



House of Lords  
House of Commons  
Joint Committee on Statutory  
Instruments

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**Thirty-Eighth Report of  
Session 2022-23**

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**Drawing special attention to:**

*National Health Service (General Medical Services Contracts and  
Personal Medical Services Agreements) (Amendment) Regulations  
2023 (S.I. 2023/436)*

*National Health Service (General Medical Services Contracts and  
Personal Medical Services Agreements) (Amendment) (No. 2)  
Regulations 2023 (S.I. 2023/449)*

*Ordered by the House of Lords  
to be printed 24 May 2023*

*Ordered by the House of Commons  
to be printed 24 May 2023*

## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

Lord Beith (*Liberal Democrat*)

Lord Chartres (*Crossbench*)

Baroness D'Souza (*Crossbench*)

Lord Leong (*Labour*)

Lord Sahota (*Labour*)

Baroness Sater (*Conservative*)

Lord Smith of Hindhead (*Conservative*)

#### House of Commons

Jessica Morden MP (*Labour, Newport East*) (Chair)

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), Ines Nizigama (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).

### **Contacts**

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 4838; the Committee's email address is: [jcsi@parliament.uk](mailto:jcsi@parliament.uk).



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# Instruments reported

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At its meeting on 24 May 2023 the Committee scrutinised a number of instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to two of those considered. The instruments and the grounds for reporting are given below. The relevant departmental memoranda are published as appendices to this report.

## 1 S.I. 2023/436: Reported for failure to comply with proper legislative practice

### *National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2023*

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper legislative practice in one respect.

1.2 These Regulations, which are subject to the negative resolution procedure, make amendments to regulations which set out the framework for General Medical Services contracts and Personal Medical Services agreements. In the Explanatory Memorandum for S.I. 2023/449 (which revokes and remakes this instrument) the Department of Health and Social Care explains that this instrument is a draft on which final legal checks were not completed. The Committee asked the Department to explain whether it is reviewing the procedures which allowed an incomplete instrument to be made and laid before Parliament. In a memorandum printed at Appendix 1, the Department explains that a thorough review has been undertaken into the circumstances relating to the making of this instrument and that review has resulted in the introduction of a more rigorous procedure to ensure this error does not happen again. The Committee accepts this explanation but also expresses its concern that an instrument could have been submitted to, and then made by, a Minister and then laid before Parliament without the instrument being properly checked. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

## 2 S.I. 2023/449: Reported for defective drafting

### *National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) 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, include provisions requiring contractors to ensure that a patient who contacts them in person, by telephone or online, is provided with an appropriate response. Paragraph 10 of both Schedules (inserted paragraphs 4(2) and 5(2)) states that the appropriate response is that the contractor must: (a) invite the patient for an appointment; (b) provide appropriate advice or care to the patient by another method; (c) signpost the patient towards appropriate services; or (d) communicate with the patient to either request or give further information. A requirement not to jeopardise the patient's health is explicitly stated as a

consideration in sub-paragraph (a) but not in sub-paragraphs (b) to (d). The Committee asked the Department of Health and Social Care to explain (1) why that requirement does not apply to all of the sub-paragraphs and (2) whether the requirement is necessary given that the appropriate response must take into account the needs of the patient (as required by paragraph 10 of both Schedules, inserted paragraphs 4(4) and 5(4)).

2.3 In a memorandum printed at Appendix 2, the Department confirms that the requirement not to jeopardise the patient's health is a consideration to be taken into account in each of sub-paragraphs (a) to (d) and acknowledges that explicit wording to that effect is not strictly necessary in those sub-paragraphs given that the appropriate response must take into account the needs of the patient. However, the Department asserts that it is valuable to reference the consideration of not jeopardising the patient's health explicitly in the context of scheduling appointments. The Committee disagrees; an explicit reference to that requirement in sub-paragraph (a) and not in sub-paragraphs (b) to (d) is confusing, unnecessary and should be avoided. **The Committee accordingly reports paragraph 10 of both Schedules (inserted paragraphs 4(2) and 5(2)) for defective drafting, acknowledged in part by the Department.**



## Instruments not reported

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At its meeting on 24 May 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

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### Draft instruments requiring affirmative approval

S.I. Number	S.I. Title
Draft	Building Safety Act 2022 (Consequential Amendments etc.) Regulations 2023
Draft	Judicial Appointments (Amendment) Order 2023
Draft	Judicial Pensions (Remediable Service etc.) Regulations 2023

### Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/448	Education (Induction Arrangements for School Teachers) (England) (Amendment) Regulations 2023
S.I. 2023/467	Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023
S.I. 2023/509	Homelessness (Suitability of Accommodation) (England) (Amendment) Order 2023

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

S.I. Number	S.I. Title
S.I. 2023/469	Product Security and Telecommunications Infrastructure Act 2022 (Commencement No. 2) Regulations 2023

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

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**S.I. 2023/436**

## ***National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2023***

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

Explain whether the Department is reviewing the procedures which allowed a draft instrument to be made and laid before Parliament.

2. Further to its communication of 18 April, the Department again apologises for the unfortunate error that resulted in an incorrect version of the instrument being made and acknowledges the importance of the correct procedures being followed.

3. A thorough review has been undertaken into the circumstances relating to the making of the instrument, and this has resulted in the introduction of a more rigorous procedure, including checks, to ensure this does not happen again.

4. Arrangements are being put in place to ensure these changes are implemented across the Department.

5. We trust that this response satisfies the Committee and once again apologise for our error.

**Department of Health and Social Care**

**16 May 2023**

# Appendix 2: Memorandum from the Department of Health and Social Care

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**S.I. 2023/449**

## ***National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2023***

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

In paragraph 10 of both Schedules (inserted paragraphs 4(2) and 5(2)), explain (1) why the requirement not to jeopardise the patient's health is only a consideration to be taken into account in sub-paragraph (a) rather than in each of subparagraphs (a) to (d); and (2) whether that requirement is necessary given that an appropriate response must take into account the needs of the patient.

2. The Department confirms that the requirement not to jeopardise the patient's health is a consideration to be taken into account in sub-paragraphs (a) to (d).

3. The Department recognises that placing that requirement in sub-paragraph (a) was probably not strictly necessary. That is since an appropriate and reasonably timed appointment would reflect that consideration and given that an appropriate response must take into account the needs of the patient.

4. Similarly, that consideration would be reflected under sub-paragraphs (b) to (d) by virtue of the reference to appropriate advice or care, appropriate services and clinical or other needs of the patient.

5. However, the specific focus on health in sub-paragraph (a) was intended and in line with previous versions of the provisions, particularly given the sensitivity of the issue of scheduling appointments.

6. It was therefore thought valuable to reference this consideration explicitly in the context of scheduling appointments and therefore in this sub-paragraph.

7. However, we recognise an alternative drafting approach could have explicitly referenced a patient's health without singling out sub-paragraph (a) for this purpose.

**Department of Health and Social Care**

**16 May 2023**

# Formal Minutes

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**Wednesday 24 May 2023**

## *Virtual meeting*

### **Members present**

Baroness D'Souza, in the Chair

Lord Beith

Lord Chartres

Peter Grant

Paul Holmes

Lord Leong

Baroness Sater

Maggie Throup

### **Report consideration**

Draft Report (*Thirty-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 2.3 read and agreed to.

Annex agreed to.

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

*Resolved*, That the Report be the Thirty-Eighth Report of the Committee to both Houses.

*Ordered*, That Maggie Throup make the Report to the House of Commons

### **Adjournment**

Adjourned till Wednesday 7 June 2023 at 3.40 p.m.