



House of Lords
House of Commons

Joint Committee on Statutory
Instruments

Twenty-Seventh Report of Session 2022–23

Drawing special attention to:

*Food Supplements and Food for Specific Groups (Miscellaneous
Amendments) Regulations 2023 (S.I. 2023/28)*

*Carriers' Liability (Clandestine Entrants) (Level of Penalty: Code of Practice)
Order 2023 (S.I. 2023/30)*

*Ordered by the House of Lords
to be printed 22 February 2023*

*Ordered by the House of Commons
to be printed 22 February 2023*

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Joint Committee on Statutory Instruments

Current membership

House of Lords

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

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

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

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

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

House of Commons

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[Peter Grant MP](#) (*Scottish National Party, Glenrothes*)

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

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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).

Contacts

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Instruments reported

At its meeting on 22 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. 2023/28: Reported for defective drafting

Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.

1.2 These Regulations, which are subject to the negative resolution procedure, make provision in relation to vitamins and minerals permitted in the manufacture of food supplements and certain categories of food. Different parts of the regulations have different commencement dates – 10 August 2024 in respect of specified regulations and 10 February 2023 for all other purposes. Regulation 1 (the citation, commencement and extent provision) is stated to come into force on the later of the two commencement dates (regulation 1(2)(a)). The Committee noted that this results in the absurdity that the provision intended to commence most of the regulations on the earlier date does not bring itself into force until the later date. The Committee asked the Department of Health and Social Care to explain. In a memorandum printed at Appendix 1, the Department confirms that this was an error and that regulation 1 should have been stated to come into force on the earlier of the two commencement dates. The Department has already rectified the error by laying an amending instrument (S.I. 2023/131, which is being issued free of charge). **The Committee accordingly reports regulation 1 for defective drafting, acknowledged by the Department.**

2 S.I. 2023/30: Reported for failure to comply with proper legislative practice

Carriers' Liability (Clandestine Entrants) (Level of Penalty: Code of Practice) Order 2023

2.1 The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice in one respect.

2.2 This Order, which is subject to the negative resolution procedure, brings into operation a code of practice titled “Immigration and Asylum Act 1999: Level of Penalty: Code of Practice”. The Committee asked the Home Office to explain why the instrument does not include details of where a hard copy of the code of practice can be inspected free of charge. In a memorandum printed at Appendix 2, the Department gives details of where a copy can be obtained free of charge and apologises for not including this information in the instrument or in the Explanatory Note. As set out at paragraphs 4.5 to 4.8 of the Committee’s First Special Report of Session 2017–19, *Transparency and Accountability in*

Subordinate Legislation, the Committee again stresses its concern that documents given a significance by subordinate legislation should be available free of charge to citizens who do not have access (or ready access) to the internet. The Committee considers that an amendment to a footnote or the Explanatory Note to include this information can be made by correction slip. **The Committee accordingly reports this Order for failure to comply with proper legislative practice, acknowledged by the Department.**

Instruments not reported

At its meeting on 22 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	Code of Practice for the Forensic Science Regulator
Draft	Agriculture (Financial Assistance) (Amendment) Regulations 2023
Draft	Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2023
Draft	Direct Payments to Farmers (Reductions) (England) Regulations 2023
Draft	Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023
Draft	Medical Devices and Blood Safety and Quality (Fees Amendment) Regulations 2023
Draft	Non-Domestic Rating (Rates Retention: Miscellaneous Amendments) Regulations 2023

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2023/77	Firearms (Amendment) Rules 2023
S.I. 2023/81	National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2023
S.I. 2023/97	Criminal Legal Aid (Remuneration) (Amendment) Regulations 2023

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2023/107	Annual Tax on Enveloped Dwellings (Indexation of Annual Chargeable Amounts) Order 2023
S.I. 2023/109	Product Security and Telecommunications Infrastructure Act 2022 (Commencement No. 1) Regulations 2023
S.I. 2023/115	Elections Act 2022 (Commencement No. 7) Regulations 2023

Appendix 1: Memorandum from the Department of Health and Social Care

S.I. 2023/28

Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023

1. In its email to the Department of 1st February 2023, the Committee requested a memorandum on the following point:

Explain why regulation 1 does not come into force on the earlier of the two commencement dates i.e. on 10th February 2023.

2. The Department confirms that this was an error and that regulation 1 should have been stated to come into force on 10th February 2023, being the earlier of the two commencement dates.

3. The Department intends to rectify the error by laying an amending instrument (which will be issued free of charge) before 10th February.

4. The instrument will also insert certain transitional provisions into the Food Supplements (England) Regulations 2003 (S.I. 2003/1387), the Food Supplements (Scotland) Regulations 2003 (S.I. 2003/278) and the Food Supplements (Wales) Regulations 2003 (S.I. 2003/1719) (W.186) in respect of the sale of food supplements which used copper or zinc in the manufacturing process and were labelled prior to the coming into force of the relevant amendments to the labelling requirements.

5. The Department apologises to the Committee for the error.

Department of Health and Social Care

2 February 2023

Appendix 2: Memorandum from the Home Office

S.I. 2023/30

Carriers' Liability (Clandestine Entrants) (Level of Penalty: Code of Practice) Order 2023

1. On 1st February 2023, the Committee asked the Home Office for a memorandum on the following point:

Explain why the instrument does not include details of where a hard copy of the code of practice can be inspected free of charge.

2. The Department's response is as follows: The draft code entitled "Immigration and Asylum Act 1999: Level of Penalty: Code of Practice" is available at <https://www.gov.uk/government/publications/clandestine-entrant-civil-penalty-scheme> with the final code to be available in the same way. A hard copy can also be obtained free of charge by writing to BF CECPT, Border Force South East, Martello House, Shearway Business Park, Folkestone, Kent, United Kingdom, CT19 4RH.

3. The Department apologises for not including all this information in the instrument or its Explanatory Note. The Department will explore whether it is appropriate to arrange for a correction slip to be issued.

Home Office

7 February 2023

Formal Minutes

Wednesday 22 February 2023

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Baroness D’Souza

Peter Grant

Gareth Johnson

Lord Leong

Lord Sahota

Maggie Throup

Report consideration

Draft Report (Twenty-Seventh 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 2.2 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-Seventh 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 1 March at 3.40 p.m.