



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

**Sixth Report of Session
2023–24**

Drawing special attention to:

*National Security (Prohibited Places) (Civil Nuclear) Regulations 2023
(S.I. 2023/1114)*

*Nationality and Borders Act 2022 (Consequential Amendments) Regulations
2023 (S.I. 2023/1129)*

*Ordered by the House of Lords
to be printed 13 December 2023*

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Joint Committee on Statutory Instruments

Current membership

House of Lords

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

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

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

[Lord Sahota](#) (*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), Jennifer Mills (Lords Clerk), Ines Nizigama (Committee Operations Officer), 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).

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Instruments reported

At its meeting on 13 December 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. 2023/1114: Reported for failure to comply with proper legislative practice

National Security (Prohibited Places) (Civil Nuclear) 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, designate civil nuclear sites as “prohibited places” for the purposes of the National Security Act 2023. The new list replaces the list of sites designated by instruments made under the Official Secrets Act 1911. The Committee noticed that neither the provisions establishing the new prohibited places regime nor those repealing the 1911 Act had been commenced by the date this instrument came into force on 15 November 2023; nor had the enabling power relied on to make this instrument. The Committee asked the Department for Energy Security and Net Zero to explain why the instrument had been brought into force on that date and how it is expected to be enforced between then and the commencement of the relevant provisions of the 2023 Act.

1.3 In a memorandum printed at Appendix 1, the Department explains that the provisions are coming into force on 20 December 2023 and that the choice of commencement date was due to its failure to confirm the commencement position. Whilst the Committee agrees with the Department that this instrument cannot be enforced until 20 December, it is an essential element of legislative practice that that Departments understand the commencement position of the provisions they are seeking to implement. The Committee is concerned that for more than a month this instrument creates a risk of confusion as to whether the old or new prohibited places regime applies. The Department has undertaken to revisit its procedures to prevent similar failures from recurring. **The Committee accordingly reports this instrument for failure to comply with proper legislative practice, acknowledged by the Department.**

2 S.I. 2023/1129: Reported for defective drafting

Nationality and Borders Act 2022 (Consequential Amendments) Regulations 2023

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

2.2 These Regulations, which are subject to the negative resolution procedure, amend two instruments as a result of the Nationality and Borders Act 2022.

2.3 Regulation 2 expands the definition of “P” in regulation 2 of the Immigration (Removal of Family Members) Regulations 2014 so that “P” is defined as a person “liable to be or has been removed from the United Kingdom under section 10 of the Act”. The effect of this is that, in addition to persons liable to removal under section 10(1) of the Immigration and Asylum Act 1999, “P” also includes family members of persons liable to removal under section 10(1). The Explanatory Memorandum explains that the change is made to allow the 2014 Regulations to continue to apply after amendments are made to section 10 of the 1999 Act by section 46 of the Nationality and Borders Act 2022. The Committee asked the Home Office to explain why the new definition of “P” in the 2014 Regulations is by reference to all persons liable to be removed under section 10, as it appeared to the Committee that this made the definitions of “P” and “family member” within the 2014 Regulations less clear.

2.4 In a memorandum printed at Appendix 2, the Department explains that section 46 of the 2022 Act amends section 10 so that “P” is defined as a person liable to be removed under “this section” as opposed to under “subsection (1)” and that consistency between section 10(2) and the 2014 Regulations is appropriate as the 2014 Regulations make provision in respect of the service of notice which triggers liability to remove a family member under section 10(2).

2.5 In the Committee’s view, whilst a desire for consistency between primary and secondary legislation is understandable on the basis that this can in some cases provide clarity, in this case the amendment made by the instrument creates confusion within the 2014 Regulations. For example, regulation 3 of the 2014 Regulations provides that a notice of removal can be given to a family member under section 10(2) at any time prior to P’s removal; but now that “P” has been defined to include *any* person who is liable to be removed under section 10, this makes it unclear when a notice under section 10(2) can be given. If the Department wanted to amend the definition after the amendments made by section 46 of the 2022 Act, this could have been achieved in a more accurate manner. **The Committee accordingly reports regulation 2 for defective drafting.**

Instruments not reported

At its meeting on 13 December 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. 2023/1306	Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations 2023

Draft instruments requiring affirmative approval

S.I. Number	S.I. Title
Draft	General Aviation (Persons on Board, Flight Information and Civil Penalties) Regulations 2024
Draft	Online Safety (List of Overseas Regulators) Regulations 2024
Draft	Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024
Draft	Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024
Draft	Financial Services Act 2021 (Overseas Funds Regime and Recognition of Parts of Schemes) (Amendment and Modification) Regulations 2024
Draft	Magistrates' Courts Act 1980 (Automatic Online Conviction and Standard Statutory Penalty) (Specification of Offences and Penalties) Regulations 2024
Draft	Wine (Amendment) (England) Regulations 2024

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/952	National Health Service Pension Schemes (Partial Retirement etc.) (Amendment) Regulations 2023
S.I. 2023/1094	Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023
S.I. 2023/1151	Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) (Amendment) Regulations 2023
S.I. 2023/1152	Armed Forces (Disposal of Property) Regulations 2023
S.I. 2023/1167	Childcare (Childminder Agencies) (Cancellation etc.) (Amendment) Regulations 2023
S.I. 2023/1169	Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2023
S.I. 2023/1181	Direct Payments to Farmers (Reconsideration and Appeal) (Modification) (England) Regulations 2023

S.I. Number	S.I. Title
S.I. 2023/1182	Energy Savings Opportunity Scheme (Amendment) Regulations 2023
S.I. 2023/1186 ¹	Information as to Provision of Education (England) (Amendment) Regulations 2023
S.I. 2023/1215	Immigration Act 2014 (Commencement No. 8) Order 2023
S.I. 2023/1218	Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Amendments) Order 2023
S.I. 2023/1233	Overseas Electors, Postal Vote Handling and Secrecy (Amendment) Rules 2023
S.I. 2023/1244	Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2023
S.I. 2023/1249	National Security Act 2023 (Prevention and Investigation Measures) (Polygraph) Regulations 2023

Draft instruments subject to annulment

S.I. Number	S.I. Title
Draft	West Northamptonshire (Electoral Changes) Order 2024

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2023/1170	Environment Act 2021 (Commencement No. 7) Regulations 2023
S.I. 2023/1174	European Union (Future Relationship) Act 2020 (Commencement No. 3) Regulations 2023
S.I. 2023/1194	Judicial Review and Courts Act 2022 (Commencement No. 4) Regulations 2023
S.I. 2023/1242	Online Safety Act 2023 (Commencement No. 1) Regulations 2023

¹ The Committee requested a memorandum for this instrument. It is printed at Appendix 3.

Appendix 1: Memorandum from the Department for Energy Security and Net Zero

S.I. 2023/1114

National Security (Civil Nuclear) (Prohibited Places) Regulations 2023

1) The Committee has asked the Department for Energy Security and Net Zero for a memorandum on the following points:

1. Why this instrument was made to come into force on 15 November 2023?

2. How it is expected to be enforced between that date and the commencement of the above-mentioned provisions [the enabling power relied on to make it; the provisions establishing the new prohibited places regime to which it relates; the provisions repealing the old prohibited places regime]?

2) The choice of commencement date was an oversight by the Department, having failed to confirm when the relevant provisions would be in force. The Department apologises to the Committee for the error and will revisit its procedures to prevent it from recurring.

3) The Department considers that the instrument is of no practical effect until the relevant provisions have been commenced. It is not enforceable until then, which we understand will be 20 December 2023. There is no gap in provision while the existing regime remains in force, however, and the Department can confirm that no enforcement action has been taken under the instrument.

Department for Energy Security and Net Zero

5 December 2023

Appendix 2: Memorandum from the Home Office

S.I. 2023/1129

Nationality and Borders Act 2022 (Consequential Amendments) Regulations 2023

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

Explain why the definition of “P” is amended by regulation 2 to refer to a person liable to be or has been removed under section 10, rather than subsection (1) of that section, considering that the notice requirements applicable to the family member under the amended Regulations operate by reference to a person liable to removal under section 10(1).

2) Section 46(3) of the Nationality and Borders Act 2022 amended section 10(2) of the Immigration and Asylum Act 1999 (the “1999 Act”) so as to provide that “Where a person (“P”) is liable to removal, or has been removed, from the United Kingdom under this section”, family members of P who meet the three conditions in section 10(3)-(5) are liable to removal from the UK, provided that they have been given written notice of liability to removal.

3) Formerly, section 10(2) of the 1999 Act provided, “Where a person (“P”) is liable to be or has been removed from the United Kingdom under subsection (1)” family members of P who met the conditions in section 10(3)-(5) could be removed from the UK, provided the Secretary of State or an immigration officer had given written notice of the intention to remove them.

4) To achieve consistency between the reference to “P” in section 10(2) of the 1999 Act and the definition of “P” in regulation 2 of the Immigration (Removal of Family Members) Regulations 2014 S.I. 2014/2816 (the “2014 Regulations”), the Nationality and Borders Act 2022 (Consequential Amendments) Regulations 2023 amend the definition of “P” in the 2014 Regulations to “a person who is liable to be or has been removed from the United Kingdom under section 10” of the 1999 Act, rather than “section 10(1)”. Consistency between section 10(2) of the 1999 Act and the 2014 Regulations is appropriate because the 2014 Regulations make provision in respect of the service of the notice which triggers liability to removal under section 10(2) of the 1999 Act.

Home Office

4 December 2023

Appendix 3: Memorandum from the Department for Education

S.I. 2023/1186

Information as to Provision of Education (England) (Amendment) Regulation 2023

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

In relation to paragraph 2(1)(a) of new Schedule 1A (inserted by regulation 2(5)), explain what is meant by “pupil planning area code”.

2) As set out in regulation 2 of S.I. 2023/1186, a “pupil planning area” is a grouping of schools within the area of a local authority which is used by that local authority for the purposes of assessing current and future demand for school places. Each pupil planning area is assigned a code by the relevant local authority by which the pupil planning area can then be identified. The reference to “pupil planning area code” is a reference to that code.

3) The term “pupil planning area code” is well understood by stakeholders, including local authorities, on whom the duty to provide the information set out in paragraph 2(1)(a) of new Schedule 1A falls.

4) The Department notes that paragraph 2(1)(a) of new Schedule 1A follows the formulation in paragraph 8(a) of Schedule 1 to the principal instrument (S.I. 2016/555) as in force before the amendments made by S.I. 2023/1186. However, whereas paragraph 8(a) of Schedule 1 referred to “the planning area code”, paragraph 2(1)(a) of new Schedule 1A refers to “the pupil planning area code”. This change was made to ensure that the wording accurately reflected the defined term “pupil planning area”.

5) The Department is confident that it will be clear to local authorities that the information that they are required to provide under paragraph 2(1)(a) of new Schedule 1A is the same information that they were required to provide under paragraph 8(a) of Schedule 1 to S.I. 2016/555 as previously in force.

Department for Education

4 December 2023

Formal Minutes

Wednesday 13 December 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

Lord Smith of Hindhead

Lord Watson of Wyre Forest

Report consideration

Draft Report (Sixth 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 3.

Resolved, That the Report be the Sixth 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 10 January 2024 at 3.40 p.m.