



House of Lords  
House of Commons  
Joint Committee on Statutory  
Instruments

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**Twenty-Eighth Report  
of Session 2022–23**

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**Drawing special attention to:**

*Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023 (S.I. 2023/45)*

*School and Early Years Finance (England) Regulations 2023 (S.I. 2023/59)*

*Family Procedure (Amendment) Rules 2023 (S.I. 2023/61)*

*Control of Explosives Precursors and Poisons Regulations 2023 (S.I. 2023/63)*

*Ordered by the House of Lords  
to be printed 1 March 2023*

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## Joint Committee on Statutory Instruments

### Current membership

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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*)

[Gareth Johnson MP](#) (*Conservative, Dartford*)

[Damien Moore MP](#) (*Conservative, Southport*)

[Maggie Throup MP](#) (*Conservative, Erewash*)

[Liz Twist MP](#) (*Labour, Blaydon*)

### 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](http://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

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At its meeting on 1 March 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 four 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. 2023/45: Reported for defective drafting

### *Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) 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 three respects.**

1.2 These Regulations, which are subject to the negative resolution procedure, amend the civil legal aid means test schemes (as set out in S.I. 2013/480) to make civil legal aid more widely available.

1.3 Regulation 2(3) creates four new exemptions from the requirement to be means tested in order to qualify for civil legal aid. The third and fourth of those new exemptions (inserted sub-paragraphs (q) and (r)) relate to applications and appeals to the First-tier Tribunal by a foster parent on behalf of a young person still living with them after turning 18. One of the criteria used to determine whether these exemptions apply is that “the young person cannot make [the/an] application themselves” ((q)(iii) and (r)(iii), the third criterion). The Committee asked the Ministry of Justice to explain how it will be determined whether a young person “cannot” make an application themselves, and whether that is intended to be limited to a lack of capacity.

1.4 In a memorandum printed at Appendix 1, the Department explains that any person falling within the second criterion (in sub-paragraphs (q)(ii) and (r)(ii)) is intended, by definition, to be acting for someone lacking in capacity; it accepts that the third criterion may therefore be superfluous. The Committee is not entirely persuaded that the drafting achieves this intent. Two of the three cases covered by the second criterion seem to apply in circumstances where the young person may not lack capacity at the time of the application: lasting power of attorney under section 9 of the Mental Capacity Act 2005 “includes” —but is impliedly not limited to—decision-making authority where the donor lacks capacity; and an application to register an enduring power of attorney under Schedule 4 of that Act may be made, and granted, where the donor is becoming—and therefore is not yet—mentally incapable. To the extent that this is the case, the third criterion is not superfluous (and the second criterion may not be sufficiently specific); but nor is the third criterion sufficiently clear on its own terms to be limited to lack of capacity. **The Committee accordingly reports regulation 2(3) (inserted sub-paragraphs (q) and (r)) for defective drafting, partly acknowledged by the Department.**

1.5 The Committee also asked the Department to explain whether “the application” in sub-paragraph (q)(iii) and “an application” in sub-paragraph (r)(iii) refer to the application to the First-tier Tribunal or to “application” as defined in S.I. 2013/480 (the amended

instrument). In its Memorandum, the Department explains that the former meaning is intended and undertakes to consider how to clarify this at the next appropriate opportunity. **The Committee accordingly reports regulation 2(3) (inserted sub-paragraphs (q)(iii) and (r)(iii)) for defective drafting in a second respect, acknowledged by the Department.**

1.6 Paragraph (6) of regulation 3 defines several terms that are not used elsewhere in that regulation. The Committee asked the Department to explain why. In its memorandum, the Department acknowledges that the definitions were included in error and undertakes to correct it at the next appropriate opportunity. **The Committee accordingly reports regulation 3(6) for defective drafting, acknowledged by the Department.**

## **2 S.I. 2023/59: Reported for requiring elucidation and defective drafting**

### ***School and Early Years Finance (England) Regulations 2023***

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

2.2 These Regulations, which are subject to the negative resolution procedure, make provision for local authorities' financial arrangements in relation to the funding of maintained schools and providers of funded early years provision in England, for the financial year 2023–2024. The Regulations make reference to a number of non-statutory documents. The Committee asked the Department for Education why two of those documents were not provided with website addresses where they could be accessed. In a memorandum printed at Appendix 2, the Department explains that these documents have been replaced with more recent documents, but that they may be inspected on request. The Committee accepts this explanation. However, the Committee notes that for documents that are relevant for the operation of the law it would be helpful if the Government could find ways of making such documents available electronically even where they have been superseded. **The Committee accordingly reports these Regulations for requiring elucidation, provided by the Department's memorandum.**

2.3 The Committee also asked the Department about the definition of “the London fringe area” in regulation 21(2). In its memorandum, the Department acknowledged that referring to “schools in the county councils of...” may not be technically accurate in view of the definition of council in section 2(3) of the Local Government Act 1972. This defines county councils as being bodies corporate, rather than by reference to a particular area. Relatedly, the Department acknowledged that referring to Buckinghamshire as a county council was incorrect given S.I. 2019/957, which replaced the county council with a unitary authority. The Department has undertaken to make the necessary corrections. **The Committee accordingly reports these Regulations for defective drafting in two related respects, acknowledged by the Department.**

2.4 The Committee also asked the Department about the approach local authorities are expected to take between various methods of calculating the “sparsity factor” in regulation 22. In its memorandum, the Department confirmed that these methods would result in different results for budget shares for primary schools, but it is left to local authorities' discretion to choose whichever method they prefer. The Committee is concerned that



regulation 22 allows local authorities to make a decision that would have an impact on primary school budgets but does not set out express criteria to be applied in making the decision. This makes it unclear how the sparsity factor, and therefore primary school budgets, will be determined, particularly as it would seemingly be possible for different methods to be applied to different schools. Whilst the Committee acknowledges the Department’s explanation, it is not satisfied that the determination of primary school budgets should be a matter of a local authority’s mere preference. The Committee hopes that next year’s iteration of these Regulations provides a more appropriately framed discretion that is clear by what criteria the sparsity factor should be determined. **On this occasion, the Committee is content to report these Regulations for requiring elucidation.**

### **3 S.I. 2023/61: Reported for defective drafting and requiring elucidation**

#### ***Family Procedure (Amendment) Rules 2023***

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

3.2 These Rules, which are subject to the negative resolution procedure, make several amendments to the Family Procedure Rules 2010 (S.I. 2010/2955).

3.3 Rule 1(3) provides for two commencement dates: 27 February 2023 for rule 8 and 6 April 2023 for the rest of the instrument – including the commencement provision. The Committee noted that this results in the commencement provision coming into force after a rule it purports to commence (making rule 8 inoperable). It asked the Ministry of Justice to explain. In a memorandum printed at Appendix 3, the Department acknowledges the error. **The Committee accordingly reports rule 1(3) for defective drafting, acknowledged by the Department.**

3.4 Several rules amend references to the Queen so that they are references to the King, for example changing “Her Majesty’s” to “His Majesty’s” and “Queen’s Bench” to “King’s Bench”. The Committee asked the Department what these amendments add that is not achieved by section 10 of the Interpretation Act 1978, which provides (when read with section 23) that references to the Sovereign reigning when the Rules were enacted are to be construed as references to the Sovereign for the time being. In its memorandum, the Department offers several justifications for preferring to amend the text of the Rules over relying on the implied effect of section 10. The Committee is persuaded in particular by the need to secure that rules of court are simple and simply expressed, which would be undermined by inconsistencies arising from future amendments. **The Committee accordingly reports these Rules for requiring elucidation, provided by the Department’s memorandum.**

## 4 S.I. 2023/63: Reported for defective drafting

### *Control of Explosives Precursors and Poisons Regulations 2023*

4.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in three respects.**

4.2 These Regulations, which are subject to the negative resolution procedure, introduce new safeguards relating to the sale of poisons and other chemicals that can be used in the illicit manufacture of homemade explosives.

4.3 The law requires persons involved in the supply of these substances to notify the Secretary of State of transactions they believe to be suspicious, and persons whose business involves the use of such substances to report their disappearance or theft (“the reporting requirement”). Failure to comply with the reporting requirement is a criminal offence. Regulation 6 adds several elements to the reporting requirement, including an obligation to make the relevant report “using either the electronic reporting service or the telephone reporting service that is provided by the Secretary of State for this purpose” (regulation 6(3)). The Committee asked the Home Office to explain why neither the instrument nor its Explanatory Note provides details to identify either of these services.

4.4 In a memorandum printed at Appendix 4, the Department explains how these services can be accessed “at the present time” and notes that this information will be included in detailed guidance about the reporting requirement. The Department justifies its decision not to include such details in regulation 6 partly on the ground of future changes and partly, in relation to the electronic reporting service, because “it would not be possible to describe it in the instrument with sufficient precision to provide certainty as to the service to which the regulation was referring”.

4.5 The Committee acknowledges the difficulties the Department has identified, including that it would not be appropriate to specify a telephone number or web address on the face of the legislation. But these issues reinforce rather than alleviate the Committee’s concern that regulation 6(3) is not drafted clearly enough for someone to know—from the legislation—what is required of them. The Committee reiterates that criminal offences must be sufficiently certain to enable readers to determine in advance what will incur criminal liability, and that guidance should not be used to remedy the lack of certainty in legislation (as stated, for example, in its First Special Report of Session 2021–22, *Rule of Law Themes from Covid-19 Regulations*). **The Committee accordingly reports regulation 6(3) for defective drafting.**

Regulation 8 inserts several new explosives precursors into the list of regulated and reportable substances in Schedule 1A to the Poisons Act 1972. The Committee noted that in several cases, this was done using only the name of the chemical and without including its CAS Reference Number (a unique identifier assigned by the Chemical Abstracts Service that is provided for most substances listed in Schedule 1A). It asked the Department to explain the omission. In its memorandum, the Department acknowledges that CAS RNs should have been, but were not, included for several substances and undertakes to correct the error at the first available opportunity. **The Committee accordingly reports regulation 8 for defective drafting, acknowledged by the Department.**

The Committee also noted that regulation 8 revoked “Zinc phosphide (CASRN 1314–84–7)” from Part 4 of that Schedule but inserted “Zinc and calcium phosphide (CASRN 1314–84–7)” into Part 2. It asked the Department to explain the discrepancy. In its memorandum, the Department acknowledges that Zinc phosphide and Calcium phosphide should have been inserted as separate entries and undertakes to correct the error at the first available opportunity. **The Committee accordingly reports regulation 8(3)(g) for defective drafting, acknowledged by the Department.**

## Instruments not reported

At its meeting on 1 March 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	Criminal Justice Act 2003 (Home Detention Curfew) Order 2023
Draft	Electricity Supplier Obligations (Green Excluded Electricity) (Amendment) Regulations 2023
Draft	Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2023
Draft	Treasure (Designation) (Amendment) Order 2023

#### Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/106	Trade in Endangered Species of Wild Fauna and Flora (Council Regulation (EC) No 338/97) (Amendment) Regulations 2023
S.I. 2023/116 <sup>1</sup>	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023
S.I. 2023/117 <sup>2</sup>	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023
S.I. 2023/121	Sanctions (Humanitarian Exception) (Amendment) Regulations 2023
S.I. 2023/124	Market Measures Payment Schemes (Amendments, Revocation and Transitional Provision) (England) Regulations 2023
S.I. 2023/126	Building Safety (Leaseholder Protections) (England) (Amendment) Regulations 2023
S.I. 2023/127	Feed-in Tariffs (Amendment) Order 2023
S.I. 2023/129	Education (Student Loans) (Repayment) (Amendment) Regulations 2023
S.I. 2023/131	Food Supplements and Food for Specific Groups (Miscellaneous Amendments) (No. 2) Regulations 2023
S.I. 2023/159	Countryside Stewardship (England) (Amendment) Regulations 2023

#### Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2022/157	Universal Credit (Work-Related Requirements) In Work Pilot Scheme (Extension) Order 2023
S.I. 2022/158	Armed Forces Act 2021 (Commencement No. 5) Regulations 2023

1 The Department for Work and Pensions submitted a voluntary memorandum in relation to these related instruments, which is printed at Appendix 5.

2 The Department for Work and Pensions submitted a voluntary memorandum in relation to these related instruments, which is printed at Appendix 5.

# Appendix 1: Memorandum from the Ministry of Justice

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S.I. 2023/45

## ***Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023***

1) In consideration of the above instrument, the Committee requested a memorandum on the following points:

1) Explain why the definitions of “approved prospective adoptive parent”, “child who is looked after by a local authority”, “foster parent” and “staying put arrangement” are included in regulation 3(6) given that those terms are not used elsewhere in regulation

2) In relation to regulation 2(3), new paragraphs (q) and (r), explain—

a) how it is intended to be determined whether a young person “cannot” make an application themselves, and whether that is intended to be limited to a lack of capacity as suggested by paragraphs 7.7 to 7.9 of the Explanatory Memorandum (and if so, how effect is given to that intention); and

b) whether “application” in sub-paragraph (iii) of both paragraphs refers to the application to appeal to the First-tier Tribunal or to “application” as defined in regulation (2) of S.I. 2013/480.

2) In relation to point (1), we understand the Committee’s concerns and it would appear that those definitions are not required in regulation 3(6). We apologise for the error and propose to correct this at the next appropriate opportunity.

3) In relation to point (2)(a), new paragraphs (q) and (r) both state that the applicant (for legal aid) making the application to the First Tier Tribunal must be a person described in paragraphs (a), (b) and (c) of section 80(6) of the Children and Families Act 2014. Those paragraphs define “Representative” in relation to a young person as meaning –

a. a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent’s or young person’s behalf in relation to matters within this Part;

b. the donee of a lasting power of attorney (within the meaning of section 9 of that Act) appointed by the parent or young person to make decisions on his or her behalf in relation to matters within this Part;

c. an attorney whom an enduring power of attorney (within the meaning of Schedule 4 to the Act) created by the parent or young person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made.

4) Section 16 of the Mental Capacity Act 2005 applies if a person lacks capacity in relation to matters concerning their personal welfare or property and affairs. Section 9 provides for a lasting power of attorney in circumstances where the donor no longer has capacity. Schedule 4 to the Mental Capacity Act applies to enduring powers of attorney, and paragraph 4 specifically deals with the duties of an attorney in the event of actual or impending incapacity of the donor. Paragraph 13 then deals with the registration of an instrument creating a power of attorney in such circumstances.

5) The intention behind the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023 is that any person falling under the definitions in section 80(6) of the Children and Families Act 2014 would, by definition, be acting for someone lacking in capacity. This means that if the requirements of new sub-paragraphs q(ii) and r(ii) are met, then it will be deemed that the young person cannot make the application themselves. We accept that new sub-paragraphs q(iii) and r(iii) may be superfluous, for which we apologise. We will consider how to correct this at the next appropriate opportunity.

6) In relation to point 2(b), “application” in sub-paragraph (iii) of both paragraphs (q) and (r) is intended to refer to the application to appeal to the First Tier Tribunal. We will consider how to clarify this at the next appropriate opportunity.

**Ministry of Justice**

**14 February 2023**

## Appendix 2: Memorandum from the Department for Education

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### S.I. 2023/59

#### *School and Early Years Finance (England) Regulations 2023*

1) The Committee has asked the Department for Education for a memorandum on the following point(s):

(1) Explain why the definitions of “2017 Document” and “2018 ARA” in regulation 1(4) do not include website addresses where they can be accessed (noting that other documents referenced in that regulation include website addresses).

(2) In relation to regulation 21(2), explain—

(a) whether a school can be “in” a county council rather than within the area of any local authority (having regard to the definition in section 2(3) of the Local Government Act 1972); and

(b) whether the list is correct, given (i) the changes to Buckinghamshire county council as a result of S.I. 2019/957 and (ii) that the Fringe Area defined in the School teachers’ pay and conditions document 2022 also refers to Berkshire and Surrey.

(3) Explain whether the choice of methods set out in regulation 22(4), (5), (11) and (12) would achieve a different outcome for schools’ budgets and, if so, on what basis local authorities should determine whether they “prefer” any of those methods.

2) In response to the Committee’s first question, “the 2017 Document” and “2018 ARA” are not available on a government website as they have been replaced with more recent documents for the purpose of early years assessments or assessments at age 11. As there are still children in schools who were assessed under them some years ago, these documents are still relevant for these regulations and so the relevant footnotes make it clear that these documents may be inspected on request at the Department for Education. On receipt of any such request, the Department would be happy to send a hard copy of the document(s) to the requestor. As there is no government website that contains an online copy, we took the decision that it was better to avoid references to third party websites that can become outdated and are not within the government’s control.

3) In response to the Committee’s questions regarding regulation 21(2), we note the wording referenced in question (2)(a) has been included in equivalent provisions in the annually made School and Early Years Finance (England) Regulations since 2013 (this provision was previously in Schedule 3, for example, see paragraph 13 of Schedule 3 to S.I. 2022/27). The Department is mindful that using different words can connote a different meaning and so where the policy and law has not changed the Department generally adopts a consistent drafting approach from year to year. Nevertheless, we accept that the

reference to “schools in the county councils of...” may not be technically accurate in view of the definition of council in section 2(3) of the Local Government Act 1972 and we therefore undertake to update the wording in regulation 21(2) in next year’s regulations, or sooner should there be a suitable vehicle.

4) We are grateful to the Committee for highlighting in question 2(b) that Buckinghamshire has been a unitary council not a county council since 2020 as a result of S.I. 2019/957. We also undertake to correct this in next year’s regulations, or sooner should there be a suitable vehicle. We believe the rest of the list is correct. Berkshire County Council was abolished in 1998 (although it is still a ceremonial county and non-metropolitan county: The Berkshire (Structural Changes) Order 1996, S.I. 1996/1879); the schools in the successor unitary authorities are all either in the same London salary weighting area (Bracknell Forest, Slough, Windsor and Maidenhead) or not in any London salary weighting area (Reading, West Berkshire, Wokingham) so do not need to be included in the list in regulation 21(2). Schools in the county of Surrey are all within the same London salary weighting area so again do not need to be included in the list.

5) In response to the Committee’s third question, the Committee is correct that the choice of method set out in regulation 22(4), (5), (11) and (12) would achieve different results. The policy intention is to leave the choice to local authorities’ discretion, and we do not specify either in regulations or guidance as to how local authorities are to choose between the different approaches –, this is deliberately left to local authorities’ own decision-making. We specifically consulted on retaining these flexibilities for local authorities in the Fair Funding For All consultation, and confirmed in the Government response (p.34), that these flexibilities would be retained for 2023–24: “This will minimise further disruption on top of the significant change we made recently by introducing a new methodology for calculating sparsity distances in the NFF [National Funding Formula] from 2022–23.”

**Department for Education**

**14 February 2023**



# Appendix 3: Memorandum from the Ministry of Justice

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**S.I. 2023/61**

## ***Family Procedure (Amendment) Rules 2023***

1) The Committee has asked the Ministry of Justice for a memorandum on the following point(s):

(1) Explain why regulation 1 does not come into force on the earlier of the two commencement dates, i.e., on 27 February 2023.

(2) Explain what rules 3, 5, 6, 7, 9, 11, 13, 15, 16 and 18 to 20 add that is not achieved by section 10 of the Interpretation Act 1978.

2) In relation to point (1), the Ministry of Justice accepts that rule should have provided for that rule itself, as well as rule 8, to come into force on 27th February, and apologises for this error.

3) In relation to point (2), while the effect of section 10 of the Interpretation Act 1978 would, absent the amendments made by the rules referred to, have been that the references to “Queen’s” and “Her Majesty’s” would fall to be read as references to “King’s” and “His Majesty’s”, that would not effect textual amendments on the face of the Family Procedure Rules 2010.

4) As noted at paragraph 7.12 of the Explanatory Memorandum to this instrument, the Family Procedure Rule Committee considered it appropriate to make express, textual amendments to the Family Procedure Rules 2010, for ease of understanding by the court user. There are three reasons for this.

5) First, the power to make Family Procedure Rules must be exercised with a view to securing that the Rules are “simple and simply expressed” (section 75(5)(b) Courts Act 2003). Express, textual amendments to reflect the accession of King Charles III were considered clearer and preferable to reliance on court users understanding the effect of section 10 of the Interpretation Act 1978.

6) Second, the Family Procedure Rules undergo regular amendment which is likely to result in the insertion of new or replacement references to the King’s Bench Division and Her Majesty’s Court Service, and it was felt preferable to have consistent text for such references throughout if possible.

7) Finally, the Family Procedure Rules 2010 are supported by a series of Practice Directions, which are made by the Lord Chief Justice (or his nominee) and approved by the Lord Chancellor. Such directions are read together with the Rules, but are themselves not subordinate legislation so as to be caught by section 10 of the Interpretation Act 1978, so express textual amendments to the Practice Directions were considered necessary. The Family Procedure Rule Committee considered it appropriate to take the same approach

to amending the Family Procedure Rules as was taken to amending Practice Directions, so that the body of Rules and Practice Directions would be textually consistent when read together.

**Ministry of Justice**

**13 February 2023**

# Appendix 4: Memorandum from the Home Office

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**S.I. 2023/63**

## ***Control of Explosives Precursors and Poisons Regulations 2023***

1) The Committee has asked the Home Office for a memorandum on the following point(s):

(1) Explain why neither the instrument nor the EN provides details to identify “the electronic reporting service or the telephone reporting service” required by regulation 6(3) to be used to satisfy the reporting requirement.

(2) In relation to regulation 8, explain—

(a) why no CAS RN is provided for Aluminium sulfide, Calcium sulfide, Magnesium sulfide, Sulfur or Sodium sulfide;

(b) why the CAS RN for Zinc phosphide (1314–84–7) is provided alongside a compound named “Zinc and calcium phosphide” in paragraph (3)(g) (cf. the reference to “Zinc phosphide (CAS RN 1314–84–7)” revoked by paragraph (5)(a)).

### **(1) Regulation 6: details of the electronic and telephone reporting services**

2) The electronic reporting service referred to in regulation 6(3) is, at the present time, the “Report Suspicious chemical activity” portal (“the portal”) that can be accessed through the Government’s [www.gov.uk](http://www.gov.uk) website.

3) During the drafting of this instrument consideration was given to including a reference to the portal in regulation 6. However, it was concluded that, given the nature of the portal, it would not be possible to describe it in the instrument with sufficient precision to provide certainty as to the service to which the regulation was referring.

4) Furthermore, it was recognised that there may be future changes to the [www.gov.uk](http://www.gov.uk) website and to the portal. If regulation 6(3) had included some form of description of, or reference to, the portal, further legislation would be required to amend such references and to describe the new electronic reporting service.

5) An equivalent consideration was also identified in relation to the telephone reporting service that is referred to by regulation 6(3). At present, the telephone reporting service can be contacted by dialling 0800 789321.

6) Consideration was given to specifying this telephone number in the instrument. However, anticipating that there may be a need to change the number of the reporting service in the future, a decision was made not to specify it.

7) As stated at paragraph 11 of the Explanatory Memorandum, the Home Office will publish detailed guidance on the requirements imposed by this instrument; including

on the requirement to report suspicious transactions, thefts, or significant losses. That guidance will set out how to access the electronic reporting service, as well as the relevant number to call in order to use the telephone reporting service.

8) Given the intention to publish this guidance, and the explanation in the Explanatory Memorandum that such guidance will be published, the view was reached that it was not necessary to also include details of the electronic reporting service and the telephone reporting service in the Explanatory Note.

9) In addition, the Home Office is conscious that, if it is necessary to make a change to the details of either reporting service, it is in a position to update the guidance to provide details as to how to access either service. However, the Home Office is not in a position to make any changes to the Explanatory Note. This could lead to the Explanatory Note providing incorrect details.

## **(2) Regulation 8: amendments to Schedule 1A to the 1972 Act**

10) The Home Office is grateful to the Committee for its scrutiny of regulation 8. Following your questions, we have reviewed the regulation and identified the following errors:

(a) Regulation 8 does not amend Schedule 1A to insert the Chemical Abstracts Service Registry Numbers (“CAS RNs”) for the following substances into the relevant tables: Aluminium sulfide, Calcium sulfide, Magnesium sulfide, Sodium sulfide, Calcium phosphide, Dinitrophenol, Sulfur and Sodium hypochlorite solutions.

CAS RNs should have been included for these substances.

(b) Regulation 8(3)(g) amends the table found in Part 2 of Schedule 1A to insert an entry for “Zinc and calcium phosphide”. This should instead be two entries for Zinc phosphide and Calcium phosphide respectively.

11) The Home Office apologises for these errors and will correct them at the first available opportunity.

**Home Office**

**14 February 2023**

# Appendix 5: Memorandum from the Department for Work and Pensions

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## S.I. 2023/116 and 117

### *Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023*

### *Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023*

- 1) This is a voluntary memorandum for the Committee from the Department for Work and Pensions about errors in S.I. 2023/116 and the correction of those errors in S.I. 2023/117.
- 2) With great regret, the Department informs the Committee that three major errors have been made in S.I. 2023/116:
  - the second preamble says “the general level of earnings has increased by X%”, but X% should be 5.8%;
  - article 3 says “the percentage by which ... has increased during the review period is X%”, but X% should be 5.8%; and
  - article 4 says “the levy ceiling ... is £X”, but £X should be £1,246,964,705.
- 3) These errors also appear in paragraph 4 of the Explanatory Note. Article 1(5) is missing “and” after “Wales” and line 2 of the preamble contains superscript.
- 4) The Department is investigating exactly how the errors arose. At the outset we acknowledge that what happened is unacceptable. The explanation that follows is to assist the Committee with our understanding of how these errors arose. We know that a version of the Order without these errors was sent originally by the drafter to the Departmental parliamentary team for making and laying. Very minor formatting issues were raised with that draft during the template validation process, which is a fairly common occurrence. When these issues were flagged with the drafter, the drafter was unable to reopen in the S.I. template the file that had been returned for formatting. The drafter therefore opened a version of the Order on a new computer file sharing system the Department has recently adopted. That software keeps a ‘live’ version of each document that should incorporate all the most recent changes to it. Being an earlier version of the Order, it omitted the numerical information listed at paragraph 2 above. The drafter therefore inserted that information and corrected the very minor formatting issues before sending a link to that version to the Departmental parliamentary team for making and laying. When the link was opened, for whatever reason not all the corrections had ‘synced’ through, which unfortunately was not spotted by the drafter. We acknowledge that the drafter should have made further checks. The defective Order was signed by the Minister on Monday 30th January 2023 with those errors and sent to the S.I. Registrar for laying. The S.I. Registrar helpfully spotted the errors and informed the Department, for which the Department is very grateful.

5) The Department considered that the best way to correct the errors would be to make a new Order as soon as possible. The new Order is S.I. 2023/117 and was made on Monday 6th February 2023. This revokes the defective S.I. 2023/116 before it comes into force. The new Order then makes the provisions that the defective Order should have made. It is available free of charge to anyone who purchased the defective Order.

6) Both the new and defective Orders were laid before Parliament on Monday 6th February 2023. This ensured that the defective Order was before Parliament and available to the public only when the new Order was too. There was a full week between the defective Order being made and being laid before Parliament. Normally, there would be a shorter period between making and laying. The Department is fully aware of the Committee's reports for inappropriate delay between making and laying. In the circumstances, the Department considered a longer gap between making and laying was preferable, for reasons of legal certainty and to avoid confusion that the defective Order could create, to having the defective and essentially meaningless Order in the public domain for any period of time before the laying of the new correct Order.

7) The Department apologises unreservedly for the errors in S.I. 2023/116 and for the delays we judged had to be incurred between making it and laying it. Clearly we do not want something like this to happen ever again. As a result of this, urgent work is being done to look at Departmental processes around version control, particularly to seek to ensure that errors between versions do not occur during the template validation process and sending the instrument to the parliamentary team for making and laying. But as examples of the seriousness with which this error has been taken, the following steps are underway already in DWP's advisory legal teams:

(1) staff will be advised to stop using file sharing technology with statutory instruments and continue using 'traditional' file attachments with defined naming protocols to differentiate laying drafts from previous drafts;

(2) clearance by a senior civil servant will be introduced at the stage that laying drafts are sent for making and laying;

(3) we will accelerate roll-out of the new online Lawmaker drafting utility, which we understand will significantly reduce formatting issues and version conflicts;

(4) we are refreshing our training both to restate best practice and to set out our new processes.

8) We stand ready to assist further the Committee.

**Department for Work and Pensions**

**6 February 2023**

# Formal minutes

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**Wednesday 1 March 2023**

## *Virtual meeting*

### **Members present**

Jessica Morden, in the Chair

Lord Chartres

Baroness D’Souza

Peter Grant

Paul Holmes

Gareth Johnson

Lord Leong

Damian Moore

Lord Sahota

Lord Smith of Hindhead

Maggie Throup

Liz Twist

### **Report consideration**

Draft Report (Twenty-Eighth 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 4.5 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 5.

*Resolved*, That the Report be the Twenty-Eighth 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 March at 3.40 p.m.