



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Thirteenth Report of Session 2021–22

Drawing special attention to:

*Merchant Shipping (Cargo Ship) (Bilge Alarm) Regulations
2021 (S.I. 2021/592)*

*Gambling (Operating Licence and Single Machine Permit
Fees) (Amendment) Regulations 2021 (S.I. 2021/701)*

*Offensive Weapons Act 2019 (Commencement No2) (England
and Wales) Regulations 2021 (S.I. 2021/762)*

*Competition Act 1998 (Coronavirus) (Public Policy Exclusions)
(Revocations) Order 2021 (S.I. 2021/773)*

Civil Procedure (Amendment No. 4) Rules 2021 (S.I. 2021/855)

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Joint Committee on Statutory Instruments

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Powers

The full constitution and powers of the Committee are set out in [House of Commons Standing Order No. 151](#) and [House of Lords Standing Order No. 74](#), 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 27 October 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 five of those considered. The instruments and the grounds for reporting them are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2021/592: Reported for defective drafting

Merchant Shipping (Cargo Ship) (Bilge Alarm) Regulations 2021

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

1.2 These Regulations, which are subject to the negative resolution procedure, implement recommendations made to prevent the flooding and foundering of cargo ships. Regulation 4(1) requires a ship to have, at its “effective date”, bilge water level detectors installed in specified locations. For a “new ship”, defined at paragraph (6) as “a ship the keel of which is laid, or which is at a similar stage of construction, on or after the date on which these Regulations come into force” (i.e., 30 June 2021), the effective date is 30 June 2021. The Committee asked the Department for Transport to explain what the requirement would mean for a ship constructed entirely after that date. In a memorandum printed at Appendix 1, the Department explains that the policy intent was to require any ship constructed after 30 June 2021 to have bilge water level detectors installed during construction. It acknowledges that the drafting does not achieve this intent and undertakes to correct the error when a suitable opportunity arises. The Committee notes that the significance of this error is such as to render this aspect of the regulations entirely nugatory in relation to ships constructed after 30 June 2021, and it trusts that the Department will therefore expedite the amendment (and will not in the meantime attempt to enforce the defective regulations in relation to this aspect of the policy). **The Committee accordingly reports regulation 4(6) for defective drafting, acknowledged by the Department.**

2 S.I. 2021/701: Reported for prescribing the amount of payments to be made to a public authority in consideration of a licence

Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2021

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they prescribe the amount of payments to be made to a public authority in consideration of a licence.

2.2 These Regulations, which are subject to the negative resolution procedure, prescribe fees to be paid to the Gambling Commission in consideration of operating licences and supply and maintenance permits. Many of the new fees are significantly higher than those they replace, with increases of up to 72%. The Explanatory Memorandum explains in some detail why the large headline percentage uplifts are necessary to enable the Gambling Commission to respond to new risks, recover its increasing regulatory costs and address

areas for improvement identified by the National Audit Office and Parliamentary Accounts Committee. It notes that, notwithstanding the increases, the fees will still represent only 0.22%, on average, of the sector's gross gambling yield. **The Committee reports these Regulations on the basis that they represent a significant increase in fees, and that the two Houses will therefore wish to have their attention drawn to the explanations provided in the Explanatory Memorandum.** (The memorandum from the Department for Digital, Culture, Media and Sport, printed at Appendix 2, confirms that the Department does not wish to add to the explanation in the Explanatory Memorandum.)

3 S.I. 2021/762: Reported for defective drafting

Offensive Weapons Act 2019 (Commencement No2) (England and Wales) Regulations 2021

3.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.

3.2 These Regulations, which are not subject to any parliamentary procedure, commence provisions of the Offensive Weapons Act 2019 that permit the making and enforcement of Knife Crime Prevention Orders (“KCPOs”). Regulation 2(1) commences provisions that confer power on the courts to make and modify KCPOs, in relation to London's metropolitan police district (“MPD”) only. Regulation 2(2) commences provisions that enable enforcement, in relation to all of England and Wales. The Committee observed that the latter group included sections 21 to 23 of the Act (which identify what restrictions and requirements a KCPO can impose, impose obligations relating to KCPOs on specified persons, and make provision as to how long KCPOs have effect), as well as some but not all of the provisions that cross-refer to those sections. It asked the Home Office to explain why sections 26(6) and 27(8) and (9) are not commenced in relation to England and Wales (cf. sections 14(8), 17(5) and (6), 18(7) and 19(6)). In a memorandum printed at Appendix 3, the Department explains that sections 21 to 23, and relevant cross-references in the sections that confer power to make KCPOs or interim KCPOs, were commenced throughout England and Wales “to ensure that there could be no doubt as to the enforceability of a measure imposed in a KCPO made by a court in the MPD by a police force outside the MPD”. It asserts that because the modification of a KCPO or interim KCPO under section 27 does not result in it being superseded by a new class of order, “the original order will continue to be enforceable throughout England and Wales in its modified form” and the wider commencement of sections 14(8), 17(5) and (6), 18(7) and 19(6) is sufficient to avoid any doubt as to enforceability of the modified order. The Committee disagrees. Sections 26(6) and 27(8) and (9), taken together, expressly provide that where a new requirement or prohibition is imposed as a result of a KCPO being modified, sections 21 to 23 have effect in relation to the modification of the order “as they have effect in relation to the making” of it. The Act itself therefore distinguishes between the requirements or prohibitions in the original order and those imposed as a result of modification. If cross-references to sections 21 to 23 are deemed necessary in the Act in relation to this type of modification, and if the Department is correct to say that the original order may not be enforceable outside the MPD without wider commencement of cross-references to those sections, it follows that sections 26(6) and 27(7) and (8) should also have been commenced in relation to the whole of England and Wales to put beyond doubt the enforceability of requirements or prohibitions added as a result of modification. **The Committee accordingly reports regulation 2(2) for defective drafting.**

4 S.I. 2021/773: Reported for unusual or unexpected use of enabling powers

Competition Act 1998 (Coronavirus) (Public Policy Exclusions) (Revocations) Order 2021

4.1 The Committee draws the special attention of both Houses to this Order on the ground that it makes unusual or unexpected use of the enabling powers in one respect.

4.2 This Order, which is subject to the negative resolution procedure, revokes several instruments made in response to the coronavirus pandemic. It was made on 24 June 2021. Article 1(d) revokes S.I. 2020/1568, which ceased to have effect on 31 March 2021 by operation of an express expiry provision. Paragraph 7.7 of the Explanatory Memorandum asserts that this revocation was done “for completeness”. The Committee asked the Department for Business, Energy and Industrial Strategy whether it had anything to add to that assertion. In a memorandum printed at Appendix 4, the Department acknowledges that revoking an expired instrument is unnecessary, whether generally or “for completeness”, and apologises for the oversight. Although in some circumstances a revocation for the sake of clarity or completeness may be helpful, in this case it adds a confusing element to an already complicated statute book (to say nothing of the undesirability of including in a negative resolution instrument a provision the annulment of which would be entirely nugatory). **The Committee accordingly reports article 1(d) for making unusual or unexpected use of the enabling powers, acknowledged by the Department.**

5 S.I. 2021/855: Reported for defective drafting and for requiring elucidation

Civil Procedure (Amendment No. 4) Rules 2021

5.1 The Committee draws the special attention of both Houses to these Rules on the grounds that they are defectively drafted in two respects and require elucidation in one respect.

5.2 These Regulations, which are subject to the negative resolution procedure, amend the Civil Procedure Rules 1998 (S.I. 1998/3132).

5.3 The amendments include inserting a definition for “tape recorded”. This states that tape recorded, tape recording and tape recorders include recording by the use or means of any other instrument or device. The Explanatory Memorandum explains that the definition is inserted so as to cover any form of recording in court, particularly digital means of recording (paragraph 7.2). As there is no reference to tape recording or tape recorders in the 1998 Rules and the only reference to “tape recording” states that hearings will be “tape recorded or digitally recorded” (rule 39.9(1)), the Committee asked the Ministry of Justice to explain the superfluous definition. In a memorandum printed at Appendix 5, the Department explains that the definition is to aid understanding of related Practice Directions and that in future some provisions within the Practice Directions may be moved to the Rules. The Department explains that “it is possible that this may include provisions about recording” and if this happens, there would be direct benefit from the new definition. Including unnecessary definitions in case new material is later added that

attracts them is confusing for readers: if a later instrument transfers material from the Practice Directions that includes these terms, that will be the time to define them. The Committee reminds the Ministry of Justice that Rules of Court are statutory instruments and must be drafted with the same precision, and according to the same standards, as any other subordinate legislation. Those standards preclude the inclusion of inert text as a contingency in case it comes to acquire meaning as a result of later amendment. **The Committee accordingly reports rule 3(b) for defective drafting.**

5.4 Rule 9 inserts words into three places in the Rules. The end result is that the applicant may apply for permission to appeal “at the hearing at which the decision to be appealed was made or any adjournment of that hearing” (rule 52.3(2)(a)) and that the appellant and respondent notices must be filed within such a period as may be directed “at the hearing at which the decision to be appealed was made or any adjournment of that hearing” (rules 52.12 and 52.13). The Committee asked the Department to explain whether words were missing before “any adjournment of that hearing” to indicate how the provision would function in practice where the adjournment was made on the papers and not at a hearing. In its memorandum, the Department explains that the intention was for the words to clarify that an application for permission to appeal can be considered at an adjourned hearing and that this is to clarify what the Court of Appeal held to be implicit in *McDonald v Rose* [2019] EWCA Civ 4. The words used simply do not mean what the Department asserts, and the **Committee accordingly reports rule 9(1), (2) and (3) for defective drafting.**

5.5 Rule 12 inserts new wording in relation to notices for eviction so as to provide for a shorter notice period where “full execution” has not taken place. The Committee asked the Department to explain the practical application of partial execution in this context. In its memorandum, the Department explains that this is to provide for situations where for example a court has stayed a writ or warrant of execution in relation to part because of an argument raised by an occupier which did not relate to the remainder. The Committee is unclear how the new notice will come to the attention of a former occupier, as it is delivered to the premises. **Accordingly, the Committee reports rule 12 for requiring elucidation.**

Instruments not reported

At its meeting on 27 October 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

Instruments requiring affirmative approval

S.I. 2021/1146 Republic of Belarus (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2021

Draft Instruments requiring affirmative approval

Draft Antique Firearms (Amendment) Regulations 2021

Draft Conformity Assessment (Mutual Recognition Agreements) (Construction Products) (Amendment) Regulations 2021

Draft Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations 2021

Draft Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021

Instruments subject to annulment

S.I. 2021/746 Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021

S.I. 2021/755 Air Navigation (Overseas Territories) (Amendment) (No. 2) Order 2021

S.I. 2021/785 International Waste Shipments (Amendment of Regulation (EC) No 1013/2006 and 1418/2007) Regulations 2021

S.I. 2021/789 Gas Act 1986 and Electricity Act 1989 (Electronic Communications) Order 2021

S.I. 2021/865 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 6) Regulations 2021

S.I. 2021/896 Union Civil Protection Mechanism (Revocation) (EU Exit) Regulations 2021

S.I. 2021/914 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 7) Regulations 2021

S.I. 2021/923 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 8) Regulations 2021

S.I. 2021/924	Ecodesign for Energy-Related Products and Energy Information (Amendment) (Northern Ireland) (EU Exit) Regulations 2021
S.I. 2021/932	Education (School Performance Information) (England) (Coronavirus) (Amendment) Regulations 2021
S.I. 2021/944	Public Interest Merger Reference (Cobham Ultra Acquisitions Ltd. and Ultra Electronics Holdings plc) (Pre-emptive Action) Order 2021
S.I. 2021/984	Financial Assistance for Environmental Purposes Order 2021
S.I. 2021/987	Crime (International Co-operation) Act 2003 (Freezing Order) (England and Wales and Northern Ireland) Regulations 2021
S.I. 2021/992	Education (Pupil Registration) (England) (Coronavirus) (Amendment) Regulations 2021
S.I. 2021/993	Public Interest Merger Reference (Perpetuus Advanced Materials plc) (Pre-emptive Action) Order 2021
S.I. 2021/994	Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021
S.I. 2021/1013	Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Closure) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Closure) Regulations 2021
S.I. 2021/1020	Gender Recognition (Disclosure of Information) (England and Wales) Order 2021
S.I. 2021/1021	Serious Organised Crime and Police Act 2005 (Designated Scottish Sites under Section 129) Order 2021
S.I. 2021/1022	Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2021
S.I. 2021/1033	Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 11) Regulations 2021

SI 2021/992 was incorrectly listed for this meeting and was not considered. See the [16th report](#) for the correctly titled instrument.

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2021/788	National Security and Investment Act 2021 (Commencement No. 1 and Transitional Provision) Regulations 2021
S.I. 2021/945	Policing and Crime Act 2017 (Commencement No. 11 and Transitional Provisions) (Amendment) Regulations 2021
S.I. 2021/950	Pension Schemes Act 2021 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2021

- S.I. 2021/1006** Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No. 12) Order 2021
- S.I. 2021/1018** Crime and Courts Act 2013 (Commencement No. 19) Order 2021

Appendix 1

S.I. 2021/592

Merchant Shipping (Cargo Ship) (Bilge Alarm) Regulations 2021

1. By a letter dated 15th September 2021 the Committee requested a memorandum on the following point:

Explain what it means for the “effective date” relating a ship constructed entirely after these Regulations come into force to be 30 June 2021.

2. The intention of the Regulations is that a ship constructed entirely after the Regulations came into force (on 30th June 2021) is required to have had a bilge water level detector installed during its construction – it is a “new ship” as defined in regulation 4(6). The position is explained in paragraph 7.5 of the Explanatory Memorandum and paragraph 2.3 of the relevant Marine Guidance Note (MGN 651 (M)). The Maritime and Coastguard Agency, which is responsible for enforcing the Regulations, is satisfied that in practice those to whom the requirements apply will be able to understand what is required of them and comply.

3. However, the Department accepts that the drafting of regulation 4(1) (in particular the reference to “at” its effective date) does not work correctly in relation to ships constructed entirely after 30th June 2021. In order to clarify the position, the Department intends to amend the Regulations when a suitable opportunity arises.

4. The Department regrets that the drafting was not as clear as it should have been and thanks the Committee for raising the point.

Department for Transport

21 September 2021

Appendix 2

S.I. 2021/701

Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2021

1. The Joint Committee on Statutory Instruments considered the above instrument at its meeting on 15 September 2021 and requested that the Department submit a memorandum on the following points:

Does the Department have anything to add to its explanation, in the Explanatory Memorandum, of the increases in fees made by this instrument?

2. The Department is aware that the increases made by this instrument present a significant percentage uplift to gambling operators' licence fees. The increases are based on the Gambling Commission's forecasted costs across each sector over the next three years. The changes include a 55% increase in the fee bands for annual operating licences for remote (online) operators, and a 15% increase in the fee bands for land-based operators. Although this is a substantial percentage increase, fees payable by operators are estimated to increase from an average of 0.16% to 0.22% of gross gambling yield (amount retained by gambling operators after the payment of winnings prior to operating cost deductions). When laying the Statutory Instrument on 14 June 2021 we set out the reasons for the increases in the Explanatory Memorandum. These include:

- The increasing cost of gambling regulation and ensuring that the Gambling Commission is able to continue to recover its costs;
- Providing the Gambling Commission with sufficient resources to respond to
- new risks and technological developments in the gambling industry;
- Ensuring that the Gambling Commission is able to invest in the areas recommended by the National Audit Office and the Public Accounts Committee.

3. We appreciate the opportunity given to the Department to expand on the explanation, but consider the Explanatory Memorandum gave us the opportunity needed to set out the reasons for the scale of the increase. We therefore do not have anything to add to the Explanatory Memorandum.

4. The government launched its Review of the Gambling Act 2005 in December 2020. The Review aims to make sure that the regulation of gambling is fit for the digital age, and as part of its broad scope looks at the role of the Gambling Commission, and what powers and resources it needs for the effective regulation of gambling. The government will set out its conclusions in due course

Department for Digital, Culture, Media & Sport

24 September 2021

Appendix 3

S.I. 2021/762

Offensive Weapons Act 2019 (Commencement No2) (England and Wales) Regulations 2021

1. In a letter of 15 September 2021, the Committee requested a memorandum on the following point in relation to the Offensive Weapons Act 2019 (Commencement No. 2) (England and Wales) Regulations 2021 (“the SI”):

Explain why sections 26(6) and 27(8) and (9) are not commenced in relation to England and Wales (cf. sections 14(8), 17(5) and (6), 18(7) and 19(6)).

2. By way of summary, the Department’s policy objective was to commence a pilot programme for knife crime prevention orders (“KCPOs”) in the Metropolitan Police District (“MPD”), but to ensure that those orders would be enforceable throughout England and Wales, even if an order could not be made by a court outside the MPD.

3. As set out in the Explanatory Note to the SI, in addition to the core powers to make KCPOs, regulation 2(1) commences provisions relating to the review, variation, renewal, discharge and appeal of KCPOs in the MPD only. The policy objective was to ensure that all KCPOs are managed and overseen by the courts in the MPD only, for the duration of the pilot programme. This includes these applications for modification of a KCPO.

4. Sections 26(6) and 27(8) and (9) of the Offensive Weapons Act 2019 (“the Act”), taken together, provide that when an order is modified under either section 26 or 27 of the Act, sections 21 to 23 will have effect in relation to that variation or renewal, as they have effect in relation to the making of such an order. Sections 21 to 23 describe the provisions of a KCPO, the requirements that can be made within it and the duration of the order.

5. Sections 26 and 27 of the Act are commenced in full in the MPD by regulation 2(1)(h) and (i) of the SI, and sections 21 to 23 are commenced in England and Wales by regulation 2(2)(e) to (g). Accordingly, sections 21 to 23 apply to the variation (et cetera) of a KCPO by a court in the MPD.

5. As the Committee has pointed out, provisions in the Act which are similar to sections 26(6) and 27(8) and (9), but which apply in relation to the making of KCPOs, as opposed to their variation, have been commenced in England and Wales, and not restricted to the MPD. The Committee refers to sections 14(8), 17(5) and (6), 18(7) and 19(6) in this regard.

6. The Department commenced those sections relating to the main KCPO powers in order to ensure that there could be no doubt as to the enforceability of a measure imposed in a KCPO made by a court in the MPD by a police force outside the MPD. Specifically, the purpose of a KCPO is to protect the public in England and Wales, and can include restrictions on movement—see section 21(1) and (2). Accordingly the Department commenced these provisions throughout England and Wales in order to dispel any argument that police forces in other districts would be unable to arrest an individual who was in breach of such a restriction (or indeed any other restriction imposed under sections 21 to 23).

8. Despite this reasoning, the Department does not consider that it is necessary to commence sections 26(6) and 27(8) and (9) outside the MPD. The objective is that any review and variation (or other modification) of a KCPO during the pilot period should be determined by a court within the MPD, and the commencement in regulation 2(1) achieves this aim and makes it clear that such an order can properly be varied or modified in line with the provision in sections 21 to 23 of the Act.

9. Section 27 of the Act makes provision for the variation, renewal or discharge of a KCPO (or interim KCPO); it does not supercede the KCPO with a new class of order. As a result, once so varied or modified, the original order will be continue to be enforceable throughout England and Wales in its modified form, and the Department considers that the commencement of sections 14(8), 17(5) and (6), 18(7) and 19(6) in England and Wales is still sufficient to ensure that there can be no doubt as to the enforceability of the order by police forces outside that district.

Home Office

20 September 2021

Appendix 4

S.I. 2021/773

Competition Act 1998 (Coronavirus) (Public Policy Exclusions) (Revocations) Order 2021

1. By a letter dated 15 September 2021, the Committee requested a Memorandum on the following point:

Does the Department have anything to add to the assertion in its Explanatory Memorandum that revocation of an instrument that included an express expiry provision is helpful “for completeness”?

2. The Department is grateful to the Committee for raising the question. The assertion made in the Explanatory Memorandum that the Groceries No. 2 Order was revoked “for completeness” aimed to indicate to the reader that the intention of the revocation had been to tidy the statute book, given that the instrument no longer had any effect.

3. However, the Department acknowledges that revoking an expired instrument is not necessary, nor was it “for completeness” given the instrument had already expired at the end of 31 March 2021. The Department apologises for this oversight.

Department for Business, Energy and Industrial Strategy

22 September 2021

Appendix 5

S.I. 2021/855

Civil Procedure (Amendment No. 4) Rules 2021

6. 1. By a letter dated 15 September 2021, the Committee sought a memorandum on the following points:

(1) Explain why it was necessary to include a definition for “tape recorded” as this phrase appears to only exist in rule 39.9(1) and is immediately followed by “or digitally recorded” (considering the explanation found in paragraph 7.2 of the Explanatory Memorandum for inserting the new definition).

(2) Explain why the definition includes “as do references to tape recording and tape recorders” as neither of these phrases appear to exist in the Civil Procedure Rules 1998 (S.I. 1998/3132).

(3) Explain how rule 9(1), rule 9(2) and rule 9(3) are intended to work in practice where an adjournment is agreed to otherwise than at a hearing and whether additional words before “any adjournment of that hearing” are required.

(4) In relation to rule 12 and the substituted wording “full execution” and “further executed”, explain what the alternative to full execution is and how that would work practically.

2. The Ministry of Justice’s response is set out below.

3. In relation to the first two points: in addition to the reference in CPR rule 39.9(1), the terms “tape recorded”, “tape recording” and “tape recorders” are used, without the additional reference to proceedings being “digitally recorded” which appears in rule 39.9(1), in the practice directions which supplement the Rules. The practice directions in question are Practice Direction 23A—Applications (paragraph 8), Practice Direction 27A—Small Claims Track (paragraphs 5.1 and 5.2) and Practice Direction 71—Orders to obtain information from judgment debtors (paragraphs 4.3 and 5.2). Practice Direction 23A supplements CPR Part 23, Practice Direction 27A supplements CPR Part 27, and Practice Direction 71 supplements CPR Part 71.

4. Although the definition provision in CPR rule 2.3 applies in a strict sense to the Rules alone, it does also provide a clear aid for interpretation of practice directions that supplement the Rules, unless a contrary intention appears. The intention of including a definition of “tape recorded” (and related expressions) in CPR rule 2.3 was accordingly to provide an extended meaning of tape recording which would extend to digital devices and other future developments in recording technology, and for that definition to aid interpretation of the practice directions supplementing the CPR as well as the Rules themselves. It should also be noted that the Civil Procedure Rule Committee is proposing to embark on an exercise of reducing the length of the CPR and practice directions which may involve the moving of some provisions from practice directions to the Rules, and it is possible that this may include provisions about recording, which would in that event

benefit directly from the definition provision in rule 2.3.

5. In relation to the third point, the delivery (whether orally or by handing down a written judgment) of a judgment by a judge takes place at a hearing (the authorities are reviewed in the decision of the Court of Appeal in *McDonald v Rose* [2019] EWCA Civ 4). An adjournment is a judicial decision and is recorded in a court order. The judge handing down the judgment may do so at a hearing attended by the parties and then adjourn it having heard their submissions, to consider consequential matters at a later date. Alternatively, the judge handing down the judgment may decide not to require attendance of the parties for the handing-down of the judgment. In that situation, the parties may often request (and some judges volunteer) for the handing-down to take place and the judge then to adjourn the hearing to a different day to work out consequential matters. The rule change was intended to make clear by express wording in the Rules what the Court of Appeal (*McDonald v Rose* [2019] EWCA Civ 4, in particular at 21–22) has said to be implicit, that if the lower court decides to adjourn the hearing, it can consider an application for permission to appeal at that (adjourned) hearing; the lower court does not lose the ability to consider the application simply by virtue of the fact that the hearing has been adjourned.

6. In relation to the fourth point, while the new CPR rule 83.13(2) is mainly directed towards occasions when the execution of a possession order has been deferred or failed altogether, on occasion possession is taken successfully of part, but only of part, of a property, for example where possession is to be taken of a whole building or a plot of land, but occupiers block entry to part of that building or land. It is also possible that a court might stay a writ or warrant of execution in relation to part because of some argument raised by an occupier which did not relate to the remainder, and so that execution would only proceed initially in relation to the uncontested part. The expressions “full execution” and “further execution” have been used to ensure that the rule covers the situation both where execution has not been able to take place, and where it has not been able to take place all in one go, on the notified date, so that a further attendance would be required to complete the execution sanctioned by the writ or warrant. The default position is that a further, but shorter, notice of eviction is required in relation to that remainder (default because rule 83.8A(2) is subject to paragraph (5) of that rule—court may dispense with eviction notice or alter the notice period).

Ministry of Justice

21 September 2021

Formal minutes

Wednesday 27 October 2021

Virtual meeting

Members present:

Jessica Morden (*in the Chair*)

Baroness D’Souza John Lamont

Baroness Gale Lord Rowe-Beddoe

Lord Haskel Baroness Scott of Needham Market

Paul Holmes Lord Smith of Hindhead

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 5.5 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 5.

Resolved, That the Report be the Thirteenth Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

[Adjourned till Wednesday 3 November at 3.40 p.m.]