



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Thirty-Fourth Report of Session 2019–21

Drawing special attention to:

*Health Protection (Coronavirus, Testing Requirements and Standards)
(England) Regulations 2020 (Draft S.I.)*

*Heat Network (Metering and Billing) (Amendment) Regulations 2020
(S.I. 2020/1221)*

*Health Protection (Coronavirus, Travel from Denmark) (England) Regulations
2020 (S.I. 2020/1239)*

*Antarctic Act 1994 (Convention for the Conservation of Antarctic Marine
Living Resources) Regulations 2020 (S.I. 2020/1251)*

*Ordered by the House of Lords
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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), Apostolos Kostoulas (Committee Operations Officer), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

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Contents

Instruments reported	3
1 Draft S.I.: Reported for requiring elucidation	3
Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020	3
2 S.I. 2020/1221: Reported for requiring elucidation	3
Heat Network (Metering and Billing) (Amendment) Regulations 2020	3
3 S.I. 2020/1239: Reported for defective drafting	4
Health Protection (Coronavirus, Travel from Denmark) (England) Regulations 2020	4
4 S.I. 2020/1251: Reported for requiring elucidation	4
Antarctic Act 1994 (Convention for the Conservation of Antarctic Marine Living Resources) Regulations 2020	4
Instruments not reported	5
Annex	5
Appendix 1	7
Draft S.I.	7
Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020	7
Appendix 2	9
S.I. 2020/1221	9
Heat Network (Metering and Billing) (Amendment) Regulations 2020	9
Appendix 3	11
S.I. 2020/1239	11
Health Protection (Coronavirus, Travel from Denmark) (England) Regulations 2020	11
Appendix 4	12
S.I. 2020/1251	12
Antarctic Act 1994 (Convention for the Conservation of Antarctic Marine Living Resources) Regulations 2020	12

Instruments reported

At its meeting on 9 December 2020 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 them are given below. The relevant departmental memoranda are published as appendices to this report.

1 Draft S.I.: Reported for requiring elucidation

Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020

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 draft affirmative procedure, will require providers of tests for the detection of coronavirus to be accredited by the United Kingdom Accreditation Service, rather than having to register with and be regulated by the Care Quality Commission (“CQC”). CQC regulatory requirements relating to both tests for the detection of coronavirus and tests for the presence of coronavirus antibodies are set to be removed by the Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020 (“the Regulated Activities Regulations”). The Committee asked the Department for Health and Social Care to explain why the definition of an “applicable test” in regulation 3 of this instrument does not cover antibody tests, in contrast to the Regulated Activities Regulations. In a helpful memorandum printed at Appendix 1, the Department explains the intention behind the different approach in the two sets of regulations. **The Committee accordingly reports regulation 3 for requiring elucidation, provided in the Department’s memorandum.**

2 S.I. 2020/1221: Reported for requiring elucidation

Heat Network (Metering and Billing) (Amendment) Regulations 2020

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in two related respects.

2.2 These Regulations, among other things, provide for metering devices which measure consumption of heating, cooling or hot water by each final customer to be installed in buildings where the heat supplier determines that such installation is cost effective and technically feasible. Regulation 6(2) (inserted regulation 4(2B)) states that a heat supplier must install meters in certain buildings before 1 September 2022 where the determination is made before 1 September 2022 (inserted regulation 4(2C)(b)). The Committee asked the Department for Business, Energy and Industrial Strategy to confirm whether the combined effect of regulations 4(2B) and (2C)(b) means that if, for example, the heat supplier made the determination on 31 August 2022, that supplier would be required to install meters on that day. (Similarly, for heat cost allocators etc (regulation 8(2), inserted regulations 6(2A) and (2B)). In a helpful memorandum printed at Appendix 2, the Department confirms

the intention and explains how it is expected to work in practice. **The Committee accordingly reports regulations 6(2) and 8(2) for requiring elucidation, provided by the Department’s memorandum.**

3 S.I. 2020/1239: Reported for defective drafting

Health Protection (Coronavirus, Travel from Denmark) (England) Regulations 2020

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

3.2 These Regulations (which have now been revoked) prohibited aircraft and maritime vessels whose last departure point was Denmark from landing or mooring at a port in England. An “operator” of a conveyance committed an offence if the aircraft or vessel was allowed to land or moor in contravention of the Regulations. Regulation 1 defined “operator” in relation to a commercially operated conveyance as “the person who has management of the conveyance” and in relation to any other conveyance as “the individual in control of the conveyance”. The Committee asked the Department to clarify the difference between the two definitions. In a memorandum printed at Appendix 3, the Department explains the intention for liability in commercial cases to rest with the managing company and not the pilot. The Committee notes the intended policy, but is concerned that it is not provided for sufficiently clearly, as the phrase “person who has management of the conveyance” could reasonably be construed as including physical management as well as corporate governance. The definition should have referred, in some form or another, to management of the entity owning the conveyance, not management of the conveyance. **The Committee accordingly reports regulation 1 for defective drafting.**

4 S.I. 2020/1251: Reported for requiring elucidation

Antarctic Act 1994 (Convention for the Conservation of Antarctic Marine Living Resources) Regulations 2020

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

4.2 These Regulations implement key provisions of the Convention for the Conservation of Antarctic Marine Living Resources. Regulation 6(1)(c) allows the Secretary of State to publish guidance on “any other matters which the Secretary of State considers to be relevant”. The Committee asked the Foreign, Commonwealth and Development Office to explain the range of matters contemplated by regulation 6(1)(c) and, if any of those matters are legislative rather than administrative, identify the power for making that regulation. In a memorandum printed at Appendix 4, the Department sets out the matters which the guidance may cover; the Committee finds the list helpful and confirms that none of the entries in it appears to be legislative. **The Committee accordingly reports regulation 6(1) (c) for requiring elucidation, provided by the Department’s memorandum.**

Instruments not reported

At its meeting on 9 December 2020 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Draft Instruments requiring affirmative approval

Draft S.I.	Customs Safety and Security Procedures (EU Exit) Regulations 2020
Draft S.I.	Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020

Instruments subject to annulment

S.I. 2020/1313	Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
S.I. 2020/1314	Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2020
S.I. 2020/1317	Patents, Trade Marks and Designs (Address for Service) (Amendment) (EU Exit) Rules 2020
S.I. 2020/1323	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 25) Regulations 2020
S.I. 2020/1332	Occupational Pensions (Revaluation) Order 2020
S.I. 2020/1352	Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) (No. 2) Regulations 2020

Instruments not subject to parliamentary proceedings laid before Parliament

S.I. 2020/1281	Democratic Republic of the Congo (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1282	Lebanon (Sanctions) (Assassination of Rafiq Hariri and others) (Overseas Territories) Order 2020
S.I. 2020/1283	Cayman Islands Constitution (Amendment) Order 2020
S.I. 2020/1284	Afghanistan (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1285	Somalia (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1286	Central African Republic (Sanctions) (Overseas Territories) Order 2020

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2020/1124	Lebanon (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1260	Iraq (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1262	Venezuela (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1268	Bosnia and Herzegovina (Sanctions) (Overseas Territories) Order 202
S.I. 2020/1269	Nicaragua (Sanctions) (Overseas Territories) (No. 2) Order 2020
S.I. 2020/1270	Cyber (Sanctions) (Overseas Territories) (No. 2) Order 2020
S.I. 2020/1272	Zimbabwe (Sanctions) (Overseas Territories) Order 2020
S.I. 2020/1325	General Optical Council (Committee Constitution, Registration and Fitness to Practise) (Coronavirus) (Amendment) Rules Order of Council 2020
S.I. 2020/1333	Value Added Tax (Disclosure of Information Relating to VAT Registration) (Appointed Day) (EU Exit) Regulations 2020

Appendix 1

Draft S.I.

Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020

1. In its letter to the Department of Health and Social Care of 2 December 2020, the Committee requested a memorandum on the following point:

Explain why regulation 3 defines an “applicable test” as a test for the detection of coronavirus and, in contrast to the draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020, does not include a test for the presence of antibodies to coronavirus.

2. Current forms of tests for antibodies to SARS-CoV-2 are taken by blood samples by means of a pin prick. Existing CQC regulations exempt tests taken by blood samples by means of pin pricks from the registration requirement (see paragraph 7(3) and (4) of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014), meaning that current tests for antibodies are not covered by the CQC registration requirement. However, if future technologies for testing for antibodies developed away from blood pricks, some antibody tests might be covered by CQC regulations while others would not be.

3. The draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020 that we have laid in Parliament would exempt all COVID-19 testing (for the presence of SARS-CoV-2 or the presence of antibodies to SARS-CoV-2). This will mean that legislation is future proofed, to avoid a situation where there is uneven coverage of tests for the presence of antibodies to SARS-CoV-2 in the future.

4. Employers are beginning to use tests for the presence of SARS-CoV-2 in workplaces, to reduce the risk of infection passing between employees. In addition, tests for the presence of SARS-CoV-2 will be able to be used by international arrivals for test to release from 15th December 2020, as per The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020. However, tests for antibodies to SARS-CoV-2 cannot be used for test to release for international arrivals. Consumers are, therefore, more likely to be looking for end-to-end providers of tests for the presence of SARS-CoV-2. As such, we have judged it necessary to provide confidence and assurances of these providers. This is especially important as a result of The Health Protection (Notification) (Amendment) (Coronavirus) Regulations 2020, which means that results of these tests are fed into NHS Test and Trace data.

5. As a result of these developments, we have developed the three stage UKAS accreditation scheme for tests for the presence of SARS-CoV-2. This is the process that will be mandated for providers of tests for the presence of SARS-CoV-2 in these regulations. However, UKAS can accredit test providers of tests for both the presence of SARS-CoV-2 and the presence of antibodies to SARS-CoV-2 and has, already, accredited testing providers for both of these activities.

6. Based on the current scope of CQC regulations, there is no regulatory gap as a result of the difference the Committee identifies. Tests for the presence of antibodies to SARS-CoV-2 were not covered by existing CQC legislation and will not be covered by the draft Health Protection (Coronavirus, Testing Requirements and Standards) Regulations 2020. Test providers for the presence of antibodies to SARS-CoV-2 can choose to apply for accreditation and, if technologies develop and the market grows, we will consider whether there is a need to extend legislation further.

Department of Health and Social Care

4 December 2020

Appendix 2

S.I. 2020/1221

Heat Network (Metering and Billing) (Amendment) Regulations 2020

1. In its letter to the Department of 25 November 2020, the Joint Committee requested a memorandum on the following point:

Confirm whether the combined effect of regulations 4(2B) and (2C)(b) (inserted by regulation 6(2)) means that if, for example, the heat supplier made the determination for the purpose of paragraph (2B) on 31 August 2022, that supplier would be required to install meters on that day. (Similarly, for heat cost allocators etc (regulation 8, inserted regulations 6(2A) and (2B)).

2. The Department confirms that the combined effect of regulation 4(2B) and (2C)(b) is that if a heat supplier made a determination (that it is cost effective and technically feasible to install meters) for the purpose of regulation 4(2B) on 31 August 2022, the heat supplier would be required to install meters on the same day. The Department confirms that the position would be the same for heat cost allocators etc. under regulation 6(2A) and (2B).

3. The buildings which could first fall within the open class on 31 August 2022 are:

- a) building connected to communal heating on that date, where the building is newly constructed or was originally constructed for connection to communal heating (regulation 2A(2)(a));
- b) an existing building retrofitted with a heating system supplied by a heat network and connected to that heat network on that date (regulation 2A(2)(c)); and
- c) an existing building which ceases to fall within the exempt class on that date (regulation 2A(2)(c)).

4. For a building mentioned in regulation 2A(2)(a), the building will fall within the open class when it is connected to communal heating. The heat supplier will know before it is connected which class the building will fall within. Before the building is connected, the heat supplier will have access to the information required by Schedule 1. This will enable the heat supplier to make a determination for the purpose of regulation 4(2B) before the building falls within the open class.

5. For an existing building mentioned in regulation 2A(2)(c), the class of the building would be known well in advance of any deadline to make a determination for the purpose of regulation 4(2B) or to install meters in compliance with regulation 4(3) or (4). A change from the exempt class to the open class would require substantial changes to the heating system for the whole building (regulation 2A(3)(a) and (b)), modifications to existing leases (regulation 2A(3)(c)) or changes to specific uses of a building (regulation 2A(3)(d)). Retrofitting an existing building with a heating system would also require substantial changes. In all these cases, the heat supplier will have access to the information required by Schedule 1 to enable the heat supplier to make a determination for the purpose of regulation 4(2B) well before the building falls within the open class.

6. The amendments made by S.I. 2020/1221 allow a long transition period to enable heat suppliers to:

- a) determine metering requirements during the planning phases for a newly constructed building or an existing building undergoing changes; and
- b) ensure that metering devices (where required) can be installed during construction or alteration of the building.

7. For these reasons, the Department considers the onus is on the heat supplier to make a determination in a timely fashion to ensure that meters are installed before 1 September 2022 where cost effective and technically feasible to do so.

8. In summary, although a heat supplier could make a determination for the purpose of regulation 4(2B) on 31 August 2022 and be obliged to install metering devices on the same day, in light of the above we do not expect this scenario to arise in practice. In any event, the Department notes from a practical perspective that it is possible to both make a determination and install meters on the same day. It is also possible for a heat supplier to install meters without taking the step of determining whether or not it is cost effective to do so, while still complying with regulation 4(3) or (4).

9. The Department is satisfied that the provisions operate effectively.

Department for Business, Energy and Industrial Strategy

1 December 2020

Appendix 3

S.I. 2020/1239

Health Protection (Coronavirus, Travel from Denmark) (England) Regulations 2020

1. By letter dated 24th November 2020, the Joint Committee on Statutory Instruments requested a memorandum on the following issue:

“In relation to regulation 1(3)(a), please clarify who is intended to be included within “person who has management of the conveyance when it arrives in England” and how this definition differs from the definition in regulation 1(3)(b).”

2. The Health Protection (Coronavirus, Travel from Denmark) (England) Regulations 2020 (“the Regulations”) were made following reports of a widespread outbreak of coronavirus in mink farms in Denmark, with a subsequent spread of a mink-variant virus to the local community. Following advice from the Chief Medical Officer, the Government, as a precautionary measure, decided to prohibit aircraft and vessels whose last point of departure was Denmark from landing or mooring at a port in England.

3. The prohibition on landing or mooring was intended to reduce, insofar as possible, the number of people arriving in England from Denmark. Accordingly, except in very limited circumstances (referred to in regulations 2(3) and 3(3)), the prohibition applied to all aircraft and vessels, i.e. those operated for commercial purposes and those operated privately, for other purposes, such as leisure.

4. Allowing an aircraft to land, or a vessel to moor, in contravention of the Regulations was a criminal offence. The policy intention was that:

- a) for aircraft and vessels operated for commercial purposes, liability would fall on the company managing the service, rather than the pilot operating the aircraft or vessel. As the pilot would be acting under the direction of their employer, fault for causing or permitting the aircraft to land, or the vessel to moor, was considered to sit with their employer rather than with them as an individual. Regulation 1(3)(a) reflected this intention;
- b) for other aircraft and vessels, liability would fall on the individual operating the aircraft or vessel. As they would not be acting under the direction of their employer, fault for causing or permitting the aircraft to land, or the vessel to moor, was considered to sit with them as an individual. Regulation 1(3)(b) reflected this intention.

5. Please note that, following a review of the epidemiological situation in Denmark by the Deputy Chief Medical Officer, Joint Biosecurity Centre and Public Health England, the Regulations were revoked by S.I. 2020/1360 with effect from 4am on 28th November 2020.

Department for Transport

1 December 2020

Appendix 4

S.I. 2020/1251

Antarctic Act 1994 (Convention for the Conservation of Antarctic Marine Living Resources) Regulations 2020

1. The guidance referenced in regulation 6 will provide clarity on the process by which the Secretary of State will consider applications for vessels to fish in the CAMLR Convention Area, and the rules and standards to which vessels must demonstrate they will be able to adhere. In addition to the legally binding conservation measures, the additional matters referenced in sub-paragraph (c) will include relevant matters covered in CCAMLR resolutions, which are agreed recommendations, but where the CAMLR Commission did not reach consensus to make such measures mandatory. Current resolutions include recommendations on ice-strengthening for fishing vessels operating in high latitudes, and ensuring operators have provided appropriate survival training as well as suitable equipment and clothing to all those on board, which the Government considers to be key safety measures. The consideration of applications will also take into account any relevant previous history and compliance of vessels and the applicant's development of contingency plans to address vessel emergencies whilst in the region. The UK is also pressing the CAMLR Commission to manage fleet capacity, and consequently the UK may need in the future to determine limits on the number of vessels it will support to undertake fishing in the Convention Area. Should this be the case, the guidance would also set out how applications would be considered and ranked.

Foreign, Commonwealth and Development Office

30 November 2020