



House of Lords
House of Commons
Joint Committee
on Statutory Instruments

**Twenty-First Report
of Session 2019–21**

Drawing special attention to:

Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643)

Patents, Trade Marks and Registered Designs (Fees) (Coronavirus) (Amendment) Rules 2020 (S.I. 2020/644)

Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2020 (S.I. 2020/662)

Secure Training Centre (Coronavirus) (Amendment) Rules 2020 (S.I. 2020/664)

Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations 2020 (S.I. 2020/710)

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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 9 September 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 five 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. 2020/643: Reported for doubtful vires

Limited Liability Partnerships (Amendment etc.) Regulations 2020

1.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that there is doubt as to whether they are *intra vires* in one respect.**

1.2 These Regulations apply the new restructuring and insolvency measures introduced by the Corporate Governance and Insolvency Act 2020 to limited liability partnerships. One of the enabling powers cited in the preamble is section 16 of the Limited Liability Partnerships Act 2000. Regulations under section 16 are subject to the draft affirmative procedure, but this instrument was not approved in draft. The Committee asked the Department for Business, Energy and Industrial Strategy to explain. In a memorandum printed at Appendix 1, the Department asserts that section 16 was cited in error and that the Department does not rely on that section to make these regulations. The Department “does not consider that this error has any effect on the validity of the regulations”. The Committee disagrees. As *Craies on Legislation* explains (11th Edition, para.3.3.5.1) it used to be the general view of government lawyers that “the preamble, not being part of the text of the instrument, had no legal effect”; but that view could not survive the decision of the Court of Appeal in *Vibixa Ltd and Polestar Jowetts Ltd v Komori UK Ltd* [2006] EWCA Civ 536 which attributes legal effect to preambles. (The reasoning of the Northern Ireland case cited by the Department relates to rectification of obvious drafting mistakes and not to the legal status of preambles; and it was decided before and without reference to *Vibixa*.) In this case, the instrument purports to be made in partial reliance on a provision which requires draft affirmative resolution and *prima facie*, therefore, the statutory precondition of laying in draft for Parliamentary approval has not been complied with and the instrument is void. A mere assertion after the event by the Department that it was not relying on that provision does not change the position (and the Committee rejects the Department’s suggestion that it would be appropriate to attempt to validate the instrument retrospectively by administrative action in the form of a correction slip amending the preamble). Whether the instrument can be saved by rectification in accordance with the rule in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586, 592 HL or on other grounds is a matter for the courts; in the meantime, **the Committee reports the instrument on the grounds that there is doubt as to whether it is *intra vires*.**

2 S.I. 2020/644: Reported for unusual or unexpected use of enabling powers

Patents, Trade Marks and Registered Designs (Fees) (Coronavirus) (Amendment) Rules 2020

2.1 **The Committee draws the special attention of both Houses to these Rules on the ground that that they make unusual or unexpected use of the enabling power in one respect.**

2.2 These Rules reduce temporarily certain fees charged by the Intellectual Property Office in relation to patents, trade marks and designs (in most cases to zero). Rule 11 (inserted rule 3A(2)(b)) reduces the fee payable on a delayed renewal of registration to £1 rather than zero as there is a statutory requirement to pay a fee in section 43(3) of the Trade Marks Act 1994 (“an additional fee must also be paid”). The Committee asked the Department for Business, Energy and Industrial Strategy to explain why, if there is an independent statutory duty to charge a fee, the Department believes that the duty is satisfactorily complied with as a matter of administrative law by a requirement to pay a notional amount. In a memorandum printed at Appendix 2, the Department asserts that the level of the fee is within the discretion of the Secretary of State and that the reduction to £1 for a limited period satisfies the statutory duty. The Committee does not consider this a rational discharge of the duty (in the administrative law sense of the term). Either there is a legal duty to charge a fee or there is not. If there is, it must be a “real” fee, which contributes to some significant extent to the costs of exercising the function. If there is no legal duty to charge a fee, then the Government could have reduced this fee to nothing, as for the others. A notional fee of £1 falls between these two stools and cannot have been what Parliament intended. **The Committee accordingly reports regulation 11 for unusual or unexpected use of the enabling power.**

3 S.I. 2020/662: Reported for requiring elucidation

Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2020

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

3.2 These Regulations implement EU Directive 2018/645 which introduces changes to the certificate of professional competence regime. Regulation 2(3) (inserted paragraph (3)) defines certain Swiss certificates of professional competence by reference to being “recognised by the competent authority as equivalent” to UK standards. Inserted paragraph (4) defines “recognised” as meaning recognised by the competent authority for the purpose of the provision in question and inserted paragraph (5) empowers the Secretary of State to “from time to time revise what is recognised under paragraph (4)”. The Committee asked the Department for Transport to identify the power to make inserted paragraph (5). In a memorandum printed at Appendix 3, the Department explains that it is relying on section 2(2) of the European Communities Act 1972 and that it does not consider paragraph 1(1)(c) of Schedule 2 (which excludes any power to legislate from the power conferred by section 2(2)) to be breached because empowering the competent authorities to review any Swiss

revisions to ensure they continue to be equivalent to UK standards is not conferring on those authorities a power to legislate. The Committee accepts this explanation, despite that paragraph (5) could also be interpreted as a power to alter the meaning of “recognised”. **The Committee accordingly reports regulation 2(3) for elucidation, provided by the Department.**

4 S.I. 2020/664: Reported for doubtful vires and for requiring elucidation

Secure Training Centre (Coronavirus) (Amendment) Rules 2020

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

4.2 These Rules temporarily modify the Secure Training Centre Rules 1998. The Rules cease to have effect on 25 March 2022 and the modifications apply during a transmission control period (defined in the Coronavirus Act 2020). Rule 2(3) (inserted rule 11(1A)) allows the Secretary of State to suspend the entitlement of the children in those centres to visits at his discretion within this period. The Committee asked the Ministry of Justice to provide evidence that section 47(1) of the Prison Act 1952 was intended to allow this sub-delegation of power. In a memorandum printed at Appendix 4, the Department asserts that new rule 11(1A) falls within the vires of section 47(1) and is an example of administrative sub-delegation. The Department states that the rule does not give the Secretary of State a discretion over visits but provides the power to suspend visits under very limited circumstances. The Committee disagrees. The decision to suspend visits goes to the heart of the instrument and cannot be characterised as merely administrative; making rules for the management of these centres and the treatment of trainees is a legislative function. Decisions to suspend visits should be set out in legislation (or made in an instrument, such as Emergency Regulations, under enabling powers that expressly permit legislative delegation). The presumption against sub-delegation in legislation is long-standing and strong, so where Parliament intends to confer power to delegate a discretion it must do so by express words or (exceptionally) by necessary implication. **The Committee accordingly reports rule 2(3) on the ground that there is doubt as to whether it is *intra vires*.**

4.3 The Committee also asked the Department how the notice of the suspension of entitlement to visits will be given. In its memorandum, the Department explains that notice of the suspension of entitlements will be given to the families of trainees by way of a letter explaining the necessity for the suspension and to the trainees by way of briefing. **The Committee accordingly reports rule 2 for requiring elucidation, provided by the Department.**

5 S.I. 2020/710: Reported for unjustifiable delay and for defective drafting

Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations 2020

5.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that:

- **there has been an unjustifiable delay in notifying the Speaker of the House of Commons and the Lord Speaker that the Regulations came into force before they were laid;**
- **they are defectively drafted in two respects.**

5.2 These Regulations were made on 6 July and came into force at the beginning of 7 July. They were then subsequently laid before Parliament on 8 July, in accordance with a requirement for laying imposed by section 43 of the Corporate Insolvency and Governance Act 2020. Where a statutory instrument is laid before Parliament after it comes into force, section 4(1) of the Statutory Instruments Act 1946 requires the Speaker of the House of Commons and the Lord Speaker to be notified immediately of that fact and of the reasons why the instrument was not laid before coming into force. In this case, the required notification was not sent until 13 days after date on which the Regulations came into force. Accordingly, the Committee asked the Department for Digital, Culture, Media and Sport for an explanation for this delay in notifying the two Speakers. In a memorandum (printed at Appendix 5), the Department explains the circumstances which led to the instrument not being laid until after it came into force, but nothing is said to explain why it took the Department so long to notify the two Speakers. **Accordingly, the Committee reports the Regulations on the ground that there appears to have been unjustifiable delay in sending a notification to the Speaker of the House of Commons and the Lord Speaker, as required by section 4(1) of the Statutory Instruments Act 1946.**

5.3 Regulation 4 has the effect of modifying Part A1 of the Insolvency Act 1986 in its application to charitable incorporated organisations. One of the modifications is to section A31, where the section has effect with a substituted subsection (11) and with a new subsection (12). The purpose of subsection (12) is to define terms used in the modified section A31. However, two of the definitions in that subsection are of terms, “market charge” and “system-charge”, which do not appear in the modified section. In its memorandum, the Department explains that this error was caused by the wrong version of the instrument being made. The version of the instrument that was made appears to be an earlier version which did not take account of all the changes made in the drafting process. The Committee is concerned that the systems in place within the Department were not sufficient to prevent the wrong version of the Regulations being made. However, the Committee notes the assurance given by the Department that it is taking steps to ensure the mistake does not happen again. The Committee also notes that the Department have already taken steps to rectify the situation by making a new version of the instrument and revoking this one. **The Committee accordingly reports regulation 4 for defective drafting acknowledged by the Department.**

5.4 Regulation 4 also provides for section A27 of the Insolvency Act 1986 not to apply in relation to charitable incorporated organisations. It does not however include

consequential modifications to two other sections of that Act which contain references to section A27. The Department explains that this omission was again a result of the wrong version of the instrument being made. **The Committee accordingly reports regulation 4 for a second instance of defective drafting acknowledged by the Department.**

Instruments not reported

At its meeting on 9 September 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.	Infrastructure Planning (Electricity Storage Facilities) Order 2020
Draft S.I.	Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020
Draft S.I.	Immigration (Health Charge) (Amendment) Order 2020
Draft S.I.	Restriction of Public Sector Exit Payments Regulations 2020
Draft S.I.	Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020

Instruments requiring affirmative approval

S.I. 2020/754	Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) Regulations 2020
S.I. 2020/787	Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) (No. 2) Regulations 2020
S.I. 2020/788	Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 2) Regulations 2020
S.I. 2020/791	Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020
S.I. 2020/800	Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Luton) Regulations 2020
S.I. 2020/839	Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) (Amendment) Regulations 2020
S.I. 2020/863	Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 3) Regulations 2020
S.I. 2020/882	Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) (Amendment) (No. 2) Regulations 2020

Instruments subject to annulment

S.I. 2020/375	Feed-in Tariffs (Amendment) (Coronavirus) Order 2020
S.I. 2020/439	Civil Legal Aid (Procedure) (Amendment) Regulations 2020

S.I. 2020/449	Non-Domestic Rating (Transitional Protection Payments and Rates Retention) (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/671	Pilotage and Port Services (Amendment) (EU Exit) Regulations 2020
S.I. 2020/682	Marketing of Seed, Plant and Propagating Material (England) Regulations 2020
S.I. 2020/683	Social Security (Income-Related Benefits) (Persons of Northern Ireland - Family Members) (Amendment) Regulations 2020
S.I. 2020/712	Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/721	M23 Motorway (Gatwick Spur) (50 Miles Per Hour Speed Limit) Regulations 2020
S.I. 2020/724	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 2) Regulations 2020
S.I. 2020/731	Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/734	Environmental Assessment of Plans and Programmes (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/735	Motor Vehicles (International Motor Insurance Card) (Amendment) Regulations 2020
S.I. 2020/736	Immigration and Nationality (Fees) (Amendment) (No. 3) Regulations 2020
S.I. 2020/739	Home Loss Payments (Prescribed Amounts) (England) Regulations 2020
S.I. 2020/742	Marriage and Civil Partnership (Northern Ireland) Regulations 2020
S.I. 2020/747	Civil Procedure (Amendment No. 3) Rules 2020
S.I. 2020/755	Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020
S.I. 2020/769	Plant Breeders' Rights (Amendment) (EU Exit) Regulations 2020
S.I. 2020/808	Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) (Amendment) Regulations 2020
S.I. 2020/809	Local Government (Structural Changes) (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/814	Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020
S.I. 2020/815	Electricity (Individual Exemptions from the Requirement for a Transmission Licence) (Coronavirus) Order 2020
S.I. 2020/816	Gatwick Spur (50 Miles Per Hour Speed Limit) Regulations 2020
S.I. 2020/819	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 6) Regulations 2020
S.I. 2020/821	Nursing and Midwifery Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2020

S.I. 2020/825	Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2020
S.I. 2020/826	Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) (Amendment) Regulations 2020
S.I. 2020/827	Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations 2020
S.I. 2020/829	Statutory Sick Pay (General) (Coronavirus Amendment) (No. 5) Regulations 2020
S.I. 2020/832	Rating Lists (Valuation Date) (England) Order 2020
S.I. 2020/841	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2020
S.I. 2020/849	Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration and Renewables Obligation (Amendment) (EU Exit) Regulations 2020
S.I. 2020/852	Product Safety and Metrology (Amendment) (EU Exit) Regulations 2020
S.I. 2020/855	Offshore Chemicals and Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/864	Product Safety and Metrology etc. (EU Withdrawal and EEA EFTA Separation Agreements) (EU Exit) Regulations 2020
S.I. 2020/866	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 8) Regulations 2020

Instruments subject to annulment (Northern Ireland)

S.R. 2020/61	Social Security (Coronavirus) (Further Measures) Amendment Regulations (Northern Ireland) 2020
S.R. 2020/130	Universal Credit (Persons of Northern Ireland - Family Members) (Amendment) Regulations (Northern Ireland) 2020
S.R. 2020/165	Universal Credit (Managed Migration and Miscellaneous Amendments) (Amendment) Regulations (Northern Ireland) 2020
S.R. 2020/166	Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations (Northern Ireland) 2020

Draft Instruments subject to annulment

Draft S.I.	London Borough of Enfield (Electoral Changes) Order 2020
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Instruments not subject to parliamentary proceedings laid before Parliament

S.I. 2020/780	Overseas Territories (Constitutional Modifications) Order 2020
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Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2020/773 Global Human Rights Sanctions (Overseas Territories) Order 2020

S.I. 2020/774 Global Human Rights Sanctions (Isle of Man) Order 2020

Appendix 1

S.I. 2020/643

Limited Liability Partnerships (Amendment etc.) Regulations 2020

1. In its letter of 15th July, the Committee requested a memorandum in relation to the Limited Liability Partnerships (Amendment etc.) Regulations 2020 (“the 2020 Regulations”), as follows:

With reference to section 17(5)(d) of the Limited Liability Partnerships Act 2000, explain why these regulations were not made under the affirmative procedure.

2. The preamble to the 2020 Regulations states that the regulations are made in exercise of the following powers: section 14, 15, 16, and 17(1) and (2) of the Limited Liability Partnerships Act 2000 (“2000 Act”). Section 17(4) and (5)(d) of the 2000 Act provide that regulations made under section 16 of that Act must be made under the draft affirmative procedure.

3. However, the Department does not in fact rely on section 16 of the 2000 Act to make these regulations. It relies on section 14, 15 and 17(1) and (2) of the Limited Liability Partnerships Act 2000. The Department regrets that due to an oversight the preamble to the regulations mistakenly cites section 16 of the 2000 Act.

4. The Department does not consider that this error has any effect on the validity of the regulations. The authors of Bennion on Statutory Interpretation state:

It is usual to recite the powers under which delegated legislation is made, but this is not necessary to its validity. Nor is it material if the enabling powers are mistakenly cited.¹

5. Subject to the Committee’s views, the Department is willing to address this error by way of a correction slip.

Department for Business, Energy and Industrial Strategy

20 July 2020

¹ *Bennion on Statutory Interpretation* (7th edition), at [3.4]. See also *R v Murray, Goodman and Kumar* [2006] NICA 33, [2007] NI 49.

Appendix 2

S.I. 2020/644

Patents, Trade Marks and Registered Designs (Fees) (Coronavirus) (Amendment) Rules 2020

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

In relation to “an additional renewal fee must also be paid” in section 43(3) of the Trade Marks Act 1994 explain why, if there is an independent statutory duty to charge a fee, the Department believes that the duty is satisfactorily complied with as a matter of administrative law by a requirement to pay a notional amount that will not contribute significantly to the costs of performing the relevant function

2. The Department considers that the duty to charge an additional renewal fee in section 43(3) confers a discretion upon the Secretary of State as to the level of that fee.
3. The Department considers that the reduction of the additional renewal fee for a limited period only satisfies the statutory duty to levy a fee and falls within the discretion of the Secretary of State as to the level at which the fee should be charged. The Secretary of State has exercised his discretion in this case based upon the adverse impact which the coronavirus pandemic may have upon the ability of the owner of a trade mark to ensure that its trade mark is renewed before the expiry of its registration.

Department for Business, Energy and Industrial Strategy

17 July 2020

Appendix 3

S.I. 2020/662

Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2020

1. By a letter dated 15th July 2020, the Joint Committee on Statutory Instruments requested a memorandum on the following point:

“Having regard to paragraph 1(1)(c) of Schedule 2 to the European Communities Act 1972, identify the power for regulation 2(3) (inserted 2(5)(b)).”

2. Regulation 2(3) (inserted 2(5)(b)) has been made under the power in section 2(2)(b) of the European Communities Act 1972 to make provision for dealing with matters related to the obligation to give effect to the EU driver certificate of professional competence (“CPC”) Directive (Directive 2003/59/EC) and changes to it.

3. Under the instrument the competent authorities (the Secretary of State and, in Northern Ireland, the Department for Infrastructure) would accept Swiss driver CPC training and qualifications where they are recognised as being equivalent to the UK driver CPC training and qualifications (provided for in S.I. 2007/605 as amended, the “CPC Regulations”). The competent authorities will publish, for transparency, what is recognised as equivalent.

4. Where Switzerland revise their driver CPC training requirements and qualifications the competent authorities would have to consider whether they remained equivalent to the UK standards provided for in the CPC Regulations. Under the inserted regulation 2(5)(b) the authorities could give recognition to the revised training requirements and qualifications if they were equivalent and could publish the revised information accordingly.

5. The Department considers this would not be a breach of paragraph 1(1)(c) of Schedule 2 to the European Communities Act 1972 because empowering the competent authorities to review the Swiss revisions to ensure they continued to be equivalent to UK standards would not be changing the UK standards, or otherwise confer on those authorities a power to legislate by means of orders, rules, regulations or other subordinate instrument.

Department for Transport

21 July 2020

Appendix 4

S.I. 2020/664

Secure Training Centre (Coronavirus) (Amendment) Rules 2020

1. The Committee has requested a memorandum on the following points for the above instrument ('the SI'):

(1) Provide evidence that the power in section 47 (1) of the Prison Act 1952 was intended to allow sub-delegation of a power to suspend entitlement to visits at the Secretary of State's discretion (albeit within a specified period).

(2) How will notice of the suspension of entitlements be given?

2. The SI was made in response to the risks associated with outbreaks of COVID-19 (coronavirus) in secure training centres and the necessity to implement a restricted regime to manage the effects of coronavirus. The SI modifies the Secure Training Centre Rules 1998 ("the STC Rules") during a "coronavirus period". A "coronavirus period" is the period of time of a "transmission control period", as defined in paragraph 5 of Schedule 21 of the Coronavirus Act 2020. The transmission control period in the 2020 Act ends when the Secretary of State for Health revokes the declaration he has made under paragraph 4 of Schedule 21.

3. The SI was made pursuant to section 47 of the Prison Act 1952, amending the STC Rules. Section 47(1) is broadly drafted. It provides that the Secretary of State may make rules for the regulation and management of prisons, remand centres, young offender institutions, secure training centres or secure colleges, and for the classification, treatment, employment, discipline and control of persons required to be detained therein.

4. The Department's view is that rule 11(1A) falls within the vires of section 47(1) as it is a rule for the management of secure training centres and the treatment of the trainees therein. Similar amendments were made to the Prison Rules 1999 ("the Prison Rules") and to the Young Offender Institution Rules 2000 ("the YOI Rules") in the Prison and Young Offender Institution (Coronavirus) (Amendment) (No.2) Rules 2020. Rule 35(2B) of the Prison Rules and rule 10(1A) of the YOI Rules now have a similar power to suspend visits for each custodial setting.

5. It is the Department's view that rule 11(1A) of the STC Rules is an example of administrative sub-delegation. The rule does not give the Secretary of State a discretion over visits but provides the power to suspend visits under very limited circumstances. The Secretary of State can only suspend visits if it is necessary as a result of the effects, or likely effects, of coronavirus on trainees or a secure training centre. The suspension of visits must also be proportionate and cannot extend beyond the time that is necessary, and the Secretary of State must act in accordance with the Human Rights Act 1998 when using the power.

6. Furthermore, the Secretary of State has the power within rule 10 of the STC rules to restrict communications between trainees and other persons with a view to securing

discipline and good order or the prevention of crime or in the interests of any persons. This is an example of administrative sub-delegation and it is the department's view that rule 11(1A) is another similar example.

7. Notice of the suspension of entitlements will be given to the families of trainees by way of a letter explaining the necessity for the suspension. The secure training centres will hold briefings with all of their trainees explaining the suspension and each individual trainee will be able to discuss the suspension with a member of staff.

Ministry of Justice

20 July 2020

Appendix 5

S.I. 2020/710

Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations 2020

1. By a letter of 22 July 2020, the Joint Committee on Statutory Instruments (“the Committee”) sought information on three points in relation to their consideration of the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations 2020 (S.I. 2020/710) (“the instrument”). This memorandum provides a response.

Explain why the notification required by section 4(1) of the Statutory Instruments Act 1946, explaining why the Regulations were not laid until after they came into force, was not sent to the Speaker of the House of Commons and the Lord Speaker until 13 days after the Regulations came into force and 12 days after they were laid before Parliament. Also, explain the technical issue which is referred to in the notification as causing the Regulations to be laid after they came into force.

2. Our intention had been for the instrument to come into force on the date it was laid as s.43(5)(b)(i) of the Corporate Insolvency and Governance Act 2020 requires that the Regulations “must be laid before Parliament as soon as reasonably practicable after being made”. However when we attempted to lay the instrument on 7 July, it failed to validate through the statutory instrument template portal, and despite best efforts we were unable to ensure its validation until 8 July. This meant that the instrument unintentionally came into force before it was laid in Parliament. As a result, it should have been accompanied by a letter to the Speakers of both Houses, which we failed to provide as originally it would not have been required. We sincerely apologise for this oversight.

Explain why, in regulation 4(4)(a), new subsection (12) of section A31 of the Insolvency Act 1986 (“the 1986 Act”) includes definitions of “market charge” and “system-charge” when those terms do not appear in that section.

3. There are several errors in the instrument which were made as a result of the version of the instrument as made failing to take account of all of the changes that had been made during the drafting process; unfortunately, the wrong version was made. Due to this, several inaccuracies and omissions currently appear in the Regulations being amended by the instrument (the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013)). We are making a correcting instrument to correct these.

4. The terms ‘market charge’ and ‘system-charge’ do not appear in section A31 because the wrong instrument was made, but they will appear by virtue of the correcting instrument. The instrument amended section A31(11) to remove those terms. But the correcting instrument will replace that change to omit from section A31(11) ‘as defined by section A27’. As section A27, which defined each of those terms, is being omitted, the terms are now defined in new section A31(12).

Explain why regulation 4 does not modify the references to section A27 of the 1986 Act in sections A22(7) and A52(4) of that Act, given that regulation 4(2)(a) has the effect of disapplying section A27 in relation to Charitable Incorporated Organisations.

5. The omission from regulation 4 is as a result of the wrong version of the instrument being made. The correcting instrument will modify the references to section A27 in sections A22 and A52.
6. We have not yet fully established what led to this error being made but there were several amendments to the instrument in the days leading up to it being made and it appears that the wrong version was presented to the minister for signature. We apologise for this mistake, and are taking steps to ensure it is not repeated. There will however be no substantive adverse effects on stakeholders.
7. Our intention is to make and lay a correcting instrument as soon as possible.
8. Once again, we would like to apologise to the Committee for the errors in this instrument, and hope that our proposed course of action will address the Committee's concerns.

Department for Digital, Culture, Media and Sport

28 July 2020