



House of Lords
House of Commons

Joint Committee on Statutory
Instruments

Thirty-Fourth Report of Session 2022–23

Drawing special attention to:

Local Government Pension Scheme (Amendment) Regulations 2023 (S.I. 2023/279)

Gas Safety (Management) (Amendment) Regulations 2023 (S.I. 2023/284)

National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301)

Employment Rights (Increase of Limits) Order 2023 (S.I. 2023/318)

*Ordered by the House of Lords
to be printed 26 April 2023*

*Ordered by the House of Commons
to be printed 26 April 2023*

**HL 186
HC 4-xxxiv**

Published on 28 April 2023
by authority of the House of Lords
and the House of Commons

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), Michael O'Leary (Committee Operations Manager), Christine Salmon Percival (Lords Clerk), Jonathan Whiffing (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 26 April 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. 2023/279: Reported for requiring elucidation

Local Government Pension Scheme (Amendment) Regulations 2023

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

1.2 These Regulations, which are subject to the negative resolution procedure, change the date on which pensions are revalued under the Local Government Pension Scheme from 1 to 6 April, so that revaluation adjustments are made in line with the tax year; the scheme year remains 1 April to 31 March.

1.3 It appeared to the Committee that regulations 4, 6 and 7(2) and (3), which amend provisions that govern survivor benefits in S.I. 2013/2356 (‘the Scheme Regulations’), create or exacerbate an anomaly. If a member (M) dies between 1 and 5 April 2023 and leaves a partner or children entitled to a survivor member’s pension, that pension is deemed, under provisions inserted by the above regulations, to include the revaluation adjustment that would have been due on 6 April 2023. If M dies on 31 March 2023, those deeming provisions do not apply. And because the Scheme Regulations provide for the survivor member’s pension account to be opened the day after M dies—which in this case would be on the first day of the next scheme year—the next revaluation adjustment is not applied until 6 April 2024; no adjustment is made or deemed to be made on 6 April 2023. Moreover, survivor members appear to derive different benefits from that adjustment depending on M’s pension status before they die. The Committee asked the Department for Levelling Up, Housing and Communities to explain whether this reflects the policy intent.

1.4 In a memorandum printed at Appendix 1, the Department asserts that it does. It acknowledges that there is an issue in relation to a death on 31 March and a later revaluation, which predates the amendments made by these Regulations. The Department undertakes to consider the issue and to consult if any legislative change is deemed to be necessary.

1.5 The Department does not, however, explain the discrepancy that these Regulations appear to create between different classes of survivor member. Under the original provisions, the surviving partners and children of pension scheme members were all treated the same way: the balance in their account at the end of the scheme year in which that account was opened was adjusted, with immediate effect, on 1 April of the following year. That is no longer the case: although the adjustment is now done on 6 April for all survivor members, for some it takes effect by reference to the scheme year in which their account was opened; for others, it takes effect by reference to the scheme year in which M acquired their membership status. Where M dies on 31 March, these are separate scheme

years. The result is that if M was an active member, a deferred member or a deferred pensioner member who dies on 31 March 2023, the adjustment has effect from 1 April 2024; if M was a pensioner member who dies the same day, it has effect from 1 April 2023. There is no clear reason for this discrepancy. **The Committee accordingly reports regulations 4, 6 and 7(2) and (3) for requiring elucidation, partly provided by the Department’s memorandum.**

2 S.I. 2023/284: Reported for defective drafting

Gas Safety (Management) (Amendment) Regulations 2023

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

2.2 These Regulations, which are subject to the negative resolution procedure, amend the Gas Safety (Management) Regulations 1996 (S.I. 1996/551) to make several key changes to the management and safety of the gas network. Regulation 7 removes the existing duty on British Gas to run the telephone service for reporting gas leaks and places that duty collectively on one or more “emergency reporting service providers” responsible for one or more gas networks. The reporting service must be contactable by one telephone number, and where different providers are responsible for different gas networks, they must all be contactable on that number.

2.3 If a continuing gas leak is discovered in any premises, the 1996 Regulations require the owner, occupier or other responsible person immediately to notify British Gas. That duty is amended by regulation 7(6) so that the responsible person must notify “the emergency reporting service provider for the network from which the premises are supplied with gas” (emphasis added). The Committee asked the Department for Work and Pensions to explain how the responsible person will be able to satisfy that obligation and what the consequences are for non-compliance.

2.4 In a memorandum printed at Appendix 2, the Health and Safety Executive (replying for the Department) explains that there is currently only one provider responsible for all gas networks; the obligation is therefore satisfied by calling the gas emergency telephone service. But HSE acknowledge that new providers could be approved, and the duty imposed by regulation 7(6) requires the responsible person to notify the specific provider for the network that supplies their premises—not the gas emergency telephone service generally or any provider with a duty of cooperation. The memorandum confirms that failure to do so is a criminal offence, but it remains unclear how the responsible person will know which provider to notify, or whether they have successfully done so, where different providers responsible for different networks are all reached on the same number. It is unsatisfactory for legislation not to be clear as to how to avoid committing an offence, particularly where there appears to be no defence of ‘reasonable excuse’. **The Committee accordingly reports regulation 7(6) for defective drafting.**

3 S.I. 2023/301: Reported for requiring elucidation

National Health Service Pension Schemes (Amendment) Regulations 2023

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

3.2 These Regulations, which are subject to the negative resolution procedure, amend the Regulations that govern the 2015 NHS Pension Scheme (S.I. 2015/94). The amendments made by Part 3 allow people working in primary care networks to access the scheme. Regulation 19 adds new defined terms to achieve that end, including “primary care network”, which means “a network of primary medical services contractors [...]”. The Committee noticed that, unlike similar terms used in the 2015 Scheme (including medical contractor and dental contractor), “primary medical services contractor” is not defined. The Committee asked the Department of Health and Social Care to explain the term’s intended legal meaning for the purposes of the new definition. In a memorandum printed at Appendix 3, the Department explains that the term is generally understood—including in the contract specification to which the definition in these Regulations cross-refers—by reference to the Primary Medical Services (Directed Enhanced Services) Directions 2023. It is defined there as referring to a GMS or PMS contractor or a person with whom NHS England makes contractual arrangements for the provision of primary medical services under section 83(2) of the National Health Service Act 2006. **The Committee accordingly reports regulation 19(2)(a) for requiring elucidation, provided by the Department’s memorandum.**

3.3 The Department also clarifies, in response to another question from the Committee, why it considers that temporary modifications to regulations 38(4)(b) and 39(4)(b) of the 2015 Regulations are unnecessary.

4 S.I. 2023/318: Reported for failure to comply with proper legislative practice

Employment Rights (Increase of Limits) Order 2023

4.1 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.

4.2 This Order increases the upper limits that apply to some awards payable under employment legislation. These limits must be increased or decreased to match any annual rise or fall in the retail price index, which usually means that such orders are needed every year.

4.3 The Explanatory Memorandum laid alongside this Order stated that it was not subject to parliamentary procedure. That Explanatory Memorandum was withdrawn the same day and replaced with a version stating that the Order was subject to the negative resolution procedure. Given that the enabling Act requires such orders to “be laid before Parliament after being made” and makes no reference to them being “subject to annulment in pursuance of a resolution of either House of Parliament” (the standard wording for a negative resolution instrument), the Committee asked the Department for Business and Trade to explain the substitution in the replacement Explanatory Memorandum.

4.4 In a memorandum printed at Appendix 4, the Department acknowledges that the Order is not subject to parliamentary procedure. It has since laid a corrected Explanatory Memorandum. The Department also notes that internal processes relating to the “registration of legislative outcomes” system added to the confusion: the Order was “recorded on the system as a negative SI so that it could be triaged [...] as part of the normal processes”. It is not clear to the Committee whether this was done by error or intent. But it is plainly undesirable for machinery of government processes to result in departments sending misleading information to Parliament, which is entitled to expect that any material laid before it has been properly checked. **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 26 April 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	Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023
Draft	Flags (Northern Ireland) (Amendment) Regulations 2023
Draft	Houses in Multiple Occupation (Asylum-Seeker Accommodation) (England) Regulations 2023
Draft	Public Service Vehicles (Accessible Information) Regulations 2023
Draft	Insider Dealing (Securities and Regulated Markets) Order 2023
Draft	Police, Crime, Sentencing and Courts Act 2022 (Extraction of information from electronic devices) (Amendment of Schedule 3) Regulations 2023

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/315	Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023
S.I. 2023/405	Care and Support (Charging and Assessment of Resources) (Amendment) (No. 2) Regulations 2023
S.I. 2023/414	Data Protection Act 2018 (Transitional Provision) Regulations 2023
S.I. 2023/416	Supported Accommodation (England) Regulations 2023

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2023/385	Finance Act 2009 (VAT-related Payments) (Interest) (Appointed Day) Order 2023

Appendix 1: Memorandum from the Department for Levelling Up, Housing and Communities

S.I. 2023/279

Local Government Pension Scheme (Amendment) Regulations 2023

1) The Committee has asked the Department for Levelling Up, Housing and Communities for a memorandum on the following point(s):

Explain whether the amendments made in relation to survivor benefits by regulations 4(1)(a) and (b) and (2)(a) and (b), 6(1)(a) and (b) and (2)(a) to (e), and 7(2)(a) and (b) and (3)(a) to (e) reflect the policy intent where a member dies on 31 March, i.e.—

For regulations 4 and 6: if a member dies on 31 March 2023 and the survivor member's pension account is opened on 1 April 2023 (the appropriate administering authority "shall open a survivor member's pension account [...] from the day following the member's death") the balance in the survivor member's pension account on 31 March 2024 ("the balance [...] at the end of the Scheme year in which the survivor member's account was opened") is adjusted on 6 April 2024 ("the revaluation date in the following Scheme year") and the adjustment takes effect from 1 April 2024 ("the start of the Scheme year following the Scheme year in which the survivor member's account was opened"); but no adjustment is made or deemed to be included on 6 April 2023;

For regulation 7: if a member (who ceases to be an active member, becomes a pensioner member and dies in the same scheme year) dies on 31 March 2023 and the survivor member's pension account is opened on 1 April 2023 (the appropriate administering authority "shall open a survivor member's pension account [...] from the day following the member's death") the balance in the survivor member's pension account on 31 March 2024 ("the balance [...] at the end of the Scheme year in which the survivor member's account was opened") is adjusted on 6 April 2024 ("the revaluation date in the following Scheme year") and the adjustment takes effect from 1 April 2023 ("the start of the Scheme year following the Scheme year in which the member became a pensioner member"); but no adjustment is made or deemed to be included on 6 April 2023.

2) The Regulations which are the subject of this memorandum amend provisions in the Local Government Pension Scheme Regulations 2013 (S.I. 2013/2356) (the 2013 Regulations) and implement a specific policy intention which is to amend the date on which benefits under the Local Government Pension Scheme (LGPS) are revalued from

the 1st April each year (the first day of the Scheme year) to 6th April to align with the tax year. The intention was also to ensure that this particular amendment did not result in detriment to persons entitled under the LGPS.

3) We are content that the Regulations as drafted meet this policy intent.

4) The Committee asks if the Regulations reflect the policy intent in relation to the situation in which a member dies on 31st March. The Department is aware that there is an existing issue in the 2013 Regulations in relation to a death on the 31st March and a later revaluation (whether that is on the 1st or the 6th April) and this may require future legislative changes.

5) However, further work is required to consider this and to determine the best course of action. In accordance with section 21 of the Public Service Pensions Act 2013 (c. 25) under which the 2013 Regulations and the Regulations which are the subject of this memorandum are made, the Secretary of State, as the responsible authority in relation to local government workers in England and Wales, is under a duty before making LGPS regulations to consult ‘such persons (or representatives of such persons) as appear to the authority likely to be affected by them’. Therefore, before any future legislative changes are made, including any to address the issue highlighted by the Committee, the Department will need to conduct that consultation.

6) We thank the Committee for highlighting this issue. The Department will consider this issue and, if a legislative amendment is deemed to be necessary, will consult on any legislative change.

Department for Levelling Up, Housing and Communities

4 April 2023

Appendix 2: Memorandum from the Department for Work and Pensions

S.I. 2023/284

Gas Safety (Management) (Amendment) Regulations 2023

1) The Committee has asked the Health and Safety Executive for a memorandum on the following point(s):

Explain how the responsible person will be able to satisfy their obligation, under regulation 7(8) of the Gas Safety (Management) Regulations 1996 as amended by regulation 7(6), to give notice to the emergency reporting service provider for the network from which the premises are supplied with gas, and what the consequences are for non-compliance with that obligation.

2) A responsible person currently satisfies their obligation under regulation 7(8) of the Gas Safety (Management) Regulations 1996 (“GSMR 1996”) by using a continuously staffed telephone service. The telephone service is provided by the current duty-holder (who acts instead of British Gas plc) in accordance with regulation 7(1) of GSMR 1996 to enable any person in Great Britain at any time to report a gas escape from any network or a fitting supplied with gas from the any network in Great Britain. The reporting service must be contactable using a single telephone number. The service is currently known as the gas emergency telephone service and is contactable on 0800 111 999 by any person in Great Britain). No separate means of notification is required to be provided for the purposes of regulation 7(8) of GSMR 1996.

3) It is currently and will remain, in accordance with section 33(1)(c) of the Health and Safety at Work etc. Act 1974, an offence for the current duty-holder (or in future any emergency reporting service provider) to fail to provide the telephone service described above or for a responsible person to fail to report a relevant gas escape or continued smell of gas in accordance with regulation 7(8) of GSMR 1996, as amended.

4) Regulation 10A of GSMR 1996 (inserted by the Gas Safety (Management) (Amendment) Regulations 2023) provides for the current duty-holder to continue as the sole emergency reporting service provider (using the same single telephone number) for all networks on and after 6 April 2023.

5) The current duty-holder may, in future, choose to provide additional continuously staffed means to enable responsible persons, and others, to report gas emergencies to it (regulation 7(1)(b) of GSMR 1996). Any such means could also be used by a responsible person to satisfy their obligation under regulation 7(8) of GSMR 1996.

6) The current duty-holder may step down from the role of emergency reporting service provider for any or all of the networks in Great Britain as provided for in regulation 3(3B) of GSMR 1996 in the future. This will, however, involve a notice period of up to two years.

7) Any new provider, or providers, would be required to provide a continuously staffed telephone service for to which any person in Great Britain can report a gas emergency and it must be contactable by the use of a single number.

8) The Health and Safety Executive does not currently expect the existing single telephone number to be changed. But were any emergency reporting service provider or providers to want to do so, their approved safety case(s) would need to include adequate arrangements for ensuring that the new contact number (and any additional contact mechanisms) were communicated to those who may need to access the service.

Health and Safety Executive

4 April 2023

Appendix 3: Memorandum from the Department of Health and Social Care

S.I. 2023/301

National Health Service Pension Schemes (Amendment) Regulations 2023

1) The Committee has asked the Department of Health and Social Care for a memorandum on the following points:

(1) In relation to regulation 19(2), explain the intended legal meaning of “primary medical services contractor” for the purposes of the new definition of “primary care network” and how effect is given to that intention in the amended Regulations.

(2) Explain whether it reflects the policy intent that, notwithstanding the modifications made by regulations 26(a) and (b) and 27(a) and (b), regulations 38(4)(b) and 39(4)(b) of the National Health Service Pension Scheme Regulations 2015 (S.I. 2015/94) will refer only to “M’s most recent certified or final pensionable earnings referred to in paragraph (2)” and not to pensionable earnings referred to in new paragraph (2A).

2) **In respect of point (1)**, the definition of “primary care network” cross-refers to a network of “primary medical services contractors” which has been approved by the National Health Service Commissioning Board. This is therefore a reference to approval in accordance with the ‘Network Contract Directed Enhanced Service Contract Specification’ (the Contract Specification) document, mentioned at footnote (b) to regulation 19 of the instrument and the reference to a “primary medical services contractor” is accordingly a reference to that term within the meaning of that document. The Department considers that a definition is unnecessary. The term is generally understood and by reference to the Primary Medical Services (Directed Enhanced Services) Directions 2023¹ which define it as (a) a GMS contract, (b) a PMS agreement, or (c) contractual arrangements for the provision of primary medical services under section 83(2) of the National Health Service Act 2006 (primary medical services).

3) **In respect of point (2)**, the Department considers it unnecessary to temporarily modify regulations 38(4)(b) and 39(4)(b) of the National Health Service Pension Scheme Regulations 2015 (the 2015 Regulations) to include reference to temporary new paragraph (2A) for the following reasons.

4) As explained in paragraphs 7.20 to 7.23 of the Explanatory Memorandum to the instrument, paragraph (2) of regulations 38 and 39 has been temporarily modified, including insertion of new temporary paragraph (2A), by regulations 26 and 27 of the instrument for scheme year 2022/23 to take account of the mid-year change to member contribution rates during that year.

5) The temporary modifications have the effect that regulations 38(4) and 39(4) of the 2015 Regulations apply where a practitioner has not provided, to the host Board, a record

1 <https://www.gov.uk/government/publications/primary-medical-services-directed-enhanced-services-directions>

of certified pensionable earnings in accordance with Part 1 of Schedule 12 for scheme year 2022/23 or was not required to do so and the host Board does not have a figure that represents the practitioner's pensionable earnings for scheme year 2022/23 (whether or not by virtue of temporarily modified paragraph (2) or temporary new paragraph (2A)).

6) Paragraph (4) of regulations 38 and 39 is expected to apply to a very limited number of practitioners (if any) for scheme year 2022/23. Where paragraph (4) applies, the host Board must choose the most appropriate basis for determining pensionable earnings in the circumstances from the options in paragraph (4)(a) to (c). Regulation 38(4)(b) provides for an amount of the practitioner earnings that corresponds to the practitioner's "most recent certified or final pensionable earnings referred to in paragraph (2)".

7) For the host Board to use paragraph (4)(b) as the basis for calculating the amount of pensionable earnings for scheme year 2022/23, they must necessarily consider the most recent certified or final pensionable earnings for a scheme year which precedes scheme year 2022/23.

8) Insofar as regulations 38(2)(a) and (b) and 39(2)(a) and (b) specify the requirements for certified (in accordance with Part 1 of Schedule 12) or final pensionable earnings, the Department considers that the existing cross-reference to paragraph (2) in paragraph (4)(b) of regulations 38 and 39 correctly directs the host Board to these requirements for the purposes of determining pensionable earnings for scheme year 2022/23. Further temporary modification to add a reference to paragraph (2A) is considered unnecessary as paragraph (2A)(a) and (b) mirrors paragraph (2)(a) and (b) (save for references to each relevant period of scheme year 2022/23).

Department of Health and Social Care

4 April 2023

Appendix 4: Memorandum from the Department for Business and Trade

S.I. 2023/318

Employment Rights (Increase of Limits) Order 2023

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

Having regard to section 34(5) of the Employment Relations Act 1999, which provides that an order made under that section shall be laid before Parliament after being made, explain why paragraph 5.1 of the (re-laid and published) Explanatory Memorandum to this instrument states that it is subject to the negative resolution procedure.

2) The Department for Business and Trade is satisfied that the SI has been made properly. However, the department acknowledges that the published EM needs to be corrected and it will be withdrawn and re-laid today. The conclusion is the same as no ECHR statement is needed just because there is no required procedure rather than a negative procedure.

3) The Limits Order is not subject to Parliamentary procedure after being laid, however it may still be scrutinised by the JCSI. For context, the relevant legislation is the Employment Relations Act 1999, Section 34, 6:

An order under this section—

- (a) shall be made by statutory instrument,
- (b) may include transitional provision, and
- (c) shall be laid before Parliament after being made.

4) Part of the confusion over the status of this SI is due to internal processes around registering on the registration of legislative outcomes (ROLO) system. Although this SI is a statutory change to certain Employment Tribunal remedies it was recorded on the system as a negative SI so that it could be triaged by PBL as part of the normal processes.

Department for Business and Trade

4 April 2023

Formal minutes

Wednesday 26 April 2023

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Baroness D’Souza

Peter Grant

Paul Holmes

Lord Sahota

Baroness Sater

Lord Smith of Hindhead

Maggie Throup

Report consideration

Draft Report (Thirty-Fourth 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 4.4 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 4.

Resolved, That the Report be the Thirty-Fourth 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 3 May at 3.40 p.m.