House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Third Report
of Session 2015-16

Drawing special attention to:

Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (S.I. 2015/398)
Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations 2015 (S.I. 2015/410)
Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 (S.I. 2015/601)
Nitrate Pollution Prevention Regulations 2015 (S.I. 2015/668)
Nagoya Protocol (Compliance) Regulations 2015 (S.I. 2015/821)
Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015 (S.I. 2015/1001)
Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392)

Ordered by the House of Lords to be printed
9 September 2015
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9 September 2015
Joint Committee on Statutory Instruments

Current membership

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Baroness Humphreys (Liberal Democrat)
Lord Lexden (Conservative)
Lord Mackay of Drumadoon (Crossbench)
Baroness Mallalieu (Labour)
Baroness Meacher (Crossbench)
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Michael Ellis (Conservative, Northampton North)
Stephen Hammond (Conservative, Wimbledon)
Mr Ian Liddell-Grainger (Conservative, Bridgwater and West Somerset)

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 Amelia Aspden (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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S.I. 2015/1392: memorandum from the Department for Business, Innovation and Skills
Instruments reported

At its meeting on 9 September 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 nine 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. 2015/385: Reported for defective drafting


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

1.2 The expression “prospective offshore licensee” is defined in regulation 2(1) as meaning a person in respect of whom an application has been made to the licensing authority—

(a) for the grant of an offshore licence to that person; or

(b) for consent to a transfer of an offshore licence to that person (whether or not after the transfer the licence will be held jointly with another person, including an existing licence holder), but where that application has not been determined.

1.3 In a memorandum printed at Appendix 1, the Department of Energy and Climate Change acknowledges that the words “but where that application has not been determined” are intended to apply to both (a) and (b) and should have been presented as such and that the error will be corrected at the next opportunity. The Committee observes also that “but where” does not fit comfortably with the accompanying text and would have been better expressed as “but” or “where”. The Committee accordingly reports regulation 2(1) for defective drafting, acknowledged by the Department.

1.4 Regulation 8(3)(b) provides that the appointment of an operator may be terminated by the licensing authority where an operator fails to comply with any obligations placed on it by or under regulation 4 or 11(5). Regulation 11(1)(b) similarly refers to a person’s obligations under regulation 4 or 5(1). Regulations 4 and 5(1) impose prohibitions but do not place any person under an obligation to do anything. The Department argues that a prohibition is an obligation not to do something so it is not inappropriate to refer to regulations 4 and 5(1) as imposing obligations. The Committee does not agree. In the absence of something to explain that “obligation” includes a prohibition the natural meaning of the words does not produce the intended result. The Committee accordingly reports regulations 8(3)(b) and 11(1)(b) for defective drafting.
2 S.I. 2015/398: Reported for failure to conform with accepted
drafting practice

Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (S.I.
2015/398)

2.1 The Committee draws the special attention of both Houses to these Regulations on
the ground that they fail to conform with accepted drafting practice in one respect.

2.2 Regulation 38 and paragraph 14 of Schedule 13 amend the Offshore Installations and
Pipeline Works (Management and Administration) Regulations 1995 by inserting
regulations 21A to 21H. The inserted regulation 21E provides in paragraph (1) for the
mode of trial and maximum penalty for an offence consisting of a contravention of a
requirement imposed by regulation 21B(1). It makes identical provision in paragraph (2)
in respect of an offence consisting or a contravention of a requirement imposed by
regulation 21B(2) or 21C. The Committee asked the Department for Work and Pensions
why paragraphs (1) and (2) were not combined.

2.3 In a memorandum printed at Appendix 2, the Department explains how the
duplication arose but admits that the two paragraphs could have been combined. The
Committee observes that, while literally read, the paragraphs have the intended effect, they
appear so surprising as separate provisions that a reader could easily suspect there was an
intended distinction that had been inadvertently missed. The Committee accordingly
reports the new regulation 21E inserted by paragraph 14 of Schedule 13 for failure to
conform with accepted drafting practice, the possibility of which is acknowledged by
the Department.

3 S.I. 2015/410: Reported for defective drafting

Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations
2015 (S.I. 2015/410)

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

3.2 Regulation 9(1) provides that, subject to regulations 10 to 12, for the purposes of
sections 49 and 52 of the Merchant Shipping Act 1995, a boatmaster is not qualified to
serve as a master of a vessel unless that boatmaster holds one of a number of specified
qualifications. Regulations 10 and 11 provide that in particular circumstances a boatmaster
is not qualified to serve as a master unless additional conditions are fulfilled. They are
therefore additional to regulation 9 and do not qualify it in any way.

3.3 In a memorandum printed at Appendix 3, the Department for Transport states that
regulation 9 can be said to be “subject to” regulation 10 or 11 in that a boatmaster who on
the face of it is qualified under regulation 9 will need to meet the additional requirements
in regulations 10 and 11 if the circumstances described in those regulations apply. The
Committee does not agree. Regulation 9 does not provide that a person is qualified; it states
when a person is not qualified. It was therefore inappropriate to describe regulation 9 as
being subject to regulations 10 and 11, and the Committee reports that regulation for
defective drafting.

3.4 Regulation 19(1)(b) prohibits the Secretary of State from issuing a boatmaster’s licence
or an endorsement of a class specified by the Secretary of State unless satisfied that a
boatmaster applying for the licence or endorsement has completed a period of qualifying
service (the “qualifying service time”) not less than that (if any) specified by the Secretary of
State. Regulation 4(1) defines “specified by the Secretary of State” as meaning specified by
the Secretary of State in Merchant Shipping Notice MSN 1853. Regulation 21 provides that
a large passenger vessel endorsement must not be issued unless, in addition to the
qualifying service time prescribed for the large passenger vessel endorsement, the applicant
has served such additional periods of service within such period on such vessels and subject
to such conditions as specified by the Secretary of State.

3.5 The Department states that “prescribed” is intended to mean “specified by the Secretary
of State” and acknowledges that the latter, defined, expression should have been used. The
Committee accordingly reports regulation 21 for defective drafting, acknowledged by
the Department.

4 S.I. 2015/589: Reported for defective drafting, failure to comply with proper drafting practice, for requiring elucidation and failure to comply with proper legislative practice

Firefighters’ Pension Scheme (England) (Transitional and Consequential Provisions)
Regulations 2015 (S.I. 2015/589)

4.1 The Committee draws the special attention of both Houses to these Regulations on
the grounds that they are defectively drafted in one respect, fail to comply with proper
drafting practice in one respect, and both call for elucidation and fail to comply with
proper legislative practice in another respect.

4.2 Paragraph 5(a) of Schedule 1 amends regulation 59 of the Firefighters’ Pension Scheme
(England) Regulations 2014 by inserting a new paragraph (2)(ba). Regulation 59(2),
however, states that the annual rate of a retirement pension is calculated by adding the
totals of sub-paragraphs (a), (b) and (c). This has not been amended to include a reference
to the amount specified in sub-paragraph (ba). In a memorandum printed at Appendix 4,
the Department for Communities and Local Government accepts that this was a drafting
error, which will be corrected at the earliest opportunity. The Committee accordingly
reports paragraph 5(a) of Schedule 1 for defective drafting, acknowledged by the
Department.

4.3 Both the 2014 Regulations and the Firefighters’ Pension Scheme (England) Order 2006,
which this instrument also amends, have been amended in several places. The footnote to
each instrument merely gives the year and number but gives no indication of the
amendments that have been made or the instruments which made them, as is required by
Statutory Instrument Practice. The Department apologises for this error and undertakes to
endeavour to get the online version and annual edition corrected. The Committee
accordingly reports the instrument for failing to comply with proper drafting practice,
as acknowledged by the Department.
4.4 The Committee also asked the Department to explain why nothing in the Regulations appears to address the matters reported by the Committee in relation to the Firefighters’ Pension Scheme (England) Regulations 2014 in its 19th Report of last Session. In that Report the Committee had identified what it perceived as defective drafting in regulation 61(3) and regulation 71(4) of those Regulations but, even though the Regulations amend those Regulations, they do not include any amendments of those provisions. Nor does the Explanatory Memorandum, in the section addressed to the Committee, explain why that is so.

4.5 In its memorandum the Department states that, having carefully considered regulation 61(3), it does not consider that any amendment is needed because its effect is clear to the Government Actuary by whom the actuarial guidance to which it refers falls to be made; and it states that guidance has in fact already been made under it. The memorandum goes on to state that regulation 71(4) has also been carefully considered by the Department which, while accepting that the Committee’s drafting suggestions might improve its intelligibility, does not consider that they would change its effect: the Department therefore does not propose to adopt them. The Department apologises for failing to mention its stance on these issues in the Explanatory Memorandum.

4.6 The Committee again wishes to stress the importance of engagement by Departments with the Committee’s reports when drafting Explanatory Memoranda. The Committee is grateful to the Department for now providing some degree of elucidation in its memorandum and for apologising for having failed to do so in the Explanatory Memorandum. But it does not believe that the Department has, even now, provided a compelling, fully-reasoned explanation of the grounds for its decision not to make amendments in response to the Committee’s earlier comments. It accordingly reports the Regulations as requiring elucidation partly provided by the Department’s memorandum and, in relation to the omission from the Explanatory Memorandum, a failure to comply with proper legislative practice, acknowledged by the Department.

5 S.I. 2015/601: Reported for defective drafting

*Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 (S.I. 2015/601)*

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

5.2 These Regulations revoke and replace the Teachers’ (Compensation for Redundancy and Premature Retirement) Regulations 1997. Regulation 2(2) defines “appropriate person” as having two meanings: one before 1 September 1999 and one on or after that date. The Committee asked the Department for Education to explain the intended purpose and effect of stating what the expression meant before these Regulations came into force. The Committee accordingly reports regulation 2(2) for defective drafting, acknowledged by the Department.
6 S.I. 2015/668: Reported for defective drafting

Nitrate Pollution Prevention Regulations 2015 (S.I. 2015/668)

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

6.2 These Regulations contain numerous provisions which state that a person (such as the occupier of a holding, the Secretary of State or the Environment Agency must or must not do something, or that something must or must not be done (without saying by whom). Regulation 41(1) states that a person who breaches a provision of these Regulations commits an offence. The Committee asked the Department for Environment, Food and Rural Affairs to which of the various provisions of the Regulations regulation 41(1) is intended to apply.

6.3 In a memorandum printed at Appendix 6, the Department accepts that regulation 41(1) could have been made clearer and undertakes to amend it at the next appropriate opportunity. The Committee accordingly reports regulation 41(1) for defective drafting, acknowledged by the Department.

7 S.I. 2015/821: Reported for defective drafting

Nagoya Protocol (Compliance) Regulations 2015 (S.I. 2015/821)

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

7.2 Regulations 13 and 14 create criminal offences. Regulation 16 specifies the maximum penalty for offences under regulation 13, but there is no mention in the Regulations of the penalty for an offence under regulation 14. In a memorandum printed at Appendix 7, the Department for Environment, Food and Rural Affairs states that this was due to a drafting error, and undertakes to correct it before these Regulations come into force. The Committee accordingly reports regulation 16 for defective drafting, acknowledged by the Department.

8 S.I. 2015/1001: Reported for defective drafting

Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015 (S.I. 2015/1001)

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

8.2 Regulation 2 amends the Civil Enforcement of Parking Contraventions (England) General Regulations 2007. Paragraph (3) inserts a new regulation 9 in substitution for the previous one and paragraph (4) inserts a new regulation 9A. Provisions within both these regulations provide for fixing penalty charge notices on vehicles. Paragraph (6) makes a consequential amendment to regulation 11(1), the provision which makes unauthorised
removal of a penalty charge notice fixed to a vehicle an offence. However it fails to cover notices fixed under new regulation 9A(5). In a memorandum printed at Appendix 8, the Department for Communities and Local Government acknowledges that the amendment to regulation 11(1) should have included a reference to regulation 9A(5) and states that it will rectify this at the earliest opportunity. The Committee accordingly reports regulation 2(6) for defective drafting, acknowledged by the Department.

9 S.I. 2015/1392: Reported for defective drafting

Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392)

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

9.2 Regulations 3, 4, 5, 7 and 8 respectively amend the Prescription and Limitation (Scotland) Act 1973, the Limitation Act 1980, the Foreign Limitation Periods Act 1984, the Equality Act 2010, and the Limitation (Northern Ireland) Order 1989. In each case the amendments include the insertion of a definition of “ADR official”, but in each case the enactment being amended does not otherwise contain that expression either before or after amendment. In a memorandum printed at Appendix 9, the Department for Business, Innovation and Skills states that the inclusion of the definition was an oversight, which arose during a change in the drafting of the instrument. The Department states that it will correct the error at the next convenient opportunity. The Committee accordingly reports regulations 3, 4, 5, 7 and 8 for defective drafting, acknowledged by the Department.
Instruments not reported

At its meeting on 9 September 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.

○ denotes written evidence has been submitted but not printed

Annex

Draft Instruments requiring affirmative approval

Draft S.I. | Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015
Draft S.I. | Renewables Obligation Order 2015
Draft S.I. | English Apprenticeships (Consequential Amendments to Primary Legislation) Order 2015
Draft S.I. | Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015

Instruments subject to annulment

○ S.I. 2015/1325 | Common Agricultural Policy (Amendment) Regulations 2015
S.I. 2015/1387 | Littlehampton Harbour Revision Order 2015
S.I. 2015/1390 | Poole Harbour (Works) Revision Order 2015
S.I. 2015/1395 | Great Yarmouth Port Authority (Constitution) Harbour Revision Order 2015
S.I. 2015/1407 | Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2015
S.I. 2015/1409 | Electricity (Exemption from the Requirement for a Generation Licence) (Frodsham) (England and Wales) Order 2015
S.I. 2015/1412 | Power Purchase Agreement Scheme (Amendment) Regulations 2015
S.I. 2015/1415 | Re-use of Public Sector Information Regulations 2015
S.I. 2015/1416  Civil and Criminal Legal Aid (Amendment) Regulations 2015
S.I. 2015/1419  Family Proceedings Fees (Amendment No. 2) Order 2015
S.I. 2015/1420  Family Procedure (Amendment No. 2) Rules 2015
S.I. 2015/1421  Family Court (Composition and Distribution of Business) (Amendment) Rules 2015
S.I. 2015/1422  Female Genital Mutilation Protection Order (Relevant Third Party) Regulations 2015
S.I. 2015/1423  Justices' Allowances Regulations 2015
S.I. 2015/1425  Contracts for Difference (Standard Terms) (Amendment) Regulations 2015
S.I. 2015/1430  National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2015
S.I. 2015/1479  Care Quality Commission (Membership) Regulations 2015
S.I. 2015/1501  Asylum Support (Amendment No. 3) Regulations 2015
S.I. 2015/1503  Human Medicines (Amendment) (No. 3) Regulations 2015
S.I. 2015/1510  Tribunal Procedure (Amendment) Rules 2015
S.I. 2015/1512  Child Benefit (General) (Amendment) Regulations 2015
S.I. 2015/1529  State Pension Credit (Amendment) Regulations 2015
S.I. 2015/1534  Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2015
S.I. 2015/1542  Housing (Right to Buy) (Prescribed Forms) (Amendment) (England) Regulations 2015
S.I. 2015/1546  Export Control (Democratic Republic of Congo Sanctions and Miscellaneous Amendments and Revocations) Order 2015
Draft Instruments subject to annulment

**Draft S.I.**
Bristol (Electoral Changes) Order 2015

**Draft S.I.**
Cherwell (Electoral Changes) Order 2015

**Draft S.I.**
Colchester (Electoral Changes) Order 2015

**Draft S.I.**
Hertfordshire (Electoral Changes) Order 2015

**Draft S.I.**
Peterborough (Electoral Changes) Order 2015

**Draft S.I.**
Rochford (Electoral Changes) Order 2015

**Draft S.I.**
Sheffield (Electoral Changes) Order 2015

**Draft S.I.**
Warwickshire (Electoral Changes) Order 2015

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. 2015/1380  Central African Republic (Sanctions) (Overseas Territories) (Amendment) Order 2015

Instruments not subject to Parliamentary proceedings not laid before Parliament


S.I. 2015/1400  Wireless Telegraphy (Register) (Amendment) Regulations 2015


S.I. 2015/1511  General Chiropractic Council (Indemnity Arrangements) Rules Order of Council 2015
Appendix 1

S.I. 2015/385: memorandum from the Department of Energy and Climate Change

1. In its letter to the Department of Energy and Climate Change of 15 July 2015, the Joint Committee requested a memorandum on two points.

   (1) In the definition of “prospective offshore licensee” in regulation 2(1), explain –

   a) why the words “but where that application has not been determined” are presented as applying to sub-paragraph (b) but not sub-paragraph (a), and

   b) why “but where” is used those words instead of just “but” or just “where”.

   (a) The phrase “but where that application has not been determined;” should apply to both sub-paragraphs (a) and (b). We do not think this will have a significant effect in practice and it will be corrected at the next opportunity.

   (b) The use of “but where” does not add anything to either “but” or “where”, but we do not think this materially affects the meaning of the regulation.

   (2) Why, in the absence of any definition to the effect that an obligation is to include a prohibition, does regulation 8(3)(b) refer to an obligation placed on an operator by or under regulation 4, and regulation 11(1)(b) refer to obligations under regulation 4 or 5(1), when regulations 4 and 5(1) impose prohibitions but do not impose any obligations?

2. The references to “obligation” in regulations 8(3)(b) and 11(1)(b) are both intended to cover the prohibitions identified. In our view a prohibition is an obligation not to do something and so it is not inappropriate to refer to regulations 4 and 5(1) as “obligations”, even though they are not obligations to positively do something. In particular, we think it is worth noting that there are no positive obligations in either regulation 4 or regulation 5(1) which might limit the meaning of the term “obligation” to only positive obligations. In our view there is therefore no doubt about the meaning of the term in either of the instances cited.

Department of Energy and Climate Change

20 July 2015
Appendix 2

S.I. 2015/398: memorandum from the Department for Work and Pensions

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<th>Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (S.I. 2015/398)</th>
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1. In its letter to the Department of 15th July 2015, the Committee requested a memorandum on the following point:

   Explain why paragraphs (1) and (2) of new regulation 21E of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, inserted by paragraph 14 of Schedule 13, are not combined, given that their content is materially identical.

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

3. The Health and Safety Executive and Treasury Solicitor’s Department (now Government Legal Department) prepared the Regulations.

4. Paragraphs (1) and (2) of the new regulation 21E have antecedents in, respectively, paragraphs (1) and (2) of regulation 12 of the Offshore Installations (Logbooks and Registration of Death) Regulations 1972 (the ‘Logbook Regulations’).

5. The Logbook Regulations are revoked, revised and consolidated by the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015.

6. Regulation 12 was the starting point for drafting the consolidated version. Its paragraphs (1) and (2) historically identified the different persons on whom the requirements they referred to were imposed. As a simplifying measure, the persons are no longer expressly identified in the corresponding paragraphs of the consolidated version as they may be identified from the citation of the provisions containing the requirements.

7. The Department accepts that with the removal of the identities of the persons to whom the offences relate, and because the level of punishment expressed in each paragraph does not differ between the two persons, these paragraphs could be combined.

Department for Work and Pensions
21 July 2015
Appendix 3

S.I. 2015/410: memorandum from the Department for Transport

Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations 2015 (S.I. 2015/410)

1. By a letter dated 15th July 2015, the Joint Committee on Statutory Instruments requested a Memorandum on the following points:

(1) Given that regulations 10 and 11 specify cases where a boatman is not qualified to serve as a master, why is regulation 9(1) expressed to be subject to them?

(2) Explain the meaning of “prescribed” in regulation 21. Is it intended to mean specified by the Secretary of State and, if so, why is that defined expression not used?

Point 1

2. Regulation 9 sets out the qualifications which must be held by a boatmaster in order to serve as master of a vessel.

3. Regulation 10 sets out specific provisions for boatmasters of vessels to which a pilotage direction applies. Regulation 11 sets out specific provisions for boatmasters holding a Rhine navigation licence.

4. Although it is correct that regulations 10 and 11 specify cases where a boatmaster is not qualified to serve as a master, both regulations state the further qualifications required by a boatmaster in those cases.

5. Regulations 10 and 11 therefore supplement the requirements of regulation 9 in certain cases. Regulation 9 can be said to be “subject to” regulation 10 or 11 in that a boatmaster who on the face it is qualified under regulation 9 will need to meet the additional requirements in regulations 10 and 11, if a pilotage direction applies or a Rhine navigation licence is held.

6. The Department notes that the Committee has a firmly held view that the words “subject to” should only be used where they qualify a proposition, for example by providing exceptions, and not where they merely add to it. The Department considers that regulations 10 and 11 have the effect of qualifying regulation 9 when read on its own, but we accept that the relationship between the regulations could have been expressed in a different way. We do not consider that this creates uncertainty for readers of the Regulations.
7. Regulation 21 refers to “the qualifying service time prescribed for the large passenger vessel endorsement”. This is intended to mean any qualifying service time required by regulation 19(1)(b). As regulation 19(1) refers to time “specified” by the Secretary of State, the Department accepts that it would have been better if the Regulations had not used the term “prescribed”.

Department for Transport
21 July 2015

Appendix 4

S.I. 2015/589: memorandum from the Department for Communities and Local Government


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

   Regulation 59(2) of the 2015 scheme, as amended by paragraph 5(a) of Schedule 1, continues to state that the annual rate of a pension is calculated by adding the totals of (a), (b) and (c). Why has this not been amended to reflect the insertion of (ba)?

2. This is a drafting error for which the Department apologises. The amendment will be made at the earliest opportunity.

   Why does neither footnote (c) nor footnote (d) on page 1 contain an appropriate entry for amendments to the instruments covered, as called for by paragraph 2.11.10 of the Statutory Instrument Practice?

3. This is a drafting error for which the Department apologises. We will endeavour to get the online version and annual edition corrected to amend the footnotes.

   The Firefighters’ Pension Scheme (England) Regulations 2014, which regulation 2 of and Schedule 2 to these Regulations amend, was reported in the Committee’s Nineteenth Report of Session 2014-15 for what the Committee perceived as defective drafting in respect of regulations 61(3) and 71(4). Explain why-
(a) nothing in these Regulations appears to deal with the matters reported, and
(b) the Explanatory Memorandum does not explain why that is so in the section addressed to the Committee.

4. The Department carefully considered the Committee’s comments in the Nineteenth Report of Session 2014-15 when drafting SI 2015/589 and again in the light of drafting this memorandum and respectfully disagrees that amendment of regulation 61(3) is required. The constraint imposed by the second sentence of that paragraph applies only to the Secretary of State and he and the Government Actuary Department from whom he takes advice in relation to actuarial guidance have a clear understanding of the meaning of the expression used. Actuarial Guidance has been issued to fire and rescue authorities under that provision and would not be affected by any amendment to the regulation.

5. The Department also carefully considered the Committee’s comments in the Nineteenth Report of Session 2014-15 on regulation 71(4) when drafting SI 2015/589 and again in the light of drafting this memorandum. The Department’s view after consultation with the Government Actuary Department is that the provision achieves the desired effect of ensuring that members who have already used up part of their lifetime allowance are restricted in the proportion of pension they can commute if to commute a particular proportion would lead to the scheme making an unauthorised payment. This is a theoretical rather than a practical possibility at present because of the commutation factors applicable. The Department acknowledges that the drafting amendments suggested by the Committee might improve intelligibility of this provision but it does not consider that they would change the effectiveness of the provision and it has no current plans to make amendments.

6. The Department took the view that it had nothing further to add to the response it had given to the Committee’s questions as regards regulations 61(3) and 71(4) of the 2014 Regulations in its memorandum dated 13 January 2015. However we accept that it would have been helpful to the Committee if we had made some reference to the Department’s position in the Explanatory Memorandum and the Department apologises for the omission.

Department for Communities and Local Government
21 July 2015
Appendix 5

S.I. 2015/601: memorandum from the Department for Education

Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 (S.I. 2015/601)

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

   Explain the purpose and intended effect of stating in regulation 2(2) what the expression “appropriate person” meant before 1 April 2015 when these Regulations came into force.

2. The Department is grateful to the Committee for drawing its attention to this matter. We agree that the first half of the definition of “appropriate person” (ie that contained in sub-paragraph (a)), together with the words “on or after 1st September 1999” (in sub-paragraph (b)) are redundant. These words formed part of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 (as amended), which these Regulations replace, but they should have been removed in this consolidation.

3. The redundant words do not affect the operation of the Regulations. However, the Department will make an appropriate amendment at the next available opportunity.

Department for Education
20 July 2015

Appendix 6

S.I. 2015/668: memorandum from the Department for Environment, Food and Rural Affairs

Nitrate Pollution Prevention Regulations 2015 (S.I. 2015/668)

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

   These Regulations contain numerous provisions which state that a person (such as the occupier of a holding, the Secretary of State or the Agency) must or must not do something, or that something must or must not be done (without saying by whom). To which of these provisions is regulation 41(1) intended to apply, how
this is made clear and how are those provisions to be distinguished from other provisions similarly expressed?

2. The Department is grateful to the Committee for raising this point. These Regulations are a consolidation and the position with respect to enforcement remains as it was under the Nitrate Pollution Prevention Regulations 2008 (SI 2008/2349). However, the Department accepts that the provisions to which regulation 41(1) is intended to apply could be made clearer and the Department will, at the next appropriate opportunity, amend regulation 41(1) to provide greater clarity.

Department for Environment, Food and Rural Affairs
20 July 2015

Appendix 7

S.I. 2015/821: memorandum from the Department for Environment, Food and Rural Affairs

Nagoya Protocol (Compliance) Regulations 2015 (S.I. 2015/821)

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

   What is the penalty for an offence under regulation 14, and where is this stated?

2. We regret that due to a drafting error there is no provision providing a penalty for an offence under regulation 14. A fine not exceeding £5,000 should have been specified. The penalty for this offence was omitted from the relevant provision when an alternative approach was proposed at a late stage, but not reinstated when the original approach was preferred.

3. The Department apologises for this error and undertakes to amend the Regulations to correct it before Regulation 14 comes into force on 12 October 2015.

Department for Environment, Food and Rural Affairs
21 July 2015
Appendix 8

S.I. 2015/1001: memorandum from the Department for Communities and Local Government

**Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015 (S.I. 2015/1001)**

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

   *In the amendment to regulation 11 of the 2007 Regulations by regulation 2(6), should the substituted words include a reference to regulation 9A(5)?*

2. The Department agrees that the substituted words should include a reference to regulation 9A(5) and is grateful to the Committee for drawing attention to this. The Department will rectify this at the earliest opportunity.

Department for Communities and Local Government
20 July 2015

Appendix 9

S.I. 2015/1392: memorandum from the Department for Business, Innovation and Skills

**Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392)**

1. In a letter to the Department on 15th July 2015, the Committee requested a memorandum on the following point:

   *Regulation 3(2)(b) inserts into the Prescription and Limitation (Scotland) Act 1973 a definition of “ADR official”. That expression does not appear in the remainder of the inserted text. What is the purpose of including the definition? A similar point arises in relation to the amendments made by regulations 4, 5, 7 and 8.*

2. The Department has looked at the point raised by the Committee, and accepts that the Committee has noticed an oversight on the part of the Department. Earlier versions of the draft Regulations had an additional provision setting out an additional way in which ADR procedures could end under new section 14(1G) of the Prescription and Limitation (Scotland) Act 1973. This additional provision used the definition “ADR official”. However, the Department
eventually concluded that this additional provision was unnecessary as it was covered by section 14(1G)(f) and so the provision was deleted, however, the Department forgot to delete the definition of “ADR official”. The same error occurred in regulations 4, 5, 7 and 8.

3. The Department will correct the error at the next convenient opportunity.

4. The Department apologises to the Committee for this oversight.

Department for Business, Innovation & Skills
20 July 2015