



House of Lords  
House of Commons  
Joint Committee  
on Statutory Instruments

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**Sixteenth Report  
of Session 2019–21**

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**Drawing special attention to:**

*Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 (S.I. 2020/534)*

*Food Information (Amendment) (England) Regulations 2020 (S.I. 2020/541)*

*Education (Independent School Standards) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/542)*

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to be printed 24 June 2020*

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## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

[Lord Colgrain](#) (*Conservative*)

[Lord Haskel](#) (*Labour*)

[Lord Morris of Handsworth](#) (*Labour*)

[Baroness Newlove](#) (*Conservative*)

[Lord Rowe-Beedoe](#) (*Crossbench*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

[Lord Stirrup](#) (*Crossbench*)

#### House of Commons

[Jessica Morden MP](#) (*Labour, Newport East*) (Chair)

[Dr James Davies MP](#) (*Conservative, Vale of Clwyd*)

[Paul Holmes MP](#) (*Conservative, Eastleigh*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

[Owen Thompson MP](#) (*Scottish National Party, Midlothian*)

[Liz Twist MP](#) (*Labour, Blaydon*)

### 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. 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](http://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: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

### **Contacts**

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 2026; the Committee's email address is: [jcsi@parliament.uk](mailto:jcsi@parliament.uk).



# Contents

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<b>Instruments reported</b>	<b>3</b>
1 S.I. 2020/534: Reported for defective drafting	3
Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020	3
2 S.I. 2020/541: Reported for defective drafting	3
Food Information (Amendment) (England) Regulations 2020	3
3 S.I. 2020/542: Reported for requiring elucidation	4
Education (Independent School Standards) (Coronavirus) (Amendment) Regulations 2020	4
<b>Instruments not reported</b>	<b>5</b>
<b>Annex</b>	<b>5</b>
<b>Appendix 1</b>	<b>6</b>
S.I. 2020/534	6
Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020	6
<b>Appendix 2</b>	<b>7</b>
S.I. 2020/541	7
Food Information (Amendment) (England) Regulations 2020	7
<b>Appendix 3</b>	<b>8</b>
S.I. 2020/542	8
Education (Independent School Standards) (Coronavirus) (Amendment) Regulations 2020	8



# Instruments reported

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At its meeting on 24 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. 2020/534: Reported for defective drafting

### *Tax Credits (Coronavirus, 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 several statutory instruments relating to tax credits in consequence of the establishment of the Coronavirus Job Retention Scheme. Regulation 4 amends the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014), with paragraph (2)(a) purporting to insert the definition of Coronavirus Job Retention Scheme “after the definition of “the Contributions and Benefits Act””; there appeared to be no such definition. The Committee asked Her Majesty’s Revenue and Customs to explain. In a memorandum printed at Appendix 1, the Department acknowledges the error and states that the new definition should have been inserted after the definition of “the Board”. The Department also asserts that the error does not affect the operation of the Regulations; in this case the Committee agrees that readers, including the courts, are likely to be forced to construe paragraph (2)(a) in a way that gives effect to the clear policy intent of regulation 4. **The Committee accordingly reports regulation 4(2)(a) for defective drafting, acknowledged by the Department.**

## 2 S.I. 2020/541: Reported for defective drafting

### *Food Information (Amendment) (England) 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 This instrument amends the Food Information Regulations 2014 (S.I. 2014/1855) to enable the enforcement of Regulation (EU) No 1169/2011, as read with Commission Implementing Regulation (EU) 2018/775. The preamble states that the Secretary of State believes it is expedient for references to both EU instruments to be ambulatory. The 2014 Regulations do make substantive provision to that effect for Regulation (EU) No 1169/2011, but there is no corresponding provision for Commission Implementing Regulation (EU) 2018/775 in either the 2014 Regulations or this instrument. The result is that references to it are not ambulatory notwithstanding the intention stated in the preamble. The Committee asked the Department for Environment, Food and Rural Affairs to explain. In a memorandum printed at Appendix 2, the Department acknowledges the error and undertakes to correct it later this year. **The Committee accordingly reports the preamble to this instrument for defective drafting, acknowledged by the Department.**

### **3 S.I. 2020/542: Reported for requiring elucidation**

#### ***Education (Independent School Standards) (Coronavirus) (Amendment) Regulations 2020***

**3.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

3.2 These Regulations are made in response to the coronavirus public health emergency. They amend the Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283) to make it easier for the Secretary of State to make enhanced criminal record checks in relation to the proprietors of independent schools, to assess whether they meet the relevant standards. The Schedule to the 2014 Regulations (at paragraph 20(3)(b) and (5)(b)) required the Secretary of State to obtain an enhanced criminal record certificate whenever an enhanced criminal record check was made. Regulation 2(3)(a)(v) and (b)(v) removes that requirement, providing instead that “where an enhanced criminal record check is made, the Secretary of State either obtains an enhanced criminal record certificate relating to the individual or confirms to the individual that no certificate is required to be provided to the Secretary of State”. The Committee asked the Department for Education to explain whether it is intended that the requirement for a certificate is abolished only where the disclosure is clear (as suggested by paragraph 7.5 of the Explanatory Memorandum to this instrument), or, if a wider discretion is intended, what enabling power is relied on to confer that discretion.

3.3 In a memorandum printed at Appendix 3, the Department confirms that it did intend to confer a broad discretion on the Secretary of State as to whether a certificate is needed, and it explains how that discretion is intended to be exercised. **The Committee accordingly reports regulation 2(3)(a)(v) and (b)(v) for requiring elucidation, provided by the Department’s memorandum.**



## Instruments not reported

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At its meeting on 24 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

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### Draft Instruments requiring affirmative approval

<b>Draft S.I.</b>	Surrender of Offensive Weapons (Compensation) Regulations 2020
<b>Draft S.I.</b>	NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) (Amendment) Order 2020
<b>Draft S.I.</b>	Immigration (Persons Designated under Sanctions Regulations) (EU Exit) Regulations 2020
<b>Draft S.I.</b>	INSPIRE (Amendment) (EU Exit) Regulations 2020
<b>Draft S.I.</b>	Representation of the People (Electoral Registers Publication Date) Regulations 2020

### Instruments requiring affirmative approval

<b>S.I. 2020/576</b>	Direct Payments to Farmers (Amendment) Regulations 2020
<b>S.I. 2020/588</b>	Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020
<b>S.I. 2020/592</b>	Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020

### Instruments subject to annulment

<b>S.I. 2020/572</b>	Export Control (Somalia) (Amendment) Order 2020
<b>S.I. 2020/579</b>	Vegetable Plant Material and Seed (Miscellaneous Amendments) Regulations 2020
<b>S.I. 2020/583</b>	Cross-border Parcel Delivery Services (Amendment) (EU Exit) Regulations 2020

### Instrument not subject to Parliamentary proceedings not laid before Parliament

<b>S.I. 2020/577</b>	Registration of Births and Deaths (Coronavirus) (Amendment) Regulations 2020
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# Appendix 1

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## S.I. 2020/534

### ***Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020***

1. In its letter to Her Majesty’s Revenue and Customs of 10th June 2020, the Joint Committee requested a memorandum on the following point:

*In relation to regulation 4(2)(a) and the location of the definition of “Coronavirus Job Retention Scheme”, confirm that “the Contributions and Benefits Act” is a defined term in the instrument being amended and identify the provision that inserted that definition.*

2. The term “the Contributions and Benefits Act” is not a defined term in the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014).

3. We acknowledge that regulation 4(2)(a) of the Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 (S.I. 2020/534) should have provided for the definition of “Coronavirus Job Retention Scheme” to be inserted after the definition of “the Board” in regulation 2 of the Tax Credits (Claims and Notifications) Regulations 2002.

4. We apologise for this error and regret that it was not corrected before the instrument was made. However, we do not consider that this error affects the operation of the Tax Credits (Claims and Notifications) Regulations 2002.

**Her Majesty’s Revenue and Customs**

**15 June 2020**

## Appendix 2

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### S.I. 2020/541

#### ***Food Information (Amendment) (England) Regulations 2020***

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

2. In relation to the enabling powers listed in the Schedule, explain:

*Given the statement in the third paragraph of the preamble, explain where it is provided that references to Commission Implementing Regulation (EU) 2018/775 are to be read as references to that Regulation as amended from time to time.*

3. As can be seen from the preamble, it was the Department's intention that the references to Commission Implementing Regulation (EU) 2018/775 be read as references to that Regulation as amended from time to time, but operative text to this effect was not incorporated into the instrument. The Department regrets the oversight.

4. As matters stand, there have been no amendments made to Commission Implementing Regulation (EU) 2018/775 since the date on which S.I. 2020/541 was made. As such, the substantive meaning of the legislation is currently unaffected.

5. Nevertheless, the Department will make provision to correct the position in further secondary legislation which is to be made this year.

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

**16 June 2020**

## Appendix 3

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### S.I. 2020/542

#### ***Education (Independent School Standards) (Coronavirus) (Amendment) Regulations 2020***

1. In its letter to the Department for Education of 10 June 2020, the Joint Committee requested a memorandum on the following points:

*In relation to regulation 2(3)(a)(v) and (b)(v) (the full-out text at the end of inserted paragraph (c)), explain:*

*(1) whether it is intended that the Secretary of State may only confirm that no enhanced criminal record certificate is required to be provided if the disclosure is clear;*

*(2) if so, how effect is given to that intention; and*

*(3) if not, and if these regulations are intended to confer a broad discretion, what enabling power is relied on.*

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

3. Under section 94(1)(d) of the Education and Skills Act 2008, the Secretary of State has a duty to prescribe standards for the purposes of Chapter 1 of Part 4 of that Act in relation to the suitability of proprietors of and staff at independent educational institutions. Under the provisions of that Chapter it is for the Secretary of State to determine in a particular case whether the standards are, or are likely to be, met in relation to a particular independent educational institution (see sections 99(2), 104(1) and 115(1)).

4. The standards are prescribed in the Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283), and are set out in the Schedule to those Regulations. They are commonly referred to as the Independent School Standards. The standards in paragraph 20 of that Schedule (“paragraph 20”) relate to the suitability of the proprietor of a school and separate provision is made for individual proprietors, Chairs of proprietors which are bodies corporate or unincorporated and members of such bodies.

5. Some of the elements of the Independent School Standards impose a specific requirement to be met (see for example paragraph 20(3)(a)). However other elements of the Standards consist only of requirements as to the checks to be carried out in relation to specified people. These requirements permit some element of judgement to be made by the person required to carry out the check, both as to whether to carry out a check at all and, if so, what that check should be, in light of the varying circumstances which might arise.

6. The purpose of the inserted text referred to in the Committee’s question is

i) to enable the Secretary of State to obtain an enhanced criminal record certificate following the criminal record checks which are required to be carried out by paragraphs 20(3)(c) and 20(5)(c) (and which would, under the Police Act 1997, be provided to the individual proprietor or chair); but

- ii) to avoid unnecessary administration where the provision of the certificate to the Secretary of State by the proprietor or chair would not provide relevant information to the Secretary of State

7. The Standards do not require any particular result arising from the checks—it is the carrying out of the checks and, where requested, the production of a certificate, that meet the standards.

8. Under the current procedures adopted by the Disclosure and Barring Service, the Secretary of State is likely to be provided with information as a result of the criminal record check without the need for the certificate to be provided only where the disclosure is clear. The regulations however apply regardless of whether or not the disclosure is clear if future arrangements mean that the necessary information would be available in other circumstances.

9. Such a judgement, as with other judgements which the Secretary of State makes as to the information required to be obtained under paragraph 20, will depend on his assessment of the utility of the information in the certificate in light of the other information available in the light of the statutory purpose for which he has the power to require criminal record checks to be carried out and subject to the usual public law constraints.

10. The Department considers that these provisions fall within the vires cited in the instrument and that no additional vires is required. The vires are intrinsically broad—they require the Secretary of State to prescribe standards in relation to certain matters, but place no further constraints on what those standards may be.

#### **Department for Education**

**16 June 2020**