



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

**Seventeenth Report of
Session 2023–24**

Drawing special attention to:

Offshore Installations (Safety Zones) Order 2024 (S.I. 2024/162)

*Police and Crime Commissioner Elections (Designation of Local Authorities
and Police Area Returning Officers) Order 2024 (S.I. 2024/186)*

*Ordered by the House of Lords
to be printed 17 April 2024*

*Ordered by the House of Commons
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Joint Committee on Statutory Instruments

Current membership

House of Lords

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

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

[Lord Meston](#) (*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), Joe Watt (Commons Clerk), Advisory Counsel: Sarita Arthur-Crow, Rupert Grist, Justin Leslie, Vanessa MacNair, and Hannah Stewart (Commons); Nicholas Beach, James Cooper, Ché Diamond (Lords).

Contacts

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Instruments reported

At its meeting on 17 April 2024 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. 2024/162: Reported for failure to comply with proper legislative practice

Offshore Installations (Safety Zones) Order 2024

Procedure: Not subject to parliamentary procedure

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice in one respect.

1.2 This Order deals with safety zones relating to offshore installations in waters around the United Kingdom. This Order was made on 19 February 2024. Article 1(2) provides that this instrument comes into force 21 days after the day on which it is made, but the italic date information says that it comes into force on 13 March 2024, a date that is more than 21 days after the day on which it was made. The Committee asked the Department for Work and Pensions to explain.

1.3 In a memorandum printed at Appendix 1, the Department explains that the italic date information is wrong and that the Order came into force on 11 March 2024. It confirms that it is taking steps to correct this, and the Committee notes that a correction slip was issued on 28 March 2024. The approach taken by article 1(2) is a common method of complying with the convention that an instrument subject to negative procedure should generally be laid at least 21 days before it is due to come into force (the Committee notes that whilst this instrument is not required to be laid before Parliament, the approach taken by article 1(2) remains consistent with the spirit of the 21-day rule). However, where a commencement provision refers to a certain number of days – rather than referring to a specific date – it is important that the italic date information is accurate as significant confusion can arise where there are discrepancies. In the Committee’s view, this confusion has not been rectified by the correction slip, as the Committee considers that the correct interpretation of article 1(2) is that the instrument came into force at the end of 21 full days after the day it was made, which was 12 March 2024. **The Committee accordingly reports this Order for failure to follow proper legislative practice, acknowledged by the Department.**

2 S.I. 2024/186: Reported for failure to comply with proper legislative practice

Police and Crime Commissioner Elections (Designation of Local Authorities and Police Area Returning Officers) Order 2024

Procedure: Not subject to parliamentary procedure

2.1 The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice in one respect.

2.2 This Order is made under the Police Reform and Social Responsibility Act 2011 for the purpose of designating returning officers and appropriate officers for police and crime commissioner elections. In doing so, article 7 makes some revocations and saving provisions and the preamble cites section 154(5)(b), which provides that orders under the Act may include such provision. By contrast, article 6 makes consequential amendments to some related legislation but the preamble does not cite section 154(5)(a), which provides that orders under the Act may include consequential provision. The Committee asked the Department for Levelling Up, Housing and Communities to explain.

2.3 In a memorandum printed at Appendix 2, the Department acknowledges that it should have cited section 154(5)(a). The Committee notes that this is not a case where a failure to cite an enabling power goes to whether the instrument, or a provision within the instrument as is the case here, is *ultra vires*. Section 154(5) is drafted in such a way that it is clear that it is expanding on what provision the main powers in question can be used to make, rather than providing a separate basis for making that provision. However, given the citation of section 154(5)(b) in the preamble, it would have been better legislative practice for the preamble to also refer to section 154(5)(a). **The Committee accordingly reports this Order for failure to follow proper legislative practice in one respect, acknowledged by the Department.**

Instruments not reported

At its meeting on 17 April 2024 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	Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) (No. 2) Regulations 2024
Draft	Combined Authorities (Finance) (Amendment) Regulations 2024
Draft	Contracts for Difference (Sustainable Industry Rewards) Regulations 2024

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2024/148	Supreme Court Fees Order 2024
S.I. 2024/181	Police and Crime Commissioner Elections (Returning Officers' Accounts) Regulations 2024
S.I. 2024/183	Non-Domestic Rating (Designated Areas) Regulations 2024
S.I. 2024/184	Non-Domestic Rating (Rates Retention and Renewable Energy Projects) (Amendment) Regulations 2024
S.I. 2024/192	Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2024
S.I. 2024/193	Copyright and Performances (Application to Other Countries) (Amendment) Order 2024
S.I. 2024/212	Prison and Young Offender Institution (Adjudication) (Amendment) Rules 2024
S.I. 2024/229	Water Industry (Special Administration) (England and Wales) Rules 2024
S.I. 2024/241	Oil and Gas Authority (Levy and Fees) Regulations 2024
S.I. 2024/258	Family Court (Composition and Distribution of Business) (Amendment) Rules 2024
S.I. 2024/266	Carer's Leave (Consequential Amendments to Subordinate Legislation) Regulations 2024
S.I. 2024/272	Football Spectators (2024 UEFA European Championship Control Period) Order 2024
S.I. 2024/273	Pensions Act 2004 (Codes of Practice) (Revocation) Order 2024
S.I. 2024/274	Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations 2024
S.I. 2024/281	National Health Service Pension Schemes (Amendment) Regulations 2024
S.I. 2024/282	Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Amendments) Order 2024

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2024/286	Finance Act 2024, Schedule 1 (Research and Development) (Appointed Day) Regulations 2024

Appendix 1: Memorandum from the Department for Work and Pensions

S.I. 2024/162

Offshore Installations (Safety Zones) Order 2024

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

Explain why the italic date information states that this Order comes into force on 13 March 2024, when the effect of article 1(2) of the Order is that it appears to come into force earlier than that.

2. The effect of article 1(2) is that the Order came into force on 11 March 2024 - 21 days after being made on 19 February 2024. This is the date that should have been included in the italic date information.

3. The Department acknowledges that the italic date information erroneously gives a coming into force date of 13 March 2024, and that in Article 3(2) there is a reference to Schedule 1, which should say ‘the Schedule’

4. The Department apologises to the Committee for these errors. It is proceeding to rectify them by issuing a correction slip.

Department for Work and Pensions

18 March 2024

Appendix 2: Memorandum from the Department for Levelling Up, Housing and Communities

S.I. 2024/186

Police and Crime Commissioner Elections (Designation of Local Authorities and Police Area Returning Officers) Order 2024

1. The Committee has asked the Department for Levelling Up, Housing and Communities for a memorandum on the following point(s):

Explain why the preamble does not cite section 154(5)(a) of the Police Reform and Social Responsibility Act 2011, given the consequential amendments made by article 6.

2. The Department acknowledges that this is a drafting error and that the Department should have cited section 154(5)(a) of the Police Reform and Social Responsibility Act 2011 as an enabling power in the preamble to the Order. The Department apologises for this error.

Department for Levelling Up, Housing and Communities

18 March 2024

Appendix 3: Memorandum from the Ministry of Justice

S.I. 2024/148

Supreme Court Fees Order 2024

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

In relation to paragraph 15 of Schedule 2, explain the basis on which the Chief Executive to the Supreme Court will decide whether there are exceptional circumstances that justify the remission of a fee.

2. The Ministry is grateful for the committee's consideration of this instrument and confirms that the Ministry has remade the power for the Chief Executive to remit fees in exceptional circumstances in identical terms to those in the Supreme Court Fees Order 2009, which this instrument revokes. Accordingly, the Ministry does not anticipate any change to the way in which the Chief Executive currently exercises this power. The Ministry did not in the 2009 Order or in this Order seek to set down specific criteria by which the Chief Executive is to determine whether an applicant's circumstances are 'exceptional', to ensure that the power could continue be exercised by the Chief Executive in line with public law principles and decisions made on the merits of each individual application.

3. The Supreme Court operates a fee remissions scheme but that scheme is only available to individuals (including sole traders) whose disposable capital and income falls below the relevant thresholds. The power to remit fees in exceptional circumstances is therefore a key safeguard to maintain access to justice for those who may not otherwise be eligible for remission, (individuals whose disposable capital and income is higher than the relevant threshold for remission, businesses and other organisations), but whose particular circumstances are such that remission should be granted.

4. Question 13 of the Supreme Court help with fees guidance provides further information on the exercise of this power.¹ It gives examples of evidence that the Chief Executive will take into account, such as evidence of income, savings and expenses, notices threatening legal action for non-payment of bills or housing costs etc, which support why the applicant is unable to realistically afford to pay the fee or that the applicant's circumstances are such that payment of the fee would result in undue hardship.

5. The guidance further clarifies that applicants will be expected to demonstrate that they have taken reasonable steps to exhaust alternative sources of funding. This may for example include where the applicant has legal expenses insurance but the insurance provider has confirmed in writing that it will not fund the court fee.

Ministry of Justice

15 March 2024

¹ <https://www.supremecourt.uk/docs/uksc-help-with-fees-guidance.pdf>

Formal Minutes

Wednesday 17 April 2024

Virtual meeting

Members present

Liz Twist, in the Chair

Lord Beith

Lord Haselhurst

Paul Holmes

Lord Meston

Damien Moore

Lord Sahota

Baroness Sater

Report consideration

Draft Report (Seventeenth 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 3.

Resolved, That the Report be the Seventeenth 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 24 April at 3.40 p.m.