



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Fourth Report
of Session 2019–21**

Drawing special attention to:

Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 (S.I. 2019/1488)

Police (Complaints and Misconduct) Regulations 2020 (S.I. 2020/2)

Police (Performance) Regulations 2020 (S.I. 2020/3)

Criminal Legal Aid (General) (Amendment) Regulations 2020 (S.I. 2020/8)

Council Tax (Demand Notices) (England) (Amendment) Regulations 2020 (S.I. 2020/21)

Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2020 (S.I. 2020/27)

Criminal Procedure (Amendment) Rules 2020 (S.I. 2020/32)

Overseas Production Orders and Requests for Interception (Designation of Agreement) Regulations 2020 (S.I. 2020/38)

Housing Benefit and Universal Credit Housing Costs (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2020 (S.R. 2020/14)

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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](#), relating to Public Business.

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

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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.

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Instruments reported

At its meeting on 4 March 2020 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 nine 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. 2019/1488: Reported for defective drafting and for requiring elucidation

Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019

1.1 The Committee draws the attention of both Houses to these Regulations on the grounds that they are defectively drafted in one respect and require elucidation in another respect.

1.2 These Regulations implement a new EU Regulation on official controls in the agri-food chain that came into effect on 14 December 2019. Regulation 2 is an interpretation provision that includes, at paragraph 2, a definition of “zootechnical additives”. That term is not used anywhere else in the instrument. The Committee asked the Department for Environment, Food and Rural Affairs to explain why, in that case, the definition had been included. In a memorandum printed at Appendix 1, the Department acknowledges that the definition was included in error. **The Committee accordingly reports regulation 2(2) (b) for defective drafting, acknowledged by the Department.**

1.3 Regulation 10 provides that expenses incurred by the Secretary of State or a designated authority in enforcing these Regulations, or in carrying out measures under Articles 66, 67, 69 or 138 of the EU Regulation being implemented, “may” be recovered from a relevant business operator. It was not clear to the Committee whether the Department intended this discretionary cost recovery to be used routinely, and whether there might be a significant and avoidable burden on the taxpayer if it were not. The Committee asked the Department to explain whether routine cost recovery was intended. In its memorandum, the Department explains that the executive agency responsible for these policy areas “is a full cost recovery agency”, and that such expenses are therefore routinely recovered. **The Committee finds this reply helpful and accordingly reports regulation 10 for requiring elucidation, provided by the Department’s memorandum.**

2 S.I. 2020/2: Reported for defective drafting and for requiring elucidation

Police (Complaints and Misconduct) Regulations 2020

2.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in one respect and require elucidation in another respect.

2.2 These Regulations make provision about the handling and investigation of complaints concerning the police. The Committee asked the Home Office to confirm what wording should be used in regulation 7(2)(d) to allow it to flow accurately from the opening words. In a memorandum printed at Appendix 2, the Department explains that sub-paragraph (d) should begin with “which” and “it” should be omitted from the middle of the sentence and undertakes to amend regulation 7(2)(d) at the next available opportunity. **The Committee accordingly reports regulation 7(2)(d) for defective drafting, acknowledged by the Department.**

2.3 The Committee also asked the Department to explain what is intended to happen if the person required to attend the interview by virtue of regulation 21(7) does not attend and how effect is given to that intention. In its memorandum, the Department explains that in such a case the appropriate authority would determine whether such non-attendance was a breach of the Standards of Professional Behaviour (as defined in the Police (Conduct) Regulations 2020). The Department explains that it has issued updated guidance (“Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing”) which states (at paragraph 7.66) that “The officer concerned must attend the interview and it may be viewed as a further misconduct matter to fail to attend this interview”. Every legislative duty requires to be capable of being enforced by a sanction or other appropriate consequence; and where the instrument itself does not provide an express sanction, it is helpful for the accompanying explanatory material to clarify how compliance with the duty is to be ensured. **The Committee accordingly reports regulation 21(7) for requiring elucidation, provided by the Department’s memorandum.**

3 S.I. 2020/3: Reported for defective drafting

Police (Performance) Regulations 2020

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

3.2 These Regulations make provision about the procedures for investigating and managing poor performance by police officers and special constables (collectively referred to as “officers”). The Committee asked the Home Office to explain why, in a list separated by semi-colons, the penultimate item was separated by a comma in some cases (and a semi-colon in others, as in regulations 28(1) and 31(1)). In a memorandum printed at Appendix 3, the Department confirms that its drafting approach to punctuation at the end of a list is to use a comma where a conjunction follows, but a semi-colon where no conjunction follows. It acknowledges and proposes to correct the internal inconsistency where this approach was not followed. The Committee’s preference is for legislation to comply with standard rules of grammar and punctuation, which would normally call for all equal items in a list to be separated by the same type of mark. But the Committee is clear that even where a Department opts to deviate from the standard, usage should be consistent within the instrument to avoid potential for confusion. **The Committee accordingly reports regulations 28(1)(d) and 31(1)(j) for defective drafting, acknowledged by the Department.**

3.3 Where performance proceedings are begun on the basis of a line manager's decision that an officer's performance is unsatisfactory, or not sufficiently improved, the Regulations impose a duty to provide to that officer a copy of any document that the line manager relied on to make the decision. Regulation 12(7) includes a list documents caught by this duty. It was not clear to the Committee, having regard to regulation 12(1)(b)(i) (and regulation 12(7)(a)), why that list does not include an authority's determination, under paragraph 24(6) or 24C(4) of Schedule 3 to the Police Reform Act 2002, that the officer's performance is unsatisfactory. The Committee asked the Department to explain the omission. In its memorandum, the Department acknowledges that regulation 12(7) ought to have included a duty to that effect and undertakes to rectify the omission at the next available opportunity. **The Committee accordingly reports regulation 12(7) for defective drafting, acknowledged by the Department.**

3.4 Regulation 14(1)(b)(i) provides for provisions to be modified by way of substitution. The Committee asked the Department to explain which part of those provisions is intended to be modified given that regulation 14(1)(b)(i) appears to contain an incorrect cross-reference. In its memorandum, the Department acknowledges the error and undertakes to remedy it at the next available opportunity. **The Committee accordingly reports regulation 14(1)(b)(1) for defective drafting, acknowledged by the Department.**

4 S.I. 2020/8: Reported for failure to comply with proper legislative practice

Criminal Legal Aid (General) (Amendment) Regulations 2020

4.1 **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.**

4.2 These Regulations make legal aid available in relation to the making, varying, discharging, renewing and appealing of stalking protection orders. The Regulations were laid before Parliament on 7 January 2020 and came into force on 20 January 2020. The Committee asked the Ministry of Justice to explain why it was not possible to make these regulations earlier so that the 21-day rule could have been complied with. In a memorandum printed at Appendix 4, the Department explains that the regulations had to come into force on 20 January 2020 to ensure that there was no gap in criminal legal aid provision on commencement of the Stalking Protection Act 2019 and that the instrument was laid "at the earliest opportunity" after the original scheduled laying date of 12 December 2019 (which was no longer possible due to the General Election). The Committee is not clear why 7 January 2020 was the earliest opportunity to lay the instrument given that it was possible to lay instruments before Parliament from 17 December 2019. In its First Special Report of Session 2017–19, *Transparency and Accountability in Subordinate Legislation*, the Committee (at paragraph 2.20) states that problems or delays within Government will not generally be regarded as justification for breach of the 21-day rule. **The Committee accordingly reports these regulations for failure to comply with proper legislative practice.**

5 S.I. 2020/21: Reported for requiring elucidation

Council Tax (Demand Notices) (England) (Amendment) Regulations 2020

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

5.2 These Regulations provide for information supplied with council tax demand notices for financial years from 2020–21 to contain updated explanatory text about council tax charged to fund expenditure on adult social care (the ASC Precept). The Committee asked the Ministry of Housing Communities and Local Government to explain why the Government’s intention (announced in the 2019 Spending Review) to make the ASC Precept available again in 2020–21 (paragraph 7.4 of the Explanatory Memorandum) is not reflected in the new paragraph 9 added by regulation 2(3). In a memorandum printed at Appendix 5, the Department provides an explanation which the Committee regards as helpful, while noting that the approach is different from that taken in paragraph 8 of Schedule 2 to S.I. 2011/3038. **The Committee accordingly reports regulation 2.3 for requiring elucidation, provided by the Department’s memorandum.**

6 S.I. 2020/27: Reported for failure to comply with proper legislative practice

Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2020

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 changes to the determination of local housing allowance in Great Britain. The Order was laid before Parliament on 13 January 2020 and came into force on 30 January 2020. The Committee asked the Department for Work and Pensions to explain why it was not possible to make this Order earlier so that the 21-day rule could have been complied with. In a memorandum printed at Appendix 6, the Department explains that decisions regarding changes to local housing allowance were delayed by the General Election and that the Order needed to come into force before the last working day of January which was when rent officers had to publish the new local housing allowance rates that will be effective from 1 April 2020. Although the Committee understands the delay caused by the General Election, this Order was laid more than a month after that election and could have complied with the 21-day rule if it had been laid four days earlier. In its First Special Report of Session 2017–19, *Transparency and Accountability in Subordinate Legislation*, the Committee (at paragraph 2.20) states that problems or delays within Government will not generally be regarded as justification for breach of the 21-day rule. **The Committee accordingly reports these regulations for failure to comply with proper legislative practice.**

7 S.I. 2020/32: Reported for doubtful vires and for defective drafting

Criminal Procedure (Amendment) Rules 2020

7.1 The Committee draws the special attention of both Houses to these Rules on the grounds that there is doubt whether they are *intra vires* in one respect and that they are defectively drafted in another respect.

7.2 These Rules amend the Criminal Procedure Rules 2015 to include (among other things) the addition of new rules that allow authorised court staff to exercise certain judicial functions (rule 3(e)). The enabling power for these new rules is section 67B(1) of the Courts Act 2003. The Committee asked the Ministry of Justice to explain why section 67B of the Courts Act 2003 is not cited as an enabling power in the preamble to this instrument. In a memorandum printed at Appendix 7, the Department refers to rule 12 of this instrument which inserts the relevant citation into the preamble to the 2015 Rules (rather than including section 67B in the preamble to these Rules). The Department cites previous instances where this approach has also been taken. The Committee does not consider that this is the proper approach. Although amending the preamble to the 2015 Rules is helpful, it is the preamble to the amending instrument that is required as a matter of law (*Vibixa Ltd and another v Komori UK Ltd and others* [2006] EWCA Civ 536) and practice to cite every enabling provision relied on. Since the decision of the Court of Appeal in *Vibixa*, preambles have been relevant not merely to legislative practice but also to *vires*: a failure to cite a provision relied on might result in a decision that a provision is *ultra vires*. **Accordingly, the Committee reports these Rules on the ground that the omission from the preamble gives rise to doubts whether they are *intra vires*.**

7.3 The Committee also asked the Department whether the phrase “including arrangements for publication by electronic means” (in new rules 5.8 (9)(b)(ii) and (11)(b)(i) inserted by rules 5(c) and (d)), is intended to impose a requirement to make arrangements for electronic publication or to give a discretion. In its memorandum, the Department explains that each paragraph “imposes on the court officer an obligation to publish by means of arrangements that the Lord Chancellor, in the latter’s discretion may direct, including, among any such arrangements, any which may direct publication by electronic means.” The Committee understands that this is the intention of the drafting but is not convinced that the wording reflects that intention. As drafted, the phrase “including arrangements for publication by electronic means” could mean either that the arrangements directed by the Lord Chancellor must include arrangements for electronic publication or that they may include such arrangements. **The Committee accordingly reports rules 5(c) and (d) for defective drafting.**

8 S.I. 2020/38: Reported for failure to comply with proper legislative practice

Overseas Production Orders and Requests for Interception (Designation of Agreement) Regulations 2020

8.1 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.

8.2 These Regulations provide for the designation of a bilateral treaty on access to electronic data for the purposes of countering serious crime, agreed between the United Kingdom and the United States in 2019. The treaty was laid before Parliament as required by statute, and it is cited in these Regulations by its command paper number. The Committee asked the Home Office to explain why an address where a hard copy can be inspected free of charge is not given in the instrument, having regard to paragraphs 4.5 to 4.8 of the Committee's First Special Report of Session 2017–19. In a memorandum printed at Appendix 8, the Department agrees that this information was omitted in error, undertakes to correct it (possibly by correction slip), and affirms that it is taking steps to minimise the risk of similar errors in future. The Committee is of the view that this rectification can properly be done by correction slip. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

9 S.R. 2020/14: Reported for failure to comply with proper legislative practice and for defective drafting

Housing Benefit and Universal Credit Housing Costs (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2020

9.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they fail to comply with proper legislative practice in one respect and are defectively drafted in another respect.**

9.2 These Regulations make changes to the determination of local housing allowance in Northern Ireland. The Regulations were laid before Parliament on 15 January 2020 and came in to force on 30 January 2020. The Committee asked the Department for Work and Pensions to explain why it was not possible to make these regulations earlier so that the 21-day rule could have been complied with. In a memorandum printed at Appendix 9, the Department gives the same explanation as for S.I. 2020/27 above but notes that the Regulations were laid two days later than that instrument because the Department for Communities in Northern Ireland needed to take in to account the version for Great Britain before finalising the version for Northern Ireland. For the same reasons stated in the report on S.I. 2020/27 above, **the Committee reports these regulations for failure to comply with proper legislative practice.**

9.3 The Committee also asked the Department to clarify the reference to “paragraph 3” in regulation 2(3) (inserted sub-paragraph (2)(a)). In its memorandum, the Department acknowledges that the reference to “paragraph 3” should have been a reference to “sub-paragraphs (4) to (8)”. The Department states: “Correcting the Order at this stage would not change the way in which the provisions were applied by the Rent Officers at the end of January 2020, who implemented the methodology for determining rents at the 30th percentile as set out in sub-paragraphs (4) to (8). The provisions are not applied by Rent Officers again after the end of January 2020.” The Committee is concerned that the Department appears untroubled by the fact that the law was administered in a form in which the Government wished it had made it, and not in the form in which it was actually made; the Government also appears to overlook the fact that while Rent Officers may have no further call to apply this provision, there remains the possibility of future challenge to their past actions. **The Committee accordingly reports regulation 2(3) for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 4 March 2020 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.	Buckinghamshire (Structural Changes) (Supplementary Provision and Amendment) Order 2020
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Instruments subject to annulment

S.I. 2020/80	Communications (Television Licensing) (Amendment) Regulations 2020
S.I. 2020/82	Civil Procedure (Amendment) Rules 2020
S.I. 2020/83	School and Early Years Finance (England) Regulations 2020
S.I. 2020/85	M62 Motorway (Junctions 10 to 12) and M602 Motorway (Junction 1) (Variable Speed Limits) Regulations 2020
S.I. 2020/94	Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020
S.I. 2020/96	Electricity and Gas (Internal Markets) Regulations 2020
S.I. 2020/98	Authorised Court Staff (Legal Advice Functions) Qualifications Regulations 2020
S.I. 2020/100	Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (Consequential, Transitional and Saving Provision) Regulations 2020
S.I. 2020/101	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2020
S.I. 2020/102	Employment and Support Allowance (Transitional Provisions) (Amendment) Regulations 2020
S.I. 2020/109	Trade in Animals and Related Products (Amendment) Regulations 2020
S.I. 2020/115	Carbon Accounting (Provision for 2018) Regulations 2020
S.I. 2020/117	Financial Services and Markets Act 2000 (Central Counterparties, Investment Exchanges, Prospectus and Benchmarks) (Amendment) Regulations 2020
S.I. 2020/123	Local Government Pension Scheme (Buckinghamshire Structural Changes) (Amendment) Regulations 2020

Instrument not subject to Parliamentary proceedings not laid before Parliament

S.I. 2020/5	Policing and Crime Act 2017 (Commencement No. 10 and Transitional and Saving Provisions) Regulations 2020
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Appendix 1

S.I. 2019/1488

Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019

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

Explain why regulation 2(2)(b) defines “zootechnical additives” given that this term is not used in the definition of “relevant legislation” in paragraph (1).

In relation to regulation 10, explain whether:

- a) *it is intended that these expenses will routinely be recovered from the relevant business operator;*
- b) *if not, why not; and*
- c) *if so, how effect is given to that intention*

2. The Department accepts that the definition of “relevant legislation” as it appears in the instrument in its final form does not contain the phrase “zootechnical additives”, and the definition of the latter term should therefore have been removed. The Department regrets this oversight.

3. In answer to the questions in relation to regulation 10—

- a) the Department’s executive agency, the Animal and Plant Health Agency, which is the main delivery arm for the majority of the areas covered by the official controls requirements, is a full cost recovery agency, and these expenses are therefore routinely recovered;
- b) the person or operator found to be non-compliant will be sent a notice stating the non-compliance revealed during the official controls checks, and requiring the person or operator responsible for the non-compliance to reimburse expenses incurred by the competent authority in dealing with the matter. An invoice is subsequently sent which sets out the expenses incurred by the authority.

Department for Environment, Food and Rural Affairs

17 February 2020

Appendix 2

S.I. 2020/2

Police (Complaints and Misconduct) Regulations 2020

1. By letter dated 12 February 2020, the Joint Committee on Statutory Instruments has requested a memorandum on the following points:

(1) Explain the reason for using a comma after the penultimate item in a list rather than the semi-colon used as between earlier entries. (Examples include regulations 6, 11(2)(b), 13(4), 17(1) and 23(2) and (3).)

(2) Confirm what wording should be used in regulation 7(2)(d) to allow it to flow accurately from the opening words of regulation 7(2).

(3) Explain whether paragraphs (a) to (d) of regulation 12 are intended to be cumulative or alternative.

(4) Explain what is intended to happen if the person required to attend the interview by virtue of regulation 21(7) does not attend and how effect is given to that intention.

2. In response to point (1), the drafting approach to punctuation at the end of the penultimate item, or at the end of the first of two items, in a list has been to use a comma where a conjunction follows (as in the examples you have cited) but a semicolon where no conjunction follows (e.g. in regulations 2(1)(e), 4(1)(a), 7(1) and (4), 11(4), 14(4) and 21(2) and (3)).

3. In response to point (2), sub-paragraph (d) should begin with “which,” and “it” should be omitted from the middle of the sentence.

4. In response to point (3), paragraphs (a) to (d) of regulation 12 are not intended to be cumulative or fully alternative. If a person has an appropriate level of knowledge, skills and experience to plan and manage the investigation and so satisfies the test in paragraph (a), the prohibition on that person’s appointment nevertheless still applies if one or more of paragraphs (b), (c) and (d) applies in relation to that person. More than one of paragraphs (b), (c) and (d) may apply in relation to a person but only one of those paragraphs needs to be satisfied for the prohibition to apply (or none of them if the person does not satisfy the test in paragraph (a)).

5. In response to point (4), if the person required to attend the interview by virtue of regulation 21(7) does not attend, the intention is that the appropriate authority (“AA”) should determine whether such non-attendance is a breach of the “Standards of Professional Behaviour” which (as provided by the definition in regulation 1(2)) has the same meaning as in the Police (Conduct) Regulations 2020 (S.I. 2020/4). That meaning is set out in Schedule 2 to those Regulations and includes a standard relating to “Orders and Instructions” that “Police officers abide by police regulations, force policies and lawful orders”. If the AA (normally a person in the force’s Professional Standards Department) considers that, in the circumstances of the case, non-attendance at interview is a breach of

the Standards of Professional Behaviour, they would be expected to consider whether such a breach would justify bringing disciplinary proceedings separate to, or as part of, any disciplinary proceedings that may flow from the matter under investigation and to which the proposed interview related. The Home Office has issued updated Guidance (“Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing”) to support the application of the legislative changes that came into effect on 1 February 2020 and paragraph 7.66 of the Guidance states that “The officer concerned must attend the interview and it may be viewed as a further misconduct matter to fail to attend this interview”.

6. In light of point (2), we propose to amend regulation 7(2)(d) at the next available opportunity.

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

Home Office

18 February 2020

Appendix 3

S.I. 2020/3

Police (Performance) Regulations 2020

1. By letter dated 12 February 2020, the Joint Committee on Statutory Instruments has requested a memorandum on the following points:

(1) Explain the reason for using a comma after the penultimate item in a list rather than the semi-colon used as between earlier entries. (Examples include regulations 4(3), 7, 16(1), 17(6) and 23(1); for contrast see regulations 28(1) and 31(1).)

(2) In relation to regulation 12(7), explain why there is no duty to provide the police officer with a copy of any determination of the appropriate authority under paragraph 24(6) or 24C(4) of Schedule 3 to the Police Reform Act 2002, in particular having regard to the duties in regulation 12(1)(a) and (b).

(3) In relation to regulation 14(1)(b)(i), explain which part of paragraphs (2)(a) and (3)(a) is intended to be modified given that the words “(1)(c) or (d)” do not appear in either paragraph.

2. In response to point (1), the intended drafting approach to punctuation at the end of the penultimate item, or at the end of the first of two items, in a list has been to use a comma where a conjunction follows but a semicolon where no conjunction follows. In view of this, we acknowledge the internal inconsistency in the use of a semicolon, rather than a comma, at the end of each of regulations 28(1)(d) and 31(1)(j).

3. In response to point (2), the duty to provide documents under regulation 12(7) should, having regard to the duties under regulation 12(1)(a) and (b) and, in particular, regulation 12(1)(b)(i), include a duty to provide the police officer with a copy of any determination of the appropriate authority under paragraph 24(6) or 24C(4) of Schedule 3 to the Police Reform Act 2002.

4. In response to point (3), we acknowledge this incorrect cross-reference. In relation to each of paragraphs (2)(a) and (3)(a) of regulation 12, the modification by substitution in regulation 14(1)(b)(i) was intended to apply to the words from “the determination” to “or (v)” (and not to the words “(1)(c) or (1)(d)” which, as you correctly note, do not appear in either paragraph).

5. Accordingly, we propose to amend regulations 12(7) and 14(1)(b)(i) at the next available opportunity and to amend the punctuation at the end of regulations 28(1)(d) and 31(1)(j) in any future consolidation of the Regulations.

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

Home Office

18 February 2020

Appendix 4

S.I. 2020/8

Criminal Legal Aid (General) (Amendment) Regulations 2020

1. In consideration of the above instrument, the Committee has requested further information on the following point:

Explain why it was not possible to make these regulations earlier so that the 21-day rule could have been complied with.

Background

2. The Criminal Legal Aid (General) (Amendment) Regulations 2020 were laid in parliament on 7 January 2020 and came into force on 20 January 2020, the same day on which the Stalking Protection Act 2019 (SPA) came into force. The SPA introduced new Stalking Protection Orders (SPOs).

3. The purpose of the instrument is to make legal aid available in relation to the making, varying, discharging, renewing and appealing of SPOs and interim SPOs, which were introduced by the SPA.

4. The Ministry regrets that the instrument was laid less than 21 days before they came into force.

Why the instrument could not have been made and laid sooner:

5. This instrument was initially scheduled to be laid on the 12 December 2019 such that it would come into force in good time before the SPA (led by the Home Office) came into force. This laying date was agreed in conjunction with the Home Office SPA Implementation Group prior to the General Election being called. The Group worked on the basis that plans for commencement should continue as agreed, unless and until an election was called.

6. The General Election was called on 31 October 2019 and Parliament was dissolved on 6 November 2019 which meant the 12 December laying date was no longer possible. The instrument was laid at the earliest opportunity after this.

Why the instrument had to come into effect on the day specified:

7. The Ministry regrets and apologises to the Committee that the instrument was laid less than 21 days before it came into force on this occasion.

8. The Ministry felt it necessary for the instrument to come into force on the specified date to ensure there was no gap in criminal legal aid provision on commencement of the SPA, and to ensure the Government was meeting its obligations to ensure access to justice and its duties under Article 6 of the European Convention on Human Rights. Any delay would have resulted in a delay to the SPA's commencement, thus delaying the introduction of SPOs. The Ministry notes the first SPO was served at Brighton Magistrates Court on the 20 January 2020 (i.e. the first day of the SPA's commencement).

9. SPOs provide the police with a vital additional tool with which to protect victims of stalking and aim to prevent harmful behaviour escalating in severity. Any delay to commencement could have had significant adverse consequences for victims.

Ministry of Justice

18 February 2020

Appendix 5

S.I. 2020/21

Council Tax (Demand Notices) (England) (Amendment) Regulations 2020

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

Explain why the Government's intention (announced in the 2019 Spending Review) to make the ASC Precept available again in 2020–21 (paragraph 7.4 of the Explanatory Memorandum) is not reflected in the new paragraph 9 added by regulation 2(3) in the same way as paragraph 8 of Schedule 2 to S.I. 2011/3038.

Summary

2. The drafting of new paragraph 9 of Schedule 2 to the Council Tax (Demand Notices) (England) Regulations 2011 and paragraph 7.4 of the Explanatory Memorandum for the Council Tax (Demand Notices) (England) (Amendment) Regulations 2020 was intended to reflect the Government's policy on council tax billing and the Adult Social Care Precept while not pre-empting the outcome of the upcoming Spending Review and any future decisions taken by the House of Commons.

Background

3. Following an announcement at the Spending Review and Autumn Statement 2015, the Secretary of State made an offer to local authorities responsible for providing adult social care ['ASC authorities']. The offer was the flexibility to increase council tax by an additional 2% each year from 2016–17 to 2019–20 without requiring approval in a local council tax referendum. This offer and the resulting council tax charge has subsequently been referred to as the 'Adult Social Care Precept' ['ASC Precept']. The offer is given effect to for a financial year in principles that are set out in a report of the Secretary of State, laid before the House of Commons for approval under section 52ZD(1) of the Local Government Finance Act 1992.
4. The Secretary of State made regulations in 2016¹ and 2017² requiring information about the ASC Precept to be shown on council tax demand notices. This included the cumulative cash amount of ASC Precept charged since 2016–17, and the percentage of the authority's overall annual council tax increase attributable to it. The regulations also prescribed text which must be included in the information supplied with demand notices [the 'council tax leaflet'] in order to explain the ASC Precept offer—and its duration—to council taxpayers.
5. The 2019 Spending Review announced the Government's intention to continue the ASC Precept in 2020–21. This necessitated making new regulations to ensure that the prescribed text in council tax leaflets did not give a misleading impression that the ASC Precept ceased in 2019–20.

1 The Council Tax (Demand Notices) (England) (Amendment) Regulations 2016 [SI 2016/188]

2 The Council Tax (Demand Notices) (England) (Amendment) Regulations 2017 [SI 2017/13]

The Government's policy

6. The Government's policy is that demand notices should continue to show information about the cumulative amount of ASC Precept charged since 2016–17 as well as the percentage of the authority's overall annual council tax increase attributable to it. Where the Secretary of State makes an offer of further ASC Precept flexibility for a given year, the amounts shown on demand notices should incorporate the authority's use of it.

7. The text prescribed at new paragraph 9 reflects this policy. It makes no mention of particular years as the availability of ASC Precept flexibility will be shaped by the outcome of other wider matters such as the upcoming Spending Review and decisions about funding for local government which will be taken by the Secretary of State and the House of Commons. In relation to the financial year 2020–21 the House of Commons has yet to debate the Referendums Relating to Council Tax Increases (Principles) (England) Report 2020–21 (HC 70).

8. Paragraph 7.4 of the Explanatory Memorandum was intended to provide information about the context in which the ASC Precept and updated regulations will operate. It therefore explained the Secretary of State's intention to offer the ASC Precept flexibility in 2020–21 (which could only be described as an intention until the Report referred to in paragraph 7 above had been approved), and indicated that any offers made beyond that date would be a matter for the Secretary of State and the House of Commons.

Ministry of Housing, Communities and Local Government

17 February 2020

Appendix 6

S.I. 2020/27

Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2020

1. In its letter to the Department of 12th February 2020, the Committee requested a memorandum on the following point:

Explain why it was not possible to make these regulations earlier so that the 21-day rule could have been complied with.

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

3. Decisions regarding changes in Local Housing Allowance rates were delayed by the General Election, and a decision was not reached until January. This Order needed to come into force by the last working day in January so that the rates could come into effect on the following 1st April, in accordance with article 4B(2B) of the Rent Officers (Housing Benefit) Order 1997 (S.I. 1997/1984). The Department apologises for this breach, and that only a brief explanation was provided in the Explanatory Memorandum.

Department for Work and Pensions

18 February 2020

Appendix 7

S.I. 2020/32

Criminal Procedure (Amendment) Rules 2020

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

(1) Explain why section 67B of the Courts Act 2003 is not cited as an enabling power in the preamble to this instrument.

(2) In new rules 5.8 (9)(b)(ii) and (11)(b)(i) (inserted by rules 5(c) and (d)), is the phrase “including arrangements for publication by electronic means” intended to impose a requirement to make arrangements for electronic publication or to give a discretion?

Question (1)

2. Rule 3 of this instrument inserts into the Criminal Procedure Rules 2015, S.I. 2015/1490, rules made in exercise of the power conferred by section 67B of the Courts Act 2003. Therefore rule 12 of the instrument inserts the relevant citation into the preamble to those Rules. For previous comparable instances, see the Criminal Procedure (Amendment) Rules 2016, S.I. 2016/120 (listed in the Annex to the Committee’s Nineteenth Report of session 2015–16, published on 4th March, 2016); the Criminal Procedure (Amendment No. 4) Rules 2017, S.I. 2017/915 (listed in the Annex to the Committee’s Second Report of session 2017–19, published on 17th November, 2017); and the Criminal Procedure (Amendment) Rules 2018, S.I. 2018/132 (listed in the Annex to the Committee’s Fourteenth Report of session 2017–19, published on 2nd March, 2018).

Question (2)

3. The phrase to which the Committee refers is a subset of a discretion. As amended by rule 5(c) of this instrument, rule 5.8(9) of the Criminal Procedure Rules 2015 will read, as far as material and with emphasis supplied, “Where a case is due to be heard in public, the court officer must ... (b) publish [*the information listed in paragraph (10) of rule 5.8*] for no longer than 5 business days ... (ii) by such arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means, but only to the extent needed to comply with paragraph (1)(a).” As amended by rule 5(d) of this instrument, rule 5.8(11) of the 2015 Rules will read, again as far as material and with emphasis supplied, “Where a case is ready to be tried without a hearing under rule 24.9 (Single justice procedure: special rules), the court officer must ... (b) publish [*the information listed in paragraph (12) of rule 5.8*] for no longer than 5 business days (i) by such arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means, but (ii) only to the extent needed to comply with paragraph (1)(a).” Each paragraph thus imposes on the court officer an obligation to publish by means of arrangements that the Lord Chancellor, in the latter’s discretion, may direct, including, among any such arrangements, any which may direct publication by electronic means; in each instance subject to the proviso that refers to rule 5.8(1)(a); and in each instance in terms that, while respecting the Lord Chancellor’s discretion, convey the Rule Committee’s expectation that that discretion will be exercised. The phrase “by such arrangements as the Lord Chancellor directs” has

appeared in successive instruments containing Criminal Procedure Rules since 2011 and the phrase “by such arrangements as the Lord Chancellor directs, including arrangements for publication by electronic means” in successive instruments since 2014.

Ministry of Justice

17 February 2020

Appendix 8

S.I. 2020/38

Overseas Production Orders and Requests for Interception (Designation of Agreement) Regulations 2020

1. By letter dated 12 February 2020, the Joint Committee on Statutory Instruments has requested a memorandum on the following point:

Explain why an address where a hard copy of the Agreement can be inspected free of charge is not given in the instrument (see paragraphs 4.5 to 4.8 of the Committee's First Special Report of Session 2017–19).

2. The Department is grateful to the Committee for drawing attention to this matter. We agree that it should have been made clear that hard copies are available from the Department on request by writing to the Office for Security and Counter-Terrorism, Home Office, Peel Building, 2 Marsham Street, London, SW1P 4DF. We will explore with the SI Registrar whether it is appropriate to revise the Explanatory Note by way of a correction slip (having noted the views of the Committee on the potential appropriateness of using a correction slip in this way – paragraph 3.13 of the First Special Report of Session 2017–19).

3. The Department is taking further steps to ensure that drafters and checkers are fully aware of the views of the Committee on this point so as to minimise the risk of a similar error being made by the Department in the future.

Home Office

13 February 2020

Appendix 9

S.R. 2020/14

Housing Benefit and Universal Credit Housing Costs (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2020

1. In its letter to the Department of 12th February 2020, the Committee requested a memorandum on the following points:

(1) Explain why it was not possible to make these regulations earlier so that the 21-day rule could have been complied with.

(2) Clarify the reference to “paragraph 3” in regulation 2(3) (inserted sub-paragraph (2)(a)).

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

3. As noted above, the delays for these Regulations were due to the General Election. S.R. 2020/14 was laid 2 days later than S.I. 2020/27 because the Department for Communities in Northern Ireland needed to take into account the version for Great Britain before finalising the version for Northern Ireland.

4. Thank you for drawing the second point to our attention. The reference to “paragraph 3” in regulation 2(3) is an error. The reference should have been to “sub-paragraphs (4) to (8)”. The NI Housing Executive has been alerted to this error. Correcting the Order at this stage would not change the way in which the provisions were applied by the Rent Officers at the end of January 2020, who implemented the methodology for determining rents at the 30th percentile as set out in sub-paragraphs (4) to (8). The provisions are not applied by Rent Officers again after the end of January 2020. The Department apologises for this error.

Department for Work and Pensions

18 February 2020