House of Lords
House of Commons

Joint Committee on Statutory Instruments

Twenty-Third Report of Session 2019–21

Drawing special attention to:

Court Fees (Miscellaneous Amendments) Order 2020 **(S.I. 2020/720)**

Official Feed and Food Controls (England) (Amendment) Regulations 2020 **(S.I. 2020/738)**

Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 **(S.I. 2020/744)**

Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 **(S.I. 2020/751)**

Road Vehicles (Certificates of Temporary Exemption) Regulations 2020 **(S.I. 2020/812)**

Road Vehicles (Approval) Regulations 2020 **(S.I. 2020/818)**

Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020 **(S.I. 2020/856)**

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Joint Committee on Statutory Instruments

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Lord Haskel *(Labour)*

Baroness Gale (*Labour*)

Baroness Newlove *(Conservative)*

Lord Rowe-Beddoe (*Crossbench*)

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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No.73, 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

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 Liz Booth (Committee Assistant), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

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Contents

Instruments reported

At its meeting on 23 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 seven 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. 2020/720: Reported for requiring elucidation

Court Fees (Miscellaneous Amendments) Order 2020

1.1 **The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.**

1.2 This Order reduces several fees charged under the Non-Contentious Probate Fees Order 2004, the Family Proceedings Fees Order 2008, the Civil Proceedings Fees Order 2008 and the Magistrates' Courts Fees Order 2008. The fees are reduced to a level that reflects an estimate of the cost of the service being provided. In the Explanatory Memorandum, the Ministry of Justice states that a refund scheme will not be launched in respect of the fees reduced by this instrument and the Committee asked for further explanation (having regard to the Court of Protection, Civil Proceedings, and Magistrates Courts' Fees (Amendment) Order 2018 in relation to which a refund scheme was established for over-charged fees). In a memorandum printed at Appendix 1, the Department explains that in the case of the 2018 Regulations a refund scheme was necessary because, not only had the fees been found to be over-recovering as compared to cost, they had also been found not to have been based on a reasonable predictive estimate of cost. In the case of the fees reduced by this Order, the Department explains that they were based on a reasonable predictive estimate of cost and were promptly corrected and therefore no refund scheme will be available. The Committee notes the Department's policy, and **accordingly reports the Order as requiring elucidation provided in the Department's memorandum**.

2 S.I. 2020/738: Reported for failure to comply with proper legislative practice

Official Feed and Food Controls (England) (Amendment) Regulations 2020

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 correct an omission in the Official Feed and Food Controls (England) Regulations 2009. The Committee asked the Food Standards Agency why the free issue procedure was not used. In a memorandum printed at Appendix 2, the Department explains that this was an oversight which it will rectify. **The Committee accordingly reports these regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

3 S.I. 2020/744: Reported for defective drafting

Co-operative and Community Benefit Societies and Credit Unions Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020

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

3.2 This Order makes provision applying to co-operative societies and community benefit societies the provisions in the Corporate Insolvency and Governance Act 2020 relating to moratoriums, arrangements and reconstructions for companies in financial difficulty. The Committee asked HM Treasury to explain why Article 7(c) refers to "Part 2 of Schedule 2A" when there appears to be no Part 2 and why the shoulder heading to Schedule 2A refers to article 2(2A) when there appears to be no article 2(2A). In a memorandum printed at Appendix 3, the Department confirms that the references are both erroneous (the first reference should have been to "Schedule 2A"and the shoulder note to that Schedule should only have referred to article 2(4)). The Department undertakes to correct these errors at the next convenient opportunity. **The Committee accordingly reports article 7(c) and Schedule 2A for defective drafting, acknowledged by the Department.**

4 S.I. 2020/751: Reported for defective drafting and for requiring elucidation

Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020

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

4.2 These Rules make provision about how possession proceedings and enforcement proceedings which were stayed until 23 August 2020 are to proceed after that stay expires. The Rules come into force on 23 August. Rule 2(a) adds new rule 34.7A to the list of contents for Part 55 and describes it as a temporary provision. Rule 34.7A is inserted into the Civil Procedure Rules by Rule 9(2) of S.I. 2020/747 and the insertion comes into force on 1 October 2020. The Committee asked the Ministry of Justice to explain. In a memorandum printed at Appendix 4, the Department explains that rule 2(a) should refer to "Rule 55.A1" not "Rule 34.7A" and undertakes to rectify the error when the Civil Procedure Rules are next updated. **The Committee accordingly reports rule 2(a) for defective drafting, acknowledged by the Department.**

4.3 The Department's memorandum also explains why the new rule is described as a temporary provision, and the **Committee accordingly reports rule 2(a) for elucidation provided by the Department's memorandum.**

5 S.I. 2020/812: Reported for defective drafting

Road Vehicles (Certificates of Temporary Exemption) Regulations 2020

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 allow the Secretary of State to issue certificates of temporary exemption to certain vehicles in specified circumstances. Before revoking a certificate of temporary exemption, the Secretary of State must give written notice to the relevant licence holder and include in that notice the date and time the certificate of temporary exemption will be revoked, which must be no sooner than 24 hours after the time the notice was issued (regulation 6(2)(b)(iii)). The Committee asked the Department for Transport to explain whether, having regard to the fact that this 24-hour period runs from the issue of the notice, that period could expire before the written notice is received by the licence holder. In a memorandum printed at Appendix 5, the Department explains that it does not foresee any situation arising in which a licence holder would be unaware of the imminent revocation of certificates applying to vehicles used under their licence either because the notice would be sent to a licence holder electronically and be received immediately or because steps would be taken to dispatch a notice by courier and verbally warn the licence holder. The Committee accepts that the administrative measures proposed will be likely to avoid the expiry of the period before notice is received, but as a matter of principle the provisions should have been framed in such a way as to exclude that possibility altogether. **The Committee accordingly reports regulation 6(2) for defective drafting.**

6 S.I. 2020/818: Reported for requiring elucidation

Road Vehicles (Approval) Regulations 2020

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

6.2 These Regulations provide for enforcement in the UK of Regulation (EU) 2018/858 on road vehicle type approval. Paragraph 39(6) of Schedule 6 makes amendments to the Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019 including the addition of new regulation 10ZA(3) which amends Regulation (EU) 2018/858 for a period beginning with IP completion day. The Committee asked the Department for Transport to identify the vires for this provision and in particular to confirm whether section 8(1) of the European Union (Withdrawal) Act 2018 should have been cited as an enabling power. In a memorandum printed at Appendix 6, the Department asserts that paragraph 39(6) falls within the vires cited in the instrument (section 2(2) of the European Communities Act 1972) because it is an amendment consequential on the revocation of the Road Vehicles (Approval) Regulations 2009 and their replacement in large part by Regulation (EU) 2018/858. The Department explains that existing provisions in the 2019 Regulations were to have amended the 2009 Regulations to remedy deficiencies related to the United Kingdom's exit from the European Union and by virtue of the revocation of the 2009 Regulations, and their replacement by the EU Regulation, those provisions needed consequentially to be applied to the EU Regulation instead. Regulations 8, 9 and 10 of the 2019 Regulations were made under section 8(1) of the European Union (Withdrawal) Act 2018 and one would have expected that the amendments made by new regulation 10ZA(3), which are also designed to address deficiencies in retained EU law, would have been made under section 8(1) too; but on the basis of the arguments set out in the Department's memorandum the Committee accepts that the amendments also fall within the vires of section 2(2)(b) of the 1972 Act. **Accordingly, the Committee reports paragraph 39(6) of Schedule 6 as requiring elucidation provided by the Department's memorandum.**

7 S.I. 2020/856: Reported for unexpected use of enabling powers

Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020

7.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that that they make an unexpected use of the enabling power in one respect.**

7.2 These Regulations modify provisions of Part A1 of the Insolvency Act 1986 ("the 1986 Act") in their application to charitable incorporated organisations (CIOs). Part A1 was inserted by the Corporate Insolvency and Governance Act 2020 and makes provision for moratoriums to apply in respect of companies. By virtue of paragraph 49 of Schedule 3 to that Act, the provisions of Part A1 also apply to CIOs.

7.3 Regulation 5(2) amends the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations with the effect (amongst other things) of disapplying section A51 of the 1986 Act in relation to CIOs. Section A51 enables the Secretary of State to make regulations in respect of companies which are subject to a moratorium to allow the Board of the Pension Protection Fund to exercise creditor rights in connection with the moratorium. The Committee asked the Department for Digital, Culture, Media and Sport to explain why section A51 was being disapplied, in the light of the fact that the powers conferred by that section are relied on in relation to CIOs in the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020 (SI 2020/693), which were made only five weeks before these Regulations.

7.4 In a memorandum (printed at Appendix 7), the Department acknowledges that the effect of disapplying section A51 will be to revoke SI 2020/693 to the extent that that instrument applies to CIOs. The Department explains that the decision to disapply section A51 was based on the view that that section was unlikely to have any practical impact for CIOs. However, the Department goes on to state that, because the implied revocation of an aspect of SI 2020/693 is liable to cause confusion and because there is a theoretical possibility that these provisions may be beneficial for CIOs in the future, the Department will bring forward legislation at the next available opportunity to reinstate the application of SI 2020/693 to CIOs.

7.5 One matter the memorandum does not address is what communication, if any, took place between DCMS and the Department for Work and Pensions before either this instrument or SI 2020/693 was made. The fact that there is a conflict between the two instruments as to the application of section A51 to CIOs suggests that there may not have been any, which the Committee finds disturbing given the shared policy interest of the two departments.

7.6 **Accordingly, the Committee reports regulation 5(2) for unexpected use of the enabling power.**

Instruments not reported

At its meeting on 23 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.	Adjacent Waters Boundaries (Northern Ireland) (Amendment) Order 2020
Draft S.I.	Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020
Draft S.I.	Immigration Skills Charge (Amendment) Regulations 2020
Draft S.I.	Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020
Draft S.I.	Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2020

Instruments requiring affirmative approval

S.I. 2020/935	Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) (Amendment) (No. 3) Regulations 2020
S.I. 2020/954	Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford, Leicester, and North of England) (Amendment) Regulations 2020

Instruments subject to annulment

S.I. 2020/859	Town and Country Planning (Use Classes) (Amendment) (England) (No. 2) Regulations 2020
S.I. 2020/881	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2020
S.I. 2020/885	National Health Service (Coronavirus) (Charges and Further Amendments Relating to the Provision of Primary Care Services During a Pandemic etc.) Regulations 2020
S.I. 2020/887	Fertilising Products Regulations 2020
S.I. 2020/889	Civil Procedure (Amendment No. 5) (Coronavirus) Rules 2020
S.I. 2020/890	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 10) Regulations 2020
S.I. 2020/893	Local Government Pension Scheme (Amendment) (No. 2) Regulations 2020
S.I. 2020/894	School Information (England) (Amendment) Regulations 2020

S.I. 2020/895	Town and Country Planning (Use Classes) (Amendment) (England) (No. 3) Regulations 2020
S.I. 2020/904	Waste (Circular Economy) (Amendment) Regulations 2020
S.I. 2020/908	School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) (No. 2) Regulations 2020
S.I. 2020/913	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 11) Regulations 2020
S.I. 2020/914	Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020
S.I. 2020/915	Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020
S.I. 2020/916	Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020
S.I. 2020/923	Social Security (Contributions) (Amendment No. 4) Regulations 2020
S.I. 2020/924	Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2020
S.I. 2020/926	Postponed Elections and Referendums (Coronavirus) and Policy Development Grants (Amendment) Regulations 2020
S.I. 2020/927	Welfare Reform (Northern Ireland) Order 2015 (Cessation of Transitory Provision) Order 2020
S.I. 2020/928	Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020
S.I. 2020/929	Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) (Amendment) Regulations 2020
S.I. 2020/933	Competition Act 1998 (Coronavirus) (Public Policy Exclusions) (Amendment and Revocation) Order 2020
S.I. 2020/939	Early Years Foundation Stage (Learning and Development and Welfare Requirements) (Coronavirus) (Amendment) (No. 2) Regulations 2020
S.I. 2020/941	Tax Credits (Coronavirus, Miscellaneous Amendments) (No. 2) Regulations 2020
S.I. 2020/945	Motor Vehicles (Compulsory Insurance and Rights Against Insurers) (Amendment) (EU Exit) Regulations 2020
S.I. 2020/946	Civil Enforcement of Parking Contraventions Designation (No. 2) Order 2020
S.I. 2020/953	Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/956	M1 Motorway (Junctions 13 to 16) (Variable Speed Limits) Regulations 2020

Appendix 1

S.I. 2020/720

Court Fees (Miscellaneous Amendments) Order 2020

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

> *Does the Department have anything to add to its explanation in paragraph 7.5 of the Explanatory Memorandum of why a refund scheme will not be established (taking into account the refund scheme referred to in paragraph 7.4 of the Explanatory Memorandum for S.I. 2018/812)?*

2. In July 2018 certain court fees were reduced through the Court of Protection, Civil Proceedings, and Magistrates Courts' Fees (Amendment) Order 2018 (S.I. 2018/812). Those fees were reduced because a cost recovery assessment identified that the fees had been over-recovering as compared to the cost of delivering the services they related to. The fees therefore required correction. The new fee levels were determined based on a reasonable predictive estimate of the costs involved in delivering the relevant services.

3. As noted by the Committee, the Explanatory Memorandum for S.I. 2018/812 stated, at paragraph 7.4:

> *The Government will be establishing a refund scheme for those who have been over charged: full details will be announced in due course.*

4. The additional step of a refund scheme was necessary in relation to the fees corrected in S.I. 2018/812 because, not only had the fees been found to be over-recovering as compared to cost, they had also been found not to have been based on a reasonable predictive estimate of cost.

5. The Ministry of Justice has implemented frequent cost-recovery exercises to ensure that the predictive estimates of cost used to set fees remain "reasonable". These reviews assess the costs of various court processes on a regular basis, and have allowed the Ministry of Justice to identify variances between costs and fees at an early stage. Any over-recovering fees can then be promptly corrected.

6. The Ministry of Justice's cost recovery assessment for the financial year 2018/19 identified as over-recovering the fees reduced in the present S.I. The purpose of the S.I. was to correct promptly the variance between costs and the fees.

7. However, these fees were at all times based on a reasonable predictive estimate of cost, on the information available at the time they were set. Given that the level of the fees was regularly reviewed, and promptly corrected, no refund scheme will be launched.

Ministry of Justice

16 September 2020

Appendix 2

S.I. 2020/738

Official Feed and Food Controls (England) (Amendment) Regulations 2020

1. The Committee requested a memorandum in response to the following point in relation to the above-mentioned instrument:

> *Given that this instrument corrects an omission in S.I. 2009/3255 (see paragraph 2.1 of the Explanatory Memorandum), explain why the free issue procedure has not been used.*

2. We thank the Committee for drawing this matter to our attention. We regret that the failure to follow the free issue procedure in respect of this instrument appears to have simply been an oversight on our part, for which we apologise.

3. We will now contact the SI Registrar at the National Archives with a formal request that they take the necessary action to refund known purchasers at the Food Standards Agency's expense.

Food Standards Agency

15 September 2020

Appendix 3

S.I. 2020/744

Co-operative and Community Benefit Societies and Credit Unions Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020

1. The Committee considered the above instrument at its meeting on 9th September 2020 and subsequently requested that the Treasury submit a memorandum to address the following point:

> *Explain why*
>
> *(1) Article 7(c) refers to "Part 2 of Schedule 2A" when there appears to be no*
>
> *Part 2 and*
>
> *(2) the shoulder heading to Schedule 2A refers to article 2(2A) when there*
>
> *appears to be no article 2(2A).*

2. In response, the Treasury confirms that the references are both erroneous. In relation to the first reference, the reference should only have been to "Schedule 2A", and the shoulder note to that Schedule should only have referred to article 2(4).

3. The Treasury apologises to the Committee for these errors and will correct them at the next convenient opportunity.

HM Treasury

15 September 2020

Appendix 4

S.I. 2020/751

Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020

1. By a letter dated 9 September 2020, the Committee sought a memorandum on the following points:

> *"Explain why the amendment made by rule 2(a):*
>
> *(1) comes into force on 23 August 2020 when Rule 34.7A comes into force on 1 October 2020 (rules 1(1) and 9(2) of S.I. 2020/747); and*
>
> *(2) is described as a temporary provision.".*

2. Regarding the first limb of the Committee's request, there is a typographical error in rule 2(a) (list of contents) which should, in fact, refer to "Rule 55.A1", not "Rule 34.7A". As the Committee notes, Rule 34.7A comes into force on 1 October 2020. We are grateful to the Committee for drawing this error to our attention, which we will rectify in the next update to the Civil Procedure Rules ("CPR") (which is to be made before the end of the period for which the new Practice Direction 55C referred to below is to operate).

3. Regarding the second limb of the Committee's request, it is right that the explanatory note to this instrument refers to the amendment as "temporary". That, on reflection, over-condenses the explanation of the temporal application of the package. The package comprises a new rule 55.A1 (together with an entry in the table of contents for that rule) which introduces a new Practice Direction 55C. The new rule (and the entry for it in the table of contents) is not in itself temporary in the sense of having a specific "sunset" date included in it by which it will cease to have effect, but the new Practice Direction 55C which it introduces is temporary in that sense. Practice Direction 55C contains provision modifying the operation of Part 55 of the CPR during the period beginning 20 September 2020 and ending on 28 March 2021. While paragraphs 6.2 and 9.1 of the explanatory memorandum to this instrument sought to explain the relationship between rule and practice direction and that both would be revoked when there is no need for the time-limited provision which, as a package, they make, the explanatory note does not adequately draw this out. We apologise for this, and for any confusion which might result.

Ministry of Justice

15 September 2020

Appendix 5

S.I. 2020/812

Road Vehicles (Certificates of Temporary Exemption) Regulations 2020

1. By a letter dated 9th September 2020, the Joint Committee on Statutory Instruments requested a memorandum on the following point:

> *"Having regard to the fact that the minimum period specified in regulation 6(2)(b)(iii) runs from the issue of the notice, explain whether that period could expire before the written notice is received by the licence holder."*

2. The Driver and Vehicle Standards Agency (DVSA) holds e-mail addresses for the vast majority of licence holders, including all members of the DVSA's Earned Recognition Scheme. A notice issued in accordance with regulation 6(2) would ordinarily be sent to a licence holder electronically and received by their e-mail provider immediately.

3. The Department anticipates that revocations of certificates of temporary exemption will be rare and typically follow an adverse determination by a traffic commissioner (for example, a finding that maintenance records for vehicles being used with such certificates had been falsified). In the unlikely event of (a) the DVSA deciding that certificates for vehicles being used by a licence holder should be revoked and (b) the licence holder's e-mail address being unknown to the DVSA, steps would be taken to ensure that the licence holder was made aware of the revocation before it took effect, such as dispatching a notice by courier and verbally warning the licence holder.

4. Additionally, revocations would invariably take place as a result of an interaction between a licence holder and a traffic commissioner or the DVSA. The Department does not foresee any situation arising in which a licence holder would be unaware of the imminent revocation of certificates applying to vehicles used under their licence.

Department for Transport

15 September 2020

Appendix 6

S.I. 2020/818

Road Vehicles (Approval) Regulations 2020

1. By letter dated 9th September 2020, the Joint Committee on Statutory Instruments has requested a memorandum on the following point:

> *Identify the vires for paragraph 39(6) of Schedule 6 and, in particular, confirm whether section 8(1) of the European Union (Withdrawal) Act 2018 should have been cited.*

2. The Department is of the view that paragraph 39(6) of Schedule 6 is an amendment consequential on the revocation of the Road Vehicles (Approval) Regulations 2009 (S.I. 2009/717) ("the 2009 Regulations") and their replacement in large part by European Regulation 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 151, 14.6.2018, p.1) ("the EU Regulation").

3. In particular, existing provisions in the Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/648, as amended by S.I. 2019/691 and 1156) ("the 2019 Regulations") were to have amended the 2009 Regulations to remedy deficiencies related to the United Kingdom's exit from the European Union. By virtue of the revocation of the 2009 Regulations, and their replacement by the EU Regulation, those provisions needed consequentially to be applied to the EU Regulation instead. The amendment in paragraph 39(6) of Schedule 6 does so in a manner consistent with the existing provisions in regulations 8, 9 and 10 of the 2019 Regulations and reformulates the planned changes to the 2009 Regulations in respect of the corresponding table in the EU Regulation (taking account of the differences in wording between the 2009 Regulations and EU Regulation).

4. As such, the Department is of the view that this properly falls within the vires cited in the instrument, namely section 2(2) of the European Communities Act 1972 (as saved).

5. Accordingly, the Department does not consider that section 8(1) of the European Union (Withdrawal) Act 2018 should have been cited.

Department for Transport

15 September 2020

Appendix 7

S.I. 2020/856

Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020

1. By a letter of 9 September 2020, the Joint Committee on Statutory Instruments ("the Committee") sought information on one point in relation to their consideration of the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No 2) Regulations 2020 (S.I. 2020/856) ("the instrument"). This memorandum provides a response. By a letter of 9 September 2020, the Joint Committee on Statutory Instruments ("the Committee") sought information on one point in relation to their consideration of the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No 2) Regulations 2020 (S.I. 2020/856) ("the instrument"). This memorandum provides a response.

> *Explain why regulation 5(2)(a) has the effect (amongst other things) of disapplying section A51 of the Insolvency Act 1986 in relation to charitable incorporated organisations, when the powers conferred by that section have recently been relied on for the purposes of making the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020 (SI 2020/693).*

2. Our approach to Charitable Incorporated Organisations (CIOs) and the application of the new Moratorium procedure (in Part A1 of the Insolvency Act 1986) was to simplify the regime and disapply provisions that were considered unnecessary or extremely unlikely to have any practical impact in order to simplify the Moratorium Regime as it applies to CIOs.

3. This included disapplying section A51 of the Insolvency Act 1986. In doing so the instrument impliedly repealed SI 2020/693 in relation to CIOs. Those regulations extended Pension Protection Fund (PPF) Moratorium provisions to a number of organisations, including CIOs, in order to support organisations during this time of economic uncertainty.

4. It remains very difficult to envisage a situation in which the PPF provisions would be required in relation to the Moratorium of a CIO. However, as the implied repeal of this aspect of the DWP regulations could cause confusion and it is a theoretical possibility that these provisions may be beneficial for CIOs in the future, DCMS will look to bring forward legislation at the next available opportunity to extend the application of the PPF provisions to CIOs.

Department for Digital, Culture, Media and Sport

15 September 2020