



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

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

Drawing special attention to:

Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 (S.I. 2020/1666)

General Pharmaceutical Council (Coronavirus) (Amendment) Rules Order of Council 2021 (S.I. 2021/26)

Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021 (S.I. 2021/27)

Health Protection (Coronavirus, Pre-departure Testing and Operator Liability) (England) (Amendment) Regulations 2021 (S.I. 2021/38)

Weymouth Harbour Revision Order 2021 (S.I. 2021/43)

Social Fund Funeral Expenses Payment (Amendment) Regulations 2021 (S.I. 2021/65)

Health Protection (Coronavirus, International Travel (England) (Amendment) (No. 7) Regulations 2021 (S.I. 2021/150)

Heather and Grass etc. Burning (England) Regulations 2021 (S.I. 2021/158)

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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 17 March 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 eight 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. 2020/1666: Reported for requiring elucidation and for defective drafting

Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020

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

1.2 These Regulations, which are subject to the negative resolution procedure, amend the retained EU law version of Commission Decision 2000/572/EC (“the Decision”) so that it applies to the import into England of meat from third countries, and so as to remove temporarily the prohibition on importing chilled meat products from the EEA that would otherwise have applied from the end of the transition period. They are made under paragraph 11A(1) of Schedule 2 to S.I. 2011/1197, which provides:

The Secretary of State may by regulations impose special import conditions in respect of imports from third countries of products of animal origin intended for human consumption, having regard to the animal health situation of the third country or countries concerned, and may for that purpose amend, modify or revoke any retained direct minor EU legislation made under Article 8(4) of Council Directive 2002/99/EC (“the 2002 Directive”; emphasis added).

1.3 The Committee asked the Department for Environment, Food and Rural Affairs to explain the basis on which this enabling power is relied on, given that the Decision was made under Council Directive 94/65/EC (“the 1994 Directive”).

1.4 In a memorandum printed at Appendix 1, the Department notes that the 1994 Directive was later repealed and, thanks to a provision in the repealing instrument, references to it in other EU legislation are to be construed as references to the 2002 Directive. The Department asserts that this gloss must be applied to such references where they appear in the recitals to the Decision as retained EU law (as it would have been in EU law immediately before the end of the transition period), and that the Decision must consequently be read as having been made under the 2002 Directive for the purposes of the enabling power. The Committee: accepts that the courts are likely to be forced to this conclusion; notes that it would have been helpful to readers, in the light of the general complexity of retained EU law and the particular complexities of this case, to have explained the chain of amendments by way of footnote to the instrument; **and accordingly reports the preamble to these Regulations as requiring elucidation, provided in the Department’s memorandum.**

1.5 Regulation 1(2) provides that these Regulations come into force “on the day after the day on which IP completion day falls, immediately following the coming into force” of specified provisions that come into force on IP completion day. “IP completion day” is defined in section 39 of the European Union (Withdrawal Agreement) Act 2020 as 31 December 2020 at 11pm. Consequently, and by operation of section 4 of the Interpretation Act 1978, provisions expressed to come into force “on the day after the day on which IP completion day falls” do so at the beginning of 1 January 2021. It appeared to the Committee that this was incompatible with commencing immediately after 11pm on 31 December 2020. It asked the Department to explain when it intended these Regulations to come into force. In its memorandum, the Department asserts that regulation 1(2) should be construed as providing “for the instrument to come into force on the day after the day on which IP completion day fell, but not earlier than immediately after the coming into force of” the specified provisions. Despite the Department’s explanation in its memorandum of why it had thought it necessary to include the second proposition, the result simply does not make sense: once it is provided that the regulations come into force on the day after the day of IP completion, it adds nothing to say that they come into force not earlier than the coming into force of provisions which commenced at 11pm the previous day. (The possibility of change to IP completion day could have been addressed by a “whichever is the later” commencement provision.) As drafted, the commencement provision simply contains two propositions that are inherently contradictory, **and the Committee accordingly reports regulation 1(2) for defective drafting.**

2 S.I. 2021/26: Reported for requiring elucidation

General Pharmaceutical Council (Coronavirus) (Amendment) Rules Order of Council 2021

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

2.2 This Order, which is subject to the negative resolution procedure, amends the General Pharmaceutical Council Rules to ensure that the Council’s processes can continue during the coronavirus pandemic. The Order comes into force on 4 March 2021 (49 days after it is laid before Parliament) and most of the amendments made by the Rules (set out in the Schedule) expire on 1 May 2021. The Committee asked the Department of Health and Social Care to explain the reasons for the commencement date and the expiry date. In a memorandum printed at Appendix 2, the Department explains that as the instrument was also laid before the Scottish Parliament, the instrument came into force on 4 March 2021 to reflect the need to lay negative procedure instruments before the Scottish Parliament for at least 40 days before they come into force. In relation to the expiry date, the Department explains that the Council indicated in the consultation on the Rules that they would only remain in place until 1 May 2021 and the short period during which the Rules are in place will be used to assess their impact with a view to introducing new Rules later in the year if appropriate. The Committee is grateful for these explanations **and accordingly reports this Order for requiring elucidation, provided by the Department’s memorandum.**

3 S.I. 2021/27: Reported for requiring elucidation and for doubtful vires

Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021

3.1 The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect and that there is doubt as to whether it is *intra vires* in four related respects.

3.2 This Order, which is subject to the negative resolution procedure, amends the Health and Care Professions Council Rules to ensure that the Council's processes can continue during the coronavirus pandemic and future emergencies. The Order comes into force 49 days after it is laid before Parliament, and the Committee asked the Department of Health and Social Care to explain why. In a memorandum printed at Appendix 3, the Department gives an explanation similar to that discussed in relation to S.I. 2021/26 above, **and the Committee accordingly reports this Order for requiring elucidation, provided by the Department's memorandum.**

3.3 The Order inserts into four sets of rules a provision relating to emergency virtual meetings and hearings. As a result of the inserted provision, when an emergency exists a meeting or hearing arranged under each set of rules can be conducted virtually. An emergency exists "where the Registrar considers that an emergency, as defined in Article 9A(12) of the [Health Professions Order 2001], has occurred, is occurring or is about to occur" (inserted paragraph 2A(3) in each of paragraphs 2(2), 3(2), 4(2) and 5(2) of the Schedule). The Committee asked the Department to identify the enabling power for this sub-delegation. In its memorandum, the Department concedes that there is no power that permits this element of sub-delegation and undertakes to rectify the issue as soon as possible (which the Committee takes as an undertaking to amend the instrument to provide objective criteria for the invocation of the new powers, as soon as can be arranged). **The Committee accordingly reports inserted paragraph 2A(3) in each of paragraphs 2(2), 3(2), 4(2) and 5(2) of the Schedule for doubt as to whether they are *intra vires*.**

4 S.I. 2021/38: Reported for unusual or unexpected use of enabling powers

Health Protection (Coronavirus, Pre-departure Testing and Operator Liability) (England) (Amendment) Regulations 2021

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

4.2 These Regulations, which are subject to the negative resolution procedure, introduce requirements for operators of commercial transport services to ensure that passengers travelling to England from outside the common travel area complete a Passenger Locator Form and possess notification of a negative test result. An operator who fails to ensure that a passenger has completed a Passenger Locator Form commits an offence (regulation 8(1)). It is a defence for an operator to show that it recorded a unique passenger reference number

for the relevant passenger before that passenger boarded the relevant service (regulation 8(3)). (A unique passenger reference number is a number received by the passenger from the Home Office on completion of the Passenger Locator Form.)

4.3 Regulation 8(5) defines “unique passenger reference number” as “a reference number which has been provided by or on behalf of the relevant passenger and which includes the letters “UKVI” followed immediately by an underscore and thirteen alphanumeric characters.” The Committee asked the Department for Transport to explain how an operator will know whether the unique passenger reference number provided by the passenger is a number received from the Home Office rather than a number falsified by the passenger in the correct format. In a memorandum printed at Appendix 4, the Department explains that operators are not required to verify the reference number as real time verification would impose a significant burden. The Department recognises that this approach does not ensure that every passenger will have completed a Passenger Locator Form before boarding and accepts that it is possible for a passenger to falsify a unique passenger reference number. The Committee finds this surprising: legislation is not the place for the expression of hopes and requests, and if an obligation is placed on a person there should be a means of ensuring and enforcing compliance. The Committee does not understand the logic of creating an offence that can be committed by the operator subject to a defence that a passenger gave them a number, if that number can be a complete fabrication. The result appears to create such obvious avoidance opportunities that **the Committee reports regulation 8 for making unusual or unexpected use of the enabling power.**

4.4 (The Committee also asked the Department to explain what criminal or other legal consequences arise from a passenger falsifying a unique passenger reference number. In its memorandum, the Department confirms that providing a false passenger reference number to an operator is not specifically prohibited. This compounds the illogicality of the result described in the previous paragraph.)

5 S.I. 2021/43: Reported for requiring elucidation for defective drafting and for failure to comply with proper legislative practice

Weymouth Harbour Revision Order 2021

5.1 **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.**

5.2 This Order, which is subject to the negative resolution procedure, modernises and consolidates the statutory harbour powers applying to Weymouth Harbour.

5.3 The Committee asked the Marine Management Organisation to explain the meaning of an “appropriate interest” in land in articles 34 and 35. In a memorandum printed at Appendix 5, the Department explains that the meaning of “appropriate interest” was intended to include interests in land which fall short of freehold ownership or lease (such as easements). Having reconsidered the matter and the definition of “land” in the Interpretation Act 1978, however, the Department accepts that the word is not necessary and undertakes to ensure the error does not occur again. Unnecessary replication of

provisions of the Interpretation Act has the potential for misunderstanding and confusion **and the Committee accordingly reports regulations 34 and 35 for defective drafting, acknowledged by the Department.**

5.4 The Committee also asked the Department to explain (having regard to Schedule 1 to the Interpretation Act 1978) what the expression “person or body” in article 40(2) achieves that could not be achieved by “person” alone. In its memorandum, the Department accepts that the words “or body” are unnecessary and undertakes to ensure that the error does not occur again. **The Committee accordingly reports article 40(2) for defective drafting, acknowledged by the Department.**

5.5 (The Committee refers to its Thirty-Ninth Report of Session 2017–19 (in relation to S.I. 2018/1093) where it noted that legislative references to “person or body” have proliferated in recent years and expressed its concern that while some legislation uses “person” alone and presumably relies on the 1978 Act, other legislation chooses to use both words, which is unnecessary (and therefore confusing) and casts doubt on the scope of references elsewhere to “person” alone. To avoid this confusion, a consistent practice should be applied throughout all legislation.)

6 S.I. 2021/65: Reported for requiring elucidation

Social Fund Funeral Expenses Payment (Amendment) Regulations 2021

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, which are subject to the negative resolution procedure, are made under section 8(1) of the European Union (Withdrawal Act) 2018 to address failures of retained EU law to operate effectively and other deficiencies. Previous instruments made under this section have contained “(EU Exit)” in the title and the Committee asked the Department for Work and Pensions to confirm whether practice within Government has changed. In a memorandum printed at Appendix 6, the Department confirms that the practice within Government following the expiry of the Transition Period is no longer automatically to include “(EU Exit)” in the title of instruments made under section 8 of the 2018 Act, subject to exceptions such as where an instrument is amending an earlier instrument with “(EU Exit)” in the title. The Committee believes that it might have been easier for readers trying to follow statutory trails if the heading convention, once adopted and generally understood, had been maintained until the section 8 power ceased to be used; both the change of practice and the exceptions may cause some confusion. But the Committee accepts that there are arguments in both directions (presumably including an argument based on an expectation that the section 8 vires will come to be used increasingly alongside other later powers). This is ultimately a question of style which the Committee believes is a matter for the Government, **and the Committee accordingly reports these regulations for requiring elucidation, provided by the Department’s memorandum.**

7 S.I. 2021/150: Reported for defective drafting

Health Protection (Coronavirus, International Travel (England) (Amendment) (No. 7) Regulations 2021

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

7.2 These Regulations, which are subject to the negative resolution procedure, introduce managed quarantine for travellers from high risk countries and mandatory testing for travellers from outside the common travel area prior to those travellers arriving in England. The Committee asked the Department of Health and Social Care to explain the meaning of “variant of concern” and “variant under investigation” in regulation 20. In a memorandum printed at Appendix 7, the Department explains the meanings and asserts that the terms have a commonly understood meaning in the scientific and public health community and do not need to be defined. The Committee disagrees. Terms used in legislation should be understandable to any user of that legislation. The Committee notes that the Department itself defines “variant of concern” in regulation 19 of these regulations (inserted paragraph 6(3)(c) of Schedule 2C) for the purposes of insertion into the Health Protection (Coronavirus, International Travel) (England) Regulations 2020: if the term was insufficiently clear to the reader in that context there is no reason why it should be clear to the reader in this context. Accordingly, definitions of “variant of concern” and “variant under investigation” should have been inserted into the Health Protection (Notification) Regulations 2010 amended by regulation 20 of these regulations; **and the Committee reports regulation 20 for defective drafting.**

7.3 The Committee also asked the Department to explain (1) whether the cross-reference in regulation 6(c)(i) to “(d) or (e)” should be to “(c) or (e)”; (2) why the words in inserted paragraph 4B(2)(c) of regulation 7 do not flow from the opening words of regulation 4B(2); (3) why Regulation 20(3) (inserted regulation 4ZA(1)(c)) refers to a paragraph 6(1)(e) which does not exist and (4) whether the cross-reference in regulation 16(b) (inserted paragraph 7(b)) should be to paragraph “10(5)” rather than “10(4)”. In each case the Department acknowledges an error. It explains that the first three errors have already been corrected by a subsequent instrument and that it intends to make regulations to address the fourth error as soon as possible. **The Committee accordingly reports regulations 6, 7, 16 and 20 for defective drafting, acknowledged by the Department.**

8 S.I. 2021/158: Reported for requiring elucidation and for defective drafting

Heather and Grass etc. Burning (England) Regulations 2021

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

8.2 These Regulations, which are subject to the negative resolution procedure, ban the burning (without a licence) of specified vegetation in specified areas subject to limited exceptions. The exceptions in regulation 3 and the provisions for the licensing of burning

in regulation 4 both refer to a burning season, the length of which depends on whether the land is an upland area. Regulation 2 defines upland area to mean “all the land shown coloured pink on the map marked as ‘Map of Upland Area in England’ held by the Department for Environment, Food and Rural Affairs but does not include the land coloured pink in the Isles of Scilly” and a footnote refers to an address where the map can be inspected upon application. The Committee asked the Department for Environment, Food and Rural Affairs to explain whether the map is available online. In a memorandum printed at Appendix 8, the Department explains that it is currently expected that the map will be published online before the instrument comes into force. Given the current restrictions on movement due to the pandemic and presumably the need for those affected by the legislation to make preparations, it appears to the Committee that it is unsatisfactory that the map is not currently available online (especially as the Department asserts that the map is intended to contain the same information as the map referenced in regulation 2 of the Heather and Grass etc. Burning (England) Regulations 2007). **The Committee accordingly reports the regulations for requiring elucidation.**

8.3 The Committee also asked the Department why the reference to the map is not to a specific dated version. In its memorandum, the Department argues that the map in question is clearly identified and there is no doubt as to the map referred to. The Committee disagrees; without reference to a specific dated version of the map, there is a possibility that a new version could be substituted. The Committee notes that the 2007 Regulations include a reference to a specific dated version of the map **and the Committee accordingly reports regulation 2 for defective drafting.**

Instruments not reported

At its meeting on 17 March 2021 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Draft Instruments requiring affirmative approval

Draft	Audiovisual Media Services (Amendment) Regulations 2021
Draft	Warm Home Discount (Miscellaneous Amendments) Regulations 2021
Draft	Civil Proceedings Fees (Amendment) Order 2021
Draft	Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021

Instruments subject to annulment

S.I. 2021/42	Countryside Stewardship (England) (Amendment) Regulations 2021
S.I. 2021/75	Traffic Signs (Coronavirus) (Amendment) (England) Regulations 2021
S.I. 2021/82	M271 Motorway (Junction 1 to Redbridge Roundabout) (Fixed Speed Limits) Regulations 2021
S.I. 2021/102	Agricultural Holdings (Units of Production) (England) Order 2021
S.I. 2021/110	Insolvency Practitioners (Recognised Professional Bodies) (Revocation of Recognition) Order 2021
S.I. 2021/116	M6 Motorway (Junctions 13 to 15) (Variable Speed Limits) Regulations 2021
S.I. 2021/117	Civil Procedure (Amendment) Rules 2021
S.I. 2021/122	Education (Coronavirus, Remote Education Information) (England) (Amendment) Regulations 2021
S.I. 2021/124	Communications (Television Licensing) (Amendment) Regulations 2021
S.I. 2021/126	Prosecution of Offences Act 1985 (Specified Proceedings) (Coronavirus) (Amendment) Order 2021
S.I. 2021/130	Fowey Harbour Revision Order 2021
S.I. 2021/137	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 6) Regulations 2021
S.I. 2021/144	Scotland Act 1998 (Agency Arrangements) (Specification) (Overseas Production Orders) Order 2021

S.I. 2021/145	Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) (Amendment) Regulations 2021
S.I. 2021/155	Family Procedure (Amendment) Rules 2021
S.I. 2021/161	Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021
S.I. 2021/166	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 8) Regulations 2021
S.I. 2021/223	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2021

Draft Instruments subject to annulment

Draft	London Borough of Bromley (Electoral Changes) Order 2021
Draft	London Borough of Wandsworth (Electoral Changes) Order 2021
Draft	Royal Borough of Kingston-upon-Thames (Electoral Changes) Order 2021

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2021/111	Income Tax (Indexation) Order 2021
S.I. 2021/132	Protection of Trading Interests (Authorisation) Regulations 2021
S.I. 2021/146	Crime (Overseas Production Orders) Act 2019 (Commencement No.2) (Northern Ireland) Regulations 2021
S.I. 2021/147	Universal Credit (Work-Related Requirements) In Work Pilot Scheme (Extension) Order 2021

Appendix 1

S.I. 2020/1666

Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020

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

(1) Explain the basis on which the enabling power cited in the preamble is relied on, given that it expressly confers a power to amend only retained direct minor EU legislation made under Article 8(4) of Council Directive 2002/99/EC.

2. Paragraph 11A of Schedule 2 to the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197) enables the Secretary of State to “amend, modify or revoke any retained direct minor EU legislation made under Article 8(4) of Council Directive 2002/99/EC.”

3. The Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 (S.I. 2020/1666) made using this power modifies and amends Commission Decision 2000/572/EC (EUDN 2000/572).

4. The Department notes that, while Commission Decision 2000/572 was adopted under powers included in Council Directive 94/65/EC, that directive was repealed by Article 2 of Directive 2004/41/EC which made provision for how references to Council Directive 94/65/EC should be construed in other EU legislation.

5. Article 4 of Directive 2004/41/EC provides that “With effect from the relevant date, references to the Directives referred to in Article 2 [which includes Council Directive 94/65/EC] or to Annex II to Directive 92/118/EEC shall be construed as being made, as the context demands, to...Directive 2002/99/EC.”

6. Commission Decision 2000/572 continues to refer to 94/65/EC in the preamble citing the powers under which it was adopted, although all other references in the operative part of the text have been replaced through amendments.

7. While Directive 2004/41/EC itself does not form part of retained EU law, it is the Department’s view that the gloss that it provided to Commission Decision 2000/572 when it became part of retained EU law under the European Union (Withdrawal) Act 2018 cannot be ignored.

8. The Department considers that Commission Decision 2000/572 needs to be construed in the same way as it would have been under EU law immediately before IP completion day (the end of the transition period), the point at which it became retained EU law, rather than as it stood at an arbitrary point in the past (such as before Directive 2004/41/EC took effect). Commission Decision 2000/572 should therefore be construed as having been made under Council Directive 2002/99/EC, in accordance with the operation of Directive 2004/41/EC as it applied to it at the end of the transition period.

9. The Department also notes that Article 13 of Council Directive 2002/99/EC provides that:

“1. As from the date referred to in Article 14(1), the animal health rules laid down by the Directives listed in Annex V [including Council Directive 94/65/EC] shall no longer apply.

2. Implementing rules adopted on the basis of such provisions shall remain in force until they are replaced by rules having the same effect adopted on the basis of this Directive ...”

10. It is the Department’s view that this envisages that Council Directive 2002/99/EC is a re-enactment of the repealed Council Directive 94/65/EC, which provides the basis for the rule of construction in Article 4 of Directive 2004/41/EC.

(2) *Explain—*

(a) *whether it is intended that these Regulations come into force:*

(i) *immediately after the commencement of regulation 40 of S.I. 2020/1462 and (the remaining provisions of) S.I. 2020/1631 at 11pm on 31 December, or*

(ii) *at the beginning of 1 January 2021; and*

(b) *how effect is given to that intention*

11. Regulation 1(2) of S.I. 2020/1666 provides that the instrument “come[s] into force on the day after the day on which IP completion day falls, immediately following the coming into force of regulation 40 of the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 and the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020.”

12. The Department considers that this provides for the instrument to come into force on the day after the day on which IP completion day fell, but not earlier than immediately after the coming into force of regulation 40 of the Import of, and Trade in Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1462).

13. Such an approach was considered necessary by the Department given the possibility that IP completion day could have been changed again, and the need to link the coming into force date both to the powers being brought into force under instruments which were themselves linked to the timing of IP completion day and operability amendments being made to Commission Decision 2000/572/EC as it became retained EU law. If IP completion day had been changed, for example to midnight on 31 December 2020, or midnight on any other day, with the result that the instrument would otherwise have come into force at that time, the second limb of the commencement provision ensured that the instrument would still have come into force after regulation 40 of S.I. 2020/1462.

14. The Department considers that the words “immediately following” have to be read as meaning immediately following the coming into force of regulation 40 of S.I. 2020/1462, or as immediately following the coming into force of that regulation as is consistent with the first requirement that the instrument comes into force on the day after the day on which IP completion day falls.

Department for Environment, Food and Rural Affairs

8 March 2021

Appendix 2

S.I. 2021/26

General Pharmaceutical Council (Coronavirus) (Amendment) Rules Order of Council 2021

1. In its letter to the Department of 3 March 2021, the Committee requested a memorandum on the following point:

Explain the reasons for the commencement date and the expiry date.

2. The Department's response to the Committee's point is as follows.

3. The instrument was laid in the UK Parliament and the Scottish Parliament on 14 January 2021. The instrument came into force on 4 March 2021 to reflect the need to lay negative procedure instruments before the Scottish Parliament for at least 40 days before they come into force.

4. In accordance with article 66(3) of the Pharmacy Order 2010 (S.I. 2010/231) the General Pharmaceutical Council (GPhC) consulted on the rules introduced by this instrument, indicating that they would only remain in place until the beginning of May 2021 which is why they expire at the end of 1 May 2021. The GPhC have indicated that they intend to use the short period during which the instrument is in place to assess the impact of the rules with a view to introducing new rules later in the year if appropriate.

Department of Health and Social Care

9 March 2021

Appendix 3

S.I. 2021/27

Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021

1. In its letter to the Department of 3 March 2021, the Committee requested a memorandum on the following points:

(1) Explain the reasons for the commencement date.

(2) Identify the enabling power for the sub-delegation in inserted paragraph 2A(3) in each of paragraphs 2(2), 3(2), 4(2) and 5(2) of the Schedule.

2. The Department's response to the Committee's points is as follows.

3. In relation to point (1), the instrument was laid in the UK Parliament and the Scottish Parliament on 14 January 2021. The instrument came into force on 4 March 2021 to reflect the need to lay negative procedure instruments before the Scottish Parliament for at least 40 days before they come into force.

4. In relation to point (2), the Department accepts that the provisions in question give rise to the risk of unauthorised sub-delegation and will take steps to rectify this as soon as possible. The Department apologises to the Committee for this.

Department of Health and Social Care

9 March 2021

Appendix 4

S.I. 2021/38

Health Protection (Coronavirus, Pre-departure Testing and Operator Liability) (England) (Amendment) Regulations 2021

1. By a letter dated 3rd March 2021, the Joint Committee on Statutory Instruments requested a memorandum on the following points:

“(1) In relation to the operator’s defence in regulation 8(3), explain how an operator will know whether the unique passenger reference number provided by the passenger is a number received from the Home Office rather than any number provided by the passenger in the correct format.

(2) Explain what criminal or other legal consequences arise from a passenger falsifying a unique passenger reference number and how those consequences are expected to be applied in practice.”

2. An operator’s liability in relation to a passenger can be discharged by recording a passenger reference number that has been provided by the passenger and is in the correct format. Operators are not expected or required to verify the reference number as transport operations originate from many countries and boarding takes place in many circumstances (from passenger airports to heavy goods vehicles being driven on to ferries); real time verification would impose a significant burden on operators that would often be impractical to manage. It is recognised that this approach does not ensure that every passenger will have completed a Passenger Locator Form before boarding but the operator’s check will prompt passengers who have failed to complete the form to do so and reduce the number of non-compliant passengers arriving into England. Whilst it is possible for a passenger to falsify a unique passenger reference number, the defence in regulation 8(3) ensures that the passenger cannot make up any number and that they will at least need to provide one in the correct format, deterring casual non-compliance.

3. Providing a false passenger reference number to an operator (which would normally occur outside the jurisdiction) is not specifically prohibited but a passenger who has not completed a Passenger Locator Form upon arrival in England would be liable for contravening regulation 3 of the Health Protection (Coronavirus, International Travel) (England) Regulations 2020. Checks for forms are carried out by Border Force at ports of entry.

Department for Transport

9 March 2021

Appendix 5

S.I. 2021/43

Weymouth Harbour Revision Order 2021

1. By letter dated 3 March 2021, the Joint Committee on Statutory Instruments has requested a Memorandum on the following points:

(1) In articles 34 and 35, explain the meaning of “appropriate interest”

(2) Having regard to Schedule 1 to the Interpretation Act 1978, explain what the expression “person or body” in article 40(2) achieves that could not be achieved by “person” alone.

2. In articles 34 and 35 the meaning of “appropriate interest” is intended to include other interests in land, which fall short of freehold ownership or lease, for example an easement.

3. The Marine Management Organisation (MMO) have reconsidered the matter, having regard to the definition of “land” in Schedule 1 to the Interpretation Act 1978, which includes “...any interest, easement...” the inclusion of the word “appropriate” does not change the legal effect of the provisions in articles 34 and 35, although the MMO accept that it is not strictly necessary.

4. The MMO will work with applicants on future applications containing similar provisions to ensure the matter does not arise again.

5. Regarding point (2) the MMO accepts that the words “or body” after “person” in article 40(2) are unnecessary given the scope of the definition of “person” in Schedule 1 to the Interpretation Act 1978. The MMO regret this error and will take steps to ensure that it does not occur again.

Marine Management Organisation

8 March 2021

Appendix 6

S.I. 2021/65

Social Fund Funeral Expenses Payment (Amendment) Regulations 2021

1. In its letter to the Department dated 3rd March 2021, the Committee requested a memorandum on the following point:

“Confirm whether practice within Government is no longer to include “(EU Exit)” in the title of instruments made under section 8 of the European Union (Withdrawal) act 2018.”

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

3. We confirm that the practice within Government in most instruments is no longer to include “(EU Exit)” in the title where they are made under section 8 of the EU (Withdrawal) Act 2018.

4. The Leader of the House wrote a letter to the Chair of the Committee on 13 February 2020. This explained that, following the expiry of the Transition Period on 31 December 2020, the titles of S.I.s laid from 1 January 2021 will no longer automatically include “(EU Exit)”. The Department received guidance to advise us of this decision. We followed the guidance in this instrument, which is why “(EU Exit)” does not appear in the title.

5. However, we understand that there may well be some situations where it is still practice within Government to include “(EU Exit)” in the title, such as if an S.I. is amending an earlier instrument that had “(EU Exit)” in the title. The guidance the Department has received outlines these exceptions.

Department for Work and Pensions

10 March 2021

Appendix 7

S.I. 2021/150

Health Protection (Coronavirus, International Travel (England) (Amendment) (No. 7) Regulations 2021

1. In its letter to the Department of 3 March 2021, the Committee requested a memorandum on the following points:

(1) In regulation 20, explain the meaning of “variant of concern” and “variant under investigation”.

(2) Explain

(i) whether the cross-reference in regulation 6(c)(i) to “(d) or (e)” should be to “(c) or (e)”;

(ii) why the words in inserted paragraph 4B(2)(c) of regulation 7 do not flow from the opening words of regulation 4B(2);

(iii) whether the cross-reference in regulation 16(b) (inserted paragraph 7(b)) should be to paragraph “10(5)” rather than “10(4)”: and

(iv) why Regulation 20(3) (inserted regulation 4ZA(1)(c)) refers to a paragraph 6(1)(e) which does not exist?

2. The Department’s response to the Committee’s points is as follows.

3. In relation to point (1), a “variant under investigation” is a sample of coronavirus which is designated as such and considered to have epidemiological, immunological or pathogenic properties that could have particular and substantial public health implications. After a formal review process, a variant under investigation will be designated “a variant of concern” if it could pose an elevated public health risk if it is allowed to spread unchecked within the UK. Our understanding is that the terms “variants of concern” and “variants under investigation” have a commonly understood meaning in the scientific and public health community and hence do not need to be defined.

4. In relation to point (2)(i), the Department confirms that the cross-reference in regulation 6(c)(i) to “(d) or (e)” should have been to “(c) or (e)”. The Department has corrected this error by means of regulation 4(2) of the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2021 (S.I. 2021/223) (“the Amending Regulations”), which were made and came into force on 2 March.

5. In relation to point (2)(ii), the Department confirms that this was an oversight. This has been corrected by means of regulation 5 of the Amending Regulations.

6. In relation to point (2)(iii), the Department confirms that the cross-reference in regulation 16(b) should have been to paragraph “10(5)” rather than “10(4)”. The Department intends to make Regulations to address this point as soon as possible.

7. In relation to point (2)(iv), the Department confirms that this was an oversight and that the correct reference should have been to paragraph 7(1)(f). This has been corrected by means of regulation 10(2) of the Amending Regulations.
8. The Department apologises to the Committee for the errors and wishes to note that they have either been rectified or are in the process of being rectified.

Department of Health and Social Care

9 March 2021

Appendix 8

S.I. 2021/158

Heather and Grass etc. Burning (England) Regulations 2021

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

Explain:

(1) Whether the “Map of Upland Area in England” referred to in regulation 2 is available online; and

(2) Why the reference to that map is not to a specific dated version of the map.

2. In relation to point (1), the map is not currently available online. Guidance will be published to accompany the SI, as referred to at paragraphs 11.1 and 11.2 of the Explanatory Memorandum. This will include a copy of the map, and at the same time the map will be published online, with a link to it in the guidance. Currently, it is expected the guidance and online map will be published in time for the SI coming into force.

3. In relation to point (2), the Department accepts that giving a date for the map would have been clearer for the avoiding any doubt. However we note the map in question is clearly identified and there is no doubt as to the map referred to.

4. The map is intended to contain the same information as the map referenced in regulation 2 of the Heather and Grass etc. Burning (England) Regulations 2007, which have been in place for many years and are not an area of contention. A new map however was produced for the purposes of this statutory instrument.

Department for Environment, Food and Rural Affairs

9 March 2021