



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

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

Drawing special attention to:

Mayoral and Police and Crime Commissioner Elections (Coronavirus, Nomination of Candidates) (Amendment) Order 2021 (Draft S.I.)

Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1388)

Russia (Sanctions) (Overseas Territories) Order 2020 (S.I. 2020/1571)

*Ordered by the House of Lords
to be printed 24 February 2021*

*Ordered by the House of Commons
to be printed 24 February 2021*

HL 230
HC 75-xli

Published on 26 February 2021
by authority of the House of Lords
and the House of Commons

Joint Committee on Statutory Instruments

Current membership

House of Lords

[Baroness D'Souza](#) (*Crossbench*)

[Baroness Gale](#) (*Labour*)

[Lord Haskel](#) (*Labour*)

[Baroness Newlove](#) (*Conservative*)

[Lord Rowe-Beddoe](#) (*Crossbench*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

[Lord Smith of Hindhead](#) (*Conservative*)

House of Commons

[Jessica Morden MP](#) (*Labour, Newport East*) (Chair)

[Dr James Davies MP](#) (*Conservative, Vale of Clwyd*)

[Paul Holmes MP](#) (*Conservative, Eastleigh*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

[Owen Thompson MP](#) (*Scottish National Party, Midlothian*)

[Liz Twist MP](#) (*Labour, Blaydon*)

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

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at <https://www.parliament.uk/site-information/copyright-parliament/>.

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 Sue Beeby (Committee Operations Officer), Apostolos Kostoulas (Committee Operations Officer), 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).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 7599; the Committee's email address is: jcsi@parliament.uk.

Contents

Instruments reported	3
1 Draft S.I.: Reported for failure to comply with proper legislative practice, for requiring elucidation and for defective drafting	3
Mayoral and Police and Crime Commissioner Elections (Coronavirus, Nomination of Candidates) (Amendment) Order 2021	3
2 S.I. 2020/1388: Reported for requiring elucidation, for defective drafting and for failure to comply with proper legislative practice	5
Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020	5
3 S.I. 2020/1571: Reported for defective drafting	7
Russia (Sanctions) (Overseas Territories) Order 2020	7
Instruments not reported	8
Annex 1	8
Annex 2	10
Appendix 1	13
Draft S.I.	13
Mayoral and Police and Crime Commissioner Elections (Coronavirus, Nomination of Candidates) (Amendment) Order 2021	13
Appendix 2	16
S.I. 2020/1388	16
Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020	16
Appendix 3	18
S.I. 2020/1571	18
Russia (Sanctions) (Overseas Territories) Order 2020	18

Instruments reported

At its meeting on 24 February 2021 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 three 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 Draft S.I.: Reported for failure to comply with proper legislative practice, for requiring elucidation and for defective drafting

Mayoral and Police and Crime Commissioner Elections (Coronavirus, Nomination of Candidates) (Amendment) Order 2021

1.1 The Committee draws the special attention of both Houses to this draft Order on the ground that it fails to comply with proper legislative practice in one respect, requires elucidation in one respect and is defectively drafted in two respects.

1.2 This draft Order, which is subject to the draft affirmative resolution procedure, makes temporary amendment of electoral enactments to reduce the number of subscribing electors that are required on a candidate nomination form for Police and Crime Commissioner, Combined Authority Mayoral and Local Authority Mayoral elections (in order to reduce the risk of exposure to and transmission of Coronavirus).

1.3 Article 3 makes amendments to rules scheduled to the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007. Those Regulations (and therefore the rules) have England and Wales extent. The amendments are to apply to England alone, but that is achieved only by limiting words in Article 1(3) of the amending Order. There is nothing in the text of the rules as amended to warn readers that the amended text relates only to England. The Committee asked the Cabinet Office to explain whether consideration was given to achieving the England-only application by express limitation on the face of the rules as amended, having regard to the particular difficulties for publishers and readers of parallel texts created by reference to application only and not extent. In a memorandum printed at Appendix 1, the Department acknowledges those difficulties but explains that it decided on its approach as the amendments are “both temporary and limited in nature” and, in particular, as “there are no elections in Wales which will be held under S.I. 2007/1024 during the period when the amended rules will be in force, as there are currently no mayors of this kind in Wales”; it concludes that “as the Cabinet Office will be providing guidance on the temporary rules, we consider that there is limited scope for confusion”. The Committee considers that this approach fails to take proper account of the needs of different readers of the statute book. Law in force may be consulted by readers for a range of purposes, including advising on or considering the arrangements of constitutional law otherwise than in the context of practical preparations for an immediately imminent election. Unless there is a specific need to create parallel texts of legislation, an approach which requires editors to prepare and readers to note different versions that apply for different purposes, it should be avoided. In this case, simply inserting “in relation to elections in England” or some such qualification in the text of the amendments would have avoided the need for parallel texts altogether. The fact that the change is temporary and limited is all the more reason why it is important for readers to

be able to grasp its purport and parameters quickly and simply on the face of the amended legislation and without having resort to informal Government guidance. **The Committee accordingly reports Article 3 for failure to comply with proper legislative practice.**

1.4 Article 3 includes omissions of provisions of the rules set out in the 2007 Regulations. As the omissions are included in legislation that is expressly temporary, the Committee asked the Department to explain whether consideration was given to providing expressly that the expiry of the amendments would revive the omitted provisions (the general rule being to the contrary, as set out in sections 15 and 16 of the Interpretation Act 1978). In its memorandum that Department confirms that revival is the legislative intention, and that it did consider making express provision for revival but felt that the intention was sufficiently clear from the context of the draft Order as whole. The Committee agrees that the intention can be inferred from the context and therefore, although a brief express provision might have added clarity, **the Committee reports the repealing provisions of Article 3 for requiring elucidation, provided by the Department’s memorandum.**

1.5 Article 3(2)(a) amends rule 8(1) of the mayoral elections rules to remove words so that the remainder reads “The nomination paper must be subscribed by two electors as proposer and seconder to the nomination.” The Committee asked the Department to confirm that the amendment effected by Article 3(2)(a) should also have removed the words “to the nomination”, having regard to the present syntax of rules 8(1) and (2). In its memorandum the Department agrees that omitting the words “to the nomination” in rule 8(1) “would also be correct, and may have been clearer”, but that a person could be “proposer or seconder to the nomination” and that rule 8(1) “as amended is sufficiently clear that it should not cause confusion for an ordinary reader”. Whether a person could naturally be described as “proposer to the nomination” (which the Committee doubts) is not the point. The point is that the pre-amended form of rule 8(1) is “The nomination paper must be subscribed by two electors as proposer and seconder, and by twenty-eight other electors as assenting to the nomination.” which shows (by the use of a single comma after “seconder” and no matching comma after “assenting”) that the words “to the nomination” belong with “and by twenty-eight other electors as assenting” and should therefore have been removed along with those words. **The Committee accordingly reports Article 3(2) (a) for defective drafting.**

1.6 Article 2(2)(b) provides for the Order to continue to have effect after 28 February 2022 “in relation to an election where ... the poll for that election takes place on or after that date”. The Explanatory Note states “Article 2 provides for the expiry of these amendments at the end of 28th February 2022, except in respect of elections which have been commenced ... on or before but not concluded on that date.” There is an inconsistency: the Explanatory Note does not correctly describe the situation where the poll in an election takes place on 28 February 2022, in which case the election is concluded on that date but Article 2(2)(b) expressly applies. In its memorandum, the Department asserts that the Explanatory Note refers to a scenario “where the poll ... is held on 28 February 2022 but where the results are not yet known by the end of that day”, on the grounds that “We considered most people would consider the announcement of the result at the count to be the “conclusion” of an election”; the Department adds that on reflection, however, it agrees that the Explanatory Note is not as clear as it should be, and that the Department will ensure that it does not use this form of words in a similar case. The Department’s explanation, however, may work for the case where the result is not announced on the day of the poll, but it does not work

for the more usual case where it is. Where the poll takes place and the result is announced on 28 February 2022, according to the Department it has “concluded” and according to the Explanatory Note the extension does not apply; but according to Article 2(2)(b) the extension clearly does apply because the poll was held on that date. The issue, in other words, is not whether most people would or would not consider the announcement of the result to be the conclusion of an election: the point is that Article 2(2)(b), rightly or wrongly, makes the extension depend not on the date on which the election “concludes” but on the date on which the poll takes place. If, as the Department maintains, the legislative intention was for the date of declaration of the result to be determinative, it has failed to achieve that result in Article 2(2)(b), **which the Committee accordingly reports for defective drafting.**

2 S.I. 2020/1388: Reported for requiring elucidation, for defective drafting and for failure to comply with proper legislative practice

Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020

2.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they require elucidation in one respect, are defectively drafted in three respects and fail to comply with proper legislative practice in one respect.

2.2 These Regulations, which are subject to the negative resolution procedure, correct deficiencies in several pieces of domestic and retained EU legislation to ensure that the UK statute book operates effectively after the end of the Brexit transition period.

2.3 Regulation 9 amends Commission Decision 2009/177/EC, which relates to the prevention of disease in aquaculture animals (i.e., farmed fish, molluscs and crustaceans). Paragraph (5) transposes into domestic legislation provisions of Directive 2006/88/EC that set out the criteria for declaring an area free of certain diseases that affect aquaculture animals (inserted Articles 2a and 2b), and for maintaining or suspending that disease-free status (inserted Articles 2c and 2d). Article 52 of the Directive provides that disease-free status can be maintained without targeted surveillance “provided that the conditions conducive to clinical expression of the disease in question exist, and the relevant provisions of this Directive are implemented”. Article 2c transposes most of Article 52 into domestic law, but it omits the second condition. The Committee asked the Department for Environment, Food and Rural Affairs to explain the omission. In a memorandum printed at Appendix 2, the Department confirms that it is intended that the only condition for maintenance of disease-free status and the discontinuance of targeted surveillance is to be for the conditions conducive to clinical expression of the disease to exist. This approach appears to rest on construing the second limb of Article 52 not as a continuing obligation that requires to be separately incorporated as such into domestic law, but simply as an obligation to achieve the stated results in domestic law. The Committee accepts that this is a possible construction, notes the Department’s policy intent and **accordingly reports regulation 9(5) (inserted Article 2c) for requiring elucidation, provided in the Department’s memorandum.**

2.4 Regulation 12 amends Regulation (EC) No 1069/2009, which sets health rules for animal by-products not intended for human consumption. Paragraph (2) makes a general amendment to the whole Regulation, replacing every reference to “Community legislation”—except where it appears in Articles 5(1) and 34(2)—with a reference to “retained EU law”. Paragraph (18)(a), however, purports to amend Article 34(1) by removing the phrase “the Community legislation referred to in that Article”. The Committee asked the Department to confirm that the exception in regulation 12(2) should have applied to both paragraphs of Article 34. In its memorandum, the Department accepts that this “may have been preferable” but asserts that because the amendments in regulation 12(2) and (18)(a) “take effect at the same point in time and have to be read together ... the more specific amendment to regulation 34(1) itself creates an exception to the general amendment in regulation 12(2) and the intended effect is clear”. Whilst the Committee accepts that a court is likely to be forced to that conclusion, it is not proper drafting practice to frame conflicting provisions on the basis that the more specific will implicitly take priority over the more general. Had that been the case, then the general substitution in regulation 12(2) would have required no exceptions. And the drafting should have been internally consistent: having created an express exception for Articles 5 and 34(2) to avoid having to construe conflicting amendments on the basis of necessary implication, the conflict with Article 34(1) should also have been avoided with express words. **The Committee accordingly reports regulation 12(2) for defective drafting.**

2.5 Regulation 15 amends Commission Regulation (EU) No 576/2013. Paragraph (3) (d) inserts several new defined terms, including ‘the EU Implementing Regulation’ (inserted point (o)) and ‘the EU Regulation’ (inserted point (p)). The Committee asked the Department to explain the intended difference in meaning between “as it has effect in European Union law” in the first definition and “as it applies in European Union law” in the second. In its memorandum, the Department acknowledges that there is no intended difference in meaning and accepts that the first expression should have been used in both definitions. It undertakes to consider how the error might be addressed. **The Committee accordingly reports regulation 15(3)(d) (inserted points (o) and (p)) for defective drafting, acknowledged by the Department.**

2.6 Regulation 20(2)(s) replaces regulation 2(60) of the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/170), which in turn amends Section A of Chapter A of Annex 8 to Regulation (EC) No 999/2001. The effect of new paragraph (60)(b)(ii) is that under Section A, point 2.1(e), introductions from “other countries” of sheep and goats and their genetic material must be carried out in accordance with Section A, point 4. But new paragraph (60)(g) revokes that point 4; meanwhile, under point 2.1(f), introductions from “third countries” of sheep and goats etc. must be carried out in accordance with other provisions that are not revoked. The Committee asked the Department to explain why new paragraph (60) (b)(ii) and point 2.1(e) are necessary. In its memorandum, the Department acknowledges that they are not and undertakes to consider whether there may be a suitable opportunity to correct the error by amending the EU Regulation. **The Committee accordingly reports regulation 20(2)(s) (substituted paragraph (60)(b)(ii)) for defective drafting, acknowledged by the Department.**

2.7 The Committee noticed a large number of minor errors in the instrument (as set out in the table in Annex 2). It asked the Department to explain why these were not identified

and corrected at proofreading stage. The Department acknowledges and apologises for the errors, which it asserts “arose through the high volume of instruments being drafted and checked in a short space of time”. The Committee of course appreciates the enormity of the necessary preparations for the end of the Brexit transition period and the pressures on all involved. But pressure of time can never amount to an acceptable excuse for making bad law. Even obvious typographical and similarly small-scale errors can be a source of confusion and even misunderstanding for readers of legislation, who are entitled to expect that legislation will not be enacted until it has been thoroughly checked. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice due to the prevalence of minor drafting errors, acknowledged by the Department.**

3 S.I. 2020/1571: Reported for defective drafting

Russia (Sanctions) (Overseas Territories) 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 one respect.

3.2 This Order in Council, which is not subject to parliamentary procedure, extends the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) to British overseas territories with several modifications. Paragraph 55 of Schedule 2 to the Order substitutes a new penalties regulation (regulation 80) so that offences in the 2019 Regulations can be enforced in the overseas territories, but it fails to include any penalty or other consequence in respect of offences under Part 6 (Ships). The Committee asked the Foreign, Commonwealth and Development Office to explain the omission. In a memorandum printed at Appendix 3, the Department acknowledges the error and undertakes to correct it at the earliest opportunity. The Committee welcomes the undertaking, and **accordingly reports paragraph 55 of Schedule 2 (substituted regulation 80) for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 24 February 2021 the Committee considered the instruments set out in Annex 1 to this Report, none of which was required to be reported to both Houses.

Annex 1

Draft Instruments requiring affirmative approval

Draft S.I.	Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021
Draft S.I.	Renewables Obligation (Amendment) Order 2021
Draft S.I.	Financial Reporting Council (Miscellaneous Provisions) Order 2021

Instruments subject to annulment

S.I. 2020/1596	Health Service Commissioner for England (Special Health Authorities) Order 2020
S.I. 2020/1644	Health Protection (Coronavirus, Travel from South Africa) (England) Regulations 2020
S.I. 2020/1659	National Health Service (Charges to Overseas Visitors) (Amendment) (EU Exit) (No. 2) Regulations 2020
S.I. 2021/5	Short Selling (Notification Thresholds) Regulations 2021
S.I. 2021/6	Whole of Government Accounts (Designation of Bodies) Order 2021
S.I. 2021/10	Aviation Safety (Amendment) Regulations 2021
S.I. 2021/14	School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2021
S.I. 2021/18	Health Protection (Coronavirus, International Travel) (England) (Amendment) Regulations 2021
S.I. 2021/28	Markets in Financial Instruments (Switzerland Equivalence) Regulations 2021
S.I. 2021/30	National Health Service (Performers Lists, Coronavirus) (England) Amendment Regulations 2021

Instruments not subject to parliamentary proceedings laid before Parliament

S.I. 2020/1561	Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1604	Sanctions (Overseas Territories) (Revocations) Order 2020

- S.I. 2020/1608** ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (Overseas Territories) Order 2020
- S.I. 2020/1668** Trade in Endangered Species of Wild Fauna and Flora (Commission Regulation (EC) No 865/2006) (Amendment) Regulations 2020

Instruments not subject to parliamentary proceedings not laid before Parliament

- S.I. 2020/1642** Finance Act 2016, Section 126 (Appointed Day), the Taxation (Cross-border Trade) Act 2018 (Appointed Day No. 8, Transition and Saving Provisions) and the Taxation (Post-transition Period) Act 2020 (Appointed Day No. 1) (EU Exit) Regulations 2020
- S.I. 2020/1652** Extradition (Provisional Arrest) Act 2020 (Commencement No. 1) Regulations 2020

Annex 2

S.I. 2020/1388: ANIMALS, AQUATIC ANIMAL HEALTH, INVASIVE ALIEN SPECIES, PLANT PROPAGATING MATERIAL AND SEEDS (AMENDMENT) (EU EXIT) REGULATIONS 2020

Minor errors queried by the Committee:

Provision	Error	Comments
Regs.5(3)(b), 6(3), 7(3), 8(3) (c), etc.	Punctuation around the defined term is not consistent (see reg.5(3)(b) cf. reg.6(3) cf. para.1(a) of the Schedule) (And in the inserted definition of “the appropriate authority”, the use of multiple sub-paragraphs with the same number is unclear for citation purposes)	e.g.: (a) X means: (i); (ii); (iii); but: (i); (ii); (b)...
Reg.5(23), inserted Annex 1A, in col.3 of the first row under “Non-exotic diseases”	“ <i>G. Macrocephalus</i> ” should be “ <i>G macrocephalus</i> ”; “ <i>Sprattussprattus</i> ” should be “ <i>Sprattus sprattus</i> ”; “ <i>Paralichthys olivaceus</i> ” should be in italics;	
Reg.9(5), inserted Art.2b(2)	“first” in “The first condition” is superfluous; there is no second condition (cf. Art.2a(2) and (3))	
Reg.9(5), inserted Art.2c	Paragraphs should be numbered	Including for consistency with other inserted provisions
Reg.11(12)(b)(ii) and (iii), (c)(iv) and (v), (d)(ii) and (iii) and (g) (ii) and (iii), (13) (b)(ii) and (iii), (d)(ii) and (iii) etc.	Punctuation in substituted and inserted provisions is inconsistent with provisions into which they are inserted (substituted provision should end with semi-colon as is not final item in list; inserted provision should not be formatted as a new sentence, but as new independent clause).	The error is repeated in several paragraphs in reg.11 that amend and add to pre-existing lists (not all listed here)

Reg.11(12)(b), (c) (v), (d) and (g), (13)(b), (c)(v), (d) and (g), (14)(c) (v), (d) etc.	Final full stop should be semi-colon	The error is repeated in several paragraphs in reg.11 (not all listed here)
Reg.12(4)(c)	The defined terms at inserted paras.32–34 should end with an inverted comma not closing quotation marks	For consistency with formatting of other defined terms, and with inverted comma at start of defined term
Regs.12(20)(a) (ii), 13(52)(b)(i), 20(2)(t) and (u), 27(11)(a), 28(3) (b), 29(4)(a), and Sch. Para.1(a)	Final full stop should be semi-colon	
Reg.13(35)(h)	Comment re reg.12(4)(c) applies here re “constituent nation”	
Reg.13(65)	Superfluous “In”	
Reg.13(66)–(69)	Final semi-colon should be full stop	
Reg.13(70)(i)(bb)	Amendment results in “has has been assessed”	
Reg.20(2)(w), and Sch.,para.1	Missing final full stop	For internal consistency
Reg.25(2)(b)	Missing comma after “and the Scottish Ministers”	
Reg.25(2)(b)	The amendment should be made to inserted paragraph 2A, not to sub-paragraph (d) itself	For accuracy and internal consistency (see e.g. reg.25(3)(b) and (11)(a))
Reg.28(2)(a)	“for “Member State” substitute” should be “for “a Member State” substitute”	
Reg.28(3)(c), substituted para.1(iii)	“of breeding body” should be “or breeding body”	
Reg.30(3)(d)(iii)	Missing final semi-colon	
Reg. 38(11), inserted Sch.1A para.4(b)(ii) and (iii); Sch. para.3(b)(ii) and (iii)	References to “Article 2b(1)” or “Article 2b(3)” of Decision 2015/1554 should be to “Article 2a(1)” or “Article 2a(3) of that Decision	

Sch.,para.4(a)(ii) (cc)	“third and fifth rows” should be “third to fifth rows”	For consistency with other amendments, e.g. in para.4(a)(v)(cc)
Sch.,para.4(a)(vi)	Comma missing between “second” and “third”	

Appendix 1

Draft S.I.

Mayoral and Police and Crime Commissioner Elections (Coronavirus, Nomination of Candidates) (Amendment) Order 2021

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

(1) In relation to the amendments effected by Article 3:

(a) explain whether consideration was given to allowing the amendments to have England and Wales extent, with their England-only application being achieved by express limitation on the face of the Rules as amended (having regard to the particular difficulties for publishers and readers of parallel texts created by reference to application only and not extent);

(b) confirm that it is intended that the words omitted are to revive on the expiry of the Order in accordance with Article 2, and explain whether consideration was given to providing for that intended effect expressly (to enhance clarity for readers having regard, in particular, to sections 15 and 16 of the Interpretation Act 1978); and

(c) confirm that the amendment of Rule 8(1) effected by Article 3(2)(a) should also have removed the words “to the nomination” (having regard to the present syntax of rules 8(1) and (2)).

(2) Explain the inconsistency between the words “but not concluded on that date” in the Explanatory Note and the words “on or” in Article 2(2)(b).

Point (1)(a)

2. The Department acknowledges that parallel texts can make understanding the law difficult for readers. We considered whether to expressly state on the face of the amended provisions that particular rules applied to Wales and other rules applied to England. On balance, as the amendments are both temporary and limited in nature, it was considered sufficient to provide on the face of the amending regulations that certain amendments apply to England only. If the intention was for the provisions to have been amended in the longer term then we agree that it would have been preferable to make this clear on the face of the amended provisions. In addition, there are no elections in Wales which will be held under S.I. 2007/1024 during the period when the amended rules will be in force, as there are currently no mayors of this kind in Wales. In light of these points, and as the Cabinet Office will be providing guidance on the temporary rules, we consider that there is limited scope for confusion.

Point (1)(b)

3. The Department confirms that the intention is that the expiry of the temporary amendments revives the prior rules.

4. We considered whether to make express provision for the revival of the prior rules but we felt that this was sufficiently clear from the context of the draft Order as whole and the fact that the amendments are expressed to be temporary, expiring at the end of the 28th February 2022. We considered sections 15 and 16 of the Interpretation Act 1978 and the drafting at article 2(1) was specifically intended, based upon the drafting guidance from the Office of the Parliamentary Counsel at paragraph 10.7.6, to make it clear that the provisions are only intended to be temporary, and that the expiry of the provisions is not intended to act as a repeal of a repeal.

5. In addition, the Department considers that it is clear from *Halsbury's Laws of England* (Vol96) (2018) (for example at paragraphs 307, 317, 319 and 686) that the effect of a temporary provision should be established from the context of that provision. In particular, “its effect on the enactment purported to be repealed may be to suspend its operation, but it clearly will not repeal it permanently”, and “it is a question of construction whether the repeal is to be taken at face value”. We consider that it is clear from the context that the provisions are intended to be temporary amendments to the existing rules. Further, Article 2(2) of the draft instrument provides that, while the old rules are revived for elections for which the notice is issued after 28 February 2022, the temporary amendments continue to have effect for elections for which the notice was issued on or before 28 February 2022. If the effect of the expiry was not to revive the previous provisions, the saving provision would have been unnecessary. Therefore we respectfully submit that it is clear from the overall context that the prior rules are amended for the period in which the order is in force and are revived for any election in relation to which a notice is issued after 28th February 2022.

Point (1)(c)

6. The Department confirms that the syntax of rules 8(1) and (2) was considered in relation to the drafting of the amendments. Our view is that “proposing or seconding to” the nomination (our emphasis) would not be correct, and that is the reason for the drafting in the amended rule 8(2). However a person could be “proposer or seconder to the nomination” and that is why it was not considered necessary to remove the words “to the nomination” in rule 8(1) even though it was in rule 8(2). We agree that omitting the words “to the nomination” in rule 8(1) would also be correct, and may have been clearer. However, the Department respectfully considers that rule 8(1) as amended is sufficiently clear that it should not cause confusion for an ordinary reader.

Point (2)

7. In relation to the inconsistency between the words in Article 2(2)(b) and the explanatory note, the purpose of Article 2(2)(b) is to ensure that where a notice of election has been issued on or before 28 February 2022, but the poll for that election held on that date or at any point after that date, the amended rules will apply. The drafting of Article 2(2)(b) reflects the policy intention.

8. In the explanatory note, the words “but not concluded on that date” were used to refer to a scenario where the poll is either to be held after 28th February 2022 or is held on 28 February 2022 but where the results are not yet known by the end of that day. We considered most people would consider the announcement of the result at the count to be the “conclusion” of an election, and therefore we used this wording. However, we

appreciate the JCSI raising this point and on reflection agree that the explanatory note is not as clear as it should be, and we will ensure that we do not use this form of words in a similar case.

Cabinet Office

15 February 2021

Appendix 2

S.I. 2020/1388

Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020

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

In relation to regulation 9(5), inserted Article 2c, explain—

(a) whether it is intended that the only condition for maintaining disease-free status is that the conditions conducive to clinical expression of the disease in question exist;

(b) whether, in the alternative, it is intended that there are other relevant conditions that must be complied with to maintain disease-free status, as in Article 52 of Directive 2006/88; and

(c) if (b), how effect is given to that intention.

2. The Department can confirm that the intention was for the only condition to be that “the conditions conducive to clinical expression of the disease in question existed.”

3. In the Department’s view it would not be consistent with UK legislative practice to provide for the maintenance of disease-free status and the discontinuance of surveillance to be conditional on legislative transposition of the Directive, even if the UK were still a member of the EU. In the Department’s view, it is for the Government to determine whether the Directive has been fully transposed, and in the light of that assessment determine whether disease-free status should be maintained, and surveillance discontinued. Where the Government considers that the Directive has been fully transposed, the latter determination turns on whether conditions are conducive to clinical expression of the disease, in cases where it exists.

Confirm that in regulation 12(2), the exception to substituting “retained EU law” for “Community legislation” should apply to both paragraphs of Article 34, given that paragraph 18(a) amends Article 31(1) by reference to the term “Community legislation”.

4. The Department’s view is that whilst it may have been preferable for Article 34(1) to be included in the list of excepted provisions in regulation 12(2), its inclusion was not strictly necessary. The amendments in regulation 12(2) and (18)(a) take effect at the same point in time and have to be read together. When read together, the more specific amendment to regulation 34(1) itself creates an exception to the general amendment in regulation 12(2) and the intended effect is clear.

Explain, in relation to regulation 15(3)(d), inserted points (o) and (p), the intended difference in meaning between “as it has effect in European Union law” and “as it applies in European Union law”.

5. There is no intended difference of meaning. The Department accepts that inserted point (p) should have said “as it has effect in European Union law”. The Department regrets the oversight and will consider how this might be addressed.

In relation to regulation 20(2)(s), explain why inserted paragraph (60)(b)(ii) and point 2.1(e) are necessary, given that point 2.1(f) already applies a condition to introductions of the same animals from “third countries” and point 4 (to which point 2.1(e) refers) is omitted by inserted paragraph (60)(g).

6. The Department agrees that point 2.1(e) is unnecessary and regrets the oversight. It will consider whether there may be a suitable opportunity to address this by an amendment to Section A of Chapter A of Annex 8 to Regulation (EC) No 999/2001.

Confirm that the provisions identified in the table below contain typographical or similar errors as marked, and explain why these errors were not identified and corrected at proofreading stage.

7. The Department accepts that the Committee has identified a number of more minor errors which should have been identified in the checking process. The Department regrets that these errors arose through the high volume of instruments being drafted and checked in a short space of time.

Department for Environment, Food and Rural Affairs

9 February 2021

Appendix 3

S.I. 2020/1571

Russia (Sanctions) (Overseas Territories) Order 2020

1. On 3 February 2021, the Committee requested that the Foreign, Commonwealth and Development Office (“FCDO”) submit a memorandum on the following point:

Explain why paragraph 55 of Schedule 2 (substituted regulation 80) does not include a penalty (or other consequence) in respect of the offence under Part 6 (Ships) of the Russia (Sanctions) (EU Exit) Regulations 2019.

2. The FCDO is grateful for the Committee’s consideration of this instrument and responds as follows.

3. The Committee is correct that paragraph 55 of Schedule 2 omits reference to Part 6 (Ships). There should be such a reference in paragraphs (3) and (8) of substituted regulation 80. This was an oversight in the drafting and checking process. We will seek to put it right by means of amendment at the earliest opportunity.

Foreign, Commonwealth & Development Office

9 February 2021