



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

First Report of Session 2019–21

Drawing special attention to:

Appeals to Traffic Commissioners (Procedure) (England) Regulations 2019 (S.I. 2019/1264)

Public Service Vehicles (Registration of Local Services in Enhanced Partnership Areas) (England) Regulations 2019 (S.I. 2019/1265)

Social Security (Capital Disregards) (Amendment) Regulations 2019 (S.I. 2019/1314)

Social Security (Capital Disregards) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/195)

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Joint Committee on Statutory Instruments

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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.

Committee staff

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

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1 Instruments reported

At its meeting on 5 February 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 four 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. 2019/1264 Reported for defective drafting

Appeals to Traffic Commissioners (Procedure) (England) Regulations 2019

1.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in two respects.**

1.2 These Regulations set out the procedure to be followed in connection with appeals to traffic commissioners relating to decisions by local transport authorities about the registration or cancellation of local bus services outside London.

1.3 Regulation 2 creates an overriding objective, requiring traffic commissioners to hear appeals “fairly and justly”. Unlike other instruments setting an overriding objective for legal proceedings (notably the Civil Procedure Rules 1998), these Rules do not set criteria for the application of the broad words of the objective. The Committee asked the Department for Transport to explain why. In a memorandum printed at Appendix 1, the Department explains that it thought such clarity was unnecessary for this type of appeal. The Committee disagrees. Traffic commissioners are likely to find it difficult to know how to proceed, given that they are set a statutory overriding objective in the same way as the Civil Procedure Rules, but deprived of statutory assistance as to how to apply it (particularly in the case of conflict between principles such as justice and efficiency). The Committee was unable to find any rules of procedure that include an overriding objective but do not include express criteria for its application, and the Committee believes that a combination of the two represents standard modern drafting practice. **The Committee accordingly reports regulation 2 for defective drafting.**

1.4 Regulations 8(5), 9(5) and 10(4) allow the traffic commissioner hearing an appeal either to extend the time limit for a notice of appeal, a response notice or a reply, or to refuse to admit the notice or reply altogether. It was not clear to the Committee whether the discretion to refuse a notice or reply was limited to circumstances in which it was submitted out of time or could be exercised in relation to any notice or reply. The Committee therefore asked the Department to explain. In its memorandum, the Department acknowledges that these provisions are not clear and undertakes to correct this at the next available opportunity to put beyond doubt that the discretion may only be exercised when a notice or reply is out of time. **The Committee accordingly reports regulations 8(5), 9(5) and 10(4) for defective drafting, acknowledged by the Department.**

2 S.I. 2019/1265 Reported for requiring elucidation

Public Service Vehicles (Registration of Local Services in Enhanced Partnership Areas) (England) Regulations 2019

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

2.2 These Regulations deal with the oversight of bus services outside London by traffic commissioners and local transport authorities. Section 6E of the Transport Act 1985 allows a traffic commissioner, or a local transport authority to which the traffic commissioner's functions under that section have been delegated, to cancel the registration of bus services as a result of failure to meet operation or route requirements. Regulations 8 to 11 make detailed provision about decisions to cancel a bus service registration, including who must be notified of the decision, when notifications must be sent, and when the cancellation will take effect. The Committee noticed that the time periods within which notifications had to be sent were not entirely consistent, and that regulation 19 grants to traffic commissioners, but not to local transport authorities exercising traffic commissioners' functions, the power to extend some of these time limits. It asked the Department for Transport to explain. In a memorandum printed at Appendix 2, the Department explains that the difference in time limits and the limited discretion reflect the broader range of functions, and the greater experience, of traffic commissioners compared to local transport authorities. **The Committee finds that explanation helpful and accordingly reports regulations 8 to 11 and 19 for requiring elucidation, provided by the Department's memorandum.**

3 S.I. 2019/1314; S.R. 2019/195: Reported for failure to comply with proper legislative practice

Social Security (Capital Disregards) (Amendment) Regulations 2019; Social Security (Capital Disregards) (Amendment) Regulations (Northern Ireland) 2019

3.1 The Committee draws the special attention of both Houses to both sets of Regulations on the ground that each set of Regulations fails to comply with proper legislative practice in one respect.

3.2 Both sets of Regulations allow back-payments of armed forces independence payment and maternity allowance to be ignored in the calculation of a claimant's capital for the purpose of income-related social security benefits. The Committee asked the Department for Work and Pensions to confirm whether the Department had consulted the SI Registrar about whether to provide free replacement copies of the instrument, given that each set of regulations in part corrects omissions. In memorandums printed at Appendix 3, the Department acknowledges that it should have discussed with the SI Registrar whether or not to provide free replacement copies. Both instruments introduce new amending provisions at the same time as correcting a defective statutory instrument. The Committee is aware that if a new instrument corrects errors but also implements a good deal of additional policy, it can be tempting for Departments not to follow the free issue process. However, it is probably right that purchasers of the original instrument should be given the corrected version without charge (see the *Committee's First Special Report of Session*

2017–19, Transparency and Accountability in Subordinate Legislation at paragraphs 3.16 to 3.25). **The Committee accordingly reports each set of Regulations for failure to comply with proper legislative practice.**

Instruments not reported

At its meeting on 5 February 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

Instruments requiring affirmative approval

S.I. 2020/36 Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020

Draft instruments requiring affirmative approval

Draft S.I.	Northamptonshire (Structural Changes) Order 2019
Draft S.I.	Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2020
Draft S.I.	Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
Draft S.I.	Police and Crime Commissioner Elections (Amendment) Order 2020
Draft S.I.	Extradition Act 2003 (Amendments to Designations) Order 2020
Draft S.I.	Legal Services Act 2007 (Approved Regulator) Order 2020
Draft S.I.	Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2020
Draft S.I.	Crown Court (Recording and Broadcasting) Order 2020
Draft S.I.	Employment Allowance (Excluded Persons) Regulations 2020
Draft S.I.	Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2020
Draft S.I.	Gambling Act 2005 (Variation of Monetary Limits) Order 2020
Draft S.I.	Judicial Pensions and Fee-Paid Judges' Pension Schemes (Contributions) (Amendment) Regulations 2020
Draft S.I.	Representation of the People (Electronic Communications and Amendment) (Northern Ireland) Regulations 2020
Draft S.I.	Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2020
Draft S.I.	National Minimum Wage (Amendment) Regulations 2020
Draft S.I.	Guaranteed Minimum Pensions Increase Order 2020
Draft S.I.	Social Security Benefits Up-rating Order 2020

Instruments subject to annulment

S.I. 2019/1353	Nicaragua (Asset-Freezing) Regulations 2019
S.I. 2019/1354	Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019
S.I. 2019/1357	Jobseeker's Allowance and Universal Credit (Higher-Level Sanctions) (Amendment) Regulations 2019
S.I. 2019/1362	Misuse of Drugs and Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Regulations 2019
S.I. 2019/1397	Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2019
S.I. 2019/1420	Firearms Regulations 2019
S.I. 2019/1423	European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 3) Regulations 2019
S.I. 2019/1426	Greater London Authority Elections (Amendment) Rules 2019
S.I. 2019/1427	Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2019
S.I. 2019/1429	Cross-border Parcel Delivery Services (EU Information Requirements) Regulations 2019
S.I. 2019/1430	M4 Motorway (Junctions 3 to 12) (Variable Speed Limits) Regulations 2019
S.I. 2019/1431	Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019
S.I. 2019/1432	National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2019
S.I. 2019/1433	Occupational Pensions (Revaluation) Order 2019
S.I. 2019/1435	Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2019
S.I. 2019/1439	Scotland Act 2016 (Transitional) (Amendment) Regulations 2019
S.I. 2019/1442	Eggs and Poultrymeat (England) (Amendment) Regulations 2019
S.I. 2019/1444	Network and Information Systems (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
S.I. 2019/1445	National Health Service (General Dental Services Contracts and Personal Dental Services Agreements) (Amendment) Regulations 2019
S.I. 2019/1449	Local Government Pension Scheme (Amendment) Regulations 2019
S.I. 2019/1453	Agricultural Holdings (Units of Production) (England) (No. 2) Order 2019
S.I. 2019/1455	Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019
S.I. 2019/1490	Public Interest Merger Reference (Gardner Aerospace Holdings Ltd. and Impcross Ltd.) (Pre-emptive Action) Order 2019

S.I. 2019/1510	Excise Goods (Holding, Movement and Duty Point) (Amendment) Regulations 2019
S.I. 2019/1512	Turkey (Asset-Freezing) Regulations 2019
S.I. 2019/1515	Public Interest Merger Reference (Mettis Aerospace Ltd.) (Pre-emptive Action) Order 2019
S.I. 2019/1517	Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019

Instruments subject to annulment (Northern Ireland)

S.R. 2019/201	Jobseeker's Allowance and Universal Credit (Higher-Level Sanctions) (Amendment) Regulations (Northern Ireland) 2019
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Draft Instruments subject to negative procedure

Draft S.I.	Halton (Electoral Changes) Order 2019
Draft S.I.	Isle of Wight (Electoral Changes) Order 2019
Draft S.I.	London Borough of Brent (Electoral Changes) Order 2019
Draft S.I.	London Borough of Ealing (Electoral Changes) Order 2019
Draft S.I.	London Borough of Harrow (Electoral Changes) Order 2019
Draft S.I.	London Borough of Hillingdon (Electoral Changes) Order 2019
Draft S.I.	Rotherham (Electoral Changes) (Amendment) Order 2019

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2019/1359	Housing and Planning Act 2016 (Commencement No. 11) Regulations 2019
S.I. 2019/1373	Mental Health Units (Use of Force) Act 2018 Commencement (No. 1) Regulations 2019
S.I. 2019/1419	Firearms (Amendment) (No. 2) Rules 2019
S.I. 2019/1434	Data Protection Act 2018 (Commencement No. 3) Regulations 2019
S.I. 2019/1450	Wireless Telegraphy (Mobile Repeater) (Exemption) (Amendment) Regulations 2019
S.I. 2019/1454	Parliamentary Elections (Returning Officers' Charges) Order 2019
S.I. 2019/1470	Parliamentary Elections (Returning Officers' Charges) (Amendment) Order 2019

Appendix 1

S.I. 2019/1264

Appeals to Traffic Commissioners (Procedure) (England) Regulations 2019

1. In its letter to the Department of 23 October 2019, the Committee requested a memorandum on the following.

1) Explain why, the Regulations do not set criteria for determining what amounts to dealing with appeals fairly and justly for the purposes of regulation 2, in contrast to, for example, the Civil Procedure Rules 1998, the Family Procedure Rules 2010 and the Court of Protection Rules 2017.

2. The Regulations do not set criteria as to what amounts to dealing with appeals fairly and justly because the Department takes the view that for this type of appeal it is unnecessary to do so. The expression is an ordinary English expression which the commissioner will be able to interpret without guidance as to what it means. Appeals will be made by companies engaged in the provision of transport services and it will be open to any appellant operator to make submissions as to what is required to achieve fair and just decisions in any case.

(2) Explain:

(a) whether the commissioner's discretion to refuse to admit a notice of appeal under regulation 8(5), a response notice under regulation 9(5), or a reply under regulation 10(4) may be exercised in relation to all such notices or replies, or only those received out of time;

(b) if the former, on what grounds the commissioner may refuse to admit the notice or reply; and

(c) whether the commissioner is required to give reasons for a refusal to admit the notice or reply.

3. The Department accepts that it would be possible to read the provisions identified as meaning that the commissioner could refuse to admit a notice or reply whereas the policy objective was to permit the commissioner to refuse to admit notices and replies only when they were out of time.

4. It is the Department's view that the context makes it apparent that the power to refuse to admit a notice or reply is limited to those that are out of time. We will make a clarifying amendment when the next available opportunity arises to put the matter beyond doubt.

5. The Regulations impose no specific obligation on the commissioner to give reasons for refusal to admit a notice or reply out of time but there may be a need for a commissioner to do so in particular cases where it is necessary to give effect to the overriding objective.

Department for Transport

30 October 2019

Appendix 2

S.I. 2019/1265

Public Service Vehicles (Registration of Local Services in Enhanced Partnership Areas) (England) Regulations 2019

1. In its letter to the Department of 23rd October 2019, the Committee requested a memorandum on the following.

(1) Explain the reasons for the differences between the time periods in:

(a) regulations 8(12)(a)(ii) and 10(12)(a)(ii) compared to regulations 9(11)(a)(ii) and 11(11)(a)(ii); and

(b) regulation 9(6)(b) compared to regulations 8(7)(b), 10(7)(b) and 11(6)(b).

(2) Explain why regulation 19 does not grant to a local transport authority exercising power delegated from a traffic commissioner the same discretion to extend time limits that it grants to a traffic commissioner.

(3) Explain why, in regulation 14:

(a) paragraph (1) permits an invitation to tender to be issued in relation only to notification of cancellation given under regulation 10(7) or 11(6), and not under regulation 8(7), 9(6) or 12(4); but (b) paragraph (3) prevents any contract being awarded until 29 days after a notification of cancellation under regulation 8(7), 9(6), 10(7), 11(6) or 12(4).

2. In response to question (1)(a), local transport authorities previously had no role in the registration of local bus services. Only from 24th April 2018 has there been a requirement that operators applying to a traffic commissioner to register a service, or vary or cancel the registration of a service, provide to the local authority a draft of their proposed application at least 28 days before it is sent to a traffic commissioner, see regulation 3(3A) of S.I. 1986/1671. The current Regulations, for the first time give local transport authorities, to whom a traffic commissioner has delegated registration functions, a power to determine whether the registration of a service is to be cancelled and a duty to notify operators of its decision. This is a completely new role for local transport authorities. Whereas traffic commissioners have exercised this function for many decades. Traffic commissioners' powers and duties under the Transport Act 1985 to determine whether bus operators should be permitted to run individual bus services are very well understood by bus operators. The traffic commissioners also have established procedures for notifying bus operators about their decisions. For these reasons it was considered appropriate in these Regulations to give bus operators more time in which to prepare for the cancellation of the registration of a service in cases where the registration functions of a traffic commissioner have been delegated to the local transport authority.

3. In response to question (1)(b), there is a different period specified in regulation 9(6)(b) because local transport authorities, to whom registration functions have been delegated, will have a narrower range of functions than is the case for traffic commissioners who are responsible for bus service registrations throughout the country and have additional responsibilities for the licensing of bus operators and goods vehicle operators. Therefore,

a shorter period was considered appropriate in respect of notification of cancellations due to a failure to meet an operation requirement. However in regulation 11(6)(b) the longer period of 35 days was considered appropriate, even though this is a case where the local transport authority is cancelling the registration, because the process of cancelling a service as a result of an operator failing to meet a route requirement is more involved as it triggers the requirement for a local authority to issue an invitation for tenders under regulation 14.

4. In response to question (2) the powers and duties of a local transport authority, where registration functions have been delegated to it, are quite different from the powers and duties of a traffic commissioner. The local transport authority role is limited to accepting and dealing with applications to register local bus services and applications to vary or cancel local bus services. It was considered that local transport authorities should be able to notify their decisions on these issues within the timescales set by the Regulations. However, traffic commissioners have a long-established role in determining a much wider set of issues than just bus service registrations. For example, they are also tasked with decisions over whether individual local bus operators and goods vehicles operators should be granted an operator's licence or continue to hold such a licence. In performing this duty, they exercise a quasi-judicial role and can, for example, hold public enquiries into individual cases. Local transport authorities exercising bus registration functions do not have these additional responsibilities. Also a traffic commissioner may take a wider range of issues into account when making decisions in its role as registration authority than a local transport authority can. It is for these reasons that under regulation 19 traffic commissioners have greater powers to extend certain periods if they feel that their wider remit warrants it.

5. In response to question (3)(a), the ability of a local transport authority to issue an invitation for tender for the award of one or more contracts applies only in relation to a notification of cancellation under regulation 10(7) or 11(6) which result from a decision that a service cannot be provided in accordance with a route required imposed on the service. A route requirement will typically be a limit on the frequency of a service, e.g. no more than six services per hour along a route. In these circumstances an exclusive right would be created under EU Regulation 1370/2007. There is no need to include regulation 8(7) or 9(6) in regulation 14(1) as these regulations relate to the cancellation of a service because the service does not meet an operation requirement (e.g. a requirement as to the type of vehicle used). A cancellation of a service because of a failure to meet an operation requirement does not result in an exclusive right being created under the EU Regulation.

6. In response to question (3)(b), the period specified in regulation 14(3) is necessary to ensure that there is enough time for a service that has been cancelled to be replaced seamlessly by one tendered for by the local transport authority, so that passengers do not experience any interruption in their local bus service. It is considered appropriate to list all the various types of cancellations in order to cover all possible circumstances, for example a service being cancelled due to a failure to meet both an operation requirement and a route requirement.

7. We trust that the explanations above provide some assurance to the Committee.

Department for Transport

29 October 2019

Appendix 3

S.I. 2019/1314

Social Security (Capital Disregards) (Amendment) Regulations 2019

1. In its letter to the Department of 23rd October 2019, the Committee requested a memorandum on the following point:

Given that these Regulations in part correct omissions, confirm whether the Department consulted the SI Registrar about whether or not to provide free replacement copies of the instrument.

2. The Department's response to the Committee's point is set out below.

3. These Regulations introduce new amending provisions at the same time as correcting a defective Statutory Instrument. The Department acknowledges that it should have agreed with the S.I. Registrar whether or not to provide free replacement copies, in accordance with paragraph 4.7.6 of Statutory Instrument Practice. Also, the Department acknowledges that it should have stated in the Explanatory Memorandum whether the free issue procedure had been applied. The Department apologises for both of these omissions.

Department for Work and Pensions

29 October 2019

Appendix 4

S.R. 2019/195

Social Security (Capital Disregards) (Amendment) Regulations (Northern Ireland) 2019

1. In its letter to the Department of 23rd October 2019, the Committee requested a memorandum on the following point:

Given that these Regulations in part correct omissions, confirm whether the Department consulted the SI Registrar about whether or not to provide free replacement copies of the instrument.

2. The Department's response to the Committee's point is set out below.

3. These Regulations introduce new amending provisions at the same time as correcting a defective Statutory Instrument. The Department acknowledges that it should have agreed with the S.I. Registrar whether or not to provide free replacement copies, in accordance with paragraph 4.7.6 of Statutory Instrument Practice. Also, the Department acknowledges that it should have stated in the Explanatory Memorandum whether the free issue procedure had been applied. The Department apologises for both of these omissions.

Department for Work and Pensions

29 October 2019