



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Tenth Report  
of Session 2012-13**

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**Drawing special attention to:**

*Syria (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1755)*

*Iran (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1756)*

*Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012 (S.I. 2012/1796)*

*Police (Amendment No. 3) Regulations 2012 (S.I. 2012/1960)*

*Special Constables (Amendment) Regulations 2012 (S.I. 2012/1961)*

*Bluetongue (Amendment) Regulations 2012 (S.I. 2012/1977)*

*Ordered by the House of Lords to be printed  
7 November 2012*

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# Joint Committee on Statutory Instruments

## Current membership

### House of Lords

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Lord Geddes (*Conservative*)  
Lord Kennedy (*Labour*)  
Earl of Mar and Kellie (*Liberal Democrat*)  
Lord Rees-Mogg (*Crossbench*)  
Lord Selkirk (*Conservative*)  
Baroness Stern (*Crossbench*)

### House of Commons

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Michael Ellis MP (*Conservative, Northampton North*)  
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Mr Ian Liddell-Grainger MP (*Conservative, Bridgwater and West Somerset*)  
Toby Perkins MP (*Labour, Chesterfield*)

## 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](http://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](http://www.parliament.uk/jcsi).

## Committee staff

The current staff of the Committee are Charlotte Littleboy (*Commons Clerk*), Jane White (*Lords Clerk*) and Liz Booth (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons*); Allan Roberts, Nicholas Beach and Peter Milledge (*Lords*).

## Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2026; the Committee's email address is: [jcsi@parliament.uk](mailto:jcsi@parliament.uk).

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## Instruments reported

At its meeting on 7 November 2012 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to six of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda are published as the appendices to this report.

### 1 S.I. 2012/1755: Reported for defective drafting

*Syria (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1755)*

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

1.2 Paragraph 2 of Schedule 5 to this Order provides that a person commits an offence if one of sub-paragraphs (a) to (d) applies. Article 43(2) prescribes the penalty for an offence under paragraph 4(b) or (d) of Schedule 5 (neither of which creates an offence), but that article does not specify the penalty for an offence under paragraph 2.

1.3 In a combined memorandum printed at Appendix 1, the Foreign and Commonwealth Office states that the reference in article 43(2) to paragraph 4(b) or (d) should have been to paragraph 2(b) or (d), and that the omission on penalties in respect of paragraph 2(a) and (c) was an error.

1.4 Paragraph 2 of both Schedules 2 and 4, which respectively apply article 43 with modifications to the Sovereign Base Areas in Cyprus and to St Helena, Ascension and Tristan de Cunha, contain the same errors.

1.5 The Department confirms that these errors will be corrected when an amending instrument is made in the near future. **The Committee accordingly reports article 43(2) and paragraph 2 of Schedules 2 and 4 for defective drafting, acknowledged by the Department.**

### 2 S.I. 2012/1756: Reported for defective drafting

*Iran (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1756)*

2.1 The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.

2.2 Articles 27 to 31 of this Order create various offences, but article 43 provides that a person is not guilty of an offence under those articles in respect of anything done by him under the authority of “a licence granted by the Governor under paragraph (2)”. Article 32 imposes restrictions on the transfer of funds without “a licence granted by the Governor under this Article”. Article 44 makes general provision about licences granted under the Order. The expression “requests for authorisation” is used in article 33 without explanation as to its meaning, but paragraph (2)(c) of that article contains “if the export of goods is subject to authorisation, the number of the licence granted by the Governor”, which

suggests that the requests are part of the procedure to lead to a decision to grant or refuse something which is or includes a licence under article 43. Even so, the term used throughout these provisions to cover the actual permission to do something otherwise prohibited is “licence”.

2.3 Article 54 then states that a licence granted under a previous order from 2007, revoked by this Order, has effect “as if it were an authorisation granted under this Order”. In a memorandum printed at Appendix 1, the Foreign and Commonwealth Office states that the use of the term “authorisation” instead of “licence” in article 54 was chosen as a matter of drafting style: the Order refers in a number of places to “the authority of a licence”. It also states that all of the provisions of the Order which confer a power on the Governor to grant a licence provide that licences are granted “under this Order”. This latter statement is, on a literal reading, clearly incorrect in respect of articles 32(2) and 43. As to the former, the Committee considers it unacceptable to use an expression which is not explained in place of one which is precise and the subject of specific provisions. This Order provides for the grant of licences, as did the 2007 Order, and the use of the term “licence” in article 54 would have made the intention clear to the reader had the provision been needed at all. In fact, as the Department acknowledges, the intended effect of article 54 is identical to what is achieved in any event by section 17 of the Interpretation Act 1978. The Committee has observed in its ninth Report for this Session (published after this Order was made) that the effect of Interpretation Act 1978 provisions should be highlighted outside the operative text. The combination of the inclusion of article 54 in the first place and the use in it of a different term “authorisation” therefore arguably indicates a potential change in the effect from what is achieved by the 1978 Act, which does not match the Department's intention.

**2.4 The Committee accordingly reports article 54 for defective drafting.**

### **3 S.I. 2012/1796: Reported for defective drafting**

*Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012 (S.I. 2012/1796)*

**3.1 The Committee draws the special attention of both Houses to this order on the ground that it is defectively drafted in a number of respects.**

3.2 This Order puts into statutory form two Schemes which provide for the payment of financial assistance with tuition fees to service leavers who embark on certain courses of education.

3.3 Article 10 specifies the eligibility conditions for payments to service leavers under the Further and Higher Education Commitment Scheme. The ninth condition, condition I, has the effect that the service leaver must remain resident in the United Kingdom for the period of the course for which assistance is provided. The Committee asked the Ministry of Defence three questions related to article 10 as it applies to an undergraduate course and, in particular, related to this condition: whether funding is intended to be permissible for a course with overseas exchange built in; how, when funding begins, it can be known whether the condition is met; and what is intended in respect of loss of eligibility and refund if the condition comes not to be observed. The Committee also asked how those intentions are achieved.

3.4 In a memorandum printed at Appendix 2, the Department states that it in view the funding is permissible for a course with an overseas exchange element, providing that all the other conditions are met. In its view, a period of study overseas as part of a course would not breach the residency condition. The Committee is not satisfied that such an interpretation is inevitable. It notes in particular that article 10(13) expressly provides that, for the purposes of a different condition, any period during with the service leaver served outside the United Kingdom as a member of the armed forces is to be treated as a period of ordinary residence in the United Kingdom.

3.5 The Department answers the second of these questions by saying that the student must each year submit a fresh claim for the following year's study, that each claim form must give the student's current address and that if the address is an overseas address the administrators would be alerted to a possible change in residency. In the Committee's view, this does not adequately answer the question. Condition I applies in respect of the full duration of the course, which may be for three or four years, and it is not impossible that a four year course would involve the third year's study being overseas. Nor is it necessary that this would be known when funding begins at the start of the first year.

3.6 As to the last of these questions, the Department states that if the student is no longer resident in the United Kingdom they would no longer be eligible for funding and the funding would stop. If the person had received funding for a period in which they were abroad, the relevant MOD authorities would take recovery action where appropriate. This answer again ignores the fact that condition I applies to the entire duration of the course. Furthermore, it does not identify any provision which requires or authorises recover action.

3.7 The Committee also asked what was the duration for which an undergraduate course is intended to be funded under the Order. The Department replies that the intention is that the course be funded for the duration of the course; there is no maximum limit.

3.8 In respect of all the above questions, the Committee asked how the intentions in question are achieved. The Department did not seek to answer this. The Committee is concerned that the Order contains insufficient detail to achieve the intended effects. Loosely-worded provisions may be acceptable in an administrative scheme, but precision is expected in a statutory instrument.

### **3.9 The Committee accordingly reports article 10 for defective drafting.**

3.10 Article 2 defines "academic year" as meaning the period of twelve months beginning on 1 January, 1 April, 1 July or 1 September of the calendar year in which *the academic year of the course* in question begins according to whether *that academic year* begins on or after 1 January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August, or on or after 1 August and on or before 31 December, respectively. The Committee's questioned why the italicised terms (as opposed to "the course" twice) appeared in the definition of "academic year".

3.11 The Department states that the wording has been used in other statutory instruments without adverse comment from this Committee, and is not considered to be causing uncertainty or any other significant problems. The Committee's general approach to references in memoranda to equivalent provisions in previous instruments was set out in

its thirty-first Report for the previous Session, and reads as follows: “The Committee is always grateful for references to other legislative provisions that give context to the instrument under consideration or suggest necessary or desirable elements of consistency between instruments. As a general rule, however, the Committee is clear that the fact that a drafting formula is used in one instrument on which the Committee does not comment, for whatever reason, neither automatically justifies the use of that formula in another instrument nor constrains the Committee in considering a later instrument (even one which effectively replicates the first).”

3.12 On this occasion the Committee is particularly concerned by the circular nature of the definition: an academic year is said to begin on one of four dates according to the date on which the academic year begins. It appears as if the definition is not intended to apply to the reference to the academic year of the course, but there is nothing to indicate this to be the case, and accordingly a different term should have been used as the term defined (and, as the term is used in only one substantive provision (article 12), the definition should have been included in that article). **The Committee accordingly reports article 2 for defective drafting.**

3.13 The Department also commendably points out an error in the heading to article 10. It suggests that, if it comes to amend the Order, it will take the opportunity to correct the error. Here the Committee observes that alteration of a heading in an amending instrument routinely calls for replacement by that instrument of the provision that the heading covers, while alteration of a heading alone routinely calls for a correction slip rather than an amending instrument.

## 4 S.I. 2012/1960 and 1961: Reported for defective drafting

*Police (Amendment No. 3) Regulations 2012 (S.I. 2012/1960)*

*Special Constables (Amendment) Regulations 2012 (S.I. 2012/1961)*

4.1 **The Committee draws the special attention of both Houses to these instruments on the ground that they are both defectively drafted in two related respects.**

4.2 The Police (Amendment No. 3) Regulations 2012 amend the Police Regulations 2003. Regulation 3 substitutes new regulations 7 to 9A for the existing regulations 7 to 9. The new regulations 7 and 8 refer to a “relative” of a member of a police force, and regulation 9A refers to a “relative” of a candidate.

4.3 Regulation 7(6) states that in regulations 7 and 8 “relative”, in relation to a member of a police force, means –

- (a) a spouse or civil partner who is not separated from the member;
- (b) a person living with the member as if they were the member’s spouse or civil partner; or
- (c) a parent, son, daughter, brother or sister of the member,

who is included in the member’s family.

4.4 Regulation 9A(2)(b) contains a similar definition of relative for the purposes of that regulation.

4.5 The Committee what the phrase “who is included in the member’s [candidate’s] family” was intended to mean and how the effect was achieved.

4.6 In a memorandum printed at Appendix 3, the Home Office seeks to explain the inclusion of the phrase by saying that it means “who lives with the member [candidate] as part of his or her household”. The Department adds that identical wording appeared in the provisions of the 2003 Regulations which these amendments replace, have been used for many years and are not known to have caused any difficulty.

4.7 The Committee notes, however, that the 2003 Regulations before amendment were worded differently. Instead of referring in the substantive provisions to a “relative”, they referred to a “relative included in his family”. The old regulation 8(1) stated that a reference to a relative included in a member’s family shall include a reference to his spouse, parent, son, daughter, brother or sister.

4.8 The intended effect of the new definitions in respect of relatives is to add a reference to cohabitantes and to civil partners, and to exclude separated spouses, separated civil partners and siblings, parents and children living apart. It appears clear from the wording of indents (a) and (b) that the inclusion of the phrase “who is included in the member’s [candidate’s] family” or any equivalent is otiose so far as those indents are concerned. Something to achieve the intended effect, in contrast, is needed for indent (c) but the wording used appears not to achieve it.

4.9 Regulation 4 of the Special Constables (Amendment) Regulations 2012 inserts regulations 1ZA to 1ZE into the Special Constables Regulations 1965. The new regulations 1ZB(2)(b) and 1ZC(6) contain provisions equivalent to those in the new regulations 9A(2)(b) and 7(6) of the 2003 Regulations, and the Committee’s remarks apply equally.

4.10 **The Committee accordingly reports regulation 3 of S.I. 2012/1960 and regulation 4 of S.I. 2012/1961 for defective drafting.**

## **5 S.I. 2012/1977: Reported for defective drafting**

### ***Bluetongue (Amendment) Regulations 2012 (S.I. 2012/1977)***

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 This instrument amends the Bluetongue Regulations 2008. Regulation 2(6) inserts as regulation 30 a requirement for the Secretary of State from time to time to review the 2008 Regulations and publish a report setting out the conclusions of the review. Paragraph (4) of regulation 30 requires the first report to be published before the end of the period of five years beginning with *the day on which these Regulations come into force*. As the 2008 Regulations came into force on 26 April 2008, the last date for publication is therefore 25 April 2013.



5.3 In a memorandum printed at Appendix 4, the Department for Environment, Food and Rural Affairs acknowledges that the first report was intended to be required to be published within five years of the date when these Regulations came into force, that is, before 24 August 2017. The Department indicates that it will make an amendment to regulation 30(4) at the next available opportunity.

**5.4 The Committee accordingly reports regulation 2(6) for defective drafting, acknowledged by the Department.**

## Instruments not reported

At its meeting on 7 November 2012 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

## Annex

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### Draft Instruments requiring affirmative approval

<b>Draft S.I.</b>	Public Bodies (Abolition of the Railway Heritage Committee) Order 2013
<b>Draft S.I.</b>	Civil Legal Aid (Merits Criteria) Regulations 2012
<b>Draft S.I.</b>	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012
<b>Draft S.I.</b>	Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012
<b>Draft S.I.</b>	Charitable Incorporated Organisations (Consequential Amendments) Order 2012
<b>Draft S.I.</b>	Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2012
<b>Draft S.I.</b>	Electricity and Gas (Energy Companies Obligation) Order 2012
<b>Draft S.I.</b>	Electoral Registration Data Schemes (No. 2) Order 2012

### Instruments subject to annulment

<b>S.I. 2012/2560</b>	Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012
<b>S.I. 2012/2573</b>	Agricultural Holdings (Units of Production) (England) Order 2012
<b>S.I. 2012/2587</b>	Social Security (Habitual Residence) (Amendment) Regulations 2012
<b>S.I. 2012/2588</b>	Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012
<b>S.I. 2012/2607</b>	Port Security (Port of Aberdeen) Designation Order 2012
<b>S.I. 2012/2608</b>	Port Security (Port of Grangemouth) Designation Order 2012
<b>S.I. 2012/2609</b>	Port Security (Port of Portland) Designation Order 2012
<b>S.I. 2012/2610</b>	Port Security (Port of Tees and Hartlepool) Designation Order 2012

- S.I. 2012/2611** Port Security (Port of Workington) Designation Order 2012
- S.I. 2012/2612** Child Benefit and Child Tax Credit (Miscellaneous Amendments) Regulations 2012
- S.I. 2012/2613** Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012
- S.I. 2012/2661** Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2012

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

- S.I. 2012/2606** Welsh Language (Police Names) Order 2012

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

- S.I. 2012/2599** Localism Act 2011 (Commencement No. 2 and Transitional Provisions) (England) Order 2012
- S.I. 2012/2647** Health Act 2009 (Commencement No. 6) Order 2012
- S.I. 2012/2657** Health and Social Care Act 2012 (Commencement No.3, Transitional, Savings and Transitory Provisions and Amendment) Order 2012

# Appendix 1

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## S.I. 2012/1755 and 1756: memorandum from the Foreign and Commonwealth Office

*Syria (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1755)*

*Iran (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1756)*

1. The Committee considered the above instruments at its meeting on 24 October 2012 and asked for a memorandum on the following points:

(1) *The Committee assumes, in relation to S.I. 2012/1755, that the references in article 43(2) and paragraph 2 of both Schedules 2 and 4 to paragraph 4(b) or (d) of Schedule 5 are intended to be references to paragraph 2(b) and (d) of that Schedule. Explain why those provisions apparently contain no penalties for offences under paragraph 2(a) or (c) of Schedule 5?*

(2) *There is an apparent contrast between these orders, in that –*

(a) *S.I. 2012/1755 contains no saving provision as to licences granted under its revoked predecessor, but*

(b) *S.I. 2012/1756 includes as article 54 a provision saving the effect of licences granted under the Order previously in force while changing the terminology into authorisations and containing no indication as to which provisions of S.I. 2012/1756 that they will count as authorisations under.*

*Taking section 17 of the Interpretation Act 1978 into account, explain the difference of treatment.*

### Response

(1) The references in article 43(2) and paragraph 2 of Schedules 2 and 4 of SI 2012/1755 to paragraph 4(b) or (d) of Schedule 5 should have been references to paragraph 2(b) or (d) of Schedule 5. The omission of penalties for offences under paragraphs 2(a) and (c) of Schedule 5 was also inadvertent. These were regrettable errors which will be corrected when SI 2012/1755 is amended in the near future to take account of further modifications to the Syria sanctions regime recently adopted by the Council of the European Union.

(2) The difference in treatment between the two Orders as regards savings provisions for licences granted under previous Orders was deliberate.

2. In relation to the Syria sanctions regime, article 29 of the previous Order (SI 2011/1678) provided that:

“If the Council of the European Union takes any decision which has the effect of postponing, suspending or terminating the operation of the Regulation, in whole or in part, this Order shall cease to have effect or its operation shall be postponed or suspended, in whole or in part, to the same extent from the date the decision of the Council comes into force”.

3. The Syria sanctions regime was amended by the Council of the European Union in January 2012. The amendments at EU level entailed the Council repealing and replacing Regulation 442/2011 in its entirety and replacing it with a new Regulation 36/2012. The FCO took the view that the effect of the Council’s action was to terminate the effect of SI 2011/1678 by operation of article 29 of that Order. It followed that any licences granted under that Order would have lapsed and therefore a savings clause in SI 2012/1755 would have been redundant. However, an express revocation of SI 2011/1678 was included in the interests of legal certainty.
4. As a result, the FCO has concluded that provisions equivalent to that appearing in article 29 of SI 2011/1678 should no longer be included in sanctions orders.
5. By contrast, in the case of the Iran sanctions regime, the predecessor Order (SI 2007/282, as amended) remained in force at the date when SI 2012/1756 entered into force and any licences granted under that Order would have remained valid at that date. Whilst the FCO accepts that a savings provision was not strictly necessary in light of section 17 of the Interpretation Act 1978, the view was taken that it would be helpful to persons in the Overseas Territories for the position to be explicit on the face of the Order.
6. The use of the term “authorisation” instead of licence in the third line of article 54 was chosen as a matter of drafting style. The Order refers in a number of places to “the authority of a licence”.
7. It was not considered necessary to indicate under which provisions of SI 2012/1756 any existing licences continued to have effect. All the provisions of SI 2012/1756 which confer a power on the Governor to grant a licence provide that licences are granted “under this Order” rather than under any specific article in the Order. Consistent with this drafting approach, which is applicable throughout the Order, the view was taken that it was sufficient to specify in article 54 of SI 2012/1756 that any existing licences issued under the predecessor Order would be treated as licences (or authorisations) “under this Order”.

## Appendix 2

### S.I. 2012/1796: memorandum from the Ministry of Defence

***Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012 (S.I. 2012/1796)***

1. The Joint Committee on Statutory Instruments requested a memorandum in response to two points made in relation to the above mentioned instrument.
2. The first point is:
  - (1) *Taking the undergraduate course as an example, explain in relation to a service leaver eligible for payments under Part 4 —*
    - (a) *the duration for which the course is intended to be funded under the order;*
    - (b) *whether funding is intended to be permissible for a course with overseas exchange built in;*
    - (c) *how in any event when funding begins, it can be known whether condition I at article 10(10) is met; and*
    - (d) *what is intended in respect of loss of eligibility and refund if condition I comes not to be observed;*

*And how those intentions are achieved.*
3. As regards, (1)(a) the intention is that the course be funded for the duration of the course; there is no maximum time limit. It is expected that most full-time courses will last three or four years, with part-time courses (such as Open University Courses) lasting longer. However, the applicant must, for each academic year for which funding is claimed, complete an application form. Where this is not the first year of the course, the student must also complete an evaluation of the previous year's study.
4. As regards 1(b) the intention is that the funding is permissible for a course with an overseas exchange element, providing that all the other conditions are met. In our view, a period of study overseas as part of a course would not breach the residency condition.
5. As regards 1(c) the student must each year submit a fresh claim form for the following year's study. Each claim form must give the student's current address. If the address is an overseas address, the administrators would be alerted to a possible change in residency.

6. As regards 1(d), if the student is no longer resident in the UK, they would no longer be eligible for funding and the funding would stop. If a person had received funding for a period in which they were not resident in the UK, the relevant MOD authorities would take recovery action where appropriate. Whether recovery would be appropriate would depend on the circumstances of the particular case.
7. The second point is:
  - (2) *In relation to article 2, explain why the terms “the academic year of the course” and “that academic year” (as opposed to “the course” twice) appear in the definition of “academic year” itself.*
8. The wording for the definition of “academic year” was chosen in order to be consistent with the definition of “academic year” in the Education (Fees and Awards) (England) Regulations 2007 (SI 2007/779) and other legislation pertaining to education referred to in art 12 of the MOD SI. The definition was drawn to the drafting lawyer’s attention by a lawyer in the Department for Business, Innovation and Skills (BIS), who was consulted in relation to the MOD SI. The BIS lawyer has this week pointed out to the MOD lawyers that the definition was most recently used by BIS in a 2011 statutory instrument. We have today searched the JCSI’s 2011 reports and could find no mention of the definition of “academic year” in a BIS SI. In any event, the MOD drafting lawyer was not made aware at the time of drafting that the BIS definition of “academic year” had attracted any adverse criticism from the JCSI either in 2011 or earlier.
9. Finally, in the course of responding to your letter, MOD lawyers have noticed that the heading of article 10 incorrectly uses the word “leaders” rather than “leavers”. Although this typing error is unfortunate, we do not consider that it is capable of causing uncertainty or any other significant problems. We therefore would not propose to amend the SI solely in order to correct the error. However, should we have cause to amend the SI in any event, we would take that opportunity to correct the error.

**Ministry of Defence**  
**31 October 2012**

## Appendix 3

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### S.I. 2012/1960 and 1961: memorandum from the Home Office

***Police (Amendment No. 3) Regulations 2012(S.I. 2012/1960)***

***Special Constables (Amendment) Regulations 2012 (S.I. 2012/1961)***

The matters raised by the Committee were as follows:

In relation to S.I. 2012/1960:

Explain what effect is intended by including the following words in provisions of the Police Regulations 2003 introduced by regulation 3:

- (a) “who is included in the member’s family” in the definition of “relative” in substituted regulation 7(6); and
- (b) “who is included in the candidate’s family” in new regulation 9A(2)(b);

and explain how the intended effect is achieved.

In relation to S.I. 2012/1961:

Explain what effect is intended by including the following words in provisions of the Special Constables Regulations 1965 introduced by regulation 4:

- (a) “who is included in the candidate’s family” in new regulation 1ZB(2)(b); and
- (b) “who is included in the special constable’s family” in the definition of “relative” in new regulation 1ZC(6);

and explain how the intended effect is achieved.

Since essentially the same issue arises in relation to each instrument, a single Memorandum is submitted as follows:

1. The words “who is included in [the member’s/the special constable’s/the candidate’s] family” mean “who lives with [the member/the special constable/the candidate] as part of his or her household”.
2. Identical wording appears in the provisions of the Police Regulations 2003 that are being replaced (see regulations 7(1A), 7(5A)(a), 7(6), 8(1), 8(3) and 9(1)). The same words appeared in the equivalent provisions of the Police Regulations 1995 (see regulations 10(1), 10(6), 10(7), 10(9) and 11(1)) and the Police Regulations 1987 (see regulations 11(1), 11(6), 11(7) and 11(9) and 12(1)). It may be that they also



appeared in earlier Regulations. But in any event it is clear that this form of words has been used for many years.

3. The meaning of the words is well known to those who administer and are affected by the Regulations, namely police forces. These are not provisions that apply generally to the public at large.
4. The Department is not aware that the wording has ever caused any difficulty in practice. Although business interest cases do give rise to litigation from time to time, as far as we are aware it has never been necessary for a court to consider the meaning of these words.
5. The Department did consider whether a different form of words should be used. However, we concluded that it was better to retain the established and accepted wording, to ensure that in this respect the new provisions had the same effect as the old ones.
6. The Regulations were scrutinised in detail by a working group of the Police Advisory Board for England and Wales, containing representatives from the Association of Chief Police Officers, the Association of Police Authorities, the Police Federation of England and Wales, the Police Superintendents' Association of England and Wales and the National Policing Improvement Agency, and there was no suggestion that the existing wording should be altered.

**Home Office**  
**30 October 2012**

## Appendix 4

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### **S.I. 2012/1977: memorandum from the Department for Environment, Food and Rural Affairs**

<p><b><i>Bluetongue (Amendment) Regulations 2012 (S.I. 2012/1977)</i></b></p>
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1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following point:

*Given that paragraph 12 of the Explanatory Memorandum states that these Regulations insert a requirement into the Bluetongue Regulations 2008 to require the Secretary of State to carry out a review of those Regulations in 2017, why does new regulation 30(4) of the 2008 regulations (inserted by regulation 2(6) of these Regulations) require*

*the first report on a review to be published before 26 April 2013 (five years after the 2008 Regulations came into force)?*

2. The Department is grateful to the Committee for identifying what the Department acknowledges to be an error in the review date inserted by regulation 2(6) of this instrument into the Bluetongue Regulations 2008 ('the principal Regulations'). It is the Department's policy intention to carry out the first review of the principal Regulations in 2017 in accordance with the commitment laid down in paragraph 12 of the Explanatory Memorandum.
3. The Department will therefore make an amendment to regulation 30(4) of the principal Regulations at the next available opportunity.

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

**26 October 2012**