



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

Thirty-First Report of Session 2021–22

Drawing special attention to:

*Milk and Milk Products (Pupils in Educational
Establishments) Aid Applications (England and Scotland)
Regulations 2022 (S.I. 2022/160)*

*Ordered by the House of Lords to be
printed 27 April 2022*

*Ordered by the House of Commons
to be printed 27 April 2022*

Joint Committee on Statutory Instruments

Current membership

House of Lords

[Lord Beith](#) (*Liberal Democrat*)

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

[Baroness D'Souza](#) (*Crossbench*)

[Baroness Gale](#) (*Labour*)

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

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

[Lord Smith of Hindhead](#) (*Conservative*)

House of Commons

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

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

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[Richard Thomson MP](#) (*Scottish National Party, Gordon*)

[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. 74](#), 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 Sue Beeby (Committee Operations Officer), Apostolos Kostoulas (Committee Operations Officer), 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 7599; the Committee's email address is: jcsi@parliament.uk.

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Instruments reported

At its meeting on 27 April 2022 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 one of those considered. The instrument and the grounds for reporting it are given below. The relevant departmental memorandum is published as an appendix to this report.

1 S.I. 2022/160: Reported for failure to comply with proper legislative practice

Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (England and Scotland) Regulations 2022

1.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they fail to comply with proper legislative practice in two respects.**

1.2 These Regulations, which are subject to the negative resolution procedure, amend the requirement for aid applicants under the School Milk Scheme to supply documentary evidence alongside an application. The aid applicant will only be required to retain documentary evidence and supply it if requested.

1.3 The Explanatory Memorandum states that the instrument “will break the 21-day rule due to an administrative error. Unanticipated delays in the making and laying processes resulted in the SI not being laid 21 days in advance of the coming into force date cited on the instrument as made” (paragraph 3.1). As administrative errors and delays are not good reasons for not complying with the 21-day rule, the Committee asked the Department for Environment, Food and Rural Affairs whether it had anything to add to its explanation. In a memorandum printed as an Appendix, the Department explains that it recognises the importance of the 21-day rule and that a review of procedures is being undertaken to avoid a repetition of the error. The Committee is grateful for this undertaking and accordingly **reports this instrument for failure to comply with proper legislative practice, acknowledged by the Department.**

1.4 The preamble refers to the enabling power “as read with” an article of the same EU Regulation that defines the Secretary of State as the “appropriate authority” to make the regulations in relation to England, and in relation to Scotland where consent has been given by the Scottish Ministers. The footnote states that consent has been given. The Committee asked the Department to explain why the consent of the Scottish Ministers was not cited in the preamble (by analogy with classes of case of satisfaction of pre-conditions) with the reference to the EU Regulation being cited in a footnote. In its memorandum, the Department acknowledges that this would have been better and undertakes to cover this point in its forthcoming internal training on devolution matters. **The Committee accordingly reports this instrument for failure to comply with proper legislative practice in this additional respect, acknowledged by the Department.**

Instruments not reported

At its meeting on 27 April 2022 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

S.I. Numbers	S.I. Title
S.I. 2022/393	Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2022
S.I. 2022/395	Russia (Sanctions) (EU Exit) (Amendment) (No. 7) Regulations 2022

Draft instruments requiring affirmative approval

S.I. Numbers	S.I. Title
Draft	Agriculture and Horticulture Development Board (Amendment) Order 2022
Draft	Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022
Draft	Contracts for Difference (Miscellaneous Amendments) Regulations 2022

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2022/57	Education (Student Fees, Awards and Support) (Amendment) Regulations 2022
S.I. 2022/59	Road Vehicles (Construction and Use) (Amendment) Regulations 2022
S.I. 2022/159	Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2022
S.I. 2022/240	Merchant Shipping (Light Dues) (Amendment) Regulations 2022
S.I. 2022/259	Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations 2022
S.I. 2022/261	Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (Consequential Modifications) Order 2022
S.I. 2022/272	Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2022
S.I. 2022/277	Occupational Pension Schemes (Master Trusts) (Amendment) Regulations 2022
S.I. 2022/278	Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2022
S.I. 2022/284	Mandatory Travel Concession (England) (Amendment) Regulations 2022
S.I. 2022/294	Personal Injuries (Civilians) Scheme (Amendment) Order 2022
S.I. 2022/296	Immigration and Nationality and Immigration Services Commissioner (Fees) (Amendment) Regulations 2022

S.I. 2022/301	Education (Student Loans) (Repayment) (Amendment) Regulations 2022
S.I. 2022/303	Police Act 1997 (Criminal Records) (Amendment) Regulations 2022
S.I. 2022/317	Health Protection (Coronavirus, International Travel and Operator Liability) (Revocation) (England) Regulations 2022
S.I. 2022/321	Air Navigation (Amendment) Order 2022
S.I. 2022/323	Armed Forces Pensions (Amendment) Regulations 2022
S.I. 2022/327	National Health Service Pension Schemes (Amendment) Regulations 2022
S.I. 2022/334	Civil Service (Other Crown Servants) Pension Scheme (Amendment) Regulations 2022
S.I. 2022/336	Police and Firefighters' Pension Schemes (Amendment) Regulations 2022
S.I. 2022/342	Social Security Benefits Up-rating Regulations 2022
S.I. 2022/344	Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2022
S.I. 2022/346	Child Benefit and Tax Credits (Amendment) Regulations 2022

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2022/333	Pensions Increase (Review) Order 2022

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2022/288	Ivory Act 2018 (Commencement No. 2 and Transitional Provision) Regulations 2022
S.I. 2022/302	Welfare Reform Act 2012 (Commencement No. 34 and Commencement No. 9, 21, 23, 31 and 32 and Transitional and Transitory Provisions (Amendment)) Order 2022

Appendix: Memorandum from the Department for Environment, Food and Rural Affairs

S.I. 2022/160

Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (England and Scotland) Regulations 2022

1. The Committee has asked the Department for a memorandum on the following points:

1. Does the Department have anything to add to its explanation in paragraph 3.1 of the Explanatory Memorandum (re-laid) as to why this instrument breached the 21-day rule?

2. Explain why the preamble does not cite the usual wording “with the consent of the Scottish Ministers” and instead refers to “as read with Article 3(5)(c)(i)(aa) and (c)(ii)(bb) of that Regulation”, with the information regarding consent being contained in the footnote.

2. With regard to the first question:

3. This SI was originally scheduled to be made on Tuesday, 15 February and laid Wednesday, 16 February for it to then come into force 21 days later, on Wednesday, 9 March.

4. Unfortunately, due to an administrative error, a delay occurred between the instrument being sent to the Minister for signing and the subsequent making of the instrument. Regrettably, this delay caused the instrument to unavoidably break the 21-day rule. Having realised a delay had taken place, it took a short while to decide what should be done. Given the need for consent from the Devolved Administrations, the Department decided that it would create more confusion and delay to revoke and remake the SI than it would to let the existing SI stand.

5. The Department recognises that the 21-day rule is an important convention and apologises sincerely for this error. We are currently undertaking a robust review of the procedures for making and laying an SI within the Department to ensure steps and controls are put in place to avoid a repetition of this error.

6. With regard to the second question:

7. The Department acknowledges that the manner in which the agreement of the Scottish Ministers was conveyed in the instrument (in the footnote to the citation in the preamble of the statutory provision requiring such agreement, rather than in the preamble itself) does not accord with the relevant provision in SIP.

8. The Department apologises for the error, and will endeavour to avoid such errors in the future. Defra Legal Advisers is planning internal training on devolution matters and will ensure this point is covered.

Department for Environment, Food and Rural Affairs

29 March 2022

Formal Minutes

Wednesday 27 April 2022

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Dr James Davies

Baroness Gale

Lord Haskel

John Lamont

Baroness Newlove

Lord Smith of Hindhead

Liz Twist

Report consideration

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.4 read and agreed to.

Annex agreed to.

A paper was appended to the Report.

Resolved, That the Report be the Thirty-First Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Adjournment

Adjourned till Wednesday 11 May at 3.40 p.m.