



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

**Fourth Report of
Session 2023–24**

Drawing special attention to

*Immigration and Nationality (Fees) (Amendment) (No.2) Regulations 2023
(S.I. 2023/1004)*

Immigration (Notices) (Amendment) Regulations 2023 (S.I. 2023/1008)

*Ordered by the House of Lords
to be printed 29 November 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, 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 29 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 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. 2023/1004: Reported for failure to comply with proper legislative practice

Immigration and Nationality (Fees) (Amendment) (No.2) 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, set fees for the exercise of various functions in connection with immigration and nationality. Most of the regulations come into force on 4 October 2023. This date was 19 days after the instrument was laid before Parliament and was in breach of the rule that regulations subject to the negative procedure should generally be laid at least 21 days before they are due to come into force. The Committee asked the Home Office to explain the reasons for the breach. In a memorandum printed at Appendix 1, the Department explains that the breach was due to an unforeseen late amendment to the Regulations and that a delay to the planned commencement date of 4 October would have incurred a significant reduction in anticipated revenue.

1.3 In its First Special Report of Session 2017–19, [Transparency and Accountability in Subordinate Legislation](#) at paragraphs 2.15 to 2.23, the Committee stresses the importance of compliance with the 21-day rule, which is designed to protect those affected by changes in the law made by subordinate legislation from being subject to the effect of the changes before they have had a reasonable opportunity to understand what they must do to satisfy any requirements. Problems or delays within Government and a desire to raise fees as soon as possible are not a justification for a breach of the 21-day rule. The Department explains that it is in the process of reviewing the issues that contributed to this breach and is improving its processes for the planning and delivery of future fees legislation. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

2 S.I. 2023/1008: Reported for requiring elucidation

Immigration (Notices) (Amendment) Regulations 2023

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

2.2 These Regulations, which are subject to the negative resolution procedure, amend the Immigration (Notices) Regulations 2003 (S.I. 2003/658). Regulation 7 of the 2003 Regulations sets out the methods by which immigration notices may be served including

service in person, by post and by electronic means but it does not specify the circumstances in which each method should be used. Regulation 2 of these Regulations amends regulation 7 to clarify that notices uploaded to an electronic portal established by the Home Office are deemed to have been sent electronically. The Committee asked the Department to explain whether arrangements are in place to ensure that persons without access to the internet do not receive notice through the electronic portal. In a memorandum printed at Appendix 2, the Department refers to guidance which indicates that claimants will have options to choose the method of service and that the portal will not be used where it is not deemed appropriate. **The Committee accordingly reports regulation 2 for requiring elucidation, provided by the Department’s memorandum.**

Instruments not reported

At its meeting on 29 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	Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels)
Draft	Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2023
Draft	Medical Devices (In Vitro Diagnostic Devices etc.) (Amendment) Regulations 2023
Draft	Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023
Draft	Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2023

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/1087	Royal Navy (Ratings) and Royal Marines Terms of Service (Amendment) Regulations 2023
S.I. 2023/1111	M621 Motorway (Off Side Lane Prohibition Disapplication) (No. 3) Regulations 2023
S.I. 2023/1112	Private Crossings (Signs and Barriers) Regulations 2023
S.I. 2023/1127	Immigration (Removal Notices) Regulations 2023
S.I. 2023/1131	Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023
S.I. 2023/1142	Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 2) Regulations 2023
S.I. 2023/1172	Social Security (Contributions) (Amendment No. 7) Regulations 2023
S.I. 2023/1175	Council Tax (Chargeable Dwellings and Liability for Owners) (Amendment) (England) Regulations 2023

Instruments subject to annulment (Northern Ireland)

S.I. Number	S.I. Title
S.R. 2023/182	Allocation of Housing and Homelessness (Eligibility) (Amendment) (No. 2) Regulations (Northern Ireland) 2023

Draft Instruments subject to annulment

S.I. Number	S.I. Title
Draft S.I.	Tunbridge Wells (Electoral Changes) Order 2024
Draft S.I.	Nuneaton & Bedworth (Electoral Changes) Order 2024

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2023/1001	Social Housing (Regulation) Act 2023 (Commencement No. 1 and Saving Provision) Regulations 2023
S.I. 2023/1193	Trade Union Act 2016 (Commencement No. 6) Regulations 2023

Appendix 1: Memorandum from the Home Office

S.I. 2023/1004

Immigration and Nationality (Fees) (Amendment) (No.2) Regulations 2023

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

Does the Department have anything to add to its explanation for breach of the 21-day rule in paragraph 3.4 of the Explanatory Memorandum.

2) This instrument laid on 15 September 2023 breached the 21-day rule in respect of the commencement date for increases to immigration and nationality fees and some amendments consequential to changes in immigration rules. The original intention was to lay the Regulations on 13 September, so that the fee increases, and other fee changes would have come into force after 21 days on 4 October and onwards. However, an unforeseen late required amendment to the Regulations and supporting documents meant the laying date was deferred to 15 September, which breached the 21-day rule by two days.

3) The commencement date of 4 October was used as the basis for wider communications and delivery planning activity. A further delay to the date of the fee increase would have seen the department incur a significant reduction in anticipated revenue in the range of £2 Mn and would have entailed some extra work and additional costs in amending front-end systems. The department, therefore, determined that it was necessary to maintain the 4 October commencement date to ensure that the full projected income from the fee increases was realised in 23/24 due to the critical role that the fee increases will play in supporting the wider departmental finance position. A further consideration had also been given to the prior announcement that was made to Parliament in relation to the fee increases on 13 July 2023 by the Chief Secretary to Treasury, as part of a wider statement on public sector pay.

4) Therefore, regrettably the commencement date could not be delayed. The department is in the process of reviewing the issues that contributed to the breach in this case and improving its processes for the planning and delivery of future fees legislation.

5) We further refer to the Secondary Legislation Scrutiny Committee's 1st Report of Session 2023–24 in which Appendix 1 has a response dated 2 November 2023 from the Rt Hon. Robert Jenrick MP, Minister of State for Immigration at the Home Office to the letter of 25 October 2023 from the Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee in this regard.

Home Office

17 November 2023

Appendix 2: Memorandum from the Home Office

S.I. 2023/1008

Immigration (Notices) (Amendment) Regulations 2023

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

Explain whether arrangements are in place to ensure that persons without access to the internet do not receive notice through the electronic portal.

2) Regulation 7(1) of the Immigration (Notices) Regulations 2003 (“the 2003 Regulations”) prescribes the methods by which immigration notices may be served by the Home Office. These methods include, but are not limited to, service in person (subparagraph (a)), service by post (sub-paragraph (c)) and service by electronic means (sub-paragraph (d)).

3) This instrument amends that regulation; to clarify both that notices sent via an electronic portal established by the Home Office (“the MAC portal”) are deemed to have been sent electronically and the time when service of those notices is deemed to have been effected.

4) Use of the electronic portal will not be mandatory. It is intended as a tool primarily for use by immigration advisors (see paragraph 2.1 of the Explanatory Memorandum).

5) The caseworker guidance which accompanies the 2003 Regulations is publicly available at: Asylum policy instruction: drafting, implementing and serving asylum decisions (accessible) - GOV.UK (www.gov.uk).

6) Guidance in respect of “Serving decisions by portal” is included within the “Serving asylum decisions” section of that guidance. This confirms that further information will be provided to claimants, legal representatives, immigration advisors and decision makers in advance of the MAC portal becoming operational. It also states that there will be information as to “other options to serve decisions for claimants where an alternative method of service has been chosen, or using the portal is not deemed appropriate”.

Home Office

20 November 2023

Formal minutes

Wednesday 29 November 2023

Virtual meeting

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Baroness D’Souza

Peter Grant

Damien Moore

Lord Sahota

Baroness Sater

Report consideration

Draft Report (Fourth 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 2.2 read and agreed to.

Annex agreed to.

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

Resolved, That the Report be the Fourth 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 December at 3.40 p.m.