



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

Twenty-Fifth Report of Session 2022–23

Drawing special attention to:

Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022 (S.I. 2022/1271)

Assistance with Voting for Persons with Disabilities (Principal Area, Parish and Greater London Authority Elections) (Amendments) Rules 2022 (S.I. 2022/1284)

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to be printed 1 February 2023*

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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 Sue Beeby (Committee Operations Officer), Liz Booth (Committee Operations Officer), Christine Salmon Percival (Lords Clerk), Hannah Stone (Commons Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Justin Leslie, Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

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Instruments reported

At its meeting on 1 February 2023 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 two of those considered. The instruments and the grounds for reporting are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2022/1271: Reported for requiring elucidation

Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.

1.2 This Order, which is subject to the negative resolution procedure, specifies certain categories of research and development agreements to exempt them from the prohibition of agreements between firms that prevent, restrict or distort competition in Chapter 1 of Part 1 of the Competition Act 1998. The block exemption is subject to certain conditions including the condition in article 8(5) which requires an assessment of “competing R&D efforts” or whether third parties are able “independently to engage in a research and development effort”. Article 9(3) states that these assessments of competing R&D efforts and third parties need to be based on “reliable information” concerning various matters but there is no indication of what might be considered “reliable” for these purposes.

1.3 The Committee asked the Department for Business, Energy and Industrial Strategy to give examples of what would be considered “reliable information” and indicate what criteria are intended to be used to determine reliability. In a memorandum printed at Appendix 1, the Department refers to draft guidance published by the Competition and Markets Authority which includes a list of examples of what might constitute “reliable information” for the purposes of article 9(3). In relation to the criteria to be used to determine reliability, the Department explains that it would expect criteria such as the credibility of the source of the information to be considered. The Committee notes that assessing the credibility and dependability of certain sources of information will not always be straightforward. However, given that the draft guidance includes examples of what may be considered reliable information (rather than using the guidance to define the term), **the Committee is content to report article 9(3) for requiring elucidation provided by the Department’s memorandum.**

2 S.I. 2022/1284: Reported for requiring elucidation and for defective drafting

Assistance with Voting for Persons with Disabilities (Principal Area, Parish and Greater London Authority Elections) (Amendments) Rules 2022

2.1 The Committee draws the special attention of both Houses to these Rules on the grounds that they require elucidation in one respect and are defectively drafted in another respect.

2.2 These Rules, which are subject to the negative resolution procedure, amend rules relating to the support for voters with a disability or inability to read. Rule 2(7) (inserted rule 21A(1)) states that the presiding officer must require such a voter to declare whether the voter is so incapacitated as to be unable to vote without assistance. The Committee asked the Department for Levelling Up, Housing and Communities to confirm whether the declaration by the voter in rule 2(7) is to be made orally or in writing (in comparison to rule 21(1) which expressly refers to a similar declaration being made orally). In a memorandum printed at Appendix 2, the Department confirms that the declaration can be made either orally or in writing. The Department acknowledges that this could have been clearer on the face of the amendments and undertakes to take this into account in any future similar situations. **The Committee accordingly reports Rule 2(7) for requiring elucidation, provided by the Department’s memorandum.**

2.3 The form in Schedule 1 (Declaration for the companion of a voter with disabilities) defines “voter” as “the person casting the vote at the poll”. Given that the form includes a reference to the possibility of the voter acting as proxy, the Committee asked the Department to explain why the definition of voter did not include a reference to the voter acting as proxy. In its memorandum, the Department explains that it is not in fact possible for an elector to vote by proxy in an election covered by the form in Schedule 1 – therefore the definition of “voter” is correct but the reference to the possibility of the voter acting as a proxy is an error on the form. **The Committee accordingly reports Schedule 1 for defective drafting.**

Instruments not reported

At its meeting on 1 February 2023 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

Draft instruments requiring affirmative approval

S.I. Number	S.I. Title
Draft	Radio Equipment (Amendment) (Northern Ireland) Regulations 2023
Draft	Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023
Draft	Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2023

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2022/1397	Voter Identification (Principal Area, Parish and Greater London Authority Elections) (Amendment) Rules 2022
S.I. 2023/16	Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) Regulations 2023
S.I. 2023/21	Public Lending Right Scheme 1982 (Commencement of Variation) Order 2023
S.I. 2023/29	Carriers' Liability (Amendment) Regulations 2023
S.I. 2023/41	Gender Recognition Reform (Scotland) Bill (Prohibition on Submission for Royal Assent) Order 2023
S.I. 2023/43	Energy Act 2004 (Assistance for Areas with High Distribution Costs) (Amendment) Order 2023

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2023/32	Nationality, Immigration and Asylum Act 2002 (Commencement No. 15) Order 2023
S.I. 2023/33	Nationality and Borders Act 2022 (Commencement No. 4 and Transitional Provision) Regulations 2023
S.I. 2023/34	Immigration and Asylum Act 1999 (Commencement No. 17) Order 2023
S.I. 2023/36	Income Tax (Indexation of Blind Person's Allowance and Married Couple's Allowance) Order 2023

Appendix 1: Memorandum from the Department for Business, Energy and Industrial Strategy

S.I. 2022/1271

Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022

1) The Committee has asked the Department for Business, Energy and Industrial Strategy for a memorandum on the following point(s):

Give examples of what would be considered “reliable” information for the purposes of the assessments referred to in article 9(3) and indicate what criteria are intended to be used to determine reliability.

2) To begin with the second of the two points raised, we consider that the term “reliable information” in article 9(3) would have its normal meaning, i.e. information that is suitable to be relied on, is worthy of confidence. Our view is that it would be understood as indicating that assessments undertaken in accordance with article 9(3) should not be based on information that is speculative, anecdotal, or out of date, but should instead be based on objective data or evidence that can be depended on with some certainty. In determining whether information is reliable we would expect parties to consider criteria such as whether the information or the source of the information (published financial accounts, press releases, research published in journals, patent applications etc.) is credible and would generally be considered trustworthy and accurate

3) In addition, the Competition and Markets Authority (CMA) is publishing for consultation draft guidance¹ on the application of competition law and, in particular, the Chapter I prohibition in the Competition Act 1998² to horizontal agreements. This will include guidance specifically on the application of the Competition Act 1998² (Research and Development Agreements Block Exemption) Order 2022. The draft guidance includes a list of examples of what might constitute “reliable information” for the purposes of article 9(3) of the Order. The list is as follows:

- a) a press release regarding a new R&D project;
- b) a business plan which is publicly available (for example, a business looking for funding, particularly public funding, may have a business plan available on its website or through funding platforms);
- c) information in the trade press or at trade exhibitions;
- d) evidence supporting the existence of low barriers to entry.

1 The draft guidance will be published on 25th January 2023 and will be accessible from 10.00 am on that day:
<https://www.gov.uk/government/consultations/draft-guidance-on-horizontal-agreements>

2 The Chapter I prohibition is set out in section 2 of the Competition Act 1998.

4) The guidance adds that “internal research or analysis by a party deciding whether to proceed with research and development, or to enter into an R&D agreement, in relation to how successful it may be and what the competitive landscape may look like, including who else may be operating or thinking of innovating in the same area, may be used for the assessment if it is based on reliable information, for example third party market reports, research or data which consider factors such as the scope for innovation in a sector and possible participants in that innovation”.

5) We, therefore, consider that “reliable information” is a commonly understood concept and that users of the legislation would not struggle with its meaning in general terms. CMA guidance will then provide further support by giving specific examples of what might constitute reliable information for the purposes of article 9(3). Following consultation, the guidance will be published in final form, including any adjustments that may be made following feedback from the consultation.

Department for Business, Energy and Industrial Strategy

23 January 2023

Appendix 2: Memorandum from Department for Levelling Up, Housing and Communities

S.I. 2022/1284

Assistance with Voting for Persons with Disabilities (Principal Area, Parish and Greater London Authority Elections) (Amendments) Rules 2022

1) The Committee has asked the Department for Levelling up, Housing and Communities for a memorandum on the following points:

Confirm whether the declaration by the voter in rule 2(7) (inserted rule 21A(1)) is to be made orally or in writing (compare rule 21(1) which expressly refers to the declaration being made orally).

Given that the form in Schedule 1 asks if the disabled voter is acting as a proxy, explain why the definition of voter in that form does not include a person voting as a proxy (as is the case in the definition of voter in the other forms in the Schedules to these Rules).

2) Turning to the Committee's first question, it is intended that the declaration under the new Rule 21A of the Parish and Community Meetings (Polls) Rules 1987 ("the 1987 Rules") may be made orally or in writing. It is anticipated that there may be some disabled voters who are unable to communicate orally, and who wish to vote with an assistant. The existing Rule 21 (now limited in application to Wales) refers only to blind voters, and is therefore narrower in application.

3) The Department appreciates it could perhaps have been clearer on the face of the amendments made by the Assistance with Voting for Persons with Disabilities (Principal Area, Parish and Greater London Authority Elections (Amendments) Rules 2022 that the declaration required by Rule 21A of the 1987 Rules could be made "orally or in writing", by saying so expressly. This will be taken into account in any future similar situations.

4) Turning to the Committee's second question, it is not in fact possible for an elector to vote by proxy in an election under the 1987 Rules. For this reason, the definition of "voter" at the top of the form is correct in not including reference to a person voting as a proxy. It is recognised that there is reference to the possibility of voter acting as a proxy in boxes half way down the first page of the form; these references are in fact in error but given an elector cannot vote by proxy in these polls it is anticipated that the errors will not lead to the form being completed inaccurately and do not require amendment.

Department for Levelling Up, Housing and Communities

24 January 2023

Formal minutes

Wednesday 1 February 2023

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Chartres

Baroness D’Souza

Peter Grant

Lord Leong

Lord Sahota

Lord Smith of Hindhead

Maggie Throup

Report consideration

Draft Report (Twenty-Fifth 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 2.3 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 2.

Resolved, That the Report be the Twenty-Fifth 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 8 February at 3.40 p.m.