



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

**Forty-First Report of
Session 2022–23**

Drawing special attention to:

*Road Vehicles (Authorisation of Special Types) (General) (Amendment)
Order 2023 (S.I. 2023/524)*

*Criminal Legal Aid (Remuneration) (Amendment) (No.3) Regulations 2023
(S.I. 2023/542)*

*Social Fund Maternity and Funeral Expenses (General) and Social Security
(Claims and Payments) (Amendment) Regulations 2023 (S.I. 2023/545)*

*Ordered by the House of Lords
to be printed 21 June 2023*

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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), 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).

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Instruments reported

At its meeting on 21 June 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 three 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. 2023/524: Reported for requiring elucidation

Road Vehicles (Authorisation of Special Types) (General) (Amendment) Order 2023

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.

1.2 This Order, which is subject to the negative resolution procedure, makes provision for the use of longer semi-trailers (generally a semi-trailer which exceeds 12 metres in length) on roads. Such vehicles may only be used on an established route which is a route specified on a route plan and for which a risk assessment has been completed. Article 4 (inserted article 61(8)(b)) provides an exemption – a longer semi-trailer may be used on a diversionary route (for which a risk assessment may not have been completed) where an operator reasonably considers that an accident or other obstruction on the established route is likely to make it subject to “unreasonable traffic delays”. The Committee asked the Department for Transport what it intends will constitute “unreasonable traffic delays”.

1.3 In a memorandum printed at Appendix 1, the Department stresses that a diversionary route should only be used in very limited circumstances and states factors to be considered in assessing whether a delay may be unreasonable, which include “the likely or expected duration of the delay, availability of alternative suitable routes and other matters.” The Committee considers that greater clarity is required on what may constitute an unreasonable traffic delay in this context, which is not provided by the Department’s memorandum, and **accordingly reports Article 4 (inserted article 61(8)(b)) for requiring elucidation.**

2 S.I. 2023/542: Reported for requiring elucidation

Criminal Legal Aid (Remuneration) (Amendment) (No.3) Regulations 2023

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

2.2 These Regulations, which are subject to the negative resolution procedure, replace the Criminal Legal Aid (Remuneration) (Amendment) (No.2) Regulations 2023 (S.I. 2023/366, the “original instrument”). The power to make the original instrument was conferred on the Lord Chancellor but that instrument was made by the Secretary of State. In its Thirty-Seventh Report of this Session, the Committee reported the original instrument

for doubt as to whether it was validly made.¹ These Regulations are now made by the Lord Chancellor and regulation 2 revokes the original instrument. On the basis that, if the original instrument is invalid, there is nothing to revoke, the Committee asked the Ministry of Justice to explain the need for the revocation provision and, if the revocation is for the avoidance of doubt, why an explanation to that effect has not been included in these Regulations (noting the example of footnote 14 in S.I. 2021/894).

2.3 In a memorandum printed at Appendix 2, the Department confirms that the revocation of the original instrument is to dispel any possible doubt concerning its validity and to address any mischief which may be caused resulting from the provisions made by the original instrument. The Committee accepts that a “for avoidance of doubt” revocation is a practical and transparent way to proceed; such a course of action has the advantage of tidying up the statute book rather than allowing an instrument of doubtful validity to remain there and the subsequent confusion that may cause. The Committee considers that the most transparent approach is to explain the circumstances of the revocation of the original instrument in these Regulations (preferably in a footnote). (The Committee also refers to its Forty-third Report of Session 2019–21 in relation to the draft Cat and Dog Fur (Control of Movement etc.) (EU Exit) Regulations 2021 which discusses transparency concerns relating to potentially invalid instruments).² **The Committee accordingly reports regulation 2 for requiring elucidation.**

3 S.I. 2023/545: Reported for requiring elucidation and for defective drafting

Social Fund Maternity and Funeral Expenses (General) and Social Security (Claims and Payments) (Amendment) Regulations 2023

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

3.2 These Regulations, which are subject to the negative resolution procedure, make changes to the Sure Start Maternity Grant for persons who left Afghanistan in connection with the fall of the Afghan Government and persons who left Ukraine following the Russian invasion.

3.3 Regulation 1(3) states that the Regulations extend to England and Wales and Scotland. Paragraph 4.1 of the Explanatory Memorandum states that the extent of the instrument is England and Wales as the Grant is devolved to Scotland. The Committee asked the Department for Work Pensions to explain the inconsistency. In a memorandum printed at Appendix 3, the Department explains that regulation 1(3) is correct and has already laid a corrected Explanatory Memorandum to reflect the wording of the regulation 1(3). The Committee notes that the instruments being amended by these Regulations extend to England and Wales and Scotland but, given that the Grant is devolved to Scotland, is

1 Joint Committee on Statutory Instruments, [Thirty-Seventh Report of Session 2022–23](#), HC 4-xxxvii / HL Paper 199, paras 2.1–2.4

2 Joint Committee on Statutory Instruments, [Forty-Third Report of Session 2019–21](#), HC 75-xliii / HL Paper 243, paras 1.1–1.8

unclear why the Department has not limited the extent of this instrument to England and Wales. **However, the Committee is content to report regulation 1(3) for requiring elucidation, acknowledged by the Department.**

3.4 Regulation 2 allows eligible claimants more time for claiming the Grant and regulation 3(3) enables such persons to claim the Grant where there is an existing member of the family who is under 16. Regulation 2 (inserted paragraph (7B)) and regulation 3(3) (inserted paragraph (9)) define the eligible Afghan claimants. In the definition in regulation 3(3) there is a requirement for the person to be “in Great Britain” whereas no such requirement exists in the definition in regulation 2. The Committee asked the Department to explain the inconsistency. In its memorandum, the Department explains that regulation 5(6) of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (S.I. 2005/3061) provides that it is a condition of entitlement to the Grant that a person lives in England and Wales and accepts that the words “in Great Britain” need not have appeared in regulation 3(3) and apologises for the inconsistency in drafting approach. **The Committee accordingly reports regulation 3(3) for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 21 June 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

Instruments requiring affirmative approval

S.I. Number	S.I. Title
S.I. 2023/602	Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023

Draft instruments requiring affirmative approval

S.I. Numbers	S.I. Title
Draft	Agriculture and Horticulture Development Board (Amendment) Order 2023
Draft	Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023
Draft	Immigration and Nationality (Fees) (Amendment) Order 2023
Draft	Industrial Training Levy (Engineering Construction Industry Training Board) Order 2023
Draft	Pensions Dashboards (Amendment) Regulations 2023
Draft	Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2023
Draft	Electricity Capacity (Amendment) Regulations 2023
Draft	Tobacco and Related Products (Amendment) (Northern Ireland) Regulations 2023

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/530	Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Regulations 2023
S.I. 2023/543	Social Security and Universal Credit (Miscellaneous Amendments) Regulations 2023
S.I. 2023/586	Competition Act 1998 (Motor Vehicle Agreements Block Exemption) (No. 2) Order 2023
S.I. 2023/593	Universal Credit (Childcare) (Amendment) Regulations 2023
S.I. 2023/599	Central Counterparties (Equivalence) (India) (Reserve Bank of India) Regulations 2023

Instruments subject to annulment (Northern Ireland)

S.I. Number	S.I. Title
S.R. 2023/79	Allocation of Housing and Homelessness (Eligibility) (Amendment) Regulations (Northern Ireland) 2023

Draft instruments subject to annulment

S.I. Number	S.I. Title
Draft	Harlow (Electoral Changes) Order 2023

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2023/535	European Union (Future Relationship) Act 2020 (Commencement No. 2) Regulations 2023

Appendix 1: Memorandum from the Department for Transport

S.I. 2023/524

Road Vehicles (Authorisation of Special Types) (General) (Amendment) Order 2023

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

In Article 4 (inserted article 61(8)(b)), explain what the Department intends will constitute “unreasonable traffic delays”.

2) The question relates to the Road Vehicles (Authorisation of Special Types) (General) (Amendment) Order 2023 (“the Order”). An assessment of what is an “unreasonable traffic delay” relates to the use of a diversionary route which is only to be used in the limited circumstances prescribed in the Order.

Background

3) By way of background, longer semi-trailers (“LSTs”) have been introduced into general use through the Order, following an 11-year trial.

4) The Department for Transport’s conclusion from the trial was that LSTs could be operated without a limit on numbers, but with some additional conditions, as set out in the Order. In particular, the trial concluded that for the safe operation of LSTs there should be proper planning and a risk assessment of the routes that are to be used by an LST. This is to ensure LSTs are only used on routes where their characteristics can be accommodated without increasing the risk of collisions or placing unreasonable demands on the driver. The requirement for route planning and risk assessments is set out under inserted article 61 of the Order.

5) The conditions in the Order relating to route planning and risk assessments are further expanded upon in the published “Guidance for Operators of LSTs” (available online at <https://www.gov.uk/government/publications/longer-semi-trailer-lst-implementation-guide-for-operators> and hard copies are available on request from the Department). This includes the conditions relating to the use of diversionary routes where an established route is not available. The limits imposed on use of a diversionary route are intended to mitigate against the potential abuse of the exemption and to try and ensure that diversionary routes are only used in very limited circumstances.

Diversionary routes and “unreasonable delays”

6) As set out under inserted article 61(8) of the Order, a diversionary route may only be used in the limited circumstances prescribed in the Order, the first of which is where the use of an LST on the whole or part of an established route is prohibited. There are further limits imposed on the use of this exemption as set out in the Order.

7) The other scenario, where it is permitted for a diversionary route to be used, relevant to the Committee’s question, is where the operator “reasonably considers that the use of an LST on the whole or any part of the established route is likely to be subject to unreasonable traffic delays because of an accident or incident on that route.”

8) “Unreasonable traffic delays” is not defined in terms of a specific time period. However, the delay must relate to an accident or incident on the route. Whether or not a delay may plausibly be said to be unreasonable may depend on a number of factors including the likely or expected duration of the delay, availability of alternative suitable routes and other matters. It would be for the operator to establish, if challenged by an enforcement officer, that they are being reasonable in their use of the exemption and that it is only being used in unforeseen circumstances, where an accident or incident has occurred, and therefore there is no reasonable practicable opportunity to carry out an assessment of the diversionary route, as per article 61(9)(a) and (b).

9) It should also be noted that the use of a diversionary route does not preclude the requirement to have undertaken a route plan and risk assessment for the established (planned) route, and for this to be present in the vehicle. Journeys covered by this Order are subject to detailed planning requirements, with reference to which the “reasonableness” of any likely delay can be assessed.

10) Therefore an operator may only divert from an established route due to “unreasonable traffic delays” in circumstances where:

- a) as a result of accident or other obstruction on the planned route, which the operator is not aware of prior to the LST starting the journey; or
- b) as a result of accident or other obstruction on the planned route, which the operator is made aware of prior to the LST reaching that part of the route, but where it is not reasonably practicable to use an alternative established route, or specify the diversionary route on a route plan and complete a risk assessment for it.

11) The risk assessments should be able to be completed relatively quickly and should not be resource intensive. The expectation is therefore that where operators have sufficient notice of a disruption on the planned route they should carry out a risk assessment and adjust the route plan. Therefore, in practice, the exemption should only be used in very limited circumstances.

Department for Transport

13 June 2023

Appendix 2: Memorandum from the Ministry of Justice

S.I. 2023/542

Criminal Legal Aid (Remuneration) (Amendment) (No.3) Regulations 2023

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

1. Given that there is a doubt as to whether S.I. 2023/366 was validly made, explain why regulation 2 revokes that instrument.

2. If the revocation is for the avoidance of doubt, explain why an explanation has not been included in a footnote (for example, see the footnote to regulation 14 of S.I. 2021/894).

2) S.I. 2023/366 contained a drafting error, in that the preamble incorrectly indicated the making of the instrument by the wrong Minister. That error might be argued to raise doubt about the validity of the instrument.

3) The error was corrected by S.I. 2023/542, which correctly refers to the Lord Chancellor in its preamble and, in order to dispel any possible doubt concerning its validity, revoked and replaced S.I. 2023/366. This was considered the proper course to address any doubt, or mischief which could be caused, resulting from the provisions made by S.I. 2023/366.

4) The Department is grateful to the Committee for its suggestion in relation to the footnotes. Whilst an explanation of the error and the background to the instrument was included in the Explanatory Memorandum, the department acknowledges that an additional reference in a footnote would have been helpful.

Ministry of Justice

13 June 2023

Appendix 3: Memorandum from the Department for Work and Pensions

S.I. 2023/545

Social Fund Maternity and Funeral Expenses (General) and Social Security (Claims and Payments) (Amendment) Regulations 2023

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

1. Explain the inconsistency between regulation 1(3) which states that these Regulations extend to England and Wales and Scotland and paragraph 4.1 of the Explanatory Memorandum which states that these Regulations extend to England and Wales.

2. Explain

- a) why the words “in Great Britain” are used in regulation 3(3) (inserted paragraph (9)(b)) and not in regulation 2 (inserted paragraph (7B)(b)); and
- b) if those words were intended given that regulation 1(4) provides that the Regulations apply to England and Wales.

2) The Department’s response to the Committee’s points is set out below.

3) On point 1, the correct position is as per regulation 1(3) – the Regulations extend to England and Wales and Scotland. The Department will lay a corrected Explanatory Memorandum reflecting the wording of the Regulations.

4) On point 2, these Regulations make changes relating to the award of Sure Start Maternity Grants (SSMGs) under the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (S.I. 2005/3061) (“the 2005 Regulations”). Under regulation 5(6) of the 2005 Regulations, it is a condition of entitlement to an SSMG that a person lives in England and Wales. Accordingly, the Department accepts that the words “in Great Britain” need not have appeared in the amendment made by regulation 3(3) and regrets the inconsistency in drafting approach between that amendment and that made in the corresponding place in regulation 2 - but the Department does not believe that this inconsistency has a material impact on the legal effect of the changes given the wording of regulation 5(6) of the 2005 Regulations.

5) The Department apologises for these errors.

Department for Work and Pensions

13 June 2023

Formal minutes

Wednesday 21 June 2023

Virtual Meeting

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Baroness D’Souza

Gareth Johnson

Damien Moore

Lord Sahota

Lord Smith of Hindhead

Report consideration

Draft Report (Forty-First 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 3.4 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 3.

Resolved, That the Report be the Forty-First 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 28 June at 3.40 p.m.