



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

Nineteenth Report of Session 2023–24

Drawing special attention to:

Aviation Security (Air Cargo Agents) Regulations 2024 (S.I. 2024/228)

Domestic Abuse Protection Orders (County Court: Relevant Proceedings)
Regulations 2024 (S.I. 2024/253)

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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), Rebecca Kirby (Committee 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).

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Instruments reported

At its meeting on 1 May 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. 2024/228: Reported for requiring elucidation

Aviation Security (Air Cargo Agents) Regulations 2024

Procedure: Made negative

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

1.2 These Regulations allow the Secretary of State to maintain a list of air cargo agents who are approved for the purposes of aviation security. Regulations 4 and 5 list the information that must be included in the application and the requirements that must be met for an application for inclusion in the list to be approved. Paragraph 7.11 of the Explanatory Memorandum explains that the information to be provided alongside the application is largely the same as information required under the Aviation Security (Air Cargo Agents) Regulations 1993. Regulation 5(2)(g)(ii) of the 1993 Regulations required details of criminal convictions under the Aviation Security Act 1982 and the Aviation and Maritime Security Act 1990 of any staff employed by the applicant in the handling of cargo to be included in the application. These Regulations do not require that information. The Committee asked the Department for Transport to explain whether information regarding specified criminal convictions of staff is still required in some form before a decision is made on whether to include an applicant on the list of security approved air cargo agents.

1.3 In a memorandum printed at Appendix 1, the Department confirms that this information is no longer required to be submitted at the time of applying to be listed due to staff turnover between the date of the application and the date the application is determined. Instead, the Department explains that alternative requirements are in place which exceed the level of security and assurance provided by regulation 5(2)(g)(ii) of the 1993 Regulations. These requirements are included in directions issued to air cargo agents by the Secretary of State under Part 2 of the Aviation Security Act 1982. These are only provided to those with appropriate security clearance, but the Committee notes that it is an offence to fail to comply with such a direction without reasonable excuse. **The Committee accordingly reports regulations 4 and 5 for requiring elucidation, provided by the Department's memorandum.**

2 S.I. 2024/253: Reported for requiring elucidation

Domestic Abuse Protection Orders (County Court: Relevant Proceedings) Regulations 2024

Procedure: Made Negative

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 specify descriptions of proceedings where a county court can make a domestic abuse protection order otherwise than on an application for such an order. Regulation 2(2)(h) lists contentious probate claims as one of those proceedings and regulation 2(3)(a)(i) defines contentious probate claim as including “the grant of probate of the will, or letters of administration of the estate, of a deceased person...”. The Committee noticed that in certain primary legislation (for example, section 56 of the Courts and Legal Services Act 1990 and section 128 of the Senior Courts Act 1981) it is made clear that letters of administration include “all letters of administration of the effects of deceased persons, whether with or without a will annexed”. The Committee asked the Ministry of Justice to explain why it considered it unnecessary to include a reference to a claim for letters of administration with the will annexed in paragraph (3)(a)(i).

2.3 In a memorandum printed at Appendix 2, the Department explains that the definition of “contentious probate claim” mirrors the definition of “probate claim” in rule 57.1(2)(a) of the Civil Procedure Rules 1998 and asserts that both definitions are to be read by reference to the section 128 definition of administration. This assertion appears to be based on wording at the end of the definition of “contentious probate claim” in regulation 2(3)(a) which excludes “a claim which is non-contentious (or common form) probate business (as defined by section 128 of the Senior Courts Act 1981)”. The Committee notes that the reference to section 128 in regulation 2(3)(a) can be construed as referring only to the definition of “non-contentious or common form probate business” and does not necessarily mean that such a reference should be read into paragraph (3)(a)(i). However, the Committee considers that the policy intention is ultimately achieved although it would have been preferable for paragraph (3)(a)(i) to refer expressly to letters of administration with the will annexed. **Accordingly, the Committee is content to report regulation (3)(a)(i) for requiring elucidation, provided by the Department’s memorandum.**

Instruments not reported

At its meeting on 1 May 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. Numbes	S.I. Title
Draft	Carbon Dioxide Transport and Storage Revenue Support (Directions and Counterparty) Regulations 2024
Draft	Agriculture (Delinked Payments) (Reductions) (England) Regulations 2024
Draft	Management of Hedgerows (England) Regulations 2024
Draft	Armed Forces (Court Martial) (Amendment) Rules 2024
Draft	Securitisation (Amendment) Regulations 2024
Draft	Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment of Schedule A2) Order 2024

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2024/246	Non-Domestic Rating (Consequential and Other Amendments) (England) Regulations 2024
S.I. 2024/262	Human Tissue Act 2004 (Supply of Information about Transplants) Regulations 2024
S.I. 2024/271	National Health Service (Primary Dental Services and Dental Charges) (Amendment) Regulations 2024
S.I. 2024/285	Single Trade Window (Establishment, Operation and Information) Regulations 2024
S.I. 2024/289	Social Security (Contributions) (Amendment No. 2) Regulations 2024
S.I. 2024/294	National Health Service (Optical Charges and Payments) (Amendment) Regulations 2024
S.I. 2024/304	Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2024
S.I. 2024/306	Social Security (Contributions) (Amendment No. 3) Regulations 2024
S.I. 2024/317	Infrastructure Planning (Examination Procedure) (Amendment) Rules 2024

S.I. Numbers	S.I. Title
S.I. 2024/323	Non-Domestic Rating (Unoccupied Property) (England) (Amendment) Regulations 2024
S.I. 2024/327	Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2024
S.I. 2024/332	Infrastructure Planning (Miscellaneous Provisions) Regulations 2024
S.I. 2024/341	Social Security and Universal Credit (Migration of Tax Credit Claimants and Miscellaneous Amendments) Regulations 2024
S.I. 2024/369	Childcare (Free of Charge for Working Parents) (England) (Amendment) Regulations 2024
S.I. 2024/404	Windsor Framework (Implementation) Regulations 2024
S.I. 2024/413	Civil Aviation (Environmental Protection) (Amendment) Regulations 2024
S.I. 2024/416	Official Controls (Location of Border Control Posts) (England) Regulations 2024
S.I. 2024/418	Levelling-up and Regeneration Act 2023 (Consequential Amendments) (England) Regulations 2024
S.I. 2024/421	Domestic Abuse Act 2021 (Amendment) Regulations 2024
S.I. 2024/453	Levelling-up and Regeneration Act 2023 (Consequential Amendments) (No. 2) (England) Regulations 2024
S.I. 2024/454	Registrar of Companies and Register of Overseas Entities (Fees) (Amendment) Regulations 2024
S.I. 2024/474	Building (Registered Building Control Approvers etc.) (England) (Amendment) Regulations 2024

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2024/270	Small Business, Enterprise and Employment Act 2015 (Commencement No. 8) Regulations 2024
S.I. 2024/298	Recall Petition (Petition Officers' Charges) Regulations 2024
S.I. 2024/373	Down Syndrome Act 2022 (Commencement) Regulations 2024
S.I. 2024/422	Finance (No. 2) Act 2017, Sections 60 and 61 and Schedule 14 (Digital Reporting and Record-Keeping) (Appointed Day) (Amendment) Regulations 2024

S.I. Numbers	S.I. Title
S.I. 2024/423	Income Tax (Indexation of Qualifying Care Relief Amounts) Order 2024
S.I. 2024/451	Pension Schemes Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024
S.I. 2024/452	Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024
S.I. 2024/465	Smart Meters Act 2018 (Commencement) Regulations 2024
S.I. 2024/472	Public Order Act 2023 (Commencement No. 4) (England and Wales) Regulations 2024

Appendix 1: Memorandum from the Department for Transport

S.I. 2024/228

Aviation Security (Air Cargo Agents) Regulations 2024

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

Given the statement in paragraph 7.11 of the Explanatory Memorandum that the information that is to be provided alongside an application is largely the same as the information required under S.I. 1993/1073, explain whether the information that was required by regulation 5(2)(g)(ii) of the 1993 Regulations is still required in some form before a decision is made on whether to include an applicant on the list of security approved air cargo agents.

2) Regulation 5(2)(g)(ii) of the 1993 Regulations required an applicant to provide the details of any criminal convictions under the Aviation Security Act 1982 or the Aviation and Maritime Security Act 1990 of any staff employed by the applicant in the handling of cargo intended for carriage by an aircraft.

3) The new Regulations do not require this information to be submitted at the time of applying to be listed. The reasons for this are twofold.

4) Firstly, the nature of air cargo operations has changed significantly since 1993. Some air cargo agents employ hundreds of individuals with a high turnover of staff. Staff turnover may limit the utility of any such information being provided at the point of application as those employed by the applicant may have changed at the point at which the application is determined.

5) Second, alternative requirements are already in place which exceed the level of security and assurance provided by regulation 5(2)(g)(ii) of the 1993 Regulations. The new Regulations deal with the inclusion of the air cargo business itself on the statutory list. As set out in the Explanatory Memorandum, once on the list the Secretary of State may issue legally binding directions to that air cargo agent under Part 2 of the Aviation Security Act 1982. Such directions are the primary method of regulating aviation security standards in the United Kingdom. Due to their sensitive nature, they are marked as Official: Sensitive and only provided to those with appropriate security clearance.

6) While the Department is unable to comment publicly on the precise content of those directions, they do include a list of disqualifying offences which prohibit a directed employer (including air cargo agents) from employing individuals in security sensitive roles if they have been convicted of such an offence. Such offences go beyond those in the Aviation Security Act 1982 and the Aviation and Maritime Security Act 1990 and include other offences which may result in the individual posing a threat to aviation security.

7) Directions also include requirements on industry to carry out recurrent background checks on employees in security sensitive roles which informs the granting or revocation of any necessary Security Clearances and ensures compliance with the disqualifying offences requirements.

Department for Transport

23 April 2024

Appendix 2: Memorandum from the Ministry of Justice

S.I. 2024/253

Domestic Abuse Protection Orders (County Court: Relevant Proceedings) Regulations 2024

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

In the definition of “contentious probate claim” in regulation 2(3), explain why the Department considered it unnecessary to include a reference to a claim for letters of administration with the will annexed in paragraph (a)(i).

2) The Ministry of Justice is grateful to the Committee for its consideration of this instrument.

3) The definition of “contentious probate claim” in this instrument mirrors the definition of “probate claim” for the purposes of Part 57 of the Civil Procedure Rules 1998 (CPR) (see CPR rule 57.1(2)(a)), which is explained in Practice Direction 57A supporting that Part as applying to contentious probate claims, with practice and procedure for non-contentious or common form probate being governed instead by the Non-Contentious Probate Rules 1987. The intention was for the cases relating to wills and probate which are captured as “relevant proceedings” when in the County Court to be the same as those to which CPR Part 57 applies.

4) The CPR definition does not (and so the mirroring definition in this instrument does not) explicitly refer to a claim for letters of administration with the will annexed. The reason for this is understood to be that in section 128 of the Senior Courts Act 1981, the term “administration” includes “all letters of administration of the effects of deceased persons, whether with or without a will annexed”, and in the definition of “non-contentious or common form probate business” (namely “the business of obtaining probate and administration where there is no contention as to the right thereto”) the reference to “administration” is to be read accordingly; and because “probate claims” are defined in CPR rule 57.1(2)(a) by reference to the section 128 definition, “administration” in that rule is construed accordingly. The effect is that the reference to “letters of administration” will include letters of administration with the will annexed.

Ministry of Justice

19 April 2024

Formal Minutes

Wednesday 1 May 2024

Members present

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Peter Grant

Lord Haselhurst

Lord Meston

Lord Sahota

Baroness Sater

Liz Twist

Lord Watson

Report consideration

Draft Report (*Nineteenth 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 2.

Resolved, That the Report be the Nineteenth 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 8 May at 3.40 p.m.