



House of Lords
House of Commons
Joint Committee
on Statutory Instruments

Twenty-Seventh Report of Session 2019–21

Drawing special attention to:

Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) etc.) (Amendment) Regulations 2020 (S.I. 2020/1057)

*Ordered by the House of Lords
to be printed 15 October 2020*

*Ordered by the House of Commons
to be printed 15 October 2020*

**HL 152
HC 75-xxvii**

Published on 19 October 2020
by authority of the House of Lords
and the House of Commons

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 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).

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Instruments reported

At its meeting on 15 October 2020 the Committee scrutinised an instrument in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to that instrument. 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. 2020/1057: Reported for delay in sending a notification to the Speaker of the House of Commons and the Speaker of the House of Lords (under the proviso to section 4(1) of the Statutory Instruments Act 1946) explaining why the Regulations were not laid before they came into force.

Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) etc.) (Amendment) Regulations 2020

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that there was a delay in sending a notification to the Speaker of the House of Commons and the Speaker of the House of Lords (under the proviso to section 4(1) of the Statutory Instruments Act 1946) explaining why the Regulations were not laid before they came into force.

1.2 These Regulations were made under the procedure in section 45R of the Public Health (Control of Disease) Act 1984 under which affirmative procedure regulations may be made without a draft having been laid before, and approved by a resolution of, each House of Parliament where the Secretary of State is of the opinion that, by reason of urgency, it is necessary to do so.

1.3 The Regulations were made on 29 September 2020. They came into force at 12:00 am on 30 September 2020. They were laid before Parliament at 10:30 am on 30 September 2020.

1.4 Section 4(1) of the Statutory Instruments Act 1946 provides that where a statutory instrument is required to be laid before Parliament after being made, a copy of it must be laid before the instrument comes into operation but this is subject to the following proviso:

“Provided that if it is essential that any such instrument should come into operation before copies thereof can be so laid as aforesaid, the instrument may be made so as to come into operation before it has been so laid; and where any statutory instrument comes into operation before it is laid before Parliament, notification shall forthwith be sent to the Speaker of the House of Commons and the Speaker of the House of Lords drawing attention to the fact that copies of the instrument have yet to be laid before Parliament and explaining why such copies were not so laid before the instrument came into operation.”

1.5 On 30 September 2020, the Minister of State for Patient Safety, Suicide Prevention and Mental Health duly wrote to the Speaker of the House of Commons and the Speaker of the House of Lords, stating that:

“As required under section 4(1) of the Statutory Instruments Act 1946, this letter explains why the Regulations are coming into force before they were laid”.

1.6 The letter therefore drew attention to the fact that the Regulations came into force before they were laid and it went on to explain why it was considered necessary for the Regulations to come into force as soon as possible but it didn’t give any reason why the Regulations were not laid before they came into force.

1.7 The Committee asked the Department for Health and Social Care to explain why the Regulations were not laid before they came into force. In a memorandum (printed at Appendix 1), the Department explains that the Regulations were not made until after Parliament had risen on 29 September 2020. It was therefore not possible for them to be laid before they came into force at 12:00 am on 30 September 2020. They were laid at the earliest opportunity on the morning of 30 September 2020.

1.8 The Department explains that the Minister has now written to the Speaker of the House of Commons and the Speaker of the House of Lords (in a letter dated 14 October 2020) “to clarify this”. In that letter, the Minister explains that:

“The Regulations were not made until after Parliament had risen and so it was not possible to lay them first. They were laid at the earliest opportunity the following day”.

1.9 The Committee accordingly reports the delay in sending a notification to the Speaker of the House of Commons and the Speaker of the House of Lords explaining why the Regulations were not laid before they came into force, acknowledged by the Department.

Appendix 1

S.I. 2020/1057

Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) etc.) (Amendment) Regulations 2020

1. In its letter to the Department of Health and Social Care of 14 October 2020, the Committee requested a memorandum on the following point:

“Explain why this instrument was not laid before Parliament before it came into force.”

2. In the Department’s view, it was essential that the instrument came into force before copies could be laid.

3. The instrument was made on 29 September 2020 and came into force the next day because it was necessary for the Government to respond quickly to the immediate risk of a continued increase in the incidence of Covid-19 in affected local authorities in Durham, Gateshead, Newcastle, North Tyneside, Northumberland, South Tyneside and Sunderland caused through community transmission.

4. The measures in the instrument prohibit household mixing in indoor settings, subject to some exemptions. Further details of this are set out in the Department’s letter of 30 September to the Speakers of both Houses.

5. It was not possible to lay the instrument on 29 September as Parliament had risen by the time it was made. The instrument was therefore laid as soon as possible on 30 September, the same day that it into force. The Department has written further to the Speakers of both Houses on 14 October to clarify this. A copy of that letter is attached.

6. The Department apologises that, for the reasons set out above, the instrument could not be laid before it came into force.

Department of Health and Social Care

15 October 2020

Letter from Nadine Dorries MP, Minister of State for Patient Safety, Suicide Prevention and Mental Health, to the Rt Hon. the Lord Fowler, Lords Speaker, and the Rt Hon. Sir Lindsay Hoyle MP, Speaker of the House of Commons

Further to my letter of 30 September, regarding The Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) etc.) (Amendment) Regulations 2020 (SI 2020/1057), which set out the reasons why this SI needed to be in force urgently and why the urgent procedure in the Public Health (Control of Disease) Act 1984 was being used, I wanted to clarify why the SI was brought into force before it was laid before Parliament.

The Regulations were not made until after Parliament had risen and so it was not possible to lay them first. They were laid at the earliest opportunity the following day.

14 October 2020