



House of Lords  
House of Commons  
Joint Committee  
on Statutory Instruments

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**Eighth Report  
of Session 2019–21**

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**Drawing special attention to:**

*Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020 (S.I. 2020/122)*

*Office of Communications (Provision of Information) Regulations 2020 (S.I. 2020/125)*

*Elections (Policy Development Grants Scheme) (Amendment) Order 2020 (S.I. 2020/139)*

*Communications (Television Licensing) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/160)*

*Combined Fire and Rescue Authorities (Membership and Allowances) (Amendment) Regulations 2020 (S.I. 2020/168)*

*Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme) Order 2020 (S.I. 2020/186)*

*Ordered by the House of Lords  
to be printed 22 April 2020*

*Ordered by the House of Commons  
to be printed 22 April 2020*

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## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

[Lord Colgrain](#) (*Conservative*)

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

[Lord Morris of Handsworth](#) (*Labour*)

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

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

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

[Lord Stirrup](#) (*Crossbench*)

#### House of Commons

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[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**

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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](http://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: Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

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# Contents

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|                                                                                                             |           |
|-------------------------------------------------------------------------------------------------------------|-----------|
| <b>Instruments reported</b>                                                                                 | <b>3</b>  |
| 1 S.I. 2020/122: Reported for defective drafting                                                            | 3         |
| Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020         | 3         |
| 2 S.I. 2020/125: Reported for doubtful vires and for requiring elucidation                                  | 4         |
| Office of Communications (Provision of Information) Regulations 2020                                        | 4         |
| 3 S.I. 2020/139: Reported for defective drafting                                                            | 5         |
| Elections (Policy Development Grants Scheme) (Amendment) Order 2020                                         | 5         |
| 4 S.I. 2020/160: Reported for unjustifiable delay in laying before Parliament and for requiring elucidation | 5         |
| Communications (Television Licensing) (Amendment) (No. 2) Regulations 2020                                  | 5         |
| 5 S.I. 2020/168: Reported for defective drafting                                                            | 6         |
| Combined Fire and Rescue Authorities (Membership and Allowances) (Amendment) Regulations 2020               | 6         |
| 6 S.I. 2020/186: Reported for defective drafting                                                            | 7         |
| Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme) Order 2020                       | 7         |
| <b>Instruments not reported</b>                                                                             | <b>9</b>  |
| <b>Annex</b>                                                                                                | <b>9</b>  |
| <b>Appendix 1</b>                                                                                           | <b>13</b> |
| S.I. 2020/122                                                                                               | 13        |
| Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020         | 13        |
| <b>Appendix 2</b>                                                                                           | <b>15</b> |
| S.I. 2020/125                                                                                               | 15        |
| Office of Communications (Provision of Information) Regulations 2020                                        | 15        |
| <b>Appendix 3</b>                                                                                           | <b>17</b> |
| S.I. 2020/139                                                                                               | 17        |
| Elections (Policy Development Grants Scheme) (Amendment) Order 2020                                         | 17        |
| <b>Appendix 4</b>                                                                                           | <b>18</b> |
| S.I. 2020/160                                                                                               | 18        |
| Communications (Television Licensing) (Amendment) (No. 2) Regulations 2020                                  | 18        |
| <b>Appendix 5</b>                                                                                           | <b>20</b> |
| S.I. 2020/168                                                                                               | 20        |

|                                                                                                  |           |
|--------------------------------------------------------------------------------------------------|-----------|
| Combined Fire and Rescue Authorities (Membership and Allowances)<br>(Amendment) Regulations 2020 | 20        |
| <b>Appendix 6</b>                                                                                | <b>22</b> |
| S.I. 2020/186                                                                                    | 22        |
| Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme)<br>Order 2020         | 22        |
| <b>Appendix 7</b>                                                                                | <b>23</b> |
| S.I. 2020/214                                                                                    | 23        |
| The Isles of Scilly (Application of Water Legislation) Order 2020                                | 23        |

# Instruments reported

At its meeting on 22 April 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 six 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. 2020/122: Reported for defective drafting

### *Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020*

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

1.2 These Regulations support the implementation of a new centralised digital service for keeping track of street and road works. They require all notices relating to such works to be submitted by means of either that new service or an electronic communication. The Committee asked the Department for Transport to explain what is intended by the requirement for a document given by means of an electronic communication to be “in a form sufficiently permanent to be used for subsequent reference” in regulations 3(3) (inserted regulations 5(6)(c) and 6(7)(c)), 4(3) (inserted regulation 5(5)(c)), and 5(8) (inserted regulations 39(5)(c) and 39A(7)(c)). In a memorandum printed at Appendix 1, the Department explains that this is intended to prevent documents being submitted in “easily manipulable forms such as word documents or webpages where the text is subject to macroinstructions or inadvertent changes by those handling the data” and the use of “low quality fax machines and fax paper, where transmitted documents are prone to fading over time”. Apart from the fact that some of these issues (such as the quality of fax paper or whether a word document is amended after receipt) are in the recipient’s control rather than the sender’s, the formula used is too vague to provide the degree of certainty necessary in a legislative duty, and the provision should either have specified permissible forms or at least set specific criteria to be applied in determining acceptability of particular forms of communication. **The Committee accordingly reports regulations 3(3), 4(3), and 5(8) for defective drafting.**

1.3 Regulation 5(7) makes several modifications to section 53 of the New Roads and Street Works Act 1991. Two of them (subsections (2A) and (2B), inserted by new regulation 38B) close with the following words: “This is subject to subsection (5C) (also see subsection (5B) which sets out the circumstances in which subsection (5C) applies)”. The Committee asked the Department to explain whether the reference to subsection (5B) is intended to be operative in so far as that provision defines the term “information” in subsection (5C). In its memorandum, the Department asserts that no part of the final sentence in subsection 2A or 2B is operative, because of the opening words of subsection (5C): “The duty imposed by subsection (2A) or (as the case may be) (2B) does not apply”. The Committee remains of the view, as set out in its First Special Report of Session 2013–14: Excluding the Inert from Secondary Legislation, that it is essential clearly to distinguish between operative and inert material—not least to avoid the potential for confusion by readers and the courts. In this case, the Committee’s view is that if the sentence in question is necessary,

it should be operative in its entirety (given that subsection (5C) cannot be understood without reference to subsection (5B)), and that as it merely duplicates provision already made elsewhere, it is superfluous and therefore undesirable. **The Committee accordingly reports regulation 5(7) for defective drafting.**

1.4 Regulation 5(8) (inserted regulation 39(4)(a)) provides that ““Another appropriate electronic address” means any email address published for the time being by that person as an address for contacting the recipient”. The Committee asked the Department to explain what is intended by the reference to “that person”. In its memorandum, the Department explains that it refers to “the recipient” mentioned in the preceding provision (new regulation 39(3)(b)). The Committee notes that several other provisions of these Regulations use different (and in the Committee’s view clearer) wording to achieve the same effect: “any email address published for the time being by the recipient as an address for contacting the recipient” (emphasis added; see regulations 3(3) (new regulation 5(5) (a)), 4(3) (new regulation 5(4)(b)), and 6(9) (new regulation 15(3)(b)). Although the courts would probably be forced to the conclusion set out in the Department’s memorandum, the same clear language used elsewhere in the instrument should have been used here and **the Committee accordingly reports regulation 5(8) for defective drafting.**

1.5 The Department also clarified the forms of account (verbal, on paper, or in an electronic communication) that will trigger a duty to pay charges as a result of the amendment made by regulation 6(5)(e).

## **2 S.I. 2020/125: Reported for doubtful vires and for requiring elucidation**

### ***Office of Communications (Provision of Information) Regulations 2020***

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

2.2 These Regulations are made under sections 24A(4) and 402(3) of the Communication Act 2003. Section 24A imposes a duty on Ofcom to “provide the Secretary of State, at least 24 hours before publication, with any information that they propose to publish”. Section 24A(4) allows the Secretary of State, by regulations, to “specify descriptions of information in relation to which the duty under subsection (1) does not apply”. Regulation 3 of these Regulations provides that where disclosing information of significant market sensitivity before publication would prejudice commercial interests, the 24-hour duty only applies if the day before publication is not a working day; otherwise, the duty is to provide the information after 4:30 p.m. on the day before publication. The policy intent (as set out in the Explanatory Memorandum) is to ensure that disclosure of commercially sensitive information only takes place after markets have closed. The Committee asked the Department for Digital, Culture, Media and Sport to identify the power for modifying the duty to disclose rather than disapplying it. In a memorandum printed at Appendix 2, the Department relies on the principle that a general power impliedly permits partial or limited exercise. The Committee does not dissent from that principle, but it does not justify the assumption that a power to disapply includes a power to modify, as to which there are generally, and in this case, arguments either way. Although the point is a relatively



minor one in terms of policy and effect, the enabling powers should have contemplated it and covered it expressly to avoid doubts of legality. **Accordingly, the Committee reports regulation 3(2)(b) for doubt as to whether it is intra vires.**

2.3 The Committee also asked the Department to explain whether a “working day”, as defined in regulation 3(4), is intended to mean a day which is not a bank holiday anywhere in the United Kingdom, or a day which is not a bank holiday in the jurisdiction where the information is proposed to be published. In its memorandum, the Department explains that the intent and effect of regulation 3(4) are to exclude bank holidays anywhere in the United Kingdom from the meaning of “working day”. **The Committee reports regulation 3(4) for requiring elucidation, provided by the Department’s memorandum.**

### **3 S.I. 2020/139: Reported for defective drafting**

#### ***Elections (Policy Development Grants Scheme) (Amendment) 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 amends the Elections (Policy Development Grants Scheme) Order 2006. The 2006 Order requires the Electoral Commission to administer an annual fund available to political parties who have two or more MPs in the House of Commons. The criteria used in determining allocations from the Scheme includes vote share at elections to the European Parliament. As a result of Brexit, this Order removes that element of vote share from the distribution criteria. It substitutes a new formula which includes a quantity “A” defined as “the number of votes cast in Northern Ireland, Scotland or Wales (as the case may be) at the Westminster election ... expressed as a percentage of the total number of votes cast by Northern Ireland voters, Scottish voters or Welsh voters (as the case may be)”. The Committee questioned the Cabinet Office as to the accuracy of the definition of “A” in the new formula. In a memorandum printed at Appendix 3, the Department acknowledges that the definition was inaccurate, and that the words “for that party” should be added after the first “(as the case may be)”. The Department have already corrected the error by the Elections (Policy Development Grants Scheme) (Amendment) (No. 2) Order 2020 (S.I. 2020/385), so that the scheme will work correctly for the year beginning on 1st April 2020. **The Committee commends the Department for the speed of their remedial action, and reports paragraph 5(b) of the Schedule for defective drafting, acknowledged by the Department.**

### **4 S.I. 2020/160: Reported for unjustifiable delay in laying before Parliament and for requiring elucidation**

#### ***Communications (Television Licensing) (Amendment) (No. 2) Regulations 2020***

4.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that there was unjustifiable delay in laying them before Parliament and that they require elucidation in one respect.**

4.2 These Regulations make ongoing provision for an instalment payment scheme (the Simple Payment Plan) for the television licence fee for specific customers who meet the eligibility criteria. The Regulations were made on 11 February and laid before Parliament on 21 February 2020. The Committee asked the Department for Digital, Culture, Media and Sport to explain the delay. In a memorandum printed at Appendix 4, the Department explains that the delay was due to the lack of availability of signatories within the ten days before the date for laying chosen by a Cabinet Committee. As stated in the Committee's First Special Report of Session 2017–19 Transparency and Accountability in Subordinate Legislation at paragraph 2.12, delays due to the machinery of Government are generally regarded as unacceptable delays by the Committee. The statutory arrangements for laying before Parliament are part of the required formal measures by which publicity is assured. Parliament and the general public are entitled to as much notice of the prospective law as the Government has itself. In this case the Department should have either delayed making or accelerated laying. **The Committee accordingly reports these Regulations for unjustifiable delay in laying before Parliament.**

4.3 One of the eligibility criteria for the instalment scheme is that a person has been “visited for enforcement purposes” (regulation 4(c)). The Committee asked the Department to explain what is intended to amount to a visit for enforcement purposes and how a person is expected to demonstrate it. In its memorandum, the Department describes what amounts to a statutory visit and explains that a record of visits is kept which will enable them to confirm the eligibility of customers who want to access the Simple Payment Plan. **The Committee accordingly reports regulation 4(c) for elucidation, provided in the Department's memorandum.**

## 5 5 S.I. 2020/168: Reported for defective drafting

### *Combined Fire and Rescue Authorities (Membership and Allowances) (Amendment) 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 two respects.**

5.2 These Regulations amend 19 Fire and Rescue Authority (Combination Scheme) Orders. One of the amendments made to each Order allows a police and crime commissioner to be appointed as a member (“a PCC member”) of a fire and rescue authority (“FRA”). All 19 schemes require the FRA to elect a chair or vice-chair from among its members. It was not clear to the Committee whether it was intended that a PCC member could also be elected and, if this was the intent, why only the scheme relating to Devon and Somerset (see Schedule 18) is modified in such a way that the chair's or vice-chair's term of office is not subject to the chair or vice-chair remaining a PCC member. The Committee asked the Home Office to explain. In a memorandum printed at Appendix 5, the Department explains that it does intend a PCC member to be electable and acknowledges the inconsistency in the Devon and Somerset scheme, undertaking to amend it at the earliest opportunity. **The Committee accordingly reports Schedule 18 for defective drafting, acknowledged by the Department.**

5.3 (The Committee also invites the Department to consider, if a PCC member were to be elected as chair or vice-chair, whether any provision might be needed to address the possibility—envisaged by these Regulations—of another person attending an FRA meeting on that PCC member’s behalf under section 18 of the Police Reform and Social Responsibility Act 2011, given that that person may not vote and is not to be treated as a member of the FRA for any purpose.)

5.4 Paragraph 2(b) of Schedule 18 omits a provision that paragraph 2 of Schedules 1 to 17 expressly insert (substituted paragraph 11(3)), and that paragraph 2(b) of Schedule 19 amends so that is consistent with the amendments made by Schedules 1 to 17 (substituted paragraph (2)). The Committee asked the Department to explain the discrepancy. In its memorandum, the Department acknowledges the discrepancy and the desirability of a consistent approach across all schemes and undertakes to amend the Devon and Somerset Scheme at the earliest opportunity. **The Committee accordingly reports paragraph 2(b) of Schedule 18 for defective drafting, acknowledged by the Department.**

## 6 6 S.I. 2020/186: Reported for defective drafting

### *Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme) Order 2020*

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

6.2 This Order establishes a new combined fire and rescue authority (“FRA”) for Hampshire and the Isle of Wight. Paragraph 7 of the Schedule allows a police and crime commissioner to be appointed as a member of the FRA (a “PCC member”); paragraph 10 makes provision for the duration of a PCC member’s term of office; paragraph 14 provides for the election of the FRA chair or vice-chair. As with S.I. 2020/168, it was not clear to the Committee whether it was intended that a PCC member could be elected as chair or vice-chair of the FRA, given that as paragraph 14 is drafted, the chair’s or vice-chair’s term of office is not subject to the individual remaining a PCC member. The Committee asked the Home Office to explain its intent on this point. In a memorandum printed at Appendix 6, the Department explains that it does intend a PCC member to be electable—in this as in the other schemes—and acknowledges the error in paragraph 14, undertaking to correct it at the earliest opportunity. **The Committee accordingly reports paragraph 14 for defective drafting, acknowledged by the Department.**

6.3 (As above, the Committee also invites the Department to consider, if a PCC member were to be elected as chair or vice-chair, whether any provision might be needed to address the possibility of another person attending an FRA meeting on that PCC member’s behalf and being unable to vote or be treated as a member of the FRA for any reason.)

6.4 In S.I. 2020/168, the provisions relating to a PCC member’s term of office are expressly made subject to general provisions about a member’s resignation or disqualification from the FRA (see paragraph 6 of each Schedule to that instrument (inserted paragraphs 13A(3) or 8A(3), as the case may be)). The Committee asked the Department to explain why this instrument did not do the same (see paragraph 10 of the Schedule). In its memorandum,

the Department acknowledges the error and undertakes to correct it at the earliest opportunity. **The Committee accordingly reports paragraph 10 of the Schedule for defective drafting, acknowledged by the Department.**

6.5 The Committee asked the Department to explain the intended difference in effect between “all contracts, deeds, bonds, agreements, licences, and other instruments” in paragraph 23(4) of the Schedule and “all contracts, deeds, bonds, licences and instruments” in paragraph 23(5). In its memorandum, the Department acknowledges that as there is no intended difference in meaning, this is an error which it undertakes to correct at the earliest opportunity. **The Committee accordingly reports regulation 23 for defective drafting, acknowledged by the Department.**

# Instruments not reported

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At its meeting on 22 April 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

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### Draft instruments requiring affirmative approval

|                   |                                                                                              |
|-------------------|----------------------------------------------------------------------------------------------|
| <b>Draft S.I.</b> | Court of Appeal (Recording and Broadcasting) (Amendment) Order 2020                          |
| <b>Draft S.I.</b> | Automatic Enrolment (Offshore Employment) (Amendment) Order 2020                             |
| <b>Draft S.I.</b> | Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2020 |
| <b>Draft S.I.</b> | Weights and Measures Act 1985 (Definitions of “Metre” and “Kilogram”) (Amendment) Order 2020 |
| <b>Draft S.I.</b> | Criminal Justice Act 2013 (Early Release on Licence) Order 2020                              |

### Instruments requiring affirmative approval

|                      |                                                                    |
|----------------------|--------------------------------------------------------------------|
| <b>S.I. 2020/273</b> | Employment Allowance (Increase of Maximum Amount) Regulations 2020 |
|----------------------|--------------------------------------------------------------------|

### Instruments subject to annulment

|                       |                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <b>S.I. 2020/28</b>   | Public Lending Right Scheme 1982 (Commencement of Variation) Order 2020                                                            |
| <b>S.I. 2020/212</b>  | Personal Injuries (Civilians) Scheme (Amendment) Order 2020                                                                        |
| <b>S.I. 2020/213</b>  | Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2020                                                       |
| <b>S.I. 2020/214*</b> | Isles of Scilly (Application of Water Legislation) Order 2020                                                                      |
| <b>S.I. 2020/219</b>  | Eritrea (Asset-Freezing) (Revocation) Regulations 2020                                                                             |
| <b>S.I. 2020/221</b>  | Republic of Maldives (Asset-Freezing) (Revocation) Regulations 2020                                                                |
| <b>S.I. 2020/224</b>  | Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2020                                                   |
| <b>S.I. 2020/226</b>  | National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2020 |
| <b>S.I. 2020/229</b>  | Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2020                                        |

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\* The Committee asked for a memorandum on this instrument and a satisfactory response was received. The memorandum is published as Appendix 7.

|                      |                                                                                                                                                                     |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>S.I. 2020/237</b> | Health Protection (Notification) (Amendment) Regulations 2020                                                                                                       |
| <b>S.I. 2020/238</b> | Social Security Contributions (Decisions and Appeals) (Amendment) Regulations 2020                                                                                  |
| <b>S.I. 2020/239</b> | Social Security (Contributions) (Amendment) Regulations 2020                                                                                                        |
| <b>S.I. 2020/241</b> | Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2020                                                                            |
| <b>S.I. 2020/245</b> | Wildlife and Countryside Act 1981 (Variation of Schedule 2) (England) Order 2020                                                                                    |
| <b>S.I. 2020/248</b> | Marketing of Fruit Plant and Propagating Material (England) (Amendment) Regulations 2020                                                                            |
| <b>S.I. 2020/251</b> | Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2020                                                                                      |
| <b>S.I. 2020/252</b> | Statutory Parental Bereavement Pay (Persons Abroad and Mariners) Regulations 2020                                                                                   |
| <b>S.I. 2020/253</b> | Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2020 |
| <b>S.I. 2020/256</b> | Addition of Vitamins, Minerals and Other Substances (England) (Amendment) Regulations 2020                                                                          |
| <b>S.I. 2020/258</b> | Branded Health Service Medicines (Costs) (Amendment) Regulations 2020                                                                                               |
| <b>S.I. 2020/264</b> | Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2020                                                                                              |
| <b>S.I. 2020/266</b> | Social Security Benefits Up-rating Regulations 2020                                                                                                                 |
| <b>S.I. 2020/269</b> | Child Trust Funds (Amendment No. 2) Regulations 2020                                                                                                                |
| <b>S.I. 2020/287</b> | Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020                                                                                               |
| <b>S.I. 2020/288</b> | Housing Benefit (Transitional Provision) (Amendment) Regulations 2020                                                                                               |
| <b>S.I. 2020/289</b> | Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020                                                                        |
| <b>S.I. 2020/294</b> | Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2020                                                                                             |
| <b>S.I. 2020/296</b> | National Health Service (Existing Liabilities Scheme for General Practice) Regulations 2020                                                                         |
| <b>S.I. 2020/300</b> | Social Security (Contributions) (Amendment No. 2) Regulations 2020                                                                                                  |
| <b>S.I. 2020/303</b> | Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 2020                                                                                |
| <b>S.I. 2020/304</b> | Statutory Sick Pay (General) (Coronavirus Amendment) (No. 2) Regulations 2020                                                                                       |
| <b>S.I. 2020/310</b> | Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2020                                                                                                        |
| <b>S.I. 2020/316</b> | Damages for Bereavement (Variation of Sum) (England and Wales) Order 2020                                                                                           |
| <b>S.I. 2020/320</b> | Social Security (Contributions) (Amendment No. 3) Regulations 2020                                                                                                  |

|                      |                                                                                                                          |
|----------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>S.I. 2020/322</b> | Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2020                                               |
| <b>S.I. 2020/324</b> | Single Use Carrier Bags Charges (England) (Amendment) Order 2020                                                         |
| <b>S.I. 2020/330</b> | Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020                               |
| <b>S.I. 2020/335</b> | International Accounting Standards, Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020 |
| <b>S.I. 2020/346</b> | Street and Road Works (Amendments Relating to Electronic Communications) (England) (Amendment) Regulations 2020          |
| <b>S.I. 2020/355</b> | Occupational and Personal Pension Schemes (General Levy) (Revocation) Regulations 2020                                   |
| <b>S.I. 2020/359</b> | Police Act 1997 (Criminal Records) (Amendment) Regulations 2020                                                          |
| <b>S.I. 2020/368</b> | Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020        |
| <b>S.I. 2020/369</b> | Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020                                      |
| <b>S.I. 2020/370</b> | Competition Act 1998 (Solent Maritime Crossings) (Coronavirus) (Public Policy Exclusion) Order 2020                      |
| <b>S.I. 2020/371</b> | Social Security (Coronavirus) (Further Measures) Regulations 2020                                                        |
| <b>S.I. 2020/374</b> | Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020                     |
| <b>S.I. 2020/382</b> | Motor Vehicles (Tests) (Amendment) (Coronavirus) Regulations 2020                                                        |
| <b>S.I. 2020/385</b> | Elections (Policy Development Grants Scheme) (Amendment) (No. 2) Order 2020                                              |
| <b>S.I. 2020/391</b> | Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) Regulations 2020          |

## **Instruments subject to annulment (Northern Ireland)**

|                     |                                                                                                                         |
|---------------------|-------------------------------------------------------------------------------------------------------------------------|
| <b>S.R. 2020/33</b> | Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020                 |
| <b>S.R. 2020/53</b> | Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020                                    |
| <b>S.R. 2020/54</b> | Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations (Northern Ireland) 2020 |

## **Instruments not subject to parliamentary proceedings laid before Parliament**

|                      |                                                                                                                      |
|----------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>S.I. 2020/274</b> | Communications (Bailiwick of Guernsey) Order 2020                                                                    |
| <b>S.I. 2020/279</b> | Nicaragua (Sanctions) (Overseas Territories) Order 2020                                                              |
| <b>S.I. 2020/281</b> | Cyber (Sanctions) (Overseas Territories) Order 2020                                                                  |
| <b>S.I. 2020/282</b> | Somalia (Sanctions) (Overseas Territories) (Amendment) Order 2020                                                    |
| <b>S.I. 2020/283</b> | Turkey (Sanctions) (Unauthorised Drilling Activities in the Eastern Mediterranean) (Overseas Territories) Order 2020 |
| <b>S.I. 2020/290</b> | Pensions Increase (Review) Order 2020                                                                                |

## **Instruments not subject to Parliamentary proceedings not laid before Parliament**

|                      |                                                                                                                                                      |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>S.I. 2020/277</b> | Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2020                                                                          |
| <b>S.I. 2020/285</b> | National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 (Commencement and Transitional Provisions) Regulations 2020 |
| <b>S.I. 2020/341</b> | Annual Tax on Enveloped Dwellings (Indexation of Annual Chargeable Amounts) Order 2020                                                               |
| <b>S.I. 2020/342</b> | Finance Act 2004 (Standard Lifetime Allowance) Regulations 2020                                                                                      |
| <b>S.I. 2020/343</b> | Income Tax (Indexation) Order 2020                                                                                                                   |
| <b>S.I. 2020/357</b> | Serious Organised Crime and Police Act 2005 (Commencement No. 16) Order 2020                                                                         |
| <b>S.I. 2020/358</b> | Protection of Freedoms Act 2012 (Transitory Provision) Order 2020                                                                                    |
| <b>S.I. 2020/361</b> | Coronavirus Act 2020 (Commencement No. 1) Regulations 2020                                                                                           |
| <b>S.I. 2020/388</b> | Coronavirus Act 2020 (Commencement No. 2) Regulations 2020                                                                                           |



# Appendix 1

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## S.I. 2020/122

### ***Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020***

1. In its letter to the Department of 11th March 2020, the Committee requested a memorandum on the following.

*Explain what is intended by the requirement for a document given by means of an electronic communication to be “in a form sufficiently permanent to be used for subsequent reference” in regulations 3(3) (inserted regulations 5(6)(c) and 6(7)(c)), 4(3) (inserted regulation 5(5)(c)), and 5(8) (inserted regulations 39(5)(c) and 39A(7)(c)), and how effect is given to that intention.*

2. The requirement is intended to dissuade the giving of documents in impermanent forms, for example, easily manipulable forms such as word documents or webpages where the text is subject to macroinstructions or inadvertent changes by those handling the data. It is also intended to dissuade the use of low quality fax machines and fax paper, where transmitted documents are prone to fading over time.

3. How is effect given to this intention? This depends on where the general rules about giving documents apply. In some cases, not giving a document correctly is an offence (see for example regulation 13 of S.I. 2009/303, where the offence “failure to give notice” may be taken to include not giving a document in its correct form.) In other cases, not giving a document correctly has non-enforcement consequences (see for example regulation 9 of S.I. 2007/3371, where it would be open to a permit authority to refuse to consider a permit application not given in its correct form).

*Explain what is intended by the requirement for a document given by means of an electronic communication to be “in a form sufficiently permanent to be used for subsequent reference” in regulations 3(3) (inserted regulations 5(6)(c) and 6(7)(c)), 4(3) (inserted regulation 5(5)(c)), and 5(8) (inserted regulations 39(5)(c) and 39A(7)(c)), and how effect is given to that intention.*

4. The first sentence of new subsection (2A) imposes a duty to enter certain information in a register. The second sentence states “This is subject to subsection (5C) (also see subsection (5B) which sets out the circumstances in which subsection (5C) applies)”. New subsection (5C) provides that the duty in subsection (2A) does not apply in relation to certain information. It is necessary to refer to the immediately preceding provision (new subsection (5B)) in order to understand what this means. The Department considers that none of the second sentence of subsection (2A), including both the non-parenthesised text and the parenthesised text, is operative, in the sense that the relationship between subsections (2A) and (5C) is made clear by the opening words of subsection (5C). The second sentence in subsection (2A) is only included to alert readers to subsection (5C) (and subsection (5B)), which, due to the existence of subsections (2C), (3), (3A), (4), (4A), (5) and (5A), is not located in close proximity with subsection (2A). The same point applies to the words of subsection (2B) and its relationship with subsections (5C) (and (5B)).

*In regulation 5(8) (inserted regulation 39(4)(a), explain what is intended by the reference to “that person”.*

5. The reference to “that person” in new regulation 39(4)(a) refers to the last person mentioned, that is, the recipient of the document being given, as mentioned in new regulation 39(3)(b).

*In relation to regulation 6(5)(e), given that an account will no longer be required to be in writing, clarify what forms of account will trigger the requirement to pay charges.*

6. In accordance with the amendment made by regulation 6(5)(e), an account will be able to be given on paper, in an electronic communication or verbally.

**Department for Transport**

**17th March 2020**

## Appendix 2

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### S.I. 2020/125

#### ***Office of Communications (Provision of Information) Regulations 2020***

1. Thank you for your letter of 11 March 2020 in which the Committee asked the Department to:

*Explain what powers are relied on to make regulation 3(2)(b) given that it appears either to amend the duty in s.24A(1) or to substitute one duty for another.*

*Explain whether a “working day”, as defined in regulation 3(4), is intended to mean a day which is not a bank holiday anywhere in the United Kingdom, or a day which is not a bank holiday in the jurisdiction where the information is proposed to be published, and how effect is given to that intention.*

2. We are grateful for the points you have raised, which we have considered. Dealing with your questions in turn:

3. The purpose of this instrument is specify descriptions of information that are exempt from the duty imposed by section 24A of the Communications Act 2003 (inserted by section 98 of the Digital Economy Act 2017) on Ofcom to provide any information they propose to publish to the Secretary of State at least 24 hours before publication.

4. The power to do so is set out in section 24A(4): “*The Secretary of State may by regulations specify descriptions of information in relation to which the duty under subsection (1) does not apply.*”

5. Having consulted with Ofcom, the Secretary of State decided to exempt the description of information to descriptions of information specified in regulation 2. The Secretary of State also decided to partially exempt<sup>2</sup> the description of information specified in regulation 3(2). That is, rather than being under a duty to provide the information at least 24 hours of publication, Ofcom will be required to provide the information immediately after 4.30pm of the last working day before publication or at least 24 hours before publication (whichever is later).

6. Section 24A(4) does not explicitly provide for regulations to specify descriptions of information that are partially exempt from the duty under section 24(1). However, we consider that a power to partially exempt may be properly implied from section 24A in accordance with the principles of statutory interpretation.

7. In particular, we rely on the principle that the granting of a greater power includes the granting of a lesser power (*omne majus continet in se minus*). This is a principle grounded in common sense and has been applied in a number of contexts. For example, where actual force is permissible, a threat to use force is also permissible (*R v Cousins*<sup>3</sup>). See also

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2 We do not consider there is any substantive difference between characterised regulation 3(2) as a partial exemption or a modified duty. The effect is the same. And therefore we consider the explanation below applies to a modified duty as well as a partial exemption.

3 [1982] QB 526 at 530

Section 9.7 of Bennion on Statutory Interpretation. And the principle is also recognised in US case-law: a greater power to completely ban an activity or product necessarily includes the lesser power to ban advertising of the activity of product (Posadas, USSC<sup>4</sup>).

8. We therefore consider that it can be properly implied that the (greater) power to make exemptions in section 24A(4) (i.e. a power to provide that the duty does not apply at all to specified descriptions of information) includes the (lesser) power to make partial exemptions (i.e. a power to provide that the duty applies in a modified, lesser manner to specified descriptions of information).

9. In the alternative, we also rely on the powers in section 402(3)(c) of the Communication Act 2003 “to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit”. This allows for provision to be made which is necessary or expedient to implement section 24A of that Act. We consider, having consulted with Ofcom, that it is expedient to make a partial exemption so that market sensitive information is protected.

10. Regulation 3(4) defines ‘working day’ as ‘any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971.’

11. Section 1 of the 1971 Act provides that the days specified in Schedule 1 to that Act are to be bank holidays in England and Wales, in Scotland and in Northern Ireland as indicated in the Schedule. Therefore the effect of regulation 3(4) is to exclude bank holidays anywhere in the United Kingdom from the meaning of ‘working day’.

**Department for Digital, Culture, Media and Sport**

**17 March 2020**

# Appendix 3

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## S.I. 2020/139

### ***Elections (Policy Development Grants Scheme) (Amendment) Order 2020***

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

*Clarify what A in the formula (paragraph 5(b) of the Schedule (inserted paragraph (b)) should be.*

2. The Minister of State (Chloe Smith) has agreed to lay a second statutory instrument to correct the error identified in paragraph 5(b) of the Schedule of Elections (Policy Development Grants Scheme) (Amendment) Order 2020 (S.I. 2020/139) (“the 2020 Order”). This new instrument will be entitled: The Elections (Policy Development Grants Scheme) (Amendment) (No.2) Order 2020.
3. This instrument will insert three words (“for that party”) into the definition of ‘A’ in the formula contained in paragraph 5(b) of the Schedule to the 2020 Order, which substituted a new paragraph 7(3)(b) in the Schedule to the Elections (Policy Development Grants Scheme) Order 2006 (S.I. 2006/602) (“the 2006 Order”). This will clarify the meaning of A in the formula.
4. It is recommended that this instrument is laid by the 31st March so that it comes into force on 1st April 2020. This will ensure that it can immediately correct the formula for Policy Development Grants, contained in the 2006 Order, before the scheme is administered by the Electoral Commission for the upcoming year beginning on 1st April 2020. The Electoral Commission can administer grants from the Policy Development Grants scheme on or after 1st April 2020.
5. Because this instrument needs to be in force by April 1st, we need to depart from the 21 day rule on this occasion. The previous Order followed the 21 day rule, and this Order does not make a substantive change to the legislation; it merely fixes a small oversight in the previous Order.

**Cabinet Office**

**30 March 2020**

## Appendix 4

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### S.I. 2020/160

#### ***Communications (Television Licensing) (Amendment) (No. 2) Regulations 2020***

1. Thank you for your letter of 11 March 2020, in which the Committee asked this Department to:

*(1) Explain the delay between the making and laying of this instrument.*

*(2) Explain what is intended to amount to a visit for enforcement purposes in regulation 4(c), and how a person is expected to demonstrate that they have been “visited for enforcement purposes”? (Regulation 4(c)).*

2. We are grateful for the points you have raised, which we have considered. Dealing with your questions in turn:

The delay between the making and laying of this instrument.

- a) The delay between the making and laying of The Communications (Television Licensing) (Amendment) (No. 2) Regulations 2020 is due to Parliamentary recess dates.
- b) In December 2019, the Parliamentary Business and Legislation (PBL) Committee confirmed the lay date for this instrument as 21 February 2020. It was then announced in January 2020 that both the House of Commons and House of Lords would be in recess for 13–24 February 2020.
- c) Therefore, in order for the instrument to receive the appropriate ministerial approval before it was laid on 21 February 2020, ministers were required to approve and sign the instrument before 13 February 2020. The availability of both the Secretary of State for DCMS and two Lord Commissioners of Her Majesty’s Treasury dictated that the instrument was signed and made on 11 February 2020.

Regulation 4(c)

- d) In regulation 4(c) of The Communications (Television Licensing) (Amendment) (No. 2) Regulations 2020, the phrase “visited for enforcement purposes” means a visit carried out by TV licensing officers where the purpose of the visit is to enforce the statutory requirement for the occupier to pay for a current TV licence. The Department is of the view that “visited for enforcement purposes” is a phrase which is clear and easy to understand taking into account the statutory scheme for television licensing and does not therefore require further definition within the statutory instrument.
- e) The licence fee payment instalment scheme introduced by this instrument, the Simple Payment Plan, was previously trialled in England between April 2018–September 2019. That trial was regulated for in The Communications

(Television Licensing) (Amendment) (No.2) Regulations 2018, and specified one of the eligibility criteria as a person having “been questioned under caution... about a TV licensing offence”.

- f) The Simple Payment Plan is now being brought into ongoing operation, and as such the eligibility criteria requiring a person to have been “questioned under caution” has been broadened to a person having been “visited for enforcement purposes”.
- g) The reason for this change in wording is that the BBC is seeking to broaden the scope of the Simple Payment Plan so that it is available to customers in the same circumstances in Scotland as it is elsewhere in the UK. Due to the different legal system in Scotland, TV Licensing cannot practise doorstep cautioning as they do in the rest of the UK. In Scotland, cautions can only be given to people when a minimum of two visiting officers attend an address; this can only apply in a minority of cases for operational reasons and the vast majority of visits for enforcement purposes only have one officer present, which means a caution cannot be given.
- h) The wording of regulation 4(c) is therefore intended to enable the Simple Payment Plan to operate across the whole of the UK and to ensure that customers in Scotland who are in the same circumstances as customers in the rest of the UK are not denied access to the scheme.
- i) The Department also understands that, in most circumstances, customers will not be required to demonstrate that they have been visited for enforcement purposes, as the Simple Payment Plan licensing option will be expressly offered in person to all customers who are visited by TV Licensing officers for enforcement purposes at the time of the visit. However, TV Licensing has also confirmed that it will keep a record of all visits for enforcement purposes, enabling TV Licensing to confirm the eligibility of customers who attempt to access the Simple Payment Plan after the visit for enforcement purposes has concluded.
- j) As the administrators of the scheme, the BBC and TV Licensing will be providing guidance around this issue.
- k) The Department acknowledges that the Explanatory Memorandum should have explained these issues in the above detail, and apologises for this oversight.

**Department for Digital, Culture, Media and Sport**

**17 March 2020**

## Appendix 5

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### S.I. 2020/168

#### ***Combined Fire and Rescue Authorities (Membership and Allowances) (Amendment) Regulations 2020***

1. This Joint Committee on Statutory Instruments (‘the Committee’) has requested further information about various points in the Combined Fire and Rescue Authorities (Membership and Allowances) (Amendment) Regulations 2020 (S.I. 2020/168). The Committee asked:

*1. Explain why regulation 2 is necessary, given that the other schemes varied by these Regulations are defined in relevant footnotes.*

*2. Explain:*

*a. in general, whether it is intended that a relevant police and crime commissioner who is appointed to be a member of an Authority may be elected chair or vice-chair of that Authority; and*

*b. if so, why Schedule 18 does not amend paragraph 12 of the relevant scheme so that the chair’s or vice-chair’s term of office is subject to paragraph 8A (as inserted by paragraph 6 of that Schedule), so as to be consistent with the other schemes amended by this instrument.*

*3. Explain why paragraph 2(b) of Schedule 18 omits a provision that is inserted by every other Schedule into the scheme it amends (see paragraph 2 of Schedules 1 to 17 (substituted paragraph 11(3)) and paragraph 2(b) of Schedule 19 (substituted paragraph (2)).*

2. The Department is grateful for the Committee’s consideration of this instrument and drawing these matters to its attention. The Department responds as set out below.

#### Response to question 1

3. Most of the Orders amended by the Combined Fire and Rescue Authorities (Membership and Allowances) (Amendment) Regulations 2020 (‘the Regulations’) provide for the relevant Scheme to be known by a particular name, cited in a particular way, or both. For example, the Avon Fire Services (Combination Scheme) Order 1995 provides for the Scheme to be “known as the Avon Fire Services Combination Scheme” at Article 2 and also to be “cited as the Avon Fire Services Combination Scheme” at paragraph 1 of Schedule 1.

4. The footnotes in the Regulations are therefore not defining the various Schemes, but instead have been included to assist the reader in locating each Scheme by referencing: the Order that set it up, where in the Order the Scheme can be found, and any relevant amendments.



5. The only Order amended by the Regulations that does not make provision for the Scheme to be known as [name] or cited as [name] is the Dorset and Wiltshire Fire and Rescue Authority (Combination Scheme) Order 2015. The Department therefore included the definition of the Dorset and Wiltshire Fire and Rescue Authority Combination Scheme ('the Dorset Scheme') for drafting convenience and readability of the Regulations.

Response to question 2(a)

6. Yes, it is intended that a relevant police and crime commissioner who is appointed to be a member of an Authority may be elected chair or vice-chair of that Authority.

Response to question 2(b)

7. Out of all of the Schemes amended by the Regulations, the Devon and Somerset Fire and Rescue Authority Combination Scheme ('the Devon Scheme') and the Dorset Scheme are the most similar in structure.

8. New paragraphs 8A in both Schemes set out the ordinary expected duration of the PCC's appointment as a member of the Authority. These are the equivalent of existing paragraphs 8, which set out the expected duration of the appointment of a member of the Authority appointed by a constituent authority.

9. One key difference between the Schemes is that whilst paragraph 13(3) of the Dorset Scheme states that the chair's or vice-chair's term of office is subject to paragraph 8, paragraph 12(2) of the Devon Scheme makes no such provision. Accordingly, whilst the Dorset Scheme was amended so that paragraph 13(3) is also subject to new paragraph 8A, consistent with the Dorset Scheme's existing structure, the Devon Scheme was not amended in this way, which is consistent with that Scheme's existing structure. However, the Department acknowledges that a consistent approach across all Schemes may be preferable and will therefore amend the Scheme at the earliest opportunity.

Response to question 3

10. It is acknowledged that the amendment to paragraph 6 of the Devon Scheme is different to the amendments to the corresponding paragraphs of the other Schemes in that text is omitted from the Devon Scheme whilst text in other Schemes is substituted for new text. The Department considers that the amendment to paragraph 6 of the Devon Scheme still allows the Scheme to operate appropriately as paragraph 4(2) still provides that "the Authority shall be constituted in accordance with the provisions of Part 3 of the Scheme". However, the Department acknowledges that a consistent approach across all Schemes may be preferable and will therefore amend the Scheme at the earliest opportunity.

**Home Office**

**17 March 2020**

## Appendix 6

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### S.I. 2020/186

#### ***Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme) Order 2020***

1. The Joint Committee on Statutory Instruments (“the Committee”) has requested further information about various points in the Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme) Order 2020 (S.I. 200/186). The Committee asked:

*1. Explain whether it is intended that a relevant police and crime commissioner who is appointed to be member of the Authority under paragraph 7 of the Schedule may be elected chair or vice-chair under paragraph 14, and if so, why paragraph 14 is not also subject to paragraph 10.*

*2. Clarify whether paragraph 10 of the Schedule is intended to be subject to paragraphs 9 and 12(2), and explain the discrepancy between this paragraph and its equivalents in S.I. 2020/168 (see paragraph 6 of each Schedule to that instrument (inserted paragraphs 13A(3) or 8A(3), as the case may be).*

*3. Explain the intended difference in effect between “all contracts, deeds, bonds, agreements, licences, and other instruments” in paragraph 23(4) of the Schedule and “all contracts, deeds, bonds, licences and instruments” in paragraph 23(5).*

2. The Department responds as set out below.

Response to question 1

3. Yes, it is intended that a relevant Police and Crime Commissioner (“PCC”) who is appointed to be a member of an Authority may be elected chair or vice-chair of that Authority.

4. The Home Office therefore agrees that paragraph 14 should also be subject to paragraph 10.

Response to question 2

5. The Home Office accepts that paragraph 10 should be subject to paragraphs 9 and 10(2). It is considered that this may be achieved by making paragraph 10 subject to paragraph 9 only as paragraph 9 itself is subject to paragraphs 11–13.

Response to question 3

6. There is no intended difference in meaning between all contracts, deeds, bonds, agreements, licences, and other instruments” in paragraph 23(4) of the Schedule and “all contracts, deeds, bonds, licences and instruments” in paragraph 23(5).

7. The Home Office is extremely grateful to the Committee for their consideration and comments and apologises for these errors. The appropriate amendments will be made to the Order at its earliest opportunity.

**Home Office**

**17 March 2020**

# Appendix 7

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## S.I. 2020/214

### ***The Isles of Scilly (Application of Water Legislation) Order 2020***

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

*Why the list does not include sections 199A(2) and (6) and 221(1) of the Water Industry Act 1991 or section 90(1) and (2) of the Water Act 2014, given that they are relied on as enabling powers in S.I. 2006/614 (article 5(u)) and S.I. 2017/447 (article 5 (y));*

Sections 199A(2) and (6) and 221(1) of the Water Industry Act 1991

1. The Department's response proceeds on the understanding that the Committee's questions concern sections 199A(2) and (6) and 221(1) of the Water Resources Act 1991 (rather than the Water Industry Act 1991). And that they concern S.I. 2006/641 (rather than S.I. 2006/614) and sub-paragraph (o) of article 5 (rather than sub-paragraph (u)). Please let the Department know if this is not correct.

2. The Committee refers to the Order not citing section 199A(2) and (6), provisions which were cited in S.I. 2006/641. The Order applies S.I. 2006/641 to the Isles of Scilly, except regulation 30 and one other provision (see article 5(o)). Section 199A(2) and (6) was cited in S.I. 2006/641 in relation to regulation 30 of that S.I. (and only in relation to that regulation of that S.I.). As the Order is not applying regulation 30 of S.I. 2006/641 to the Isles, section 199A(2) and (6) is not cited in the Order.

3. The Committee refers to the absence of section 221(1) from the list of provisions in the first column of the table in the Schedule to the Order. Section 221(1) is a definitional provision, with the relevant definitions being "the Ministers" and "prescribed". The Department used column 2 of the table to draw users' attention to the existence of these definitions, in accordance with paragraph 3.11.16 of Statutory Instrument Practice (5th Edition) (see for example the entries relating to section 72(5) and paragraph 1(3)(f) of Schedule 19).

Section 90(1) and (2) of the Water Act 2014

4. The Committee refers to the Order not citing section 90(1) and (2), provisions which were cited in S.I. 2017/447. Section 90(1) and (2) was cited in S.I. 2017/477 in relation to regulation 20 of that S.I. (and only in relation to that regulation of that S.I.). When preparing the Order, the Department considered whether regulation 20 of S.I. 2017/477 already applies to the Isles of Scilly. The Department concluded that it does, given—

(a) section 90(1) and (2) apply to the Isles (see in particular section 93 of the Water Act 2014, which does not contain express provision excluding the Isles), and

(b) the provision amended by regulation 20 also applies to the Isles (see section 102 of the Enterprise and Regulatory Reform Act 2013 which does not contain express provision excluding the Isles).

5. It follows that the Order does not cite section 90(1) and (2) in relation to applying regulation 20 of S.I. 2017/447 to the Isles.

6. When preparing the Order, the Department considered whether to include a provision which applied S.I. 2017/447 “except regulation 20”. The Department considered that it is implicit that the application of S.I. 2017/447 by the Order does not include any provision of that S.I. which already applies to the Isles. The Department was also concerned that the specific exception of regulation 20 might lead users to mistakenly conclude that that regulation does not apply to the Isles.

*Why the list includes only paragraph (1) of section 219 of the Water Industry Act 1991, when the entire section is identified as an enabling power in S.I. 2005/1905 (article 5(l)) and S.I. 2007/727 (article 5(p)).*

7. Section 219 of the Water Industry Act 1991 is a definitional provision. The Department considers that only subsection (1) contains a definition of relevance in the citation of the enabling provisions (namely, “prescribed”). In accordance with the second sentence of paragraph 3.11.11 of Statutory Instrument Practice (5th Edition), the Department has specifically cited subsection (1). This is consistent with the level of specificity with which section 219(1) has been cited in other instruments listed in article 5 (see for example the footnote to the preamble to the Water Industry (Prescribed Conditions) Regulations 1999 which are listed in article 5(g)).

**Department for Environment, Food and Rural Affairs**

**24 March 2020**