



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

**Seventeenth Report of
Session 2022–23**

Drawing special attention to:

*Telecommunications Infrastructure (Leasehold Property)
(Conditions and Time Limits) Regulations 2022 (S.I. 2022/1057)*

*Ordered by the House of Lords to be
printed 16 November 2022*

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Joint Committee on Statutory Instruments

Current membership

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

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

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

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

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House of Commons

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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 Sue Beeby (Committee Operations Officer), Liz Booth (Committee Operations Officer), Apostolos Kostoulas (Committee Operations Manager), Christine Salmon Percival (Lords Clerk), Hannah Stone (Commons 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 3296; the Committee's email address is: jcsi@parliament.uk.

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Instruments reported

At its meeting on 16 November 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 are given below. The relevant departmental memorandum is published as an appendix to this report.

1 S.I. 2022/1057: Reported for failure to comply with proper legislative practice

Telecommunications Infrastructure (Leasehold Property) (Conditions and Time Limits) Regulations 2022

1.1 **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.**

1.2 These Regulations, which are subject to the negative resolution procedure, allow a telecommunications operator to apply to a court for an order (a Part 4A order) granting rights to access a multiple dwelling unit to provide an electronic communications service where it has been requested by a lessee in occupation. Regulation 5 specifies the time limit for an application for a Part 4A order, but the preamble does not cite the power which enables that specification to be made (paragraph 27D(2) of Schedule 3A to the Communications Act 2003 which states that an application for a Part 4A order may not be made after the end of a “specified period”). The Committee asked the Department for Digital, Culture, Media and Sport to explain. In a memorandum printed at Appendix 1, the Department acknowledges the argument that the requisite *vires* is conferred by paragraph 27D(2) but argues that, in the alternative, paragraph 27D(1)(d) provides the requisite *vires* given that it provides that the operator may apply to the court for a Part 4A order if it has satisfied any other “specified conditions.” The Committee disagrees and considers the appropriate *vires* to be paragraph 27D(2); the Committee reads paragraph 27D(1)(d) as referring to eligibility conditions to apply for the Part 4A order rather than the time limit within which to apply. The Department undertakes to address this issue at an appropriate point in the future. **The Committee accordingly reports the preamble for failure to comply with proper legislative practice, acknowledged in part by the Department.**

Instruments not reported

At its meeting on 16 November 2022 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. Numbers	S.I. Title
S.I. 2022/1110	Russia (Sanctions) (EU Exit) (Amendment) (No. 15) Regulations 2022
S.I. 2022/1122	Russia (Sanctions) (EU Exit) (Amendment) (No. 16) Regulations 2022

Draft instruments requiring affirmative approval

S.I. Numbers	S.I. Title
Draft	Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2022
Draft	Immigration (Persons Designated under Sanctions Regulations) (EU Exit) (Amendment) Regulations 2022
Draft	Police and Crime Commissioner Elections and Welsh Forms (Amendment) Order 2022
Draft	Combined Authorities (Mayoral Elections) (Amendment) Order 2022
Draft	Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2022
Draft	Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2022
Draft	Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2022/1111	Greater London Authority Elections (Amendment) Rules 2022
S.I. 2022/1120	Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022
S.I. 2022/1129	Feed Additives (Authorisations) (England) Regulations 2022
S.I. 2022/1131	National Health Service (Performers Lists) (England) (Amendment) Regulations 2022

Draft instruments subject to annulment

S.I. Numbers	S.I. Title
Draft	Blaby (Electoral Changes) Order 2022
Draft	Blackpool (Electoral Changes) Order 2022
Draft	Telford & Wrekin (Electoral Changes) Order 2022
Draft	Trafford (Electoral Changes) Order 2022

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2022/1108	Exotic Animal Disease (Amendment) (England) Order 2022

Appendix 1: Memorandum from the Department for Digital, Culture, Media and Sport

S.I. 2022/1057

Telecommunications Infrastructure (Leasehold Property) (Conditions and Time Limits) Regulations 2022

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

Given the provision made by regulation 5, explain why paragraph 27D(2) of Schedule 3A to the Communications Act 2003 is not cited as an enabling power.

2. In drafting regulation 5, the Department sought to rely on paragraph 27D(1)(d) of Schedule 3A to the Communications Act 2003, which is cited and which provides that the operator may apply to the court for a Part 4A order if the operator has satisfied any other specified conditions. The Department respectfully suggests that the “specified period” referred to in paragraph 27D(2) is a specified condition with which the operator must comply and therefore is the relevant *vires* for this provision.

3. In light of the Committee’s question though, we have considered this further and can see the argument that, in the alternative, the requisite *vires* are conferred by paragraph 27D(2) and that this *vires* could also have been cited. The Department will look to address this at an appropriate point in the future.

Department for Digital, Culture, Media and Sport

8 November 2022

Formal Minutes

Wednesday 16 November 2022

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Baroness D’Souza

Baroness Gale

Lord Haskel

Paul Holmes

Lord Smith of Hindhead

Report consideration

Draft Report (Seventeenth 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 1.2 read and agreed to.

Annex agreed to.

A Paper was appended to the Report as Appendix 1.

Resolved, That the Report be the Seventeenth 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 23rd November at 3.40 p.m.