



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Third Report
of Session 2010-11**

Drawing special attention to:

*UK Border Agency (Complaints and Misconduct) Regulations 2010
(S.I. 2010/782)*

*Complaints Against Schools (England) Regulations 2010 (S.I. 2010/853)
Saving Gateway Accounts Act 2009 (Commencement No. 2) Order 2010
S.I. (2010/921)*

*Water Supply (Water Quality) Regulations 2010 (S.I. 2010/994)
Planning (Hazardous Substances) (Amendment) (England) Regulations 2010
(S.I. 2010/1050)*

*Ordered by the House of Lords to be printed
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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 74, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i. that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii. that its parent legislation says that it cannot be challenged in the courts;
- iii. that it appears to have retrospective effect without the express authority of the parent legislation;
- iv. that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
- v. that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi. that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii. that its form or meaning needs to be explained;
- viii. that its drafting appears to be defective;
- ix. any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jennifer Steele (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank and Christine Cogger (*Commons*); Allan Roberts, Nicholas Beach and Peter Milledge (*Lords*).

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Instruments reported

At its meeting on 20 October 2010 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. 2010/782: Reported for defective drafting and not according with proper drafting practice

UK Border Agency (Complaints and Misconduct) Regulations 2010 (S.I. 2010/782)

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in many respects, and do not accord with proper drafting practice in one respect.

1.2 In a full and frank memorandum printed at Appendix 1, the Home Office acknowledges around 30 instances of defective drafting in these Regulations. The Department also acknowledges that regulation 68, which deals with how these Regulations are to operate when the person whose conduct is the subject of a complaint or conduct matter has not been identified, should not have been included in Part 7 (which sets out the various actions to be taken at the conclusion of an investigation) but in Part 1 (complaints and misconduct) or Part 2 (handling of complaints and conduct matters). There remain two matters raised by the Committee which the Department does not address to the Committee's satisfaction.

1.3 Regulation 14 requires the appropriate authority to keep records of various matters, but does not say for how long they must be kept. The Department states that records are intended to be kept for as long as it is necessary in accordance with the principles of the Data Protection Act 1998. The Department's standard position is that records will be held for seven years but this is subject to Data Protection Act considerations on a case by case basis. The Committee does not consider that the regulation as drafted gives effect to this intention: if the appropriate authority disposes of records after seven years (otherwise than by virtue of obligations arising from the Data Protection Act) it will be in breach of this regulation. Read literally, a duty to keep records without any limitation of time means that the records must be kept forever. The Committee therefore considers regulation 14 to be deficient in indicating what is intended. .

1.4 Regulation 39 applies where the IPCC, i.e. the Independent Police Complaints Commission, has determined that it should supervise the investigation by the relevant appropriate authority of any complaint or recordable conduct matter or DSI (death or serious injury) matter. Paragraph (2) requires the authority, on being given notice of that determination, to appoint a person to investigate the complaint or matter if it has not already done so. Paragraph (4) provides that, where a person has already been appointed to investigate the complaint or matter, or is selected under that paragraph, and the IPCC is not satisfied with that person, the IPCC may require the authority to select another person "falling within paragraph (2)" to investigate the complaint or matter and to notify the

IPCC of the person selected. Paragraph (5) provides that where a selection made in pursuance of a requirement under paragraph (4) has been notified to the IPCC, the authority shall appoint that person if, but only if, the IPCC notifies the authority that it approves the appointment of that person.

1.5 The Committee asked the Department to explain the reference in paragraph (4) to a person falling with paragraph (2). The Department states that the intention is that in the circumstances described in paragraph (4) the authority should select another person, who has been appointed after notice of a determination by the IPCC has been given in accordance with paragraph (2), to investigate the complaint or matter. This response ignores both the absence of any limited class in paragraph (2) and the fact that paragraph (5) expressly prohibits the authority from appointing a person selected under paragraph (4) unless the IPCC approves that person's appointment. The words "falling within paragraph (2)" in paragraph (4) therefore appear to the Committee to be both otiose and misleading.

1.6 Most of the errors in this instrument would have been prevented if it had been checked properly before being made. The Department explains in its memorandum its standard procedures for checking its statutory instruments, apologises for the fact that these procedures were not followed in this case and sets out proposals for rectification. The Department recognises that this instrument was not prepared to the standard the Committee is entitled to expect. The Committee takes the opportunity of stressing that the public at large are also entitled to expect legislation to be of an acceptable standard.

1.7 The Committee accordingly reports regulation 68 for not according to proper drafting practice, and the Regulations generally for defective drafting on an unacceptable scale.

2 S.I. 2010/853: Reported for defective drafting

<i>Complaints Against Schools (England) Regulations 2010 (S.I. 2010/853)</i>
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2.1 The Committee draws the special attention to these Regulations on the ground that they are defectively drafted in one respect.

2.2 Regulation 1(3) defines the expression "First Tier Tribunal" even though that expression is not used elsewhere in the instrument. In a memorandum printed at Appendix 2, the Department for Education acknowledges that the definition ought not to have been included and undertakes to remove it at the earliest suitable opportunity.

2.3 The Committee accordingly reports regulation 1(3) for defective drafting, acknowledged by the Department.

3 S.I. 2010/921: Reported for defective drafting

Saving Gateway Accounts Act 2009 (Commencement No. 2) Order 2010 (S.I. 2010/921)

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 Article 2(2) provides that section 2(1) of the Saving Gateway Accounts Act 2009 comes into effect on 1 July 2010 for the purposes of ensuring an orderly introduction of accounts and on 1 March 2011 for all purposes. Section 2(1) provides that the Commissioners must issue a notice of eligibility to each eligible person (as defined in section 3).

3.3 The Committee was uncertain how the duty of the Commissioners could apply “for the purposes of ensuring an orderly introduction of accounts” but not for other purposes: if the duty exists it must be fulfilled. In a memorandum printed at Appendix 3, HM Revenue and Customs (which points out that the Order was revoked before 1 July 2010) acknowledges that the wording of article 2(2)—aimed at gradual compliance with the section 2(1) duty—might have led to some lack of clarity as to when HMRC was under an obligation to issue notices of eligibility to eligible persons in the period before 1 March 2011, and states that it will reconsider adopting such an approach in future cases. The Committee notes that section 28(2) of the 2009 Act confers power for an order to include provision for the exercise of discretion and transitional provisions as well as incidental, supplementary or consequential provisions, and would suggest that it would have been possible to find a way of providing for the power to issue a notice to have been introduced in effect on 1 July 2010 but the duty not to exist until 1 March 2011. **The Committee, while recognising that the obscurity of article 2(2) has turned out not to be of specific significance, reports that provision for defective drafting, the possibility of which is acknowledged by the Department.**

4 S.I. 2010/994: Reported for defective drafting

Water Supply (Water Quality) Regulations 2010 (S.I. 2010/994)

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

4.2 In a memorandum printed at Appendix 4, the Welsh Assembly Government acknowledges that incorrect cross-references (which it proposes to rectify this year in amending regulations) are included in regulations 6(4), 6(5) and 33(1). In none of these cases was it obvious what the provision was intended to mean. **The Committee accordingly reports regulations 6(4) and (5) and 33(1) for defective drafting, acknowledged by the Department.**

5 S.I. 2010/1050: Reported for failure to comply with *Statutory Instrument Practice*

Planning (Hazardous Substances) (Amendment) (England) Regulations 2010
(S.I. 2010/1050)

5.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with *Statutory Instrument Practice*.

5.2 The sole function of these Regulations is to correct errors in S.I. 2009/1901. In a memorandum printed at Appendix 5, the Department for Communities and Local Government acknowledges that these Regulations should have been made available free of charge to all known recipients of the earlier instrument, and should have borne an italic headnote to that effect, in accordance with paragraphs 3.4.11 and 3.4.14 of *Statutory instrument Practice*. The Department is making arrangements to rectify this omission. **The Committee accordingly reports these Regulations for a failure to comply with *Statutory Instrument Practice*, acknowledged by the Department.**

Instruments not reported

At its meeting on 20 October 2010 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

- *denotes written evidence has been submitted but not printed*

Annex

Draft Instruments requiring affirmative approval

Draft S.I.	Asylum (First List of Safe Countries) (Amendment) Order 2010
Draft S.I.	Disabled People's Right to Control (Pilot Scheme) (England) Regulations 2010
Draft S.I.	European Communities (Definition of Treaties) (Central Africa Interim Economic Partnership Agreement) Order 2010
Draft S.I.	European Communities (Definition of Treaties) (Côte d'Ivoire Economic Partnership Agreement) Order 2010
Draft S.I.	Freedom of Information (Time for Compliance with Request) Regulations 2010
Draft S.I.	Immigration (Biometric Registration) (Amendment) Regulations 2010
Draft S.I.	Immigration and Nationality (Fees) (No. 2) Regulations 2010
Draft S.I.	Medical Profession (Responsible Officers) Regulations 2010

Instruments subject to annulment

S.I. 2010/239	The Parliamentary Commissioner Order 2010
○ S.I. 2010/906	Credit Rating Agencies Regulations 2010
S.I. 2010/1725	Education (Pupil Registration) (England) (Amendment) Regulations 2010
S.I. 2010/1758	Products of Animal Origin (Third Country Imports) (England) (Amendment) Regulations 2010
S.I. 2010/1759	Firearms (Amendment) Regulations 2010
S.I. 2010/1760	Animals and Animal Products (Import and Export) (England) (Amendment) Regulations 2010
S.I. 2010/1768	Nutrition and Health Claims (England) (Amendment) Regulations 2010
S.I. 2010/1794	Social Security (Exemption from Claiming Retirement Pension) Regulations 2010
S.I. 2010/1799	Misuse of Drugs (Amendment No. 2) (England, Wales and Scotland) Regulations 2010

- S.I. 2010/1800** Misuse of Drugs (Designation) (Amendment No. 2) (England, Wales and Scotland) Order 2010
- S.I. 2010/1806** Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) (Amendment) Order 2010
- S.I. 2010/1809** Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010
- S.I. 2010/1811** Social Security (Housing Costs) (Standard Interest Rate) Amendment Regulations 2010
- S.I. 2010/1812** Local Land Charges (Amendment) Rules 2010
- S.I. 2010/1825** Transfer of State Pensions and Benefits (Amendment) Regulations 2010
- S.I. 2010/1834** European Communities (Designation) (No. 3) Order 2010
- S.I. 2010/1837** Lord President of the Council Order 2010
- S.I. 2010/1848** Criminal Defence Service (General) (No. 2) (Amendment) Regulations 2010
- S.I. 2010/1864** Safety of Sports Grounds (Designation) (No. 3) Order 2010
- S.I. 2010/1881** Health and Social Care Act 2008 (Miscellaneous Consequential Amendments) Order 2010
- S.I. 2010/1883** Audiovisual Media Services (Codification) Regulations 2010
- S.I. 2010/1886** Addition of Vitamins, Minerals and Other Substances (England) (Amendment) Regulations 2010
- S.I. 2010/1893** Home Energy Efficiency Scheme (England) (Amendment) Regulations 2010
- S.I. 2010/1898** Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010
- S.I. 2010/1906** Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (Revocation) Regulations 2010
- S.I. 2010/1907** Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010
- S.I. 2010/1908** Sale of Electricity by Local Authorities (Scotland) Regulations 2010
- S.I. 2010/1910** Sale of Electricity by Local Authorities (England and Wales) Regulations 2010
- S.I. 2010/1916** Family Proceedings Fees (Amendment) Order 2010
- S.I. 2010/1917** Magistrates' Courts Fees (Amendment No. 2) Order 2010
- S.I. 2010/1921** Criminal Procedure (Amendment) Rules 2010
- S.I. 2010/1927** Cosmetic Products (Safety) (Amendment No. 2) Regulations 2010
- S.I. 2010/1928** Toys (Safety) (Amendment) Regulations 2010
- S.I. 2010/1938** Academy Conversions (Transfer of School Surpluses) Regulations 2010

- S.I. 2010/1940** Education (Individual Pupil Information) (Prescribed Persons) (England) (Amendment) Regulations 2010
- S.I. 2010/1941** Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010
- S.I. 2010/1970** Consumer Credit (Advertisements) Regulations 2010
- S.I. 2010/2126** Social Security (Miscellaneous Amendments) (No. 4) Regulations 2010
- S.I. 2010/2127** Public Rights of Way (Combined Orders) (England) (Amendment) Regulations 2010
- S.I. 2010/2128** Equality Act 2010 (Disability) Regulations 2010
- S.I. 2010/2129** Children's Trust Board (Children and Young People's Plan) (England) (Revocation) Regulations 2010
- S.I. 2010/2130** Care Standards Act 2000 (Registration) (England) Regulations 2010
- S.I. 2010/2132** Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010
- S.I. 2010/2133** Equality Act (Age Exceptions for Pension Schemes) Order 2010
- S.I. 2010/2145** Radioactive Contaminated Land Regulations (Northern Ireland) (Amendment) Regulations 2010
- S.I. 2010/2146** Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2010
- S.I. 2010/2147** Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2010
- S.I. 2010/2153** Radioactive Contaminated Land (Scotland) (Amendment) Regulations 2010
- S.I. 2010/2161** Occupational Pension Schemes (Investment) (Amendment) Regulations 2010
- S.I. 2010/2184** Town and Country Planning (Development Management Procedure) (England) Order 2010
- S.I. 2010/2185** Planning (Listed Buildings and Conservation Areas) (Amendment No. 2) (England) Regulations 2010
- S.I. 2010/2196** New Woodlands School (Amendment) Order 2010
- S.I. 2010/2214** Building Regulations 2010
- S.I. 2010/2215** Building (Approved Inspectors etc.) Regulations 2010
- S.I. 2010/2221** Storage of Carbon Dioxide (Licensing etc.) Regulations 2010
- S.I. 2010/2225** Materials and Articles in Contact with Food (England) Regulations 2010
- S.I. 2010/2226** Immigration and Nationality (Cost Recovery Fees) (No. 2) Regulations 2010
- S.I. 2010/2228** Contaminants in Food (England) Regulations 2010
- S.I. 2010/2231** Water Use (Temporary Bans) Order 2010

- S.I. 2010/2232** Flood Risk Management Functions Order 2010
- S.I. 2010/2235** Police Pensions (Additional Voluntary Contributions) (Amendment) Regulations 2010
- S.I. 2010/2245** Equality Act 2010 (General Qualifications Bodies) (Appropriate Regulator and Relevant Qualifications) Regulations 2010
- S.I. 2010/2265** Special Restrictions on Adoptions from Abroad (Haiti) Order 2010
- S.I. 2010/2280** Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010
- S.I. 2010/2281** Foodstuffs Suitable for People Intolerant to Gluten (England) Regulations 2010
- S.I. 2010/2285** Equality Act (Age Exceptions for Pensions Schemes) (Amendment) Order 2010
- S.I. 2010/2312** Food Irradiation (England) (Amendment) Regulations 2010
- S.I. 2010/2327** Education (Prescribed Public Examinations) (England) Regulations 2010

Draft Instruments subject to annulment

- Draft S.I.** Royal Parks and Other Open Spaces (Amendment) (No. 2) etc. Regulations 2010

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2010/1771** Designation of Schools Having a Religious Character (Independent Schools) (England) (No. 2) Order 2010
- S.I. 2010/1779** Geneva Conventions and United Nations Personnel (Protocols) Act 2009 (Commencement No. 2) Order 2010
- S.I. 2010/1817** Children, Schools and Families Act 2010 (Commencement No. 1) Order 2010
- S.I. 2010/1823** Wireless Telegraphy (Licensing Procedures) Regulations 2010
- S.I. 2010/1858** Coroners and Justice Act 2009 (Commencement No. 5) Order 2010
- S.I. 2010/1863** Health Act 2009 (Commencement No. 4) Order 2010
- S.I. 2010/1888** Energy Act 2008 (Commencement No. 5) Order 2010
- S.I. 2010/1889** Energy Act 2004 (Commencement No. 10) Order 2010
- S.I. 2010/1937** Academies Act 2010 (Commencement and Transitional Provisions) Order 2010
- S.I. 2010/2088** Electricity (Connection Standards of Performance) Regulations 2010
- S.I. 2010/2131** Electricity (Standards of Performance) (Amendment) Regulations 2010
- S.I. 2010/2154** Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2010
- S.I. 2010/2155** Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2010

- S.I. 2010/2191** Equality Act 2010 (Commencement No. 3) Order 2010
- S.I. 2010/2229** South Downs National Health Service Trust (Establishment) Amendment Order 2010
- S.I. 2010/2230** Mayday Healthcare National Health Service Trust (Establishment) Amendment Order 2010
- S.I. 2010/2317** Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010
- S.I. 2010/2325** Anti-Slavery Day Act 2010 (Specified Date) Order 2010
- S.I. 2010/2337** Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (Amendment) Order 2010

Appendix 1

S.I. 2010/782: memorandum from the Home Office

UK Border Agency (Complaints and Misconduct) Regulations 2010 (S.I. 2010/782)

1. In its letter dated 14th July 2010 the Committee requested a memorandum responding to a number of points. The points and the Department's responses are set out below. In summary,

- The Department is grateful to the Committee for raising these points many of which the Department accepts. Detailed responses are below.
- The process of thoroughly going through the Regulations again has led to the identification of some other errors and a number of policy issues which will require consideration with the IPCC.
- The Regulations were based on similar Regulations which went through the Parliamentary process in 2009. Most of the errors identified by the Committee were repeated from the 2009 Regulations.
- In preparing the current Regulations the Department focussed on the substantive changes relating to contractors and paid insufficient attention to revisiting the rest of the Regulations.
- As a consequence the Regulations were not prepared to the standard the Committee is entitled to expect. This is a matter of great regret to the Department.

(1)(a) In regulation 2(1) should the definition of “complainant” refer to paragraph (6) rather than paragraph (7)?

2. It is correct that in the definition of “complainant” in regulation 2(1), the reference should be to paragraph (6) rather than to paragraph (7).

(1)(b) In regulation 2(1) why is the definition of “relevant appropriate authority” divided into sub-paragraphs (c) and (d) and not (a) and (b)?

3. It is agreed that the definition of “relevant appropriate authority” in regulation 2(1) should be divided into sub-paragraphs (a) and (b) rather than (c) and (d) which was a formatting error.

(2)(a) In regulation 6(2) should sub-paragraph (a)(ii) refer to regulation 21(2) rather than regulation 21(5) or (6)?

4. It is agreed that in regulation 6(2), sub-paragraph (a)(ii) should refer to regulation 21(2) rather than regulation 21(5) or (6).

(2)(b) In regulation 6(2) should sub-paragraph (b)(ii) refer to regulation 23(4) rather than regulation 23(4) or (5)?

5. It is agreed that in regulation 6(2), sub-paragraph (b)(ii) should refer to regulation 23(4) rather than regulation 23(4) or (5).

(3) In regulation 8(6) should the reference be to paragraph (7) rather than paragraph (8)?

6. It is agreed that in regulation 8(6), the reference should be to paragraph (7) rather than paragraph (8).

(4) In regulation 11 (a) in the second line of paragraph (3) and (b) in the first line of paragraph (5), what body does “it” refer to and why is the particular body not specified?

7. In regulation 11, the paragraph (3) reference to “it” is intended to refer to “the relevant appropriate authority” whilst in paragraph (5) the reference is intended to refer to the IPCC. In both cases the reference to “it” directly follows the reference to “relevant appropriate authority” and “the IPCC” respectively. Thus, the Department’s view is that in both cases the body to which “it” is intended to refer” is sufficiently clear.

(5)(a) In regulation 13(3) explain the inclusion of the words “or relevant appropriate authority” and “the person who gave the notification, or, as the case may be”.

(5)(b) In regulation 13(3) should the reference to paragraphs (1) or (2) be to paragraph (1) and the reference to paragraph (4) be to paragraph (2)?

8. The Department’s view is that regulation 13(3) should remain as drafted as it is intended that this regulation should set out the steps for the initial handling and recording of complaints made to both the IPCC and the relevant appropriate authority. However, additional provision should be made in this regulation prior to current paragraphs (2) and (3), setting out the steps which should be taken where a complaint is made to the relevant appropriate authority and the cross references in regulation 13(3) should be amended accordingly.

(6)(a) In regulation 14(1)(b) should the reference to regulation 17(3) be to regulation 17(2)?

9. In regulation 14(1)(b), it is agreed that the reference to regulation 17(3) should be to regulation 17(2).

(6)(b) In regulation 14(1)(b) why is the relevant appropriate authority not required to keep records of conduct matters recorded under regulation 18(1) and 18(6)?

10. In regulation 14(1)(b), it is agreed that in order to ensure a consistent approach to how records are kept, the relevant appropriate authority should also be required to keep records of conduct matters recorded under regulation 18(1) and (6) in such form as the IPCC shall determine and that regulation 14 should include such references.

(6)(c) In regulation 14(1)(b), for how long are records intended to be required to be kept and why is the period not specified?

11. In regulation 14(1)(b), records are intended to be kept for as long as it is necessary in accordance with the principles of the Data Protection Act 1998. The Department’s standard position in such cases is that records will be held for seven years but this is subject to Data Protection Act considerations on a case by case basis. There are further provisions at Regulations 19 and 26, in relation to the duties on the relevant

appropriate authority to preserve evidence relating to conduct matters and DSI matters respectively.

(7) In regulation 16(2), should “this regulation” be “these Regulations”?

12. In regulation 16(2), it is agreed that the reference to “this regulation” should read “these Regulations”.

(8) In regulation 19(1), should “recordable matter” be “recordable conduct matter” and if not where is the expression defined?

13. In regulation 19(1), it is agreed that this should be a reference to “recordable conduct matter” rather than “recordable matter”.

(9) Why does the heading of regulation 20 include “Recording”?

14. In regulation 20, it is agreed that the reference to “Recording” in the heading is unnecessary as this regulation concerns the manner in which conduct matters and DSI matters should be referred rather than the manner in which such references should be recorded.

(10) Explain the inclusion of paragraph (8) of regulation 21, given that it replicates paragraph (4).

15. In regulation 21, it is agreed that there is an unnecessary duplication of paragraph (4) at paragraph (8) and that the latter paragraph should be removed.

(11)(a) In regulation 29 why are there no references to a person appointed under regulation 37?

16. It is agreed that there should be a reference to a person appointed under regulation 37 in regulation 29.

(11)(b) In regulation 29, should the reference to a person appointed under regulation 42 be to a person designated under that regulation?

17. It is agreed that the reference at regulation 29(1) to a person appointed under regulation 42 should be a reference to a person designated under regulation 42.

(11)(c) In regulation 29, should “submission” in paragraph (2) be “notification”?

18. It is agreed that the reference to “submission” at paragraph 29(2) should be a reference to a “notification”.

(12) Explain the reference in regulation 35(6)(d)(ii) to a direction under regulation 36(11)(b).

19. Regulation 35(6)(d)(ii) concerns cases where the IPCC has already determined that the investigation of a complaint can be discontinued for any of the reasons set out in regulation 35(5) and has given a determination under regulation 31 to the relevant appropriate authority to take one of the courses of action set out at 35(11). The reference in regulation 35(6)(d)(ii) to a direction under regulation 36(11)(b) should be to “a determination under paragraph (11)”. In addition, the reference in the chapeau of

regulation 35(11) should simply be to “regulation 31” rather than to regulation 31(4)(a) and the Department further notes that the reference to regulation 36(1)(a) in regulation 35(d)(iii) should be to regulation 36(1).

(13) In regulation 38(5), should the reference to paragraphs (3) to (5) and (7) of regulation 40 be to paragraphs (3) and (6) of regulation 39?

20. It is agreed that the reference to paragraphs (3) to (5) and (7) of regulation 40 should be to paragraphs (3) to (6) of regulation 39.

(14) Explain the reference to a person falling within paragraph (2) in regulation 39(4)(a).

21. The intention of the provision at regulation 39(4)(a) is to allow for the IPCC, in a supervised investigation, to request that the UKBA propose an alternative person to investigate if they are not satisfied with the person appointed under paragraph (2). The intention is that in these circumstances the relevant appropriate authority should select another person, who has been appointed after notice of a determination by the IPCC has been given in accordance with paragraph (2), to investigate the complaint or matter.

(15) In regulation 47(1), should “Part 6” be “this Part”?

22. In regulation 47(1) the Department agrees that it would be better to refer to “this Part” rather than to Part 6.

(16) Should regulation 49(2)(b) read “by the relevant appropriate authority under the supervision of the IPCC”?

23. In regulation 49(2)(b), for the purposes of greater clarity it is agreed that the reference should read “by the relevant appropriate authority under the supervision of the IPCC” rather than simply “under the supervision of the IPCC”.

(17)(a) In regulation 51(2) should “The notification will” be “The notification must”?

24. At regulation 51(2), it is agreed that “the notification will” would read better as “the notification must”.

(17)(b)(i) In sub-paragraph (c) should “that” be “as”?

(17)(b)(ii) In sub-paragraph (c) whose guidance is meant to be covered and why is it not specified?

25. In sub-paragraph (c) of regulation 51(2), it is agreed that it would be better to replace “that” with “as” but more generally, in view of the fact that no guidance has yet been made in relation to the information to be set out in a notification and that sub-paragraphs (a) and (b) are considered sufficiently broad to cover all the necessary information which might be included in guidance, consideration is being given to whether to remove this sub-paragraph altogether.

(18) Should paragraphs (5) and (6) of regulation 51 be paragraphs (3) and (4) of regulation 52? If not, explain their relevance.

26. It is agreed that paragraphs (5) and (6) of regulation 51 should in fact be paragraphs (3) and (4) of regulation 52, which contains references to “relevant documents” and “relevant statements”.

(19) In regulation 63(6), should the reference to paragraph (5) be to paragraph (7)?

27. It is agreed that the reference to paragraph (5) in regulation 63(6) should be to paragraph (7).

(20) In regulation 64(1)(b), should the reference to regulation 62(3) or (4) be to regulation 62(3) or (5)?

28. It is agreed that the reference to paragraphs 62(3) or (4) in regulation 64(1)(b) should be to regulation 62(3) or (5).

(21) In regulation 64(6), should the reference to a person mentioned in paragraph (4) be to a person mentioned in paragraph (3)?

29. It is agreed that the reference to a person mentioned in paragraph (4) in regulation 64(6) should be a reference to a person mentioned in paragraph (3).

(22) Why is regulation 68 (which makes general provisions as to the application of these Regulations in a specified case) in Part 7, which governs reports and recommendations and not Part 2 (or somewhere else more appropriate)?

30. Regulation 68 concerns the way in which the regulations should be applied in a situation where the person whose conduct is the subject of the complaint or conduct matter has not been identified (either when the initial complaint is made, during the investigation or after the investigation). It permits the IPCC and relevant appropriate authority to take such action as they see fit in accordance with the regulations where the person’s identity is subsequently established. Part 7 contains regulations setting out various actions to be taken at the conclusion of an investigation and it is for this reason that this provision was located in this Part of the regulations. However, the Department recognises that there is an argument that this regulation could alternatively be better located, for example, in Part 1 after regulation 8 (complaints, matters and persons to which these Regulations apply) or in Part 2 (handling of complaints and conduct matters etc), which largely concerns how complaints and conduct matters should be recorded, notified and handled.

(23)(a) In relation to regulation 70(1)(b), explain the reference to determinations under regulations 21, 23 and 27, given that these regulations do not provide for the making of determinations?

(23)(b) What if anything renders the words from “following” to the end necessary?

31. The Department agrees that the reference to “determinations” should not have been included in regulation 70(1)(b) as there is no provision for the making of determinations in regulations 21, 23 & 27. In addition it is agreed that the words from “following” to the end are unnecessary and that the words “an investigation under the supervision of the IPCC” would suffice.

(24) Regulation 70(3)(d) ends with the words “and it shall be the duty of the relevant appropriate authority to comply with any requirement under this paragraph”. Is this statement intended to apply to every requirement which may be imposed under regulation 70(3) and, if so, why does it not appear as full-out words after subparagraph (e)? If it is not intended so to apply, what is the significance of a requirement made under sub-paragraphs (a), (b), (c) or (e) when there is no duty to comply?

32. It is agreed that the statement “and it shall be the duty of the relevant appropriate authority to comply with any requirement under this paragraph” is intended to apply to every requirement which may be imposed under regulation 70(3).

(25) In regulation 70(3)(e), should the reference to regulation 63(2)(c) be to regulation 63(2)(b)?

33. It is agreed that in regulation 70(3)(e), the reference should be to regulation 63(2)(b).

(26) What procedures does the Home Office have in place for checking the accuracy of statutory instruments before they are made, and how were they applied in relation to this instrument?

34. The Home Office has long established procedures in place for checking the numerous statutory instruments the Department makes each year. All lawyers drafting statutory instruments are sent on the National School of Government Drafting Statutory Instruments course and internal training on statutory instruments is provided. Statutory instruments are then drafted by Grade 7 or 6 lawyers in conjunction with their policy clients. Once prepared all statutory instruments should first be checked by the drafting lawyer’s line manager. Where the line manager in question is not the SCS team leader, it should also be checked by the team leader. Where team leaders draft an instrument it should be checked by another member of the team. The instrument should then in all cases be submitted for checking to one of two other senior lawyers who have a cross cutting role of checking statutory instruments. Instruments should also be checked by the relevant policy officials.

35. It is matter of great regret to the Department that this procedure was not fully followed in this case and the Department accepts that the matters identified by the Committee should have been identified. However, it might assist the Committee if the Department explained the background to these Regulations. These Regulations were based on the UK Border Agency (Complaints and Misconduct) Regulations 2009 (2009/2133). These 2009 Regulations conferred functions on the Independent Police Complaints Commission (IPCC) in relation to the exercise of certain functions by the UK Border Agency (UKBA) relating to both immigration and customs matters. Those Regulations had to be in force by 5th August 2009 to ensure that when many staff transferred to the newly formed UKBA from Her Majesty’s Revenue and Customs on that date under the Borders, Citizenship and Immigration Act 2009 one scheme for IPCC oversight of both customs and immigration officers in UKBA was in place. Unfortunately, those Regulations were not prepared sufficiently well enough in advance to comply with the 21 day rule and were only laid on 31st July 2009. The 2009 Regulations were prepared in accordance with departmental procedures but were subject to considerable time pressures. Regrettably, it appears that almost all of the errors the Committee has identified in the current instrument originated in those 2009 Regulations.

36. The 2009 Regulations were reported for 4 drafting errors by the Committee in its 25th Report of the 2008/09 session. In its memorandum to the Committee at that time the Department indicated that it would correct those errors when it amended the 2009 Regulations to provide for IPCC oversight of UKBA contractors exercising the functions of the Secretary of State in relation to immigration, asylum or customs. The Regulations that are the subject of this memorandum made those changes. These current Regulations were also prepared in accordance with Departmental procedure save that they were inadvertently not checked by an additional SCS lawyer. It is also a matter of regret to the Department that in focusing on the substantive changes relating to UKBA contractors it clearly paid insufficient attention to checking again those parts of the Regulations carried forward from the 2009 Regulations.
37. The Home Office is grateful to the Committee for bringing these points to its attention and apologises for the errors referred to above. All lawyers in the Department have now been reminded again of all the internal statutory instrument procedures. The Department has also discussed the points raised by the Committee with the IPCC and the IPCC agrees with the Department that the points raised do not affect the effective operation of the Regulations. Accordingly, it is not of the view that the Regulations need to be amended immediately.
38. The process of looking at the Regulations again to prepare this memorandum has also brought to the Department's attention that the Regulations contain other minor errors, such as the point noted at the end of paragraph 19 above, further formatting errors in regulation 2, inaccurate cross-references in regulations 29(4), 54(1), 54(4) & 71(4) and unnecessary subparagraphs in regulation 14. The Department therefore proposes to take the opportunity, in consultation with the IPCC, to continue to look at the whole of the Regulations to seek to identify any further errors and to see if other policy changes are required similar to that identified in paragraph 25. Indeed, the Department was already engaged with the IPCC on the production of guidance to underpin the Regulations. A similar regime is in place for IPCC supervision of Her Majesty's Revenue and Customs so they too will need to be involved in that process if policy changes are to be made. When those processes are complete the Department intends laying amending Regulations to deal with the points rightly identified by the Committee and any other relevant matters. We hope to have this process completed by the end of the year. It should be emphasised finally that the Department recognises that this instrument was not prepared to the standard the Committee is entitled to expect. It is incumbent on the Department to produce legislation to a high standard and it is a matter of great regret to the Department that this has not happened.

Home Office
3rd August 2010

Appendix 2

S.I. 2010/853: memorandum from the Department for Education

Complaints Against Schools (England) Regulations 2010 (S.I. 2010/853)

1. In its letter to the Department dated 14th July, the Joint Committee requested a memorandum on the following point:

“Given that the expression ‘First Tier Tribunal’ does not appear elsewhere in the instrument, why is it defined in regulation 1(3)?”

2. The Committee has highlighted an error in the regulations. The definition of ‘First Tier Tribunal’ in regulation 1(3) is not necessary and needs to be removed from the regulations. The Department apologises for this error and proposes to remove this redundant definition at the earliest suitable opportunity.
3. In the mean time, given that the Regulations only apply to some local authorities (as part of a pilot scheme) we will write to the legal departments in those local authorities to advise them that this definition was included in error and should be ignored.

Department for Education,
19 July 2010.

Appendix 3

S.I. 2010/921: memorandum from HM Treasury

Saving Gateway Accounts Act 2009 (Commencement No. 2) Order 2010 (S.I. 2010/921)

1. The Joint Committee has requested a memorandum to be submitted on the following point–

“Explain the meaning of ‘for the purposes of ensuring an orderly introduction of accounts’ in article 2(2), identifying clearly the circumstances under which, before 1 March 2011, the Commissioners must issue a notice of eligibility and those under which they need not.”

2. You may wish to note at the outset that the Order has now been revoked by the Saving Gateway Accounts Act 2009 (Revocation of Commencement) Order 2010, SI 2010/1640. The Government announced in the Emergency Budget on 22 June that it will not now be introducing the Saving Gateway scheme and is now looking to formally repeal the Saving Gateway Accounts Act 2009 (“the Act”) at the earliest appropriate

opportunity. The Order was revoked on 22 June 2010 before the Order came into effect.

3. The Act established a scheme for working aged people on lower income to open Saving Gateway accounts with various account providers which would have been tax-free and which would also have received an additional payment from the government, calculated by reference to the amount saved and subject to a maximum limit of £300, at the end of the two-year period during which such accounts were to be held. Eligibility to open a Saving Gateway account was limited to individuals who were entitled to certain social security benefits and/or tax credit awards as listed in section 3(2) of the Act and when a person became so entitled HMRC was required by section 2(1) of the Act to issue a notice of eligibility to such individuals by which they would open the account.
4. It had been envisaged that accounts would have been available from July 2010, at which point approximately 5 million people would have been eligible to receive a notice of eligibility, which would have entitled them to apply for an account. In total around 9 to 10 million people would have been entitled to receive a notice of eligibility for an account during the first year of the Saving Gateway.
5. HMRC would have issued a notice of eligibility to each eligible person, as required under section 2(1) of the Act. However, the proposed orderly introduction of accounts was based upon the need for HMRC to manage the issue of these notices during the period between launch and March 2011—so as to take into account its own capacity to issue notices, the capacity of account providers to meet the anticipated demand, and the capacity of intermediary and advice giving bodies to meet demand for advice on the Saving Gateway. It was envisaged that the system would have reached a steady state in March 2011—after which time HMRC would have issued a notice to each person as and when they became an eligible person as defined in section 3.
6. If section 2(1) of the Act was commenced on 1 July 2010 without any qualification, HMRC would have been under an obligation to issue notices of eligibility to 5 million people within a reasonable period of that date and as such persons would still have lacked a degree of certainty as to when they could have expected to have received a notice from HMRC (and also the point in time at which they would have had to have been eligible: sections 1(3) and 3 of the Act). As HMRC was aware that it would take up to March 2011 for all initial notices of eligibility to be issued so as to bring the scheme into steady state, it was thought clearer to phase in the obligation to issue the vouchers between July 2010 and March 2011.
7. On reflection, HMRC accepts that the approach taken may lead to some lack of clarity as to when HMRC was under an enforceable obligation to issue notices of eligibility to eligible persons (albeit there was the ultimate back-stop date of 1 March 2011) and will reconsider adopting such an approach in future cases. With regards to the Order, however, as mentioned above, it was revoked on 22 June 2010 and before the substantive provisions of the Act, including section 2(1), were brought into effect.

Appendix 4

S.I. 2010/994: memorandum from the Wales Office

Water Supply (Water Quality) Regulations 2010 (S.I. 2010/994)

By a letter dated 14 July 2010, the Committee has asked for a memorandum on the following points:

- 1) In regulation 6(4), which is correct: the reference to hydrogen ion or the reference to item 3 in Part II of Table B in Schedule 1?
- 2) In regulation 6(5), which is correct: the reference to iron and manganese or the reference to items 9 and 10?
- 3) Is the reference in regulation 33(1) to paragraph (3) of regulation 27 intended to be a reference to paragraph (2), to paragraph (4), or to both of these paragraphs?

The Welsh Assembly Government's response is as follows.

In respect of point (1), the reference to the chemical parameter hydrogen ion is correct but this is found at item 7 of Schedule 2. Regulation 6(4) ought to read as follows:

“Of the samples taken in accordance with paragraph (3) in relation to each distribution, the first must be analysed for compliance with the parameters E coli, conductivity and hydrogen ion (item 2 in Table A in Schedule 1 and items 6 and 7 in Schedule 2 respectively), and the second and any subsequent samples must be analysed for compliance with those and every parameter.”

In respect of point (2), it is confirmed that the correct reference is to iron and manganese, which are items 10 and 11 in the table. Therefore regulation 6(5) ought to read *“items 1, 3, 10 & 11 in Table 1 in Schedule 3”*.

In respect of point (3), the reference in regulation 33(1) to paragraph (3) is incorrect and should instead refer to paragraph (4). Therefore regulation 33(1) should read:

“A water undertaker or combined licensee which contravenes regulation 27(1) or (4) or the terms of a notice served under regulation 29(4)(d) will be guilty of an offence and liable –

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.”

The Welsh Assembly Government regrets these errors and is grateful to the Committee for drawing them to its attention. It will seek to ensure that such drafting and cross-referencing errors are not repeated in any future regulations. The Welsh Assembly

Government intends to rectify the errors in these Regulations by an amending instrument by the end of this year.

Department of Environment, Sustainability and Housing
Welsh Assembly Government
30 September 2010

Appendix 5

S.I. 2010/1050: memorandum from the Department for Communities and Local Government

***Planning (Hazardous Substances) (Amendment) (England) Regulations 2010
(S.I. 2010/1050)***

The Committee has requested a memorandum on the following point –

“Given that the sole purpose of this instrument is to correct errors in S.I. 2009/1901, why does it not bear a headnote stating that it is being made available free of charge to all known purchasers of that instrument, as required by paragraph 3.4.14 of Statutory Instrument Practice?”

The Department accepts that S.I. 2010/1050 should have included a headnote as required by paragraph 3.4.14 of Statutory Instrument Practice. The Department apologises for this error and will make arrangements for S.I. 2010/1050 to be issued free of charge to all known recipients of S.I. 2009/1901.

Department for Communities and Local Government
20th July 2010