House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Twenty-seventh Report
of Session 2014-15

Drawing special attention to:

Antarctic (Recognised Assistance Dog) Regulations 2015 (S.I. 2015/126)
Further Education Loans (Amendment) Regulations 2015 (S.I. 2015/181)
Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 (S.I. 2015/191)

Ordered by the House of Lords to be printed
25 March 2015
Ordered by the House of Commons to be printed
25 March 2015
Joint Committee on Statutory Instruments

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- Lord Kennedy (Labour)
- Lord Lyell (Conservative)
- Baroness Mallalieu (Labour)
- Lord Selkirk (Conservative)
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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, 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 Joanna Welham (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (Commons); Nicholas Beach, Peter Milledge and John Crane (Lords).

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Instruments reported

At its meeting on 25 March 2015 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to three of those considered. The Instruments and the grounds for reporting them, are given below. The relevant Departmental memoranda are published as appendices to this report.

1 S.I. 2015/126: Reported for defective drafting

Antarctic (Recognised Assistance Dog) Regulations 2015 (S.I. 2015/126)

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 The Regulations prescribe who may train a “recognised assistance dog” for the purposes of section 8(5) of the Antarctic Act 1994 as amended by the Antarctic Act 2013. Section 8(1) of the Antarctic Act 1994 prohibits the introduction into any part of Antarctica of any animal or species that is not indigenous to Antarctica, except in accordance with a permit. This prohibition does not apply to the keeping on board a vessel in Antarctica of a recognised assistance dog that is trained by a person, or a person of a description, prescribed in regulations.

1.3 Regulation 2 prescribes: “the Guide Dogs for the Blind Association”; “an organisation which is a registered member of Assistance Dogs (UK)”; “a person or organisation that is affiliated to the International Guide Dog Federation”; and “a person or organisation accredited by Assistance Dogs International”. Each of those organisations could have been uniquely identified by reference to a charity or company number or other equivalent detail, and omission so to identify them leaves open the possibility of future uncertainty in the event of name changes or rival users of the same name. The Committee accordingly pointed out the scope for unique identification and on that basis asked the Foreign and Commonwealth Office to explain why the Regulations did not designate those bodies by more than their title.

1.4 In a memorandum printed at Appendix 1, the Department asserts that the designated bodies are “sufficiently clearly identified by reference to their title alone as they are organisations that are well known to the public at large or to that part of the public that would have a particular interest in the provision and training of assistance dogs” and that the Department “is not aware of other organisations which could be confused with the bodies mentioned”. It adds that it has based the drafting of regulation 2 on existing guidance issued by the Department for Rural Affairs; and that “the Polar Regions Department at the FCO provides guidance to UK expeditions to Antarctica … [which] will specify in greater detail how to identify whether an assistance dog has been trained by one of the organisations mentioned in the regulations”.

1.5 The Committee accepts that the bodies intended to be designated will at present be known by all or many of the people likely to be interested in the effect of these Regulations. But law covers the future as well as the present; the Committee considers it axiomatic that it ought to be as clear and certain as is needed to cover both, and the Department has not offered any reason for the omission of additional details of incorporation or other similar
matters which could easily have been provided in the text of the instrument. Even if the omission turns out not to cause confusion in practice, the designation should therefore as a matter of principle have been cast in such a way as to identify a necessarily unique entity. The fact that existing departmental guidance has used a similarly inexact form is irrelevant. The Department’s proposal to use further non-statutory guidance to supply additional detail in relation to the designated organisations suggests that it is not confident in its assertion that no further detail is necessary; and non-statutory guidance cannot be used to supply deficiencies of legislative certainty.

1.6 The Committee accordingly reports regulation 2 for defective drafting.

2 S.I. 2015/181: Reported for defective drafting and for doubtful vires

Further Education Loans (Amendment) Regulations 2015 (S.I. 2015/181)

2.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that there is a doubt whether they are intra vires in one respect and that they are defectively drafted in a related respect.

2.2 These Regulations amend the Further Education Loans Regulations 2012 (S.I. 2012/1818). They are made under powers in the Teaching and Higher Education Act 1998 which cover grants and loans for further education. The relevant provisions in the Act read as follows: “22. …(2) Regulations under this section may make provision …(b) prescribing, in relation to any such grant or loan and an academic year, the maximum amount available to any person for any purpose for that year; … [and] … (d) prescribing categories of attendance on … further education courses which are to qualify for any purposes of the regulations.” Those provisions do not appear to contain any authority to delegate the prescription in question.

2.3 Regulation 4 replaces regulation 16 of the 2012 Regulations. Paragraph (2) of new regulation 16 provides that “the amount of a fee loan in respect of a further education course beginning on or after 1st August 2015 must not exceed the lesser of—

(a) the maximum loan amount available in connection with that further education course as contained in the document published by the Skills Funding Agency on 5th February 2015 entitled “Funding rates for 24+ Advanced Learning Loans designated qualifications 2015 to 2016, Version 1”, or

(b) the amount which the institution is charging the eligible student for the further education course.”

2.4 The Committee accepts that a power to prescribe by regulations includes, even in a case where delegation is not permitted, power to attract an identified outside document that itself contains the requisite prescription, subject to two reservations: the regulations should not attract any element of that document that itself delegates prescription and they should also not attract any element that is inconsistent with the remainder of the regulations. As new regulation 16(2) appeared to attract the entire document referred to in it, the Committee noted the following statement in that document: “This Addendum contains the maximum amounts for 24+ Advanced Learning Loans for designated qualifications (by
designated we mean that the course has been through the Skills Funding Agency’s [SFA’s] approval process). It refers to learners who start qualifications between 1 August 2015 and 31 July 2016. Qualifications designated by the SFA for Advanced Learning Loans are published with their maximum loan amount on the Hub. This is updated regularly as we add newly designated qualifications to the database”.

2.5 The Committee accordingly asked the Department for Business, Innovation and Skills, in the light of that statement, to explain—

(a) how attracting the final sentence of the statement can be reconciled with the powers in section 22(2)(b) and (d) of the Teaching and Higher Education Act 1998, and

(b) why new regulation 16(2)(a) applies to all further education courses beginning on or after 1 August 2015 when the document appears to apply only to further education courses that begin in the period which starts with that date and ends with 31 July 2016.”

2.6 In a memorandum printed at Appendix 2 the Department explains, in relation to the first issue raised by the Committee, that the effect of new regulation 16(2)(a) is to prescribe as the maximum amount of fee loan that specified by Annex 2 of the attracted document. The website referred to as the ‘Hub’ in the document contains an extensive list of all designated courses and the actual maximum loan amounts for each course (as arrived at in accordance with Annex 2). The maximum loan amounts are included on the Hub to make the information easily accessible for users who can immediately discover the maximum amount of fee loan available for a particular course (rather than having to apply the matrix in Annex 2). But the amount prescribed by new regulation 16(2)(a) is the amount as provided by Annex 2 of the document itself.

2.7 The Department’s memorandum explains that, while the Hub may be updated from time to time to include newly designated courses, the prescribed maximum amount for the purposes of new regulation 16(2)(a) is that contained in Annex 2 (which remains frozen as at 5th February 2015) and that that is consistent with the powers in section 22(2)(b) and 22(2)(d) of the Teaching and Higher Education Act 1998. However, the Department admits that the wording within the document highlighted by the Committee is unhelpful and raises a doubt as to what is being prescribed by new regulation 16(2)(a). The Department regrets this, thanks the Committee for bringing the matter to its attention and undertakes to remedy the unhelpful wording at the next available opportunity. The Committee is grateful to the Department for this helpful explanation of the first issue raised by the Committee and for undertaking to address it.

2.8 In response to the second issue raised by the Committee, the Department in its memorandum states that it intends to amend new regulation 16(2)(a) on an annual basis to refer to new maximum amounts each year, presumably by reference to a new document. It states that the first amendment will take place before 31st July 2016 so that the issue which the Committee identified will be addressed in time to ensure that it does not cause practical problems. However, the Department recognises that the drafting of new paragraph 16(2) is imperfect and regrets that. It also regrets not making its future intentions clear in the Explanatory Memorandum. The Department is grateful to the Committee for identifying this issue and agrees to address it at the next available opportunity, presumably by ensuring that when the new regulation 16(2) is first amended to refer to a new document its opening
words are amended so that they expressly state that it applies only to further education courses that begin in the period covered by that new document. The Committee is in turn grateful for that undertaking.

2.9 The Committee accordingly reports regulation 4 for doubtful *vires* in respect of the application of regulation 4 to future unspecified courses and for defective drafting in failing to limit its effect to the intended period, in both cases acknowledged in principle by the Department.

3  S.I. 2015/191: Reported for failure to comply with proper legislative practice

*Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 (S.I. 2015/191)*

3.1 The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice.

3.2 The Order, made by the Secretary of State and (in respect of Wales and the Welsh zone) the Welsh Ministers, revokes a number of instruments relating to fisheries and makes other miscellaneous changes in fisheries law. It is subject to the negative procedure both in Parliament and the National Assembly for Wales.

3.3 The Committee was concerned that the effect of a resolution annulling the order in one of the two legislatures but not the other would be uncertain on the ground that it is not clear from the combined effect of sections 5 and 11A of the Statutory Instruments Act 1946 whether an annulment in one legislature would operate on the whole instrument or just on the instrument so far as made by the Secretary of State (in the case of a resolution of either House of Parliament) or so far as made by the Welsh Ministers (in the case of a resolution of the Assembly). The Committee accordingly asked the Department for Environment, Food and Rural Affairs to explain why, in the light of the Committee’s observations on S.I. 2011/695 in its 21st Report of Session 2010-12, the Order was made by the Secretary of State and the Welsh Ministers given the terms of those sections.

3.4 In a clearly expressed memorandum printed at Appendix 3 the Department acknowledges there is a potential difficulty in consequence of the fact that the words “no further proceedings shall be taken thereunder” in section 5(1) of the Statutory Instruments Act 1946 have not been limited so as to restrict their application only in relation to England (in the case of a resolution passed in Parliament) or Wales (in the case of a resolution passed by the Assembly). The Department considers that, in the absence of such a restriction, Parliament must be presumed to have intended that an annulling resolution passed in one legislature but not the other would have the effect that no further proceedings could be taken under the instrument in relation to England or Wales.

3.5 As the Committee indicated in its 21st Report of Session 2010-12, it is the Committee’s view that, while that may be so, the surprising result (namely that a resolution of the Assembly could annul provisions made by the Secretary of State even so far as they apply to England and that a resolution of either House of Parliament could annul provision made by the Welsh Ministers only in relation to Wales) means that the position cannot safely be regarded as beyond argument.
3.6 In this instance, as a matter of policy, the Department and the Welsh Ministers considered that there was a convenience in the instrument applying in relation to both England and Wales. They also took the view that the risk that this might result in it being necessary to remake the instrument in relation to one territory in the event of an annulling resolution being passed in the legislature of the other was one worth taking. The Department further notes that any interval between any such resolution and the remaking of the instrument with a more limited application would likely to be of very limited duration.

3.7 The Committee is grateful to the Department for acknowledging the potential difficulties arising from a situation where a composite instrument like this one is the subject of a successful motion for annulment in only one of the two legislatures concerned and for indicating that it and the Welsh Ministers would be prepared to act quickly to sort out the difficulties that would arise in consequence of their decision to operate via a single composite instrument should that happen. Furthermore, the Committee notes that, in the absence of annulment within the time available for it, the potential difficulties will come to an end.

3.8 That leaves the Committee nonetheless with three remaining grounds for objection. The first is that it can operate consistently only by considering instruments as they stand rather than as they may come to be varied. The second is that it is not prepared to assume in advance the outcome of actual or potential proceedings in Parliament. The third is that, in so far as the inconvenience identified comprises making two instruments rather than one, it could in the Committee’s view have been avoided in this case by the making of one Order with identical application by the Secretary of State alone in reliance on Government of Wales Act 2006, Schedule 3, paragraph 5. The Committee accordingly reports the Order for failure to comply with proper legislative practice.
Instruments not reported

At its meeting on 25 March 2015 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

Draft Instrument requiring affirmative approval

**Draft S.I.**  
Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2015

Instruments subject to annulment

**S.I. 2015/52**  
Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules Order of Council 2015

**S.I. 2015/58**  
National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Amendment and Transitional Provision) Regulations 2015

**S.I. 2015/62**  
Special Educational Needs and Disability (Detained Persons) Regulations 2015

**S.I. 2015/82**  
Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2015

**S.I. 2015/83**  
Child Poverty Act 2010 (Extension of Publication Deadline) Order 2015

**S.I. 2015/87**  
Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2015

**S.I. 2015/118**  
Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2015

**S.I. 2015/185**  
Social Security Pensions (Flat Rate Accrual Amount) Order 2015

**S.I. 2015/186**  
Social Security Pensions (Low Earnings Threshold) Order 2015

**S.I. 2015/187**  
Social Security Revaluation of Earnings Factors Order 2015

**S.I. 2015/212**  
Football Spectators (Corresponding Offences) (Revocation) Order 2015

**S.I. 2015/225**  
Education (Prescribed Courses of Higher Education) (Information Requirements) (England) Regulations 2015

**S.I. 2015/231**  
Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2015

**S.I. 2015/232**  
Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2015

**S.I. 2015/237**  
Railways (North and East London Lines) Exemption Order 2015

**S.I. 2015/239**  
Railways (Crossrail Services) Exemption Order 2015

**S.I. 2015/244**  
Animals (Scientific Procedures) Act 1986 (Fees) Order 2015

**S.I. 2015/321**  
Charities Act 2011 (Accounts and Audit) Order 2015

**S.I. 2015/322**  
Charities Act 2011 (Group Accounts) Regulations 2015

**S.I. 2015/327**  
Agriculture (Calculation of Value for Compensation) (Revocations) (England) Regulations 2015

**S.I. 2015/337**  
Criminal Justice (Sentencing) (Licence Conditions) Order 2015
S.I. 2015/402  Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) (Amendment) Regulations 2015
S.I. 2015/412  Motor Vehicles (Driving Licences) (Amendment) (No.2) Regulations 2015
S.I. 2015/419  Clinical Thermometers (EEC Requirements) (Revocation) Regulations 2015
S.I. 2015/453  Police (Promotion) (Amendment) Regulations 2015
S.I. 2015/458  Merchant Shipping (Light Dues) (Amendment) Regulations 2015
S.I. 2015/533  Judicial Pensions (Miscellaneous) (Amendment) Regulations 2015
S.I. 2015/719  Motor Vehicles (Driving Licences) (Amendment) (No.3) Regulations 2015

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2015/188  Serious Organised Crime and Police Act 2005 (Commencement No. 15) Order 2015
S.I. 2015/375  Children and Families Act 2014 (Commencement No. 6) Order 2015
S.I. 2015/504  Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 11) Order 2015
S.I. 2015/587  Protection of Freedoms Act 2012 (Commencement No.11) Order 2015
Appendix 1

S.I. 2015/126: memorandum from the Foreign and Commonwealth Office


1. At its meeting on 11 March 2015, the Committee asked for a memorandum on the following point:

*Explain why the Regulations do not designate the bodies specified in regulation 2 by more than their title, given that each could have been uniquely identified by reference to charity or company number or other equivalent detail.*

Response

2. The FCO considered that bodies designated in regulation 2 were sufficiently clearly identified by reference to their title alone as they are organisations that are well known to the public at large or to that part of the public that would have a particular interest in the provision and training of assistance dogs. The Department is not aware of other organisations which could be confused with the bodies mentioned in regulation.


4. Additionally, the Polar Regions Department at the FCO provides guidance to UK expeditions to Antarctica. That guidance will specify in greater detail how to identify whether an assistance dog has been trained by one of the organisations mentioned in the regulations.

Foreign and Commonwealth Office
17 March 2015
Appendix 2

S.I. 2015/181: memorandum from the Department for Business, Innovation and Skills

Further Education Loans (Amendment) Regulations 2015 (S.I. 2015/181)

1. The Committee asked:

The Committee notes the following extract from the document attracted by new regulation 16(2)(a) as inserted by regulation 4: “This Addendum contains the maximum amounts for 24+ Advanced Learning Loans for designated qualifications (by designated we mean that the course has been through the Skills Funding Agency’s [SFA’s] approval process). It refers to learners who start qualifications between 1 August 2015 and 31 July 2016. Qualifications designated by the SFA for Advanced Learning Loans are published with their maximum loan amount on the Hub. This is updated regularly as we add newly designated qualifications to the database.

In the light of that, explain—

(a) how attracting the final sentence in the extract can be reconciled with the powers in section 22(2)(b) and (d) of the Teaching and Higher Education Act 1998, and

(b) why new regulation 16(2)(a) applies to all further education courses beginning on or after 1 August 2015 when the document appears to apply only to further education courses that begin in the period which starts with that date and ends with 31 July 2016.

Point (a)

2. New regulation 16(2)(a) prescribes the maximum amount of fee loan available as that contained in the named Skills Funding Agency (SFA) document as it existed on 5 February 2015. Annex 2 of the SFA document lists the maximum amounts available.

3. The website referred to as the ‘Hub’ in the SFA document contains an extensive list of all designated courses and the maximum loan amounts for each course (calculated in accordance with Annex 2 of the SFA document). The maximum loan amounts are included on the Hub to make course information easily accessible for users – who can instantly see the maximum amount of fee loan available for a particular course (rather than by applying the matrix in Annex 2 of the SFA document). However the amount intended to be prescribed by new regulation 16(2)(a) is the amount contained in Annex 2 of the SFA document.
4. While the Hub may be updated from time to time to include newly designated courses, the prescribed maximum amount for the purposes of new regulation 16(2)(a) is intended to be that contained in Annex 2 of the SFA document (which remains frozen as at 5 February 2015). Any new designated course will fall within the categories of qualification contained within the SFA document. The Department considers the approach of referring to amounts contained in the SFA document as it existed on 5 February 2015 is consistent with the powers in section 22(2)(b) and 22(2)(d) of the Teaching and Higher Education Act 1998.

5. However the Department recognises that the wording within the SFA document highlighted by the Committee is unhelpful and raises a doubt as to what is being prescribed by new regulation 16(2)(a). The Department regrets this.

6. The Department thanks the Committee for bringing this error to its attention and will remedy this at the next available opportunity.

**Point (b)**

7. The Department intends to amend new regulation 16(2) on an annual basis to refer to new maximum amounts each year. This amendment would take place prior to 31 July 2016 so the potential inconsistency identified would be addressed at that stage – before users might be impacted.

8. However the Department recognises that the drafting could be clearer and regrets that it is not. The Department also regrets not making its future intentions clear in the Explanatory Memorandum.

9. The Department is grateful to the Committee for identifying this error and will address this at the next available opportunity.

Department for Business, Innovation and Skills
16 March 2015

**Appendix 3**

**S.I. 2015/191.: memorandum from the Department for Environment, Food and Rural Affairs**

**Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 (S.I. 2015/191)**

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

In the light of the Committee’s observations on S.I. 2011/695 in its 21st Report of Session 2010-12, explain why the Order was made by the Secretary of State and
the Welsh Ministers given the terms of sections 5 and 11A of the Statutory Instruments Act 1946.

2. The Department understands the Committee’s question to relate to the possibility that either Parliament or the Assembly resolves that the instrument be annulled but the other does not.

3. The Department notes, firstly, that this situation is not incapable of a practical resolution, since the instrument can be revoked and then remade so as to apply only in relation to the territory whose legislature did not so resolve.

4. Secondly, the Department notes as a matter of analysis that any constraint on the freedom of Parliament or the Assembly arising from the other resolving that the instrument be annulled is a consequence of the fact that the words “no further proceedings shall be taken thereunder” in section 5(1) of the Statutory Instruments Act 1946 (c.36) have not been limited so as to restrict their application only in relation to England (in the case of a resolution passed by either House of Parliament), or Wales (in the case of a resolution passed by the Assembly). Parliament, in introducing section 11A of the Statutory Instruments Act 1946 by means of section 160 of and Schedule 10 to the Government of Wales Act 2006 (c.32), did not see fit to introduce any such restriction. Equally, it introduced no restrictions on the making of composite instruments.

5. The Department considers that Parliament must be presumed to have intended the result achieved. Had it introduced a restriction on the territorial effect of an annulling resolution, any such resolution would only have affected the operation of the instrument in relation to England, in the case of a resolution passed by either House of Parliament, or in relation to Wales, in the case of a resolution passed by the Assembly; and, if an Order in Council were then made so as to revoke the instrument only in relation to the territory in which the resolution was passed, the operation of the instrument in relation to the other territory would have remained unaffected.

6. The Department does not speculate as to Parliament’s reasons for choosing not to take this course. The Department considers, however, that Parliament’s intention in enacting the Government of Wales Act 2006 was plain. It plainly intended that composite instruments should be capable of being made, notwithstanding that an annulling resolution passed in one legislature but not the other would have the effect that no further proceedings could be taken under the instrument in either England or Wales.

7. Parliament has since in certain instances set out this effect with specific reference to composite instruments: see, for example, paragraphs 5 to 8 of Schedule 3 to the Climate Change Act 2008 (c.27); but the Department submits that such specific reference to composite instruments is merely a more specific statement of an intention which is sufficiently clearly achieved as regards the general

8. The Department notes that any interval between any such resolution and the remaking of the instrument with a more limited application is likely to be of very limited duration.

9. In this instance, as a matter of policy, the Department and the Welsh Ministers considered that there was a convenience in the instrument applying in relation to both England and Wales which made it appropriate to proceed in that way. The Department and the Welsh Ministers also took the view that the risk that this might result in its being necessary to remake the instrument in relation to one territory in the event of an annulling resolution being passed in the legislature of the other was one worth taking.

Department for Environment, Food and Rural Affairs
17 March 2015