



House of Commons
Joint Committee on Statutory
Instruments

Forty-Third Report

Forty-Third Report of Session 2022–23

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Lords
to be printed 5 July 2023*

*Ordered by the House of Commons
to be printed 5 July 2023*

**HL 230
HC 4-xliii**

Published on 7 July 2023
by authority of the House of Lords
and the House of Commons

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

© Parliamentary Copyright House of Commons 2023. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at <https://www.parliament.uk/site-information/copyright-parliament/>.

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).

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.

Contents

1 Instruments reported	3
1 S.I. 2023/572: Reported for defective drafting	3
Civil Procedure (Amendment No. 2) Rules 2023	3
2 S.I. 2023/603: Reported for doubtful vires	3
Care Quality Commission (Fees) (Reviews and Performance Assessments: Integrated Care System) Regulations 2023	3
Instruments not reported	5
Annex	5
Appendix 1: Memorandum from the Ministry of Justice	6
S.I. 2023/572	6
Civil Procedure (Amendment No. 2) Rules 2023	6
Appendix 2: Memorandum from the Department of Health and Social Care	7
S.I. 2023/603	7
Care Quality Commission (Fees) (Reviews and Performance Assessments: Integrated Care System) Regulations 2023	7
Formal Minutes	8

1 Instruments reported

At its meeting on 5 July 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. 2023/572: Reported for defective drafting

Civil Procedure (Amendment No. 2) Rules 2023

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

1.2 These Rules, which are subject to the negative resolution procedure, amend the Civil Procedure Rules 1998. One of the main amendments is to introduce a new track for civil claims, the intermediate track. Existing rule 16.3 requires that where a claimant is making a claim for money, the claimant must include in the claim form a statement of value relating to the claim; and this can be done by reference to certain financial brackets. Currently there are three financial brackets in rule 16.3, of which the highest refers to claims where the claimant expects to recover more than £25,000. For the new intermediate track, rule 6(2)(a) inserts a new financial bracket which relates to claims where the claimant expects to recover “more than £25,000 but not more than £100,000”. The Committee asked the Ministry of Justice to explain why the bracket relating to claims worth “more than £25,000” was retained in rule 16.3(2)(b)(iii) given the overlap with the new financial bracket this creates.

1.3 In a memorandum printed at Appendix 1, the Department confirms that rule 16.3(2)(b)(iii) should have been amended and provision to correct this error is being included in the next instrument amending the Civil Procedure Rules which is being laid in July. This will ensure that the rule is in its correct form at the time it comes into force in October. **The Committee accordingly reports rule 6(2)(a) for defective drafting, acknowledged by the Department.**

2 S.I. 2023/603: Reported for doubtful vires

Care Quality Commission (Fees) (Reviews and Performance Assessments: Integrated Care System) Regulations 2023

2.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that there is doubt as to whether they are *intra vires* in one respect.**

2.2 These Regulations, which are subject to the negative resolution procedure, relate to the charging of fees by the Care Quality Commission. Section 31 of the Health and Care Act 2022 confers new functions on the Commission to conduct reviews and performance assessments of integrated care systems. This instrument prescribes those new functions for the purposes of section 85 of the Health and Social Care Act 2008, enabling the Commission to charge English NHS bodies, English local authorities and

registered health and social care providers for performing those functions. Section 85(6) provides that the Secretary of State must, before making such an instrument, consult the Commission and such other persons as the Secretary of State thinks appropriate. In its Explanatory Memorandum accompanying this instrument, the Department for Health and Social Care stated at paragraph 10.2 that—

Consideration was given as to whether other persons should be consulted. As CQC’s new duty to review ICSs was within the Health and Care Act and as the principle of cost recovery is a long-held Government policy, the Secretary of State did not consider it appropriate to consult more widely.

2.3 The Committee asked the Department to explain whether the Secretary of State considered which persons other than the Commission to consult and the relevance of the reasons provided as to why it did not consult more widely.

2.4 In a memorandum printed at Appendix 2, the Department explains that the Secretary of State considered whether it would be appropriate to undertake a full public consultation and concluded it was not. The Department goes on to explain that it is aware that the Commission intends to undertake its own consultation in respect of their fees. In addition, the Department explains that the reasons provided “informed rather than determined” its approach to consultation.

2.5 The duty imposed by section 85(6) of the 2008 Act is a simple duty to consult (similar to the duty applicable to S.I. 2021/875 reported in the [Committee’s Fifteenth Report of Session 2021–22](#)) and the discretion relates only to the choice of whom to consult, not whether to do so. The Committee accepts that the Secretary of State may be excused from the duty in the unlikely case of it being impossible to identify an appropriate consultee, although here the Committee is unclear why the bodies that will be reviewed and assessed were not considered appropriate consultees. This duty applies before regulations are made and thus any consultation that the Commission may or may not undertake after these Regulations are made, is a separate matter. (The Committee notes that consultation fulfilling “such other persons as the Secretary of State thinks appropriate” was undertaken when the Secretary of State relied on section 85 to make S.I. 2016/249.) In the absence of further information, **the Committee reports this instrument for doubt as to whether it is *intra vires*.**

Instruments not reported

At its meeting on 5 July 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. Numbers	S.I. Title
S.I. 2023/665	Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2023
S.I. 2023/704	Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2023

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2023/588	Aviation Safety (Amendment) Regulations 2023
S.I. 2023/640	Social Security (Income and Capital Disregards) (Amendment) Regulations 2023
S.I. 2023/666	Motor Vehicles (Driving Licences) (Amendment) Regulations 2023

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2023/641	Police, Crime, Sentencing and Courts Act 2022 (Commencement No. 2 and Transitional and Saving Provisions) (England and Wales) Regulations 2023
S.I. 2023/643	Charities Act 2022 (Commencement No. 2 and Saving Provisions) Regulations 2023
S.I. 2023/648	Health and Care Act 2022 (Commencement No. 5) Regulations 2023

Appendix 1: Memorandum from the Ministry of Justice

S.I. 2023/572

Civil Procedure (Amendment No. 2) Rules 2023

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

In relation to rule 6(2), explain why rule 16.3(2)(b)(iii) of the Civil Procedure Rules 1998 has not been amended given the introduction of the intermediate track.

2. We are grateful to the Committee for pointing out what is a drafting error. Rule 16(2)(b)(iii) should have been amended in consequence of the forthcoming introduction of the intermediate track. The insertion of new rule 16(2)(b)(iv) was intended to have similar effect but does not achieve it in the absence of amendment to rule 16(2)(b)(iii). Provision to correct this error is being included in the next instrument amending the Civil Procedure Rules which is being laid in July, and will come into force on 1 October so as to ensure that the rule is in the correct form at the time it comes into force.

Ministry of Justice

27 June 2023

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

S.I. 2023/603

Care Quality Commission (Fees) (Reviews and Performance Assessments: Integrated Care System) Regulations 2023

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

In relation to the duty in section 85(6) of the Health and Social Care Act 2008 explain—

1. whether the Secretary of State considered which persons other than the Care Quality Commission it would be appropriate to consult;
2. the basis on which the Department considers it is relevant to the discharge of that duty that this instrument is implementing the Health and Care Act 2022 and that cost recovery is a long-held Government policy (having noted paragraph 10.2 of the Explanatory Memorandum).

2. In relation to point 1, the Secretary of State considered whether it would be appropriate to undertake a full public consultation and concluded that it would not. In prescribing reviews and performance assessments of integrated care systems as functions (the relevant functions) in respect of which the CQC could charge fees, the instrument does not necessarily have a direct impact on, for example, whether fees are payable by particular organisations. Further, the Department is aware that the CQC intends to run their own consultation in respect of their fees which will provide an opportunity for persons to make representations in respect of fees.

3. In relation to point 2, insofar as this instrument implemented the Health and Care Act 2022 (by prescribing functions under provisions inserted by that Act), as recognised in the Impact Assessment (IA) for the Bill which was enacted into that Act, the relevant functions would involve ongoing costs and the intention was to minimise these costs. The IA also mentioned prospective consultation by the CQC on its fee changes. However, this and the fact that cost-recovery is government policy informed rather than determined the approach to consultation which, as mentioned above, and on the facts, was that it would not be appropriate to consult persons other than the CQC before making the instrument.

Department of Health and Social Care

27 June 2023

Formal Minutes

Wednesday 5 July 2023

Virtual meeting

Members present

Jessica Morden, in the Chair

Baroness D'Souza

Peter Grant

Damien Moore

Lord Sahota

Baroness Sater

Liz Twist

Report consideration

Draft Report (*Forty-Third 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 2.5 read and agreed to.

Annex agreed to.

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

Resolved, That the Report be the Forty-Third 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 12 July at 3.40 p.m.