



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**First Report of
Session 2023–24**

Drawing special attention to:

Civil Procedure (Amendment No. 3) Rules 2023 (S.I. 2023/788)

Firefighters' Pensions (Remediable Service) Regulations 2023
(S.I. 2023/843)

Electricity (Standards of Performance) (Amendment)
Regulations 2023 (S.I. 2023/887)

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Joint Committee on Statutory Instruments

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Lord Chartres (*Crossbench*)

Baroness D'Souza (*Crossbench*)

Lord Sahota (*Labour*)

Baroness Sater (*Conservative*)

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Lord Watson of Wyre Forest (*Labour*)

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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, Rupert Grist, Justin Leslie, Vanessa MacNair, and Hannah Stewart (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

Contacts

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Instruments reported

At its meeting on 8 November 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. 2023/788: Reported for defective drafting

Civil Procedure (Amendment No. 3) 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. Rule 1(1) provides for the Rules to come into force on 1 October 2023 except for the provisions listed in rule 1(2) which come into force on the earlier date of 14 August 2023. Rule 1(2) is not itself listed in rule 1(2) which means that the provision which brings certain rules into force on an earlier date does not itself come into force until a later date. The Committee asked the Ministry of Justice to explain. In a memorandum printed at Appendix 1, the Department explains that this is a drafting error and rule 1(2) should have come into force on the earlier date. The Committee welcomes the Department's confirmation that it has amended its internal drafting guidance to highlight the need to ensure that this error does not occur again. As the Committee has noted before (most recently in its Forty-Eighth Report of Session 2022–23, in relation to S.I. 2023/836), it is absurd for a commencement provision to come into force after rules it purports to commence as this creates doubt as to whether the commencement of those rules works as intended. **The Committee accordingly reports rule 1(2) for defective drafting, acknowledged by the Department.**

2 S.I. 2023/843: Reported for defective drafting and requiring elucidation

Firefighters' Pensions (Remediable Service) Regulations 2023

2.1 The Committee draws the special attention of both Houses to these Rules on the ground that they are defectively drafted in four respects and require elucidation in one respect.

2.2 These Regulations, which are subject to the negative resolution procedure, remedy the discrimination that arose in respect of pensions payable to certain firefighters following transitional arrangements put in place when public service pension schemes were reformed.

2.3 The definition of "eligible child" in regulation 2(1) refers to the "2015 scheme" which is not defined. The Committee asked the Home Office to confirm whether it is intended to be a reference to the "reformed scheme" (as defined in regulation 2(1)). In a memorandum

printed at Appendix 2, the Department gives the required confirmation and undertakes to correct the error at the next legislative opportunity. **The Committee accordingly reports regulation 2(1) for defective drafting, acknowledged by the Department.**

2.4 Regulation 49 is titled “Application and interpretation of Chapter 1” but contains no application provision. The regulation also defines “ill-health benefits” by reference to a non-existent paragraph (1) of that regulation. The Committee asked the Department to explain. In its memorandum, the Department confirms that these are both errors and undertakes to correct them at the next legislative opportunity. **The Committee accordingly reports regulation 49 for defective drafting in two respects, acknowledged by the Department.**

2.5 In regulation 52, the Committee asked the Department to explain why (a) “full protection member of the 1992 scheme” is defined and “full protection member of the 2006 scheme” is not defined, and (b) “full protection member of the NFPS” is defined but does not appear to be used. In its memorandum, the Department explains that the reference to “full protection member of the 2006 Scheme” should be a reference to “full protection member of the NFPS” and again undertakes to correct this error at the next legislative opportunity. **The Committee accordingly reports regulation 52 for defective drafting, acknowledged by the Department.**

2.6 Regulation 61 deals with netting off and paragraph (1)(a) states that the regulation applies where “relevant amounts owed by and to a person (“P”) fall to be paid at the same or similar times...”. The Committee asked the Department to explain what time frame “similar times” is intended to encompass. In its memorandum, the Department gives a clear explanation of the context in which “similar times” is intended to be read and explains their view that the time frame should be taken to encompass the period over which, if amounts were netted off, there would be no material effect on the value of interest owed in relation to the amounts. **The Committee accordingly reports regulation 61 for requiring elucidation, provided by the Department’s memorandum.**

3 S.I. 2023/887: Reported for defective drafting

Electricity (Standards of Performance) (Amendment) Regulations 2023

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

3.2 These Regulations, which are not subject to Parliamentary procedure, amend regulations which prescribe sums which electricity suppliers and distributors must pay to a customer as compensation for failure to meet specified standards of performance in respect of their services. Regulation 1 brings regulations 2 and 3 into force but does not bring itself into force. The Committee asked the Department for Energy Security and Net Zero on behalf of the Office of Gas and Electricity Markets to explain. In a memorandum printed at Appendix 3, the Department explains that in drafting the instrument reference was made to paragraph 3.12.17 of *Statutory Instrument Practice* which states that commencement clauses are inappropriate for certain types of statutory instrument that do not need to be laid before Parliament. The Committee notes this paragraph but agrees with the Department that providing express commencement provision for regulations 2

and 3 but not regulation 1 may lead to the drafting not being clear as to its intended effect. **The Committee accordingly reports regulation 1 for defective drafting, acknowledged by the Department.**

(The Committee notes paragraph 6 of the Department's memorandum but emphasises that any action taken following this report is a matter for the Department.)

Instruments not reported

At its meeting on 8 November 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

Draft instruments requiring affirmative approval

S.I. Number	S.I. Title
Draft	Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment and Transitional Provision) Regulations 2023
Draft	National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023
Draft	Vehicle Emissions Trading Schemes Order 2023
Draft	Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023
Draft	Health Care Services (Provider Selection Regime) Regulations 2023
Draft	Immigration (Health Charge) (Amendment) Order 2023

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/965	Building Safety (Regulator's Charges) Regulations 2023
S.I. 2023/966	Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023
S.I. 2023/967	Employment Appeal Tribunal (Amendment) Rules 2023
S.I. 2023/968	Countryside Stewardship (England) (Amendment) (No. 2) Regulations 2023
S.I. 2023/969	Personal Injuries (NHS Charges) (Amounts) (Amendment) (No. 2) Regulations 2023
S.I. 2023/971	Petroleum Act 1998 (Specified Pipelines) (Amendment) and Importation and Storage of Combustible Gas (Designation of Substance etc.) Order 2023
S.I. 2023/980	Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2023
S.I. 2023/985	National Health Service Pension Schemes (Remediable Service) Regulations 2023
S.I. 2023/1012	Registered Pension Schemes (Authorised Member Payments) Regulations 2023
S.I. 2023/1052	Building (Restricted Activities and Functions) (England) Regulations 2023

Draft instruments subject to annulment

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

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2023/400	Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2023
S.I. 2023/918 ¹	Finance (No. 2) Act 2023, Schedule 19 (Trade Remedies) (Appointed Day and Savings) Regulations 2023
S.I. 2023/992	Building Act 1984 (Commencement No. 3) (England) Order 2023
S.I. 2023/993	Building Safety Act 2022 (Commencement No. 5 and Transitional Provisions) Regulations 2023
S.I. 2023/1049	Forensic Science Regulator Act 2021 (Commencement No. 2) Regulations 2023
S.I. 2023/1050	Customs (Northern Ireland) (EU Exit) Regulations 2020 (Appointed Day) Regulations 2023
S.I. 2023/1088	Chief Inspector of Education, Children's Services and Skills Order 2023

1 The Committee asked for a memorandum on this instrument and a satisfactory response was received.

Appendix 1: Memorandum from the Ministry of Justice

S.I. 2023/788

Civil Procedure (Amendment No. 3) Rules 2023

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

Explain why rule 1(2) does not itself come into force on 14 August 2023 (rather than 1 October 2023 as stated in rule 1(1)).

2. The Ministry is grateful to the Committee for its consideration. The Committee has identified a drafting error in that paragraph (2) of rule 1 of this SI should have started with the words “This paragraph and”, or contained provision to similar effect to ensure that the provision itself came into force at the same, earlier, time as the provisions to which it referred.

3. The Ministry was concerned that this was the second instance of this error in one of its instruments in a relatively short period (the other instrument, S.I. 2023/61, being reported in the Committee’s Twenty-Eight Report of Session 2022–23) and has amended its internal drafting guidance to highlight the need to ensure that where provision A of an SI is brought into force earlier than the rest of the SI, provision B which provides for that earlier commencement contains wording to secure that provision B itself comes into force at that earlier time. The Ministry is also considering its SI checking protocols to ensure that this is an issue flagged for those who undertake checking.

Ministry of Justice

24 October 2023

Appendix 2: Memorandum from the Home Office

S.I. 2023/843

Firefighters' Pensions (Remediable Service) Regulations 2023

1. The Committee has asked for a memorandum on the following point(s):
 1. In relation to the definition of “eligible child” in regulation 2(1)
 - a. explain what “2015 Scheme” is intended to refer to; and
 - b. if it means the scheme established by S.I. 2014/2848, explain why the term “reformed scheme” (defined in regulation 2(1)) is not used.
 2. In regulation 49, explain:
 - a. why the regulation is titled “Application and interpretation of Chapter 1” but there is no application provision, and
 - b. which paragraph (1) is being referred to in the definition of “ill-health benefits”.
 3. In regulation 52, explain why
 - a. “full protection member of the 1992 scheme” is defined and “full protection member of the 2006 scheme” is not defined, and
 - b. “full protection member of the NFPS” is defined but does not appear to be used.
 4. Explain what timeframe “similar times” is intended to encompass (regulation 61(1)(a)).
2. In relation to point 1, the Committee is correct that “2015 Scheme” is intended to be a reference to the reformed scheme. The Department will correct this error at the next legislative opportunity.
3. In relation to regulation 49, these are errors and will be corrected at the next legislative opportunity.
4. In regulation 52, the references to “full protection member of the 2006 Scheme” should be references to “full protection member of the NFPS”. The Department will correct these errors at the next legislative opportunity.
5. In relation to point 4, regulation 61(1)(a) was made under the power in section 26 of the Public Service Pensions and Judicial Offices Act 2022 (‘PSPJOA’) which, by virtue of section 27(1) and (20)(j) of that Act must be exercised in accordance with Treasury Directions (the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022). The relevant direction is 19(1), which refers to amounts falling to be paid “at the

same or approximately the same times”. We consider that “approximately the same” and “similar”, in this context, have identical meanings.

6. In terms of substance, we consider that “similar times” in regulation 61(1)(a) should be read in the context of the purpose of the power to make “netting off” provision at section 26(2)(c) of PSPJOA and of direction 19(1). These provisions are aimed at simplifying the administration of payments owed by and to a person by consolidating such payments, as far as possible, into a single payment. That objective is in tension with the need to ensure that a person who owes, or is owed, amounts as a result of the remedy is not advantaged or disadvantaged by the operation of provisions on interest, the value of which depends on when the amount owed falls to be paid.

7. The timeframe described by the words “similar times” should therefore be taken to encompass the period over which, if amounts were netted off, there would be no material effect on the value of interest owed in relation to the amounts. The scheme manager will have this objective in mind when exercising the discretion conferred by regulation 61.

Home Office

24 October 2023

Appendix 3: Memorandum from the Department for Energy Security and Net Zero, on behalf of the Office of Gas and Electricity Markets

S.I. 2023/887

Electricity (Standards of Performance) (Amendment) Regulations 2023

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

Explain why there is no provision bringing regulation 1 into force.

2. The instrument was made by the Gas and Electricity Markets Authority with the consent of the Minister of State for Energy Security and Net Zero. Accordingly the Department for Energy Security and Net Zero provides the response of the Office of Gas and Electricity Markets (Ofgem).
3. It was considered that the statutory instrument came into force on the date the instrument was made and therefore an express commencement clause was not required for regulation 1. For this instrument, the date the statutory instrument was made was 31 July 2023. The express commencement provisions for regulations 2 and 3 were required to bring into force those provisions at a later date.
4. In drafting the instrument reference was made to Statutory Instrument Practice, paragraph 3.12.17, which states that commencement clauses are inappropriate for certain types of statutory instrument that do not need to be laid before Parliament. It was considered appropriate, due to the instrument not being subject to any parliamentary procedure, that a commencement clause was not required to bring the instrument into force. Express commencement clauses were only required for regulations 2 and 3 as those provisions required a later coming into force date.
5. However, in this instance Ofgem recognises that by not including an express commencement provision for regulation 1 in this instrument, while providing commencement provision for regulation 2 and regulation 3, it may lead to the drafting not being entirely clear as to the intended effect. In drafting future instruments with staggered commencement dates Ofgem will take a different drafting approach.
6. If it is considered necessary by the Joint Committee on Statutory Instruments, Ofgem can undertake to amend the Electricity (Standards of Performance) (Amendment) Regulations 2023 for the purposes of clarifying the commencement of regulation 1 at the earliest available opportunity.

Department for Energy Security and Net Zero

Office of Gas and Electricity Markets

24 October 2023

Formal Minutes

Wednesday 8 November 2023

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Chartres

Baroness D’Souza

Peter Grant

Lord Sahota

Baroness Sater

Lord Smith of Hindhead

Lord Watson of Wyre Forest

Report consideration

Draft Report (*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 3.2 read and agreed to.

Annex agreed to.

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

Resolved, That the Report be the 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 15 November at 3.40 p.m.