



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Forty-Fifth Report of Session 2022–23

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Joint Committee on Statutory Instruments

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House of Lords

[Lord Beith](#) (*Liberal Democrat*)

[Lord Chartres](#) (*Crossbench*)

[Baroness D'Souza](#) (*Crossbench*)

[Lord Sahota](#) (*Labour*)

[Baroness Sater](#) (*Conservative*)

[Lord Smith of Hindhead](#) (*Conservative*)

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House of Commons

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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).

Contacts

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Instruments reported

At its meeting on 19 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. 2023/623: Reported for failure to comply with proper legislative practice

Windsor Framework (Disclosure of Revenue and Customs Information) 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, permit the disclosure of information to EU representatives for the purposes of implementing UK obligations relating to the Windsor Framework. Regulation 2(2) defines “Windsor Framework” by reference to Joint Declaration No 1/2023 of the Union and the United Kingdom. The Committee asked His Majesty’s Revenue and Customs to explain why, that being the case, the instrument does not include a link to the Declaration.

1.3 In a memorandum printed at Appendix 1, the Department acknowledges that the omission was an error and undertakes both to correct it at the earliest opportunity and to include the link in future instruments that cite the Declaration. The Committee welcomes the undertakings. It has long held the view that where an instrument gives significance to a document, it should provide accessibility details for that document. The principle is especially relevant in the context of the Windsor Framework, which is a suite of closely interrelated documents rather than a standalone agreement. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

2 S.I. 2023/658: Reported for failure to comply with proper legislative practice

Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2023

2.1 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.

2.2 These Regulations, which are subject to the negative resolution procedure, set new expiry dates for exemptions to the restrictions on the use of mercury in electrical and electronic equipment. Exemptions being revoked have a new expiry date of 1 February 2024. The Explanatory Note asserts that this is “one calendar year from the date on which the Secretary of State’s determination to revoke the exemptions was made public”. Given that the revocation power must be exercised so that the new expiry date falls within time

limits relative to the date of the determination, not the date it is made public (see regulation 7(4) of S.I. 2020/1647), the Committee asked the Department for Environment, Food and Rural Affairs to explain where it is possible to find that date.

2.3 In a memorandum printed at Appendix 2, the Department explains that the determination was made on 5 December 2022 (meaning that the expiry date does fall within the relevant time limits); it undertakes to include this information in future instruments made under the same enabling power. Noting that it is not possible to assess whether the expiry date complies with the statutory time limits – and so whether the instrument is *intra vires* – without knowing the date of the determination, the Committee welcomes the undertaking **and accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

Instruments not reported

At its meeting on 19 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. 2023/776	Northern Ireland (Ministerial Appointment Functions) Regulations 2023

Draft instruments requiring affirmative approval

S.I. Numbers	S.I. Title
Draft	Mayoral and Police and Crime Commissioner Elections, Recall Petitions and Referendums (Ballot Secrecy, Candidates and Undue Influence) Regulations 2023
Draft	Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023
Draft	Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023
Draft	Product Security and Telecommunications Infrastructure (Security Requirements for Relevant Connectable Products) Regulations 2023

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2023/676	Seed Marketing (Heterogeneous Material) (Temporary Experiment) (England) Regulations 2023
S.I. 2023/698	Civil Enforcement of Moving Traffic Contraventions Designation Order 2023
S.I. 2023/718	Direct Payments to Farmers (Eligible Hectares and Afforested Areas) (Amendment) (England) Regulations 2023
S.I. 2023/727	Aviation Security (Air Cargo Agents) (Amendment) Regulations 2023
S.I. 2023/729	Persistent Organic Pollutants (Amendment) Regulations 2023

S.I. 2023/742	Victims' Payments (Amendment) Regulations 2023
S.I. 2023/745	Criminal and Civil Legal Aid (Amendment) Regulations 2023

Draft instruments subject to annulment

S.I. Numbers	S.I. Title
Draft	Cannock Chase (Electoral Changes) Order 2023
Draft	North Hertfordshire (Electoral Changes) Order 2023

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2023/699	Southport and Ormskirk Hospital National Health Service Trust (Dissolution) Order 2023
S.I. 2023/705	Police, Crime, Sentencing and Courts Act 2022 (Youth Rehabilitation Order with Intensive Supervision and Surveillance) Piloting Regulations 2023
S.I. 2023/710	Taxation of Chargeable Gains (Gilt-edged Securities) Order 2023
S.I. 2023/711	St. Helens and Knowsley Hospital Services National Health Service Trust (Establishment) (Amendment) Order 2023
S.I. 2023/717	Youth Rehabilitation Order (Electronic Monitoring Whereabouts Requirement) (Responsible Persons) Regulations 2023
S.I. 2023/733	Public Order Act 2023 (Commencement No. 1) (England and Wales) Regulations 2023
S.I. 2023/748	International Organisations (Tax Exemptions Designation) (Amendment) Order 2023

Appendix 1: Memorandum from His Majesty's Revenue and Customs

S.I. 2023/623

Windsor Framework (Disclosure of Revenue and Customs Information) Regulations 2023

1. The Committee has asked HMRC for a memorandum on the following point:

Given that in regulation 2(2), “Windsor Framework” has the same meaning as in Joint Declaration No 1/2023 of the Union and the United Kingdom, explain why a link to that Declaration has not been included in the instrument.

2. We are grateful to the Committee for pointing out this error and will correct it at the first available opportunity. We intend to do this through a correction slip to the original instrument. This course of action has been approved by the Registrar.
3. We will also ensure that any future statutory instruments making reference to Joint Declaration No 1/2023 contain a link to that Declaration.

His Majesty's Revenue and Customs

10 July 2023

Appendix 2: Memorandum from the Department for Environment, Food and Rural Affairs

S.I. 2023/658

Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2023

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following point:

Explain where readers of the instrument can find the date on which the Secretary of State's determination to revoke specified exemptions was made (cf. the date on which it was made public).

2. The determination in respect of the exemptions revoked by this instrument was made on 5 December 2022 and a summary of the determination pursuant to regulation 7(1) of S.I. 2020/1647 was published on 1 February 2023 on [RoHS exemption applications: Secretary of State determinations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/rohs-exemption-applications-secretary-of-state-determinations). That publication confirmed that the exemptions would have an expiry date of 1 February 2024, in accordance with regulation 7(1). These dates are consistent with regulation 7(4) which requires that the exemptions must remain in force until such date as the Secretary of State determines, which must be not less than 12 months and not more than 18 months after the date on which the determination is made.

3. The Department recognises that it would be useful for the readers of the instrument to know the date on which the determination is made, given the terms of regulation 7(4), and in respect of future exemptions of this nature will include this information when publishing the summary pursuant to regulation 7(1).

Department for Environment, Food and Rural Affairs

11 July 2023

Formal Minutes

Wednesday 19 July 2023

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Peter Grant

Damien Moore

Lord Sahota

Baroness Sater

Lord Smith of Hindhead

Lord Watson of Wyre Forest

Report consideration

Draft Report (*Forty-Fifth 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 Forty-Fifth 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 6 September at 3.40 p.m.