was not specifically referred to on the face of the instrument itself; even though it would have been easy to predict from the information provided.

3. In S.I. 2017/1251, which was made on 11th December 2017 and is the subject of this memorandum, the “emissions publication” was described as being entitled “In Service Exhaust Emission Standards for Road Vehicles – Nineteenth edition”, published by the Department for Transport with the ISBN number 978–1–84864–176–1. This statutory instrument was in the same format as several previous amending instruments in the series which had not attracted any adverse comment from the Committee. The Department acknowledges that of itself this does not prevent the Committee from raising matters currently that may not have been raised in the past.

4. In order to avoid the possibility of the incorrect edition of the manual being downloaded and used in testing, the nineteenth edition of the emissions publication is not currently available online but, in accordance with previous practice, the eighteenth edition will be replaced on gov.uk by the nineteenth edition immediately before the instrument comes into force.

5. Although it would again have been straightforward to anticipate from its description where the “emissions publication” might be accessed and hard copies made available, the Department accepts that it would have been better to have explained both the reasoning behind and the approach it proposed to take with regard to electronic publication as well as making it abundantly clear where hard copies were available.

6. The Committee will have noted that this instrument was made prior to the publication of its seventh Report, but following the Committee’s observations, the Department took steps to remind its drafting lawyers of the importance the Committee attaches to the accessibility of relevant documents and particularly the availability of hard copies for those without access to the internet.

Department for Transport

23 January 2018

Appendix 8

S.I. 2017/1261

Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2017

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

Explain why article 6(2) amends the list of “Other Bodies” and not the list of “Offices”.

2. The purpose of the Order is to add employments and offices to Schedule 1 to the Superannuation Act 1972 so that persons serving in those employments or holding those offices are eligible to be members of schemes made under section 1 of the Act, subject to the rules of those schemes.

3. Article 6(2) of the Order added the Ministerial Adviser on Gender-based Violence, Domestic Abuse and Sexual Violence and the Future Generations Commissioner for Wales to the Schedule “at the appropriate place in the list of “Other Bodies”. The Cabinet Office acknowledge that they should have been added at the appropriate place in the list of “Other Offices”, and is grateful to the Committee for pointing out this error.

4. The Cabinet Office will make a retrospective correction when it next makes an Order that updates the list; this is likely to be in early 2019. Retrospective provision is permitted by section 1 of the Act. However, prior to that correction, the error does not affect the effectiveness of the Order as the relevant offices are still included in the schedule to the Act and hence will be eligible to be members of the relevant pension schemes.

Cabinet Office

23 January 2018

Appendix 9

S.I. 2017/1293

Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017

1. This memorandum is submitted in response to a question from the Joint Committee on Statutory Instruments to the Ministry of Justice on 17 January 2017. The Committee asked:

Explain why an immigration officer is included in the list in Rule 10 when such officer is not referred to in section 303X of the Act.

2. Rule 10 accurately reflects the range of officeholders for whom the Director of Public Prosecutions may appear for under section 303X of the Proceeds of Crime Act 2002 (“POCA”), as the term “constable” in that section includes immigration officers.

3. Immigration officers are able to access the powers in Chapter 3A of Part 5 of POCA as a result of the operation of section 24 of the UK Borders Act 2007 (“UKBA”). As amended by the Criminal Finances Act 2017 (“CFA”), section 24(1) provides that Chapters 3 to 3B of Part 5 of POCA (civil recovery) apply in relation to an immigration officer as they apply in relation to a constable. Section 303X is within Chapter 3A, which was inserted by the CFA. The relevant amendments to section 24 of the UKBA will come into force at the same time as these Rules.

4. During the drafting of the Rules, it was determined that referring to an immigration officer specifically in Rule 10 would aid clarity, for both law enforcement and court officers who will use the Rules. It also removes any uncertainty as to whether section 24 of the UK Borders Act 2007 (which only modifies the application of certain provisions of POCA) would apply to references to “constable” in the Rules.

Home Office / Ministry of Justice

22 January 2018

Appendix 10

S.I. 2017/1290

Magistrates' Courts (Freezing and Forfeiture of Terrorist Money in Bank and Building Society Accounts) Rules 2017

S.I. 2017/1291

Magistrates' Courts (Detention and Forfeiture of Cash) (Amendment) Rules 2017

S.I. 2017/1293

Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017

S.I. 2017/1295

Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (Amendment) Rules 2017

1. On 17 January 2018, the Committee requested that the Ministry of Justice submit a memorandum on the following point:

Having regard to paragraphs 7.4 of the Explanatory Memorandum for S.I. 2017/1291 and 7.6 of the Explanatory Memorandum for S.I. 2017/1295, explain whether the references to “designated officer” in the following rules should be removed:

“Might not

- i. S.I. 2017/1290: Rules 5(4) and 7.
- ii. S.I. 2017/1291: Rule 5(c) (inserted paragraph 3A).
- iii. S.I. 2017/1293: Rule 17(6)(b).
- iv. S.I. 2017/1295: Rules 8 (inserted rule 7B) and 11 (inserted rule 9F(6) (b))”.

2. The Ministry of Justice is grateful to the Committee for highlighting the references to the “designated officer” in the relevant rules, and accepts that those references were retained in error and should be removed or amended (depending on the precise context) so as to operate as references to “the court”.

3. The effect of the references to the “designated officer” is to reduce the benefit of the less prescriptive approach which (as explained in the paragraphs of the Explanatory Memoranda highlighted by the Committee) the change to conferring the relevant function on “the court” was intended to provide. The rules will require amendment to correct the references to the “designated officer”, and this will be done at the next suitable opportunity.

Ministry of Justice

18 January 2018

Appendix 11

S.I. 2017/1297

Magistrates’ Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017

1. This memorandum is submitted in response to a question from the Joint Committee on Statutory Instruments to the Ministry of Justice on 17 January 2017. The Committee asked:

Explain (i) why an immigration officer is included in the list in Rule 7 when such officer is not referred to in section 303Z19 of the Act and (ii) whether the references to “Chapter 3A” in rules 2(d) and 7 should be to “Chapter 3B”.

2. Rule 7 accurately reflects the range of officeholders for whom the Director of Public Prosecutions may appear for under section 303Z19 of the Proceeds of Crime Act 2002 (“POCA”), as the term “constable” in that section includes immigration officers.

3. Immigration officers are able to access the powers in Chapter 3B of Part 5 of POCA as a result of the operation of section 24 of the UK Borders Act 2007 (“UKBA”). As amended by the Criminal Finances Act 2017 (“CFA”), section 24(1) provides that Chapters 3 to 3B of Part 5 of POCA (civil recovery) apply in relation to an immigration officer as they apply in relation to a constable. Section 303Z19 is within Chapter 3B, which was inserted by the CFA. The relevant amendments to section 24 of the UKBA will come into force at the same time as these Rules.

4. During the drafting of the Rules, it was determined that referring to an immigration officer specifically in Rule 7 would aid clarity, for both law enforcement and court officers who will use the Rules. It also removes any uncertainty as to whether section 24 of the UK Borders Act 2007 (which only modifies the application of certain provisions of POCA) would apply to references to “constable” in the Rules.

5. In respect of the committee’s second question, we acknowledge that the references to “Chapter 3A” in rules 2(d) and 7 are erroneous, and should instead refer to “Chapter 3B”. We are investigating whether these matters can be addressed in a correction slip, but in the event that this is not possible we will correct the errors at the next suitable opportunity.

Home Office / Ministry of Justice

22 January 2018