



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Thirty-Seventh Report of Session 2019–21

Drawing special attention to:

*Heavy Commercial Vehicles in Kent (No.3) (Amendment) Order 2020
(S.I. 2020/1146)*

*Road Vehicles (Display of Registration Marks) (Amendment) (EU Exit) (No.2)
Regulations 2020 (S.I. 2020/1363)*

*Direct Payments to Farmers and Cross-Compliance (Simplifications) (England)
(Amendment) Regulations 2020 (S.I. 2020/1387)*

*Electricity and Gas (Internal Markets) (No. 2) Regulations 2020
(S.I. 2020/1401)*

*Ordered by the House of Lords
to be printed 20 January 2021*

*Ordered by the House of Commons
to be printed 20 January 2021*

**HL 214
HC 75-xxxvii**

Published on 22 January 2021
by authority of the House of Lords
and the House of Commons

Joint Committee on Statutory Instruments

Current membership

House of Lords

[Lord Colgrain](#) (*Conservative*)

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

[Baroness Gale](#) (*Labour*)

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

[Lord Rowe-Beddoe](#) (*Crossbench*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

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

House of Commons

[Jessica Morden MP](#) (*Labour, Newport East*) (Chair)

[Dr James Davies MP](#) (*Conservative, Vale of Clwyd*)

[Paul Holmes MP](#) (*Conservative, Eastleigh*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

[Owen Thompson MP](#) (*Scottish National Party, Midlothian*)

[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 2021. 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), Apostolos Kostoulas (Committee Operations Officer), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and 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 7599; the Committee's email address is: jcsi@parliament.uk.

Contents

Instruments reported	3
1 S.I. 2020/1146: Reported for defective drafting.	3
Heavy Commercial Vehicles in Kent (No.3) (Amendment) Order 2020	3
2 S.I. 2020/1363: Reported for defective drafting	3
Road Vehicles (Display of Registration Marks) (Amendment) (EU Exit) (No.2) Regulations 2020	3
3 S.I. 2020/1387: Reported for defective drafting	4
Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020	4
4 S.I. 2020/1401: Reported for defective drafting and for failure to comply with proper legislative practice	5
Electricity and Gas (Internal Markets) (No. 2) Regulations 2020	5
Instruments not reported	7
Annex	7
Appendix 1	8
S.I. 2020/1146	8
Heavy Commercial Vehicles in Kent (No.3) (Amendment) Order 2020	8
Appendix 2	9
S.I. 2020/1363	9
Road Vehicles (Display of Registration Marks) (Amendment) (EU Exit) (No.2) Regulations 2020	9
Appendix 3	10
S.I. 2020/1387	10
Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020	10
Appendix 4	11
S.I. 2020/1401	11
Electricity and Gas (Internal Markets) (No. 2) Regulations 2020	11

Instruments reported

At its meeting on 20 January 2021 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 four of those considered. The instruments and the grounds for reporting them are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2020/1146: Reported for defective drafting.

Heavy Commercial Vehicles in Kent (No.3) (Amendment) Order 2020

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.

1.2 This Order, which is subject to the negative resolution procedure, establishes a permit scheme to allow cross-Channel lorries carrying certain priority goods for export (day-old chicks, or fresh or live seafood for human consumption) to bypass traffic restrictions in Kent. Where a lorry is carrying only priority goods, the Secretary of State may issue a permit under that scheme that is valid for 24 hours from the time of issue (article 2(6)(a), inserted article 7(C1) and (D1)). It was not clear to the Committee whether the condition that the lorry be carrying only priority goods had to be satisfied for the entire 24-hour period or only at the point when the permit was issued. This would be relevant, for instance, if the lorry were carrying day-old chicks, which are defined in article 2(2)(a) as poultry or muscovy ducks less than 72 hours old: would a permit continue to be valid in respect of chicks that exceeded that age limit whilst still in transit? The Committee asked the Department for Transport to explain. In a memorandum printed at Appendix 1, the Department explains that the policy intention is that the condition must be satisfied throughout the permit's validity. It asserts, however, that a priority goods permit would not be considered invalid by day-old chicks ceasing to meet the age requirement that makes them priority goods. These two propositions are clearly incompatible. If a priority goods permit is only valid while the lorry carries priority goods and nothing else, this should exclude chicks that have ceased to be priority goods as defined in article 2(2)(a). If, however, a consignment of chicks ceasing to fall within the definition of priority goods does not invalidate a permit, then the same should apply to any consignment ceasing to fall within that definition. The provisions are insufficiently clear on their face as to which of these two incompatible interpretations is in fact the law, and the Committee accordingly reports article 2(6)(a) for defective drafting.

2 S.I. 2020/1363: Reported for defective drafting

Road Vehicles (Display of Registration Marks) (Amendment) (EU Exit) (No.2) Regulations 2020

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 the Road Vehicles (Display of Registration Marks) Regulations 2001 (S.I. 2001/561) to take account of new requirements for registration plates that will apply from 1 September 2021. Regulation 7 inserts the new requirements as new Part A1 of Schedule 2 to the 2001 Regulations; Parts 1 and 2 contain the earlier requirements; and which Part applies depends on the date on which a vehicle was first registered and whether it is being fitted with new or replacement plates. This is set out in regulation 10 of the 2001 Regulations: paragraph (2) provides that for vehicles first registered between 1 September 2001 and 31 August 2021, Part 1 applies; paragraph (3) provides that for vehicles first registered between 1 January 1973 and 31 August 2001, Part 2 applies, but only subject to the provisions relating to replacement plates—paragraph (4), which applies Part 1 for replacement plates fitted on or before 31 August 2001, and new paragraph (4A) (inserted by regulation 3(e)), which applies new Part A1 for replacement plates fitted on or after 1 September 2021. The Committee asked the Department for Transport to confirm that paragraph (2) should also have been made subject to paragraph (4A), for consistency with both paragraph (3) and the drafting of paragraph (4A) itself. In a memorandum printed at Appendix 2, the Department sets out reasoning by virtue of which it believes the correct result is achieved by the instrument as drafted, but adds that “to avoid any confusion about how regulation 10(4A) should apply to paragraph 10(2), the Department proposes to amend regulation 10(2) when a suitable opportunity arises to provide that it is subject to new paragraph 10(4A)”. The Committee does not dissent from the Department’s reasoning, but welcomes the proposed amendment to remove what is presently an inconsistency of treatment of different provisions within the Regulations. Inconsistencies are always a potential source of confusion and argument and accordingly, although this is a relatively minor inconsistency, **the Committee reports regulation 3 for defective drafting, in essence acknowledged by the Department.**

3 S.I. 2020/1387: Reported for defective drafting

Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020

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

3.2 These Regulations, which are subject to the negative resolution procedure, amend retained EU law that governs the Direct Payment to Farmers schemes and Cross Compliance rules to simplify both as they apply in England. Among the simplifications is the removal of the rules that govern “greening payments”, such as Article 45 of Regulation (EU) No 1307/2013, which requires the designation of permanent grassland that farmers were prohibited from converting or ploughing and is removed from UK law by regulation 5(6). Regulation 7(2) also removes one reference to greening rules from Article 2(1)(22) of Commission Delegated Regulation (EU) No 640/2014, but it leaves in place the words “permanent pasture referred to in Article 45(2)(a) of [Regulation (EU) No 1307/2013]”. Having regard to the stated policy intent of this instrument, the Committee asked the Department for Environment, Food and Rural Affairs to confirm whether those words should have been omitted. In a memorandum printed at Appendix 3, the Department

provides that confirmation and undertakes to correct the error at the earliest available opportunity. **The Committee accordingly reports regulation 7 for defective drafting, acknowledged by the Department.**

4 S.I. 2020/1401: Reported for defective drafting and for failure to comply with proper legislative practice

Electricity and Gas (Internal Markets) (No. 2) Regulations 2020

4.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in one respect and do not comply with proper legislative practice in one respect.

4.2 These Regulations, which are subject to the negative resolution procedure, insert new provisions into the standard conditions of several licences granted under the Electricity Act 1989 in order to implement Directive (EU) 2019/944.

4.3 Regulation 4 amends the standard conditions of an electricity distribution licence granted under section 6(1)(c) of the 1989 Act by inserting several new conditions and inserting into Condition 1 several new defined terms that appear in those conditions. The term “Distribution Licensees” is used for the first time in inserted Condition 31E; it is not a defined term, although the drafting convention within the conditions is to use initial capitals for defined terms. The Committee asked the Department for Business, Energy and Industrial Strategy to explain. In a memorandum printed at Appendix 4, the Department accepts that a definition would have been clearer and explains the route by which the expression is likely to be understood as intended in the context. The Committee accepts the Department’s explanation; but, of course, once the convention of using initial capitals for defined terms is adopted in an instrument it must be applied consistently and **the Committee accordingly reports regulation 4 for defective drafting.**

4.4 Although the licences amended by this instrument are granted under the 1989 Act and at least some of the standard conditions have, as here, been made by statutory instrument, these Regulations do not identify any such prior instruments. The Explanatory Note refers readers to “copies of the standard licence conditions” available at Ofgem’s Electronic Public Register (“EPR”) website and to “indicative versions of the standard licence conditions” available at its office. It is not clear whether the online “copies” to which the Note refers are the unofficial consolidated versions of current and previous standard licence conditions (expressly marked as “*not formal Public Register documents and should not be relied on*”) or the modifications signed by the Secretary of State (which do not appear to include prior statutory instruments) or both. The Committee asked the Department to explain what is intended by the phrase “indicative versions of the standard licence conditions”, and where the official, non-consolidated version of all the standard conditions that this instrument amends can be accessed. In its memorandum, the Department explains that the phrase in question refers to the hard copies. The Department does not answer the second question, but merely refers the Committee to Keeling schedules and to the EPR website. It remains unclear to the Committee what makes the hard copy an “indicative” version (rather than a definitive one) and where the official, reliable version of the standard conditions can be found. This makes it difficult to assess whether some of the changes made by this instrument are technically correct. The amendment made by regulation 4(7)

(e), for instance, refers to subparagraphs (e) and (f) of paragraph 43B.6 of the standard conditions of an electricity distribution licence, but in the consolidated version on the EPR website, paragraph 43B.6 has no such subparagraphs (although it does have two each of subparagraphs (a), (b) and (c)). It is important for readers of amended instruments to be able to reconstruct the complete chain of amendments for themselves so as to be able to verify their cumulative effect. The Committee hopes that future instruments modifying the standard conditions will set out—whether in a footnote or in the Explanatory Notes—where all the official, non-consolidated, definitive versions they amend can be accessed. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice.**

Instruments not reported

At its meeting on 20 January 2021 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

- | | |
|----------------|---|
| S.I. 2020/1661 | Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 |
| S.I. 2020/1669 | Organic Production (Organic Indications) (Amendment) (EU Exit) Regulations 2020 |
| S.I. 2021/15 | Public Health (Coronavirus) (Protection from Eviction) (England) Regulations 2021 |

Draft Instruments requiring affirmative approval

- | | |
|------------|---|
| Draft S.I. | Bank for International Settlements (Immunities and Privileges) Order 2021 |
|------------|---|

Instruments subject to annulment

- | | |
|----------------|---|
| S.I. 2020/1369 | Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020 |
| S.I. 2020/1464 | European Institutions and Consular Protection (Amendment etc.) (EU Exit) (Amendment) Regulations 2020 |
| S.I. 2020/1473 | Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2020 |
| S.I. 2020/1486 | Product Safety (Toys and Cosmetics) and Metrology (Measuring and Non-automatic Weighing Instruments) (Amendment) (EU Exit) Regulations 2020 |
| S.I. 2020/1498 | Air Traffic Management (Amendment etc.) (EU Exit) (No. 3) Regulations 2020 |
| S.I. 2020/1503 | Challenges to Validity of EU Instruments (Amendment) (EU Exit) Regulations 2020 |
| S.I. 2020/1505 | Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020 |
| S.I. 2020/1509 | Motor Vehicle Tyres (Labelling) (Enforcement) (Amendment) (EU Exit) Regulations 2020 |
| S.I. 2020/1510 | Export Control (Amendment) (EU Exit) (No. 2) Regulations 2020 |
| S.I. 2020/1517 | Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) (No. 2) Regulations 2020 |

Appendix 1

S.I. 2020/1146

Heavy Commercial Vehicles in Kent (No.3) (Amendment) Order 2020

1. In its letter to the Department of 16th December 2020, the Committee requested a memorandum on the following:

“Is it intended that the condition in regulation 2(6)(a) (inserted paragraph (C1)) that a priority goods permit may be issued to a vehicle “that is carrying only priority goods” needs to be satisfied throughout the life of that permit, or is it intended to be sufficient for the condition to be satisfied at the point when the permit is issued (having regard, for example, to a consignment of chicks that is between 48 and 72 hours old at the time when the permit is issued)?”

2. In response to the question above, it is the policy intention that a heavy commercial vehicle, in respect of which a priority goods permit is issued, should carry only priority goods both at the point the permit is issued and during the duration of the permit’s validity (i.e. 24 hours). So, for example, the priority goods should not later during the journey in Kent be mixed with or exchanged for non-priority goods.

3. In a case where a priority goods permit has been issued in respect of a consignment of chicks that is between 48 and 72 hours old at the point when the permit is issued, it is the policy intention that the permit will not be considered invalid because the chicks have now reached the age of 72 hours. In practice such day-old chicks normally arrive at their European destination, i.e. at a market, within 72 hours. So at the point a permit is issued at a site in Kent the chicks would usually be considerably younger than 72 hours.

4. We trust that the explanation above provides some assurance to the Committee.

Department for Transport

21 December 2020

Appendix 2

S.I. 2020/1363

Road Vehicles (Display of Registration Marks) (Amendment) (EU Exit) (No.2) Regulations 2020

1. By a letter dated 16th December 2020, the Joint Committee on Statutory Instruments requested a memorandum on the following point:

“Confirm that regulation 3 should have provided for regulation 10(2) of the Road Vehicles (Display of Registration Marks) Regulations 2001 to be subject to new paragraph (4A).”

2. Regulation 10(2) as amended applies to vehicles first registered on or after 1st September 2001 but before 1st September 2021. The registration plates for this group of vehicles must comply with the requirements of Part 1 of Schedule 2.

3. The new regulation 10(4A) applies to replacement plates for all vehicles from 1st September 2021, other than those which fall within paragraph 10(5) (which are vehicles first registered before 1st September 1973).

4. Paragraph 10(4A) provides that for replacement plates from 1st September 2021, they must comply with new Part A1 of Schedule 2. This includes vehicles which fall within paragraph 10(2).

5. However, to avoid any confusion about how regulation 10(4A) should apply to paragraph 10(2), the Department proposes to amend regulation 10(2) when a suitable opportunity arises to provide that it is subject to new paragraph 10(4A).

Department for Transport

22 December 2020

Appendix 3

S.I. 2020/1387

Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020

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

In relation to regulation 7, confirm whether the words “permanent pasture referred to in Article 45(2)(a) of that Regulation” should have been omitted from Article 2(1)(22) of Commission Delegated Regulation (EU) No 640/2014 insofar as it applies to direct payments, given that Article 45 is among the provisions omitted by regulation 5(6).

2. The Department had taken the view that the wording “permanent pasture referred to in Article 45(2)(a) of that Regulation”, had already been omitted from Article 2(1)(22) of Commission Delegated Regulation (EU) No 640/2014, insofar as it related to direct payments, by a gloss in the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2). This gloss meant that references which were only relevant to historic years prior to the 2020 claim year would be omitted. The term “permanent pasture” was a historic term which had been replaced by “permanent grassland” in Regulation (EU) No 1307/2013, save for a few references to “permanent pasture” relating to the first 2 years of the new Basic Payment Scheme, also pre-2020.

3. However, on reflection, the term “permanent pasture” in Article 45(2)(a) of Regulation (EU) No 1307/2013 relates to a reference ratio still in use in the 2020 claim year. The Department concludes therefore that the wording “permanent pasture referred to in Article 45(2)(a) of that Regulation” would not have been omitted by the gloss. Consequently it should have been omitted from Article 2(1)(22) by this statutory instrument.

4. The Department apologises for this oversight and assures the Committee that it will correct the error at the earliest available opportunity.

Department for Environment, Food and Rural Affairs

22 December 2020

Appendix 4

S.I. 2020/1401

Electricity and Gas (Internal Markets) (No. 2) Regulations 2020

1. In its letter to the Department of 16 December 2020, the Joint Committee requested a memorandum on the following points:

1. In relation to regulation 4(5), inserted Condition 31E, explain where the term “Distribution Licensee” is defined.

2. In relation to regulation 4(5), inserted paragraph 31F.6, explain whether the factors the licensee must take into account when considering whether “31F.4 may apply” are intended to include whether the Authority is satisfied that the circumstances described in that paragraph are satisfied.

3. In relation to the second paragraph of the Explanatory Note, explain:

a. what is intended by the phrase “indicative versions of the standard licence conditions”; and;

b. where the official, non-consolidated version of all the standard conditions in each of the licences this instrument amends can be accessed by a person wishing to check the accuracy of those amendments (for example, that made by regulation 4(7)(e), which appears to be inconsistent with the sub-paragraph numbering in the copy available on Ofgem’s Electronic Public Register).

In relation to regulation 4(5), inserted Condition 31E, explain where the term “Distribution Licensee” is defined.

2. The term “Distribution Licensee” has not been defined.

3. We note that there is an existing reference to “distribution licensees” in condition 21.4 of the standard conditions of electricity distribution licences. It is in lower case but is referred to in the context of distribution licences.

4. At the time of drafting, a definition was not considered necessary on the basis that it is clear that this term is referring to other holders of a distribution licence. The standard conditions of electricity distribution licences refer to “licensee” throughout the document and therefore it seems to be a reasonable inference that the reference to “other Distribution licensees” is referring to other distribution licence holders.

5. We accept that a definition would have been clearer. The standard conditions are targeted at industry and the position would be clear to them. We take the view that this will not provide any practical problems.

In relation to regulation 4(5), inserted paragraph 31F.6, explain whether the factors the licensee must take into account when considering whether “31F.4 may apply” are intended to include whether the Authority is satisfied that the circumstances described in that paragraph are satisfied.

6. It is the intention that a tender process is to be carried out before a determination is made by the Authority (i.e. it is satisfied that the circumstances in 31F.4 have been met). The tender process will help to inform the Authority’s determination on whether any party is able to own, develop, manage or operate an Electric Vehicle Charging Point at a reasonable cost and in a timely manner.

7. The licensee must take into account whether the Authority could become satisfied (following the process set out in 31F.6 to 31F.11) that the circumstances set out in 31F.4 are met.

In relation to the second paragraph of the Explanatory Note, explain:

a. what is intended by the phrase “indicative versions of the standard licence conditions”;

8. The phrase “indicative versions of the standard licence conditions” refers to the hard copies of the licence conditions, as revised from time to time, including through this statutory instrument. They are available for public access.

b. where the official, non-consolidated version of all the standard conditions in each of the licences this instrument amends can be accessed by a person wishing to check the accuracy of those amendments (for example, that made by regulation 4(7)(e), which appears to be inconsistent with the sub-paragraph numbering in the copy available on Ofgem’s Electronic Public Register).

9. Keeling Schedules showing the relevant amendments to each of the sets of the standard licence conditions can be accessed on Ofgem’s website: <https://www.ofgem.gov.uk/publications-and-updates/open-letter-changes-licence-conditions-result-transposition-clean-energy-package>.

10. Versions of the standard licence conditions, as they apply from time to time, are available on Ofgem’s Electronic Public Register website: <https://epr.ofgem.gov.uk/Document>. This will be updated in due course to show the amendments that are being made by this statutory instrument.

Department for Business, Energy and Industrial Strategy

21 December 2020