



House of Lords  
House of Commons  
Joint Committee on Statutory  
Instruments

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# Twenty-First Report of Session 2023–24

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**Drawing special attention to:**

*Magistrates' Courts (Amendment) Rules 2024 (S.I. 2024/254)*

*Charities Act 2022 (Commencement No. 3, Consequential, Saving and Transitional Provisions) Regulations 2024 (S.I. 2024/265)*

*Economic Crime and Corporate Transparency Act 2023 (Commencement No. 2 and Transitional Provision) Regulations 2024 (S.I. 2024/269)*

*Air Navigation (Overseas Territories) (Environmental Standards) Order 2024 (S.I. 2024/378)*

*Town and Country Planning (Former RAF Airfield Wethersfield) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024 (S.I. 2024/411)*

*Town and Country Planning (Former RAF Scampton) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024 (S.I. 2024/412)*

*Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2024 (S.I. 2024/426)*

*Cosmetic Products (Restriction of Chemical Substances) Regulations 2024 (S.I. 2024/455)*

*Ordered by the House of Lords  
to be printed 15 May 2024*

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## Joint Committee on Statutory Instruments

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

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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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### **Committee staff**

The current staff of the Committee are Sue Beeby (Committee Operations Officer), Rebecca Kirby (Committee Officer), Jennifer Mills (Lords Clerk), 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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# Contents

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|                                                                                                                                     |           |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Instruments reported</b>                                                                                                         | <b>3</b>  |
| 1 S.I. 2024/254: Reported for failure to comply with proper legislative practice and requiring elucidation                          | 3         |
| Magistrates' Courts (Amendment) Rules 2024                                                                                          |           |
| 2 S.I. 2024/265: Reported for defective drafting                                                                                    | 4         |
| Charities Act 2022 (Commencement No. 3, Consequential, Saving and Transitional Provisions) Regulations 2024                         |           |
| 3 S.I. 2024/269: Reported for failure to comply with proper legislative practice                                                    | 5         |
| Economic Crime and Corporate Transparency Act 2023 (Commencement No. 2 and Transitional Provision) Regulations 2024                 |           |
| 4 S.I. 2024/378: Reported for unjustifiable delay                                                                                   | 5         |
| Air Navigation (Overseas Territories) (Environmental Standards) Order 2024                                                          |           |
| 5 S.I. 2024/411: Reported for failure to comply with proper legislative practice and requiring elucidation                          | 6         |
| Town and Country Planning (Former RAF Airfield Wethersfield) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024 |           |
| 6 S.I. 2024/412: Reported for failure to comply with proper legislative practice and requiring elucidation                          | 7         |
| Town and Country Planning (Former RAF Scampton) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024              |           |
| 7 S.I. 2024/426: Reported for defective drafting                                                                                    | 7         |
| Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2024                            |           |
| 8 S.I. 2024/455: Reported for failure to comply with proper legislative practice                                                    | 8         |
| Cosmetic Products (Restriction of Chemical Substances) Regulations 2024                                                             |           |
| <b>Instruments not reported</b>                                                                                                     | <b>9</b>  |
| <b>Annex</b>                                                                                                                        | <b>9</b>  |
| <b>Appendix 1: Memorandum from the Ministry of Justice</b>                                                                          | <b>11</b> |
| S.I. 2024/254                                                                                                                       | 11        |
| Magistrates' Courts (Amendment) Rules 2024                                                                                          |           |
| <b>Appendix 2: Memorandum from the Department of Culture Media and Sport</b>                                                        | <b>13</b> |
| S.I. 2024/265                                                                                                                       | 13        |
| Charities Act 2022 (Commencement No. 3, Consequential, Saving and Transitional Provisions) Regulations 2024                         |           |
| <b>Appendix 3: Memorandum from the Department of Business and Trade</b>                                                             | <b>16</b> |
| S.I. 2024/269                                                                                                                       | 16        |

Economic Crime and Corporate Transparency Act 2023 (Commencement No 2  
and Transitional Provisions) Regulations 2024

|                                                                                                                                        |           |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Appendix 4: Memorandum from the Department for Transport</b>                                                                        | <b>17</b> |
| S.I. 2024/378                                                                                                                          | 17        |
| Air Navigation (Overseas Territories) (Environmental Standards) Order 2024                                                             |           |
| <b>Appendix 5: Memorandum from the Department for Levelling Up, Housing<br/>and Communities</b>                                        | <b>19</b> |
| S.I. 2024/411                                                                                                                          | 19        |
| Town and Country Planning (Former RAF Airfield Wethersfield)<br>(Accommodation for Asylum-Seekers etc.) Special Development Order 2024 |           |
| <b>Appendix 6: Memorandum from the Department for Levelling Up, Housing<br/>and Communities</b>                                        | <b>21</b> |
| S.I. 2024/412                                                                                                                          | 21        |
| Town and Country Planning (Former RAF Scampton) (Accommodation for<br>Asylum-Seekers etc.) Special Development Order 2024              |           |
| <b>Appendix 7: Memorandum from the Home Office</b>                                                                                     | <b>23</b> |
| S.I. 2024/426                                                                                                                          | 23        |
| Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act<br>1984) (Amendment) Order 2024                            |           |
| <b>Appendix 8: Memorandum from the Department of Business and Trade</b>                                                                | <b>24</b> |
| S.I. 2024/455                                                                                                                          | 24        |
| Cosmetic Products (Restriction of Chemical Substances) Regulations 2024                                                                |           |
| <b>Formal minutes</b>                                                                                                                  | <b>25</b> |

# Instruments reported

At its meeting on 15 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 eight 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. 2024/254: Reported for failure to comply with proper legislative practice and requiring elucidation

### *Magistrates' Courts (Amendment) Rules 2024*

*Procedure: Made Negative*

1.1 **The Committee draws the special attention of both Houses to these Rules on the grounds that they fail to comply with proper legislative practice in one respect and require elucidation in one respect.**

1.2 These Rules amend the Magistrates' Courts Rules 1981 to ensure that the necessary procedural framework is in place to underpin the operation of Part 3 of the Domestic Abuse Act 2021.

1.3 Whilst the instrument comes into force on 8 April 2024, much of the instrument will not have effect until Part 3 of the Domestic Abuse Act 2021 comes into force. The Committee asked the Ministry of Justice to explain why it was necessary to make the rules relating to the 2021 Act before those provisions are commenced. In a memorandum printed at Appendix 1, the Department explains that Part 3 of the Act is to be commenced on a pilot basis and that commencement of the pilot has been delayed. The Department acknowledge that provisions within this instrument will “beat the air” until the date of pilot commencement and that in retrospect it might have been preferable to adopt a commencement provision which ties directly to the date the Act is commenced for the pilot, as was done in article 3(3) of S.I. 2023/150. The Committee agrees that the Department's suggestion would have been better practice (see the Committee's report regarding S.I. 2024/364 where a similar but more confined issue arose) **and accordingly reports this Order for failure to comply with proper legislative practice.**

1.4 Rule 2(6) inserts new rule 20(4) into the 1981 Rules. The new rule provides that where a domestic abuse protection order has been made without notice to the defendant, the court must arrange a hearing at which the defendant may make representations. Where the defendant does in fact make representations, rule 20(4)(c) provides that rule 21 does not apply. Rule 21 deals with the procedure applicable where an application has been made to vary or discharge an order. The Committee asked the Department to explain what the intention behind 20(4)(c) had been and particularly whether it is intended to restrict rule 21 from applying after the hearing under rule 20 has finished. In its memorandum, the Department explains that rule 20(4)(c) was included to avoid a conflict with the procedure set out in rule 21. The Committee considers this to have been an excessively cautious approach that in turn gave rise to lack of clarity. Rule 21 stipulates what should be included in an application to vary or discharge an order, who must be served, how it

must be served and who should receive notice of the hearing. These requirements cannot apply to a rule 20 scenario where the defendant attends the hearing and at the hearing makes representations. Whilst the Committee agrees with the Department that rule 20(4)(c) could not have the effect of overriding the ability to make an application under the Domestic Abuse Act 2021, its inclusion gives rise to doubts as to its intended purpose. **The Committee accordingly reports this provision for requiring elucidation.**

1.5 The Committee also queried whether rule 20(3) should have provided for a notice of hearing to be given to a person other than the applicant, for example the person for whose protection the order was made. The Department confirmed that rule 20(3) accords with the policy intention.

## 2 S.I. 2024/265: Reported for defective drafting

### ***Charities Act 2022 (Commencement No. 3, Consequential, Saving and Transitional Provisions) Regulations 2024***

*Procedure: Not subject to parliamentary procedure*

**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 are the third set of commencement regulations made under the Charities Act 2022. They include saving provisions to ensure that in circumstances where there is a right to bring proceedings in the relevant Tribunal or by way of judicial review, the old provisions continue to apply until either the time for bringing relevant proceedings has expired or any relevant proceedings brought have been completed. Under regulations 6(2)(b)(ii), 7(2)(b)(ii), 8(2)(b)(iii) and 8(3)(b)(iii), one of the relevant criteria for the application of the saving provisions is that “the period for commencing... proceedings... has not expired”. There is no provision for determining what that period is regarding judicial review proceedings. The Committee asked the Department for Media, Culture and Sport to explain.

2.3 In a memorandum printed at Appendix 2, the Department explains how the start of that period should be determined in respect of regulations 6, 7 and 8. However, it does not provide any information about determining when the period expires. Under the Civil Procedure Rules, Part 54.5(1), a claim for judicial review must be filed “(a) promptly; and (b) in any event not later than 3 months after the grounds to make the claim first arose”. Case law has confirmed that “promptly” may mean a period of less than 3 months (and the period can be extended by a court). The Committee therefore remains unclear how to determine when “the period for commencing... proceedings... has not expired” in respect of judicial review proceedings. **The Committee accordingly reports regulations 6, 7 and 8 for defective drafting.**

### 3 S.I. 2024/269: Reported for failure to comply with proper legislative practice

#### ***Economic Crime and Corporate Transparency Act 2023 (Commencement No. 2 and Transitional Provision) Regulations 2024***

*Procedure: Not subject to parliamentary procedure*

**3.1 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.**

3.2 These Regulations commence provisions of the Economic Crime and Corporate Transparency Act 2023. Regulation 2(z13) contains the inert material “(but see regulation 5)” whilst regulation 4(a) refers to operative material in the same manner, providing that Part 1 of Schedule 8 “(and section 179 so far as it relates to Part 1 of Schedule 8)” comes into force on the specified date. The Committee asked the Department for Business and Trade why inert and operative material is presented in the same way. In a memorandum printed at Appendix 3, the Department accepts that they were presented in the same way and that a different method could have been used. In the Committee’s view, presentational distinction between inert and operative material is essential as it enables the reader to unequivocally establish what has legal effect and what has not (see the Committee’s First Special Report of Session 2013–14 Excluding the inert from secondary legislation). **The Committee accordingly reports regulation 4(a) for failure to comply with proper legislative practice.**

### 4 S.I. 2024/378: Reported for unjustifiable delay

#### ***Air Navigation (Overseas Territories) (Environmental Standards) Order 2024***

*Procedure: Made Negative*

**4.1 The Committee draws the special attention of both Houses to this Order due to the Department’s delay in fulfilling an undertaking to the Committee.**

4.2 This Order updates requirements of the Convention on International Civil Aviation 1944, and revokes and replaces the Air Navigation (Overseas Territories) (Environmental Standards) Order 2014 (S.I. 2014/2926) and the Air Navigation (Overseas Territories) (Environmental Standards) (Amendment) Order 2015 (S.I. 2015/236). In doing so, it addresses concerns raised by the Committee in its Eighteenth Report of Session 2014–15 and First Report of Session 2015–16 in relation to the 2014 and 2015 Orders respectively, regarding the validation of certificates.

4.3 The Committee noted that the Foreign, Commonwealth and Development Office had stated, in its memorandum to the Committee on 24 March 2015, in respect of S.I. 2015/236, that a new Order correcting this error would “be submitted to the next Privy Council”. It asked the Department for Transport—which has since become responsible for this legislation—to explain why it has taken nearly nine years to make amendments the Foreign and Commonwealth Office informed Parliament would be submitted in a much shorter timescale.

4.4 In a memorandum printed at Appendix 4, the Department acknowledges and regrets the delay. It explains the delay as a combination of reasons, including resourcing constraints. The Department states that the amendments were in practice not having a practical effect in the “correct implementation” of international standards and that the amendments were not seen as a high priority. The Committee presumes the Department is not referring to provisions that were reported for defective drafting and reminds the Department of its previous reports regarding implementing law the Government wished it had made, rather than law it did make (see for example S.I. 2019/983 and 2021/59). The Committee is also concerned that the Department did not consider the amending instrument to be high priority, after a commitment was given to the Committee, and therefore to Parliament, that it would correct errors much more quickly. **The Committee accordingly reports this Order due to the Department’s delay in fulfilling the original undertaking to the Committee, acknowledged by the Department.**

## **5 S.I. 2024/411: Reported for failure to comply with proper legislative practice and requiring elucidation**

### ***Town and Country Planning (Former RAF Airfield Wethersfield) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024***

*Procedure: Made Negative*

**5.1 The Committee draws the special attention of both Houses to this Order on the grounds that it fails to comply with proper legislative practice in one respect and requires elucidation in two respects.**

5.2 This Order grants temporary planning permission for development at the former RAF Airfield Wethersfield relating to accommodation and support to asylum seekers.

5.3 The development granted includes “construction” of certain things. Article 2(1) defines “construction” as including “decommissioning or removal (demolition)”. The Committee asked the Department for Levelling Up, Housing and Communities why the word demolition is in parentheses. In a memorandum printed at Appendix 5, the Department explains that the word demolition was included as the question of whether demolition requires planning permission has been contentious at times. Whilst the majority of the new buildings will be removed in one piece, demolition was included to cover any cases where demolition, as naturally thought of, would be required. The Committee considers that provisions that are operative should not be presented as if they are inert. The Department clearly intended the word demolition to have legal effect and it would have been better practice to present that word in the same manner as others that have legal effect (see the Committee’s First Special Report of Session 2013–14 Excluding the inert from secondary legislation). **The Committee accordingly reports article 2(1) for failure to comply with proper legislative practice.**

5.4 One of the conditions attached to the planning permission is that “between the hours of 11 p.m. and 7 a.m., internal ambient noise levels in sleeping accommodation do not exceed 30dB LAeq, 8 hours and 45dB LAFmax more than 15 times per night”. The Committee asked the Department which period “8 hours” is referring to. In its memorandum, the Department explains that it is the same 11pm to 7am period. As that period is an eight-hour period, the reference to “8 hours” is superfluous and its inclusion

instead casts doubt as to whether the second half of the requirement (that noise does not exceed 45dB LAFmax more than 15 times per night) can be a different 8-hour nightly period, such as 10pm to 6am. However, as the Department states that this is standard formulae and the doubt for confusion in practice therefore appears to be minimal, **the Committee is content to report paragraph 11 of Schedule 3 for requiring elucidation, provided by the Department’s memorandum.**

5.5 Several of the conditions attached to the planning permission must be met before any service user is accommodated on the land. As the land has been providing accommodation to asylum seekers since July 2023, the Committee asked the Department to confirm that the requirements set out in conditions 9, 14, 16(1), 16(3), 17(1), 17(3) and 24(1) were met before this Order came into force on 11 April 2024. The Department provides this confirmation in their memorandum. **The Committee accordingly reports this instrument for requiring elucidation, provided by the Department’s memorandum.**

## **6 S.I. 2024/412: Reported for failure to comply with proper legislative practice and requiring elucidation**

### ***Town and Country Planning (Former RAF Scampton) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024***

*Procedure: Made Negative*

6.1 **The Committee draws the special attention of both Houses to this Order on the grounds that it fails to comply with proper legislative practice in one respect and requires elucidation in two respects.**

6.2 This Order grants temporary planning permission for development at the former RAF Scampton site relating to accommodation and support to asylum seekers.

6.3 The Committee asked the Department for Levelling Up, Housing and Communities the same first two questions that were asked in relation to S.I. 2024/411 and the same replies were received. On the basis set out above, **the Committee reports article 2(1) of this instrument for failure to comply with proper legislative practice and paragraph 13 of Schedule 3 for requiring elucidation.**

## **7 S.I. 2024/426: Reported for defective drafting**

### ***Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2024***

*Procedure: Made Negative*

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

7.2 This Order amends S.I. 2015/759 so that certain sections of the Police and Criminal Evidence Act 1984 also apply to cryptoasset investigations. The Economic Crime and Corporate Transparency Act 2023 amended the Proceeds of Crime Act 2002 to provide new powers for law enforcement officers to take control of and recover cryptoassets which

are derived from, or are intended for use in, unlawful conduct. The amendments made by this Order ensure that the safeguards and procedures found in the Police and Criminal Evidence Act 1984 also apply to cryptoasset investigations.

7.3 The Committee noticed that a reference to cryptoasset investigations was not added to article 5(3)(d)(v) of S.I. 2015/759 which provides that anything seized for the purposes of an investigation may be retained for forensic examination in connection with specified investigations. The Committee asked the Home Office to explain whether it had intended to include cryptoasset investigations in the list of specified investigations. In a memorandum printed at Appendix 7, the Department confirms the omission and explains that it will correct it in a future instrument. **The Committee accordingly reports this instrument for defective drafting, acknowledged by the Department.**

## 8 S.I. 2024/455: Reported for failure to comply with proper legislative practice

### *Cosmetic Products (Restriction of Chemical Substances) Regulations 2024*

*Procedure: Made Negative*

8.1 **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.**

8.2 These Regulations, which restrict the use of the chemical substance butylated hydroxytoluene in cosmetic products, come into force less than 21 days after laying. The Explanatory Memorandum states that the breach of the 21-day rule was an oversight in aligning the logistics of obtaining a Ministerial signature for the instrument with the aim to move swiftly to bring into legal effect the provisions within the instrument (paragraph 11.1). The Committee asked the Department for Business and Trade whether it had anything further it wished to add to its explanation in the Explanatory Memorandum as to why the 21-day rule was not complied with.

8.3 In a memorandum printed at Appendix 8, the Department provides a different reason, namely that the instrument, and in particular its provision stating that the instrument comes into force 21 days after making, was drafted on the assumption that it would be made and laid the same day. This did not build in sufficient contingency to allow for the practicalities of doing so. The Department has put in place additional steps to improve communications between officials to ensure that misunderstandings of this type do not happen again. **The Committee accordingly reports this instrument for failing to comply with proper legislative practice, acknowledged by the Department.**

# Instruments not reported

At its meeting on 15 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

### Instruments requiring affirmative approval

| S.I. Number   | S.I. Title                                                                                  |
|---------------|---------------------------------------------------------------------------------------------|
| S.I. 2024/588 | Tribunal Procedure (Upper Tribunal) (Immigration and Asylum Chamber) (Amendment) Rules 2024 |

### Draft instruments requiring affirmative approval

| S.I. Number | S.I. Title                                                                             |
|-------------|----------------------------------------------------------------------------------------|
| Draft       | Coroners (Suspension of Requirement for Jury at Inquest: Coronavirus) Regulations 2024 |

### Instruments subject to annulment

| S.I. Number   | S.I. Title                                                                                                           |
|---------------|----------------------------------------------------------------------------------------------------------------------|
| S.I. 2024/259 | Crown Court (Amendment) Rules 2024                                                                                   |
| S.I. 2024/512 | Representation of the People Act 1983 (Amendment of Schedule 6A) Regulations 2024                                    |
| S.I. 2024/513 | Retained EU Law (Revocation and Reform) Act 2023 (Environment, Food and Rural Affairs) (Revocation) Regulations 2024 |
| S.I. 2024/521 | Police (Conduct) (Amendment) Regulations 2024                                                                        |
| S.I. 2024/529 | Universal Credit (Administrative Earnings Threshold) (Amendment) Regulations 2024                                    |
| S.I. 2024/543 | Borough of Thurrock (Scheme of Elections) Order 2024                                                                 |
| S.I. 2024/553 | Charitable Incorporated Organisations (Notification Requirements: Social Housing) (Amendment) Regulations 2024       |
| S.I. 2024/556 | Independent Commission for Reconciliation and Information Recovery (Biometric Material) Regulations 2024             |

## Instruments not subject to parliamentary proceedings not laid before Parliament

| S.I. Number   | S.I. Title                                                                                               |
|---------------|----------------------------------------------------------------------------------------------------------|
| S.I. 2024/511 | Health and Care Act 2022 (Commencement No. 9) Regulations 2024                                           |
| S.I. 2024/522 | Finance (No. 2) Act 2023, Schedule 20 (Bilateral Safeguarding Remedies) (Appointed Day) Regulations 2024 |
| S.I. 2024/525 | Recall Petition (Petition Officers' Charges) (Amendment) Regulations 2024                                |
| S.I. 2024/559 | Protection of Trading Interests (Authorisation) (Amendment) Regulations 2024                             |
| S.I. 2024/562 | Armed Forces Act 2016 (Commencement No. 4) Regulations 2024                                              |

# Appendix 1: Memorandum from the Ministry of Justice

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S.I. 2024/254

## *Magistrates' Courts (Amendment) Rules 2024*

1. The Committee has asked the Ministry of Justice for a memorandum on the following points:

(1) Explain why it was necessary to make rules that contain references to provisions within the Domestic Abuse Act 2021 that are not yet in force, before those provisions are commenced.

(2) Explain whether it was intended that new rule 20(3) would provide that the notice of hearing be given to the person for whose protection the order was made, where that person was not the applicant (noting that section 34 of the 2021 Act refers to notification being given to “all the parties”).

(3) In relation to rule 20(4)(c), explain:

(a) whether the intention is to prevent the defendant from subsequently applying under rule 21 to vary or discharge the order (noting that the Domestic Abuse Act 2021 does not appear to impose this restriction), and

(b) whether the intention is to also restrict rule 21 from applying where the defendant has previously had the opportunity to make representations under rule 20 and the person that wants to make an application under rule 21 is a person other than the defendant.

The Ministry of Justice is grateful for the Committee’s consideration of this instrument. The response to each of the points raised is set out below.

### Point (1)

2. This instrument is one of a number of instruments containing provision for the purpose of giving effect to Part 3 of the Domestic Abuse Act 2021, which establishes a new form of order (the domestic abuse protection order, or DAPO) for the protection of those subject to or at risk of domestic abuse. Part 3 is to be brought into force on a pilot basis in selected areas, and the arrangements for settling the areas in which DAPOs may be made have been subject to change, with consequent adjustment of the date of pilot commencement. Slippage in pilot commencement has meant that the commencement date for this instrument of 8 April is before that of pilot commencement (which is nevertheless anticipated to be in the near future), with the effect that the provisions of this instrument which provide for procedure for applications in respect of DAPOs (including references to definitions in Part 3) will “beat the air” until the date of pilot commencement. In retrospect, it might have been preferable to adopt a commencement provision like that in article 3(3) of S.I. 2023/150, tying commencement directly to the date of pilot commencement; and the Ministry will bear this in mind for future instruments.

Point (2): new rule 20(3), Magistrates' Courts Rules 1981

3. The Ministry confirms that it was not the intention of this provision to provide that the notice of hearing be given to the person for whose protection the order was made, where that person was not the applicant. The intention is that the notice of hearing should be given to the applicant, which in this instance is the police. Section 34(4)(b) of the Domestic Abuse Act 2021 (the 2021 Act) refers to the right to make representations at a hearing to which notice was given to all the parties in accordance with rules of the court, covering proceedings in all courts (magistrates' courts in their civil jurisdiction (to which this instrument applies), magistrates' courts and the Crown Court in criminal proceedings, the County Court, the Family Court and the Family Division of the High Court); but while the person to be protected will usually be a party in proceedings in the County Court, Family Court and Family Division of the High Court, that is not the case in the magistrates' court. This is by reason of (i) section 28(5), (6) and (7) of the Act (given that section 31 of the Act applies only to civil proceedings in the County Court, not to civil proceedings in a magistrates' court), and (ii) sections 51 and 52 of the Magistrates' Courts Act 1980 and rule 14 of the Magistrates' Courts Rules 1981 (establishing the nature of a "complaint").

Point (3)(a) and (b): new rule 20(4)(c), Magistrates' Courts Rules 1981

4. The Ministry confirms that the intention of rule 20(4)(c) is not as described in point 3(a) or (b).

5. Point (3)(a): New rule 21 of the Magistrates' Courts Rules 1981 prescribes the procedure ordinarily to be followed on an application under section 44 of the 2021 Act to vary or to discharge a DAPO; but it does not itself create the power to make such an application. Rule 20 deals with the specific situation of the requirement in section 34(4) of the 2021 Act that where an order was made without notice, the defendant can make representations about it at a hearing. To put section 34 of the 2021 Act into effect in the context of magistrates' courts proceedings, rule 20 provides for the hearing to be treated as an application (i.e. complaint) to vary the order, and sets out the procedure for that, in that specific context. To avoid a conflict with the procedure for dealing with an application more generally to vary under section 44 of the 2021 procedure for which is regulated by rule 21, rule 21 is disapplied for the specific rule 20 context.

6. Point (3)(b): As explained above, rule 20 is not intended to restrict the ability to make applications under section 44 of the 2021 Act at all, and it could not in the Ministry's view override the 2021 Act so as to have that effect. Therefore, a defendant who has made representations at a hearing following a DAPO being made without notice under section 34 of the 2021 Act, can apply at a later stage to vary or discharge a DAPO, for example because there has been a subsequent change in circumstances. If they make such an application, the procedure for that application will be governed by rule 21.

**Ministry of Justice**

**3 May 2024**

## Appendix 2: Memorandum from the Department of Culture Media and Sport

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S.I. 2024/265

### ***Charities Act 2022 (Commencement No. 3, Consequential, Saving and Transitional Provisions) Regulations 2024***

1. The Committee has asked the Department of Culture Media and Sport for a memorandum on the following point(s):

In relation to regulations 6(2)(b)(ii), 7(2)(b)(ii), 8(2)(b)(iii) and 8(3)(b)(iii) explain how the period for commencing an application for judicial review is to be determined for the purposes of applying the related saving provisions.

2. The Charities Act 2022 (“the 2022 Act”) makes a number of changes to charity law, including through amendments to the Charities Act 2011 (“the 2011 Act”). The Charities Act 2022 (Commencement No. 3, Consequential, Saving and Transitional Provisions) Regulations 2024 (“the Commencement Regulations”) are the third set of commencement regulations bringing into force various provisions of the 2022 Act.

3. Regulations 6, 7 and 8 of the Commencement Regulations make saving provision in relation to sections 1, 2 and 3 of the 2022 Act respectively. These sections make changes to the way in which charitable companies, charitable incorporated organisations and unincorporated charities can make changes to their governing documents, partly to bring the processes as closely aligned as is possible.

4. The saving provisions set out in regulations 6, 7 and 8 of the Commencement Regulations are aimed at ensuring that in cases where charities have already begun processes to amend their governing documents prior to the commencement of sections 1 to 3 of the 2022 Act, the relevant provisions of the 2011 Act continue to apply as those sections 1 to 3 of (and relevant paragraphs of Schedule 2 to) the 2011 Act had not come into force.

5. Regulations 6(2), 7(2), 8(2) and 8(3) set out the circumstances in which the savings of the old provisions apply. In each case, the saving provisions aim to ensure that in circumstances where there is a right to bring relevant proceedings, the old provisions continue to apply until either the time for bringing relevant proceedings has expired or any relevant proceedings brought have been completed. Relevant proceedings are defined in each regulation as proceedings that can be brought to the Tribunal under specific sections of the 2011 Act and as judicial review proceedings.

6. The question raised by the JCSI relates to circumstances where there is a right to bring judicial review proceedings where the regulations “save” the old provisions until the time for bringing judicial review proceedings has expired.

7. As set out in paragraph 3, regulation 6 makes saving provision in relation to section 1 of the 2022 Act. Section 1 amends section 198 of the 2011 Act, which sets a requirement that where amendments are proposed to a charitable company’s articles of associations,

if those amendments are “regulated alterations” as defined by section 198(2), the prior written consent of the Charity Commission is required before such amendments can take effect.

8. Regulation 6(2)(b)(ii) relates to a decision of the Charity Commission to provide or withhold consent to a regulated alteration to a charitable company’s articles of association where “*the period for commencing relevant proceedings has not expired*”. As a decision of the Charity Commission to give, or withhold, consent under section 198(1) of the 2011 Act is appealable to the Tribunal, the relevant proceedings referred to in regulation 6(2)(b)(ii) are to proceedings before the Tribunal, as well as judicial review proceedings.

9. The period for proceedings, either judicial review or before the Tribunal, is determined by reference to the date on which the Charity Commission informs the charity in writing (by email) that it either consents or withholds consent to the regulated alteration of the charitable company’s articles of association.

10. Regulation 7 makes saving provision in relation to section 2 of the 2022 Act. Section 2 amends sections 226 and 227 of the 2011 Act, which set out requirements in relation to regulated alterations, and to the registration of amendments (both regulated and non-regulated alterations) to constitutions of charitable incorporated organisations.

11. Section 226 requires that any resolution of the charitable incorporated organisation that would make a regulated alteration to the constitution of a charitable incorporated organisation will be ineffective if the prior written consent of the Charity Commission is not obtained.

12. Section 227 relates to the registration of amendments to the constitution of a charitable incorporated organisation. Section 227(3), which is repealed by the 2022 Act, sets out when the Charity Commission must refuse to register an amendment to the constitution of a charitable incorporated organisation.

13. Regulation 7(2)(b)(ii) relates to a decision of the Charity Commission to register an amendment to a charitable incorporated organisation’s constitution.

14. The period for commencing judicial review proceedings is determined by reference to the date on which the Charity Commission informs the charitable incorporated organisation in writing (by email) that it has registered the amendment to the constitution of the charitable incorporated organisation.

15. Regulation 8 makes saving provision in relation to section 3 of the 2022 Act. Section 3 revoked a number of pre-existing powers of unincorporated charities (sections 267 to 280 of the 2011 Act), replacing them with a general power for unincorporated charities to make amendments to their governing documents (new section 280A of the 2011 Act). As there is some saving provision at section 3(3) of the 2022 Act, the saving provision at regulation 8 is in relation to relevant paragraphs of Schedule 2 to the 2022 Act only.

16. Regulation 8(2) relates to the powers under sections 267 to 274 of the 2011 Act for unincorporated charities (with an income of £10,000 or less and which do not hold designated land) to resolve to transfer any or all of their property to another charity,

whilst regulation 8(3) relates to the powers under sections 275 to 279 of the 2011 Act for unincorporated charities (with an income of £10,000 or less and which do not hold designated land) to resolve to amend their charitable purposes.

17. Under section 270 of the 2011 Act as it applied prior to its repeal, any resolution under section 268(1) transferring any or all of an unincorporated charity's property comes into effect, subject to section 271, at the end of the period of 60 days beginning with the date on which a copy of the resolution is received by the Charity Commission. Regulation 8(2)(b)(iii) makes provision for situations where a resolution has come into effect under section 270, but the period for bring judicial review has not expired. (Regulations 8(2)(b)(iv) makes provision for circumstances in which section 271 apply.)

18. Similarly, under section 277 of the 2011 Act as it applied prior to its repeal, any resolution under section 275(2) amending the charitable purposes of an unincorporated charity comes into effect, subject to section 278, at the end of the period of 60 days beginning with the date on which a copy of the resolution is received by the Charity Commission. Regulation 8(3)(b)(iii) makes provision for situations where a resolution has come into effect under section 277, but the period for bring judicial review has not expired. (Regulations 8(3)(b)(iv) makes provision for circumstances in which section 278 apply.)

19. Charities submit a copy of the resolution to the Charity Commission using the online form on the Charity Commission's website<sup>1</sup> and receive an automated email response from the Charity Commission confirming receipt of that resolution. The 60-day period begins on the date on which the Charity Commission's email confirmation of receipt is received. The period for commencing judicial review proceedings is therefore determined by reference to the end of this 60-day period.

**Department for Culture Media and Sport**

**7 May 2024**

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<sup>1</sup> <https://www.gov.uk/change-your-charitys-details>

## Appendix 3: Memorandum from the Department of Business and Trade

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**S.I. 2024/269**

### ***Economic Crime and Corporate Transparency Act 2023 (Commencement No 2 and Transitional Provisions) Regulations 2024***

1. The Committee has asked the Department of Business and Trade for a memorandum on the following point(s):

Explain why inert and operative material is presented in the same way (in regulation 2(z13) and regulation 4(a)).

2. The reference at the end of regulation 2(z13) to regulation 5 is a signpost to the relevant transitional provision later in the Regulations. The Department accepts that this sign-posting, whilst intended to assist the reader, is inert.

3. The reference in regulation 4(a) to section 179 of the 2023 Act could have been presented within commas rather than brackets, to avoid the operative material being presented as inert. These brackets were meant to make it easier for a reader to follow the references to the different provisions within the same paragraph. It was not thought that any confusion could arise about what was being brought into force, despite the use of brackets for a different purpose in regulation 2(z13).

**Department of Business and Trade**

**2 May 2024**

# Appendix 4: Memorandum from the Department for Transport

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**S.I. 2024/378**

## ***Air Navigation (Overseas Territories) (Environmental Standards) Order 2024***

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

Explain why it took almost exactly nine years to make an instrument that the Foreign and Commonwealth Department advised the Committee would be submitted “to the next Privy Council” (Departmental memorandum relating to S.I. 2015/236).

### Response:

2. We acknowledge, and regret, the delay to making the Air Navigation (Overseas Territories) (Environmental Standards) Order 2024 (“the OT(ES) Order”).

3. Our Departmental records provide the chronology from April 2019 as set out below. Due to responsibilities changing we do not hold records from before this date.

4. Work was initially paused in 2019 due to resourcing constraints related to EU-exit priorities and then again in 2020 due to resource being focused on the COVID-19 pandemic response.

5. Towards the end of 2020, drafting resumed, however, at that point a defect with the application of the Air Navigation (Overseas Territories) Order 2013 (“the 2013 Order”) was then discovered in that certain provisions of the 2013 Order had not been correctly applied in relation to Anguilla and the Pitcairn Islands.

6. As the OT(ES) Order amends the 2013 Order and extends to those territories, it was necessary to first correct the defects in the application of the 2013 Order by an amending instrument.

7. The resolution of the application issues was complicated and took some time to resolve. That amending order was the Air Navigation (Overseas Territories) (Amendment) Order 2021 (SI 2021/524) which came into force on 26 May 2021. This pushed back the OT (ES) Order.

8. Shortly after that and before the OT(ES) Order had been finalised, in September 2021, the Civil Aviation Authority (CAA) and Air Safety Support International (ASSI)<sup>2</sup> recommended the Order needed to make provision to implement Volume III of Annex

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2 Air Safety Support International (ASSI) Limited is a non-profit subsidiary of the Civil Aviation Authority. ASSI monitors the Overseas Territories aviation industry to ensure compliance with the standards set out in Air Navigation Orders.

16 to the Chicago Convention, which had not been considered in relation to the Order at this point. Volume III contains standards and recommended practices for certification of aeroplane CO<sub>2</sub> emissions.

9. The OT (ES) Order as drafted at that point only extended to implementation of Volume I (noise) and Volume II (aircraft engine emissions). This meant that Volume III needed to be worked through to identify the further provision which needed to be added into the instrument.

10. Drafting concerns were raised at checking stages that the Order did not fully capture all the provision that needed to be made in respect of Volumes I and II and did not adequately address issues previously raised by the JCSI.

11. As the amendments were in practice not having a practical effect in the correct implementation of international standards in the Overseas Territories this OT (ES) Order was not seen as high priority and unfortunately due to resourcing issues across the Department, other drafting took priority.

## **Department for Transport**

**7 May 2024**

# Appendix 5: Memorandum from the Department for Levelling Up, Housing and Communities

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**S.I. 2024/411**

***Town and Country Planning (Former RAF Airfield Wethersfield) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024***

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

- (1) In relation to the definition of “construction” in article 2(1), explain why the word “demolition” is in parentheses.
- (2) Given that there are several requirements that must be met before any service user is accommodated on the land and given that the land has been providing the relevant accommodation since July 2023, please confirm that the requirements set out in condition 9, 14, 16(1), 16(3), 17(1), 17(3) and 24(1) were met before this Order came into force on 11 April 2024.
- (3) In relation to paragraph 11 of Schedule 3, explain which period (during the night) “8 hours” is referring to.

Response to point 1

2. The definition of “construction” in article 2(1) is intended to cover all the physical work involved in carrying out the development authorised by the Order across the full life-cycle of temporary buildings and other structures comprised in that development. The parent Town and Country Planning Act 1990 uses both “removal” and “demolition” when referring to the end of a building’s life-cycle, but the latter term appears more frequently in the Act, not least because the question of whether “demolition” requires planning permission has been contentious at various times. The Planning and Compensation Act 1991 (s.13) inserted s.55(1A) to clarify, amongst other things, the point that “demolition” is a “building operation”.

3. However, the great majority of the new buildings (which will be “modular”) and structures involved in the development authorised by this Order will be installed in one piece and removed in one piece, without the need for anything corresponding to the kind of activities that the word “demolition” normally conveys, or that would be required in the case of, for example, a building made of bricks. Accordingly, “removal” seemed a more natural word for the end of their life-cycle on the Order land, but “(demolition)” was added both to reflect its more common usage in the Act and to cover any cases where what would naturally be thought of as demolition is required.

Response to point 2

4. The requirements of conditions 9, 14, 16(1), 16(3), 17(1), 17(3) and 24(1) had been met on 11 April 2024.

5. This was confirmed by means of a site visit conducted by officials on 11 April and the submission to the SSLUHC of the reports and notices required by the conditions.

Response to point 3

6. Terms used in legal requirements regarding noise, like  $L_{Aeq T}$ , are defined in standards such as BS 8233:2014. They are based on standard formulae into which measurement data are fed.

7. The aim of paragraph 11(a) is to control noise levels when people are sleeping. It therefore sets the noise level that must not be exceeded and how this is to be determined by measurement and calculation. The levels chosen the guidelines values in the British Standard and are typical of those recommended in local planning authority guidance for bedrooms.

8. The reference to “8 hours” relates to the way that the noise level is calculated; “between the hours of 11 p.m. and 7 a.m.” describes the period during which this level is not to be exceeded.

**Department for Levelling Up, Housing and Communities**

**7 May 2024**

# Appendix 6: Memorandum from the Department for Levelling Up, Housing and Communities

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**S.I. 2024/412**

## ***Town and Country Planning (Former RAF Scampton) (Accommodation for Asylum-Seekers etc.) Special Development Order 2024***

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

- (1) In relation to the definition of “construction” in article 2(1), explain why the word “demolition” is in parentheses.
- (2) In relation to paragraph 13 of Schedule 3, explain which period (during the night) “8 hours” is referring to.

### Response to point 1

2. The definition of “construction” in article 2(1) is intended to cover all the physical work involved in carrying out the development authorised by the Order across the full life-cycle of temporary buildings and other structures comprised in that development. The parent Town and Country Planning Act 1990 uses both “removal” and “demolition” when referring to the end of a building’s life-cycle, but the latter term appears more frequently in the Act, not least because the question of whether “demolition” requires planning permission has been contentious at various times. The Planning and Compensation Act 1991 (s.13) inserted s.55(1A) to clarify, amongst other things, the point that “demolition” is a “building operation”.

3. However, the great majority of the new buildings (which will be “modular”) and structures involved in the development authorised by this Order will be installed in one piece and removed in one piece, without the need for anything corresponding to the kind of activities that the word “demolition” normally conveys, or that would be required in the case of, for example, a building made of bricks. Accordingly, “removal” seemed a more natural word for the end of their life-cycle on the Order land, but “(demolition)” was added both to reflect its more common usage in the Act and to cover any cases where what would naturally be thought of as demolition is required.

### Response to point 2

4. Terms used in legal requirements regarding noise, like LAeq T, are defined in standards such as BS 8233:2014. They are based on standard formulae into which measurement data are fed.

5. The aim of paragraph 13(a) is to control noise levels when people are sleeping. It therefore sets the noise level that must not be exceeded and how this is to be determined

by measurement and calculation. The levels chosen the guidelines values in the British Standard and are typical of those recommended in local planning authority guidance for bedrooms.

6. The reference to “8 hours” relates to the way that the noise level is calculated; “between the hours of 11 p.m. and 7 a.m.” describes the period during which this level is not to be exceeded.

**Department for Levelling Up, Housing and Communities**

**7 May 2024**

# Appendix 7: Memorandum from the Home Office

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**S.I. 2024/426**

***Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2024***

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

Explain whether the policy intention was to also amend article 5(3)(d)(v) of S.I. 2015/759 so as to include a reference to a “cryptoasset investigation”

2. The omission of an amendment to article 5(3)(d)(v) of S.I. 2015/759 was an oversight. The Home Office will add a reference to a “cryptoasset investigation” in a future instrument.

3. In the short term, pending its correction, the Home Office does not consider that the absence of an explicit power to retain items for forensic investigation will cause substantial problems in practice. Law enforcement officers have other powers to retain seized articles: for example, the Proceeds of Crime Act 2002 allows them to detain, and to use information obtained from, seized cryptoasset-related items for certain purposes connected with the seizure of cryptoassets under that Act.

**Home Office**

**7 May 2024**

## Appendix 8: Memorandum from the Department of Business and Trade

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**S.I. 2024/455**

### ***Cosmetic Products (Restriction of Chemical Substances) Regulations 2024***

4. The Committee has asked the Department for Business and Trade for a memorandum on the following point(s):

Does the Department have anything further it wishes to add in relation to the 21-day rule (noting paragraph 11.1 of the Explanatory Memorandum).

5. This instrument was made by the Minister on 1st April 2024 and contains an automatic coming into force provision which means it would come into force 21 days after making. This was drafted on the assumption that the instrument would be made and laid on the same day, which did not build in sufficient contingency to allow for the practicalities of doing so. The laying date of the instrument was deferred to 3rd April 2024, which regrettably breached the 21-day rule by two days.

6. The Department apologises for this unintentional breach of the 21-day rule and has put in place additional steps to improve communications between officials to ensure that misunderstandings of this type do not happen again.

**Department for Business and Trade**

**7 May 2024**

# Formal minutes

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**Wednesday 15 May 2024**

***Virtual meeting***

**Members present**

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Peter Grant

Lord Haselhurst

Lord Meston

Lord Sahota

Baroness Sater

Liz Twist

**Report consideration**

Draft Report (Twenty First 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 8.3 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 8.

*Resolved*, That the Report be the Twenty First 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 22 May at 3.40 p.m.