



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

**Fourteenth Report of
Session 2019–21**

Drawing special attention to:

Teachers' Skills Test (England) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/476)

Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484)

Ecodesign for Energy-Related Products (Amendment) Regulations 2020 (S.I. 2020/485)

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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in [House of Commons Standing Order No. 151](#) and [House of Lords Standing Order No. 73](#), relating to Public Business.

Remit

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

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

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

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

Committee staff

The current staff of the Committee are Liz Booth (Committee Assistant), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

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1 Instruments reported

At its meeting on 10 June 2020 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. 2020/476: Reported for defective drafting

Teachers' Skills Test (England) (Miscellaneous Amendments) Regulations 2020

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

1.2 These Regulations amend a number of instruments to abolish a requirement for certain individuals to pass a skills test in order to meet the specified standards required to become a qualified teacher. Regulation 5 amends the Education (Induction Arrangements for School Teachers) (England) Regulations 2012 (S.I. 2012/1115), with paragraph (b) substituting a new Schedule 1A for the original Schedule 2. Paragraph 3 of the new Schedule provides: “When making a decision pursuant to paragraph 2 (also see regulation 11(5)), the appropriate body must disregard the fact that P had not passed a numeracy skills test before 25th June 2020”. The Committee was unsure whether the phrase “(also see regulation 11(5))” was intended as an operative provision indicating that regulation 11(5) was equally relevant to what followed in some way, or as an inert “signpost”; in either event, the precise import appeared obscure. The Committee asked the Department for Education to elucidate. In a memorandum printed at Appendix 1, the Department says “the words in brackets are not intended to be operative. They are simply intended to help the reader by drawing their attention to regulation 11(5) and the related and relevant decision making process under that provision”. It appears from this that the process set out in regulation 11(5) is intended to apply to decisions made pursuant to paragraph 2 of Schedule 1A. But there is no express provision to that effect in that Schedule (in contrast to the substituted Schedule 2). It therefore remains unclear how regulation 11(5) and Schedule 1A relate to one another, and whether the words in brackets are in fact inert or operative. As the Committee found in its First Special Report of Session 2013–14 (*Excluding the inert from secondary legislation*), “clear presentational distinction between operative and inert material is essential”. And the Committee warned of the confusion that can arise when drafters try to be helpful to the reader by using the text to provide explanatory material. In the case of cross-referencing “signposts”, there is the danger that readers will draw unintended inferences from the drafter’s choice of which provisions to signpost. As the Committee said in that Report, “we consider that inert material, if included at all, should not be presented as if it were part of the operative text. Explanations should be provided in non-operative parts of the instrument or other documents, and drafting should be as precise as possible to minimise the need for amplification and the potential for confusion.” Even after the Department’s explanation, the Committee does not consider the purpose and effect of this particular signpost to be sufficiently clear. **Accordingly, the Committee reports regulation 5(b) for defective drafting.**

2 S.I. 2020/484: Reported for defective drafting

Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020

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

2.2 These Regulations implement Regulation (EU) 2017/2394, which deals with enforcement of consumer protection laws. Regulation 2 amends the Enterprise Act 2002 to allow lower and superior courts in all UK jurisdictions to make interim and final “online interface orders” as part of that enforcement. New section 218ZA gives jurisdiction to make an online interface order to the High Court or the county court if the person against whom the order is sought carries on business in England and Wales, to the High Court or a county court if the person against whom the order is sought carries on business in Northern Ireland, and to the Court of Session or the sheriff if the person against whom the order is sought carries on business in Scotland. New sections 218ZB(4) and 218ZC(8) provide that an “online interface order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part”. The Committee asked the Department for Business, Energy and Industrial Strategy to explain which of the courts with jurisdiction to make the order in relation to the part of the United Kingdom in which enforcement is sought is to be treated as having made the notional order. For example, if a person wants to enforce in England and Wales an order made in Scotland, are they to treat it as if it had been made by the High Court or as if it had been made by the county court (the enforcement processes for the two being different); or perhaps they are intended to be able to choose either? In a memorandum printed at Appendix 2, the Department fails to address this point; the Department refers to the provisions of the Civil Jurisdiction and Judgments Act 1982 for registration of judgments, but of course a provision of the kind found in new sections 218ZB(4) and 218ZC(8) is expressly intended to avoid the need for registration, by creating a notional judgment in each jurisdiction which can be enforced directly without registration. That leaves the Committee’s question unanswered, and the intentions of the legislation obscure, and **the Committee accordingly reports regulation 2 for defective drafting.**

3 S.I. 2020/485: Reported for failure to comply with proper legislative practice

Ecodesign for Energy-Related Products (Amendment) Regulations 2020

3.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper legislative practice in one respect.

3.2 These Regulations amend the Ecodesign for Energy-Related Products Regulations 2010 (S.I. 2010/2617) by substituting the title of an EU instrument made on 1 October 2019 for the title of the earlier instrument which it repealed and replaced. That is all they do. The substitution enables the UK regulator legally to enforce compliance with a new standard, which has been in place in the UK since 1 April 2020. This instrument was made on 4 May 2020 and came into force three weeks later, which left a period of eight weeks when no penalty framework existed within the UK to sanction breaches of the new standard. The Committee asked the Department for Business, Energy and Industrial

Strategy to explain the delay in making the instrument. In a memorandum printed at Appendix 3, the Department explains that “due to the quantity of SIs required to be laid during this time and the Department’s need to manage priorities, a decision was taken to lay the 2020 Regulations at a later date, shortly after 1st April 2020”; it accepts that this was not ideal, but argues that the impact was minimal because manufacturers were “still legally obliged to comply” with the standard even though it could not be enforced. As the Committee has said on a number of occasions, it is wrong in principle for Ministers to purport to make legislation which they cannot enforce: it is the essence of legislation that it imposes enforceable duties, and confers enforceable rights. (And, of course, in a case such as this where legal obligations derive directly from EU legislation, delay in providing an enforcement mechanism amounts to breach of the duty to transpose or implement the EU legislation.) Relying on a presumption that people will “do what they are told” even for a short time is not proper legislative practice. If the new standard was to be law, the regulations should have been in place to enforce it. As the Department gives no reason other than internal prioritisation of resources for the delay, **the Committee reports these Regulations for failing to comply with proper legislative practice.**

Instruments not reported

At its meeting on 10 June 2020 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 Instruments requiring affirmative approval

Draft S.I.	Public Service Vehicles (Open Data) (England) Regulations 2020
Draft S.I.	Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020
Draft S.I.	Greater Manchester Combined Authority (Fire and Rescue Functions) (Amendment) Order 2020

Instrument requiring affirmative approval

S.I. 2020/558	Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020
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Instruments subject to annulment

S.I. 2020/463	Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020
S.I. 2020/522	Universal Credit (Coronavirus) (Self-employed Claimants and Reclaims) (Amendment) Regulations 2020
S.I. 2020/523	Companies and Statutory Auditors etc. (Consequential Amendments) (EU Exit) Regulations 2020
S.I. 2020/525	Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2020
S.I. 2020/536	The Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020
S.I. 2020/539	Statutory Sick Pay (General) (Coronavirus Amendment) (No. 4) Regulations 2020
S.I. 2020/540	Schools Forums (England) (Coronavirus) (Amendment) Regulations 2020
S.I. 2020/543	School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020
S.I. 2020/544	Education (Pupil Registration) (England) (Coronavirus) (Amendment) Regulations 2020

Instrument subject to annulment (Northern Ireland)

S.R. 2020/85	Universal Credit (Coronavirus) (Self-employed Claimants and Reclaims) (Amendment) Regulations (Northern Ireland) 2020
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Appendix 1

S.I. 2020/476

Teachers' Skills Test (England) (Miscellaneous Amendments) Regulations 2020

1. In its letter to the Department for Education of 20th May 2020, the Joint Committee requested a memorandum on the following point:

“In regulation 5(b), explain whether the expression “(also see regulation 11(5))” in paragraph 3 of inserted Schedule 1A is intended to be an operative provision, and what effect it is intended to have.”

2. This memorandum has been prepared by the Department for Education.

3. The Department's response to the Committee's query is that the words in brackets are not intended to be operative. They are simply intended to help the reader by drawing their attention to regulation 11(5) and the related and relevant decision making process under that provision.

Department for Education

23 May 2020

Appendix 2

S.I. 2020/484

Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020

1. By a letter dated 20th May 2020, the Committee requested a Memorandum on the following point:

In relation to the notional order provided for by new sections 218ZB(4) and 218ZC(8) (inserted by regulation 2(5)), explain which of the courts with jurisdiction to make the order in relation to the part of the United Kingdom in which enforcement is sought is to be treated as having made that notional order.

2. The courts with jurisdiction to make an online interface order or an interim online interface order are listed in new section 218ZA(3) (inserted by regulation 2(5)). The Department has drafted that provision to mirror section 215(5) of the Enterprise Act 2002 (“the 2002 Act”), so as to ensure consistency with the existing statutory scheme.

3. New sections 218ZB(4) and 218ZC(8) mirror sections 217(12) and 218(11) of the 2002 Act in respect of enforcement orders and interim enforcement orders respectively. Again, this is to ensure consistency with the existing statutory scheme

4. The purpose of sections 217(12) and 218(11) are set out in the Explanatory Notes to the 2002 Act. Paragraph 535 of the Explanatory Notes states the following in relation to section 217(12):

An injunction (or interdict in Scotland) generally has effect only in the jurisdiction (England and Wales, or Scotland or Northern Ireland) in which it was granted. The effect of subsection (12) is that an enforcement order made under this Part will apply throughout the UK. It will therefore be capable of stopping a person who is the subject of an order in one jurisdiction of the UK from harming the collective interests of consumers in the other two jurisdictions.

5. Paragraph 545 of the Explanatory Notes states the following in relation to section 218(11):

As with enforcement orders, an interim enforcement order made in one part of the UK will apply throughout the UK (subsection (11)).

6. To the extent that the Committee is concerned by the enforcement in one part of the UK of a court judgment or order issued in another part of the UK, the Department has consulted with the Ministry of Justice and would like to draw the Committee’s attention to the existing provisions of the Civil Jurisdiction and Judgments Act 1982. In particular, section 18 and Schedules 6 and 7 of that Act provide for a registration procedure to enable a judgment within the scope of section 18 to be enforced in a part of the UK other than the part in which the judgment was given. These provisions include provision regarding the courts to which any application for registration is to be made (for example, paragraph 5(1)

of Schedule 7 in respect of non-money provisions in UK judgments) and are supplemented by court rules in each jurisdiction (for example, Rule 74.16 of the Civil Procedure Rules regarding applications to the High Court to enforce a non-money judgment of a court in another part of the UK).

Department for Business, Energy and Industrial Strategy

28 May 2020

Appendix 3

S.I. 2020/485

Ecodesign for Energy-Related Products (Amendment) Regulations 2020

1. In its letter of 20th May, the Committee requested a memorandum in relation to the Ecodesign for Energy-Related Products (Amendment) Regulations 2020 (“the 2020 Regulations”), as follows:

Explain why this instrument was not made in time to ensure a legal basis for enforcement of the new standard from the day that standard began to apply.

2. Ecodesign requirements set minimum energy efficiency requirements for energy using products. Updated EU eco-design requirements for external power supplies (e.g. laptop chargers) have applied directly in the UK since 1 April 2020. The 2020 Regulations amend domestic legislation so that the UK Market Surveillance Authority can enforce the updated eco-design requirements for external power supplies in the UK.

3. The Department worked to introduce the 2020 Regulations so that they would come into force from 1 April 2020, i.e. at the same time as the new eco-design requirements for external power supplies were applied. However, due to the quantity of SIs required to be laid during this time and the Department’s need to manage priorities, a decision was taken to lay the 2020 Regulations at a later date, shortly after 1st April 2020.

4. The Department accepts that this delay is not ideal. However, we consider the impact of this to be minimal, with any consequential loss to carbon savings expected to be negligible. While the 2020 Regulations allow the Market Surveillance Authority (the Office for Product Safety and Standards) to enforce the new EU eco-design requirements, manufacturers are still legally required to comply. The Office for Product Safety and Standards has continued to monitor the market and work with stakeholders during short period between 1st April and 26th May when the 2020 Regulations come into force to explain the new EU Ecodesign Regulations and seek compliance.

Department for Business, Energy and Industrial Strategy

26 May 2020