



House of Lords
House of Commons

Joint Committee on Statutory Instruments

First Report of Session 2024–25

HC 291-i / HL Paper 22

Drawing special attention to:

Merchant Shipping (Anti-Fouling Systems) Regulations 2024 (S.I. 2024/509)

Boiler Upgrade Scheme (England and Wales) (Amendment) Regulations 2024 (S.I. 2024/ 524)

Joint Committee on Statutory Instruments

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.** 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.** ii that its parent legislation says that it cannot be challenged in the courts;
- iii.** iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv.** iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
- v.** 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.** 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.** vii that its form or meaning needs to be explained;
- viii.** viii that its drafting appears to be defective;
- ix.** 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.

Current membership

House of Lords

[Lord Beith](#) (Life peer; Liberal Democrat)

[Lord Chartres](#) (Life peer; Crossbench)

[Lord Haselhurst](#) (Life peer; Conservative)

[Lord Meston](#) (Excepted Hereditary; Crossbench)

[Lord Sahota](#) (Life peer; Labour)

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[Lord Watson of Wyre Forest](#) (Life peer; Labour)

House of Commons

[Sir Bernard Jenkin](#) (Harwich and North Essex; Conservative) (Chair)

[Lewis Atkinson](#) (Sunderland Central; Labour)

[Mark Ferguson](#) (Gateshead Central and Whickham; Labour)

[Claire Hughes](#) (Bangor Aberconwy; Labour)

[Charlie Maynard](#) (Witney; Liberal Democrat)

[Gordon McKee](#) (Glasgow South; Labour)

[Ms Julie Minns](#) (Carlisle; Labour)

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.

Publication

This Report, together with formal minutes relating to the report, was Ordered by the House of Commons and by the House of Lords, on 16 October 2024, to be printed.

It was published on 18 October 2024. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

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Contacts

All correspondence should be addressed to the Clerk of the Statutory Instruments (Joint Committee), House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5739; the Committee's email address is jcsi@parliament.uk.

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Instruments reported

At its meeting on 16 October 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. 2024/509: Reported for defective drafting

Merchant Shipping (Anti-Fouling Systems) Regulations 2024

Procedure: Made negative

- 1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect**
- 1.2** These Regulations deal with the regulation of anti-fouling systems, which are coatings put on the outside of hulls of ships to prevent the attachment of unwanted organisms such as barnacles and other molluscs. Regulation 6(2) provides a prohibition and a requirement in the following terms—
- 1.3** “...a ship—
 - a.** must not bear an organotin compound which acts as a biocide in anti-fouling systems on its hull or another external part or surface; or
 - b.** must bear a coating which forms a barrier to prevent an organotin compound, which acts as a biocide, leaching from the anti-fouling system containing that substance.”
- 1.4** Given that paragraph (a) prohibits anti-fouling systems that contain a biocide organotin compound, the Committee was unclear how the requirement in paragraph (b) that anti-fouling systems containing a biocide organotin compound must include a barrier to prevent leaching could arise. The Committee asked the Department for Transport to explain.

In a memorandum printed at Appendix 1, the Department explains that the intention was that regulation 6 should cover alternative, mutually exclusive cases. The Committee understands this to mean that the intention is that ships should not have anti-fouling systems that contain a biocide organotin compound, but if a ship does have such an anti-fouling system there should be a barrier to prevent leaching. However, the way that regulation 6(2) is drafted and structured does not clearly capture this intention. The Committee also noted that breaching regulation 6(2) can be an offence and result in a ship being detained (regulation 12 and 13). Accordingly, the Committee would expect particular clarity in how this provision is drafted and notes that the Department has undertaken to correct this error as soon as possible. **The Committee accordingly reports regulation 6(2) for defective drafting, acknowledged by the Department.**

2 S.I. 2024/524: Reported for defective drafting

Boiler Upgrade Scheme (England and Wales) (Amendment) Regulations 2024

Procedure: Made negative

- 2.1 The Committee draws the special attention both Houses to these Regulations on the ground that they are defectively drafted in one respect.**
- 2.2** These Regulations make amendments to the Boiler Upgrade Scheme (England and Wales) Regulations 2022 which allow for applications to be made for boiler upgrade grants. These amendments include changes to the information required when making grant applications. Regulation 25 provides that any grant applications properly made before these Regulations come into force are not affected by the amendments. The Committee noticed that the 2022 Regulations provide specific definitions of the terms “grant application” and “properly made” which are not referred to in this instrument and asked the Department of Energy Security and Net Zero to explain.
- 2.3** In a memorandum printed at Appendix 2, the Department explains that the intention was that regulation 25 would be read consistently with the 2022 Regulations but accepts there is no express link with this instrument. The Department goes on to say that it considers the policy intention is clear, but that it will amend the instrument at the next available opportunity.

2.4 Where an instrument is relying on a term that is defined elsewhere in legislation, an express definition or cross-reference is likely to be necessary for the relevant concepts to be carried into the instrument (the main exception being terms defined in the enabling Act – see section 11 of the Interpretation Act 1978). In the 2022 Regulations a grant application is only properly made when it includes the required information. To achieve with certainty the result that grant applications made (with all the necessary information) before this instrument comes into force continue to operate under the unamended 2022 Regulations, it would have been better to include wording making an express link to the meaning of those terms. **The Committee accordingly reports regulation 25 for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 16 October 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. Numbers	S.I. Title
S.I. 2024/833	Syria (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2024
S.I. 2024/834	Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2024
S.I. 2024/872	Infected Blood Compensation Scheme Regulations 2024
S.I. 2024/900	Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2024
S.I. 2024/944	Iran (Sanctions) (Amendment) Regulations 2024

Draft instruments requiring affirmative approval

S.I. Numbers	S.I. Title
Draft	European Forest Institute (Immunities and Privileges) Order 2024
Draft	Human Fertilisation and Embryology (Amendment) Regulations 2024
Draft	Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2024
Draft	Armed Forces Act 2006 (Continuation) Order 2024

S.I. Numbers	S.I. Title
Draft	Financial Services and Markets Act 2000 (Ombudsman Scheme) (Fees) Regulations 2024
Draft	Government of Wales Act 2006 (Devolved Welsh Authorities) (Amendment) Order 2024
Draft	Ivory Act 2018 (Meaning of “Ivory” and Miscellaneous Amendments) Regulations 2024
Draft	Information Sharing (Disclosure by the Registrar) Regulations 2024
Draft	Registrar (Identity Verification and Authorised Corporate Service Providers) Regulations 2024
Draft	Renewable Transport Fuel Obligations (Sustainable Aviation Fuel) Order 2024
Draft	Social Security (Scotland) Act 2018 (Disability Assistance) (Consequential Modifications) Order 2024
Draft	Human Medicines (Amendments Relating to Naloxone and Transfers of Functions) Regulations 2024
Draft	Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2024
Draft	Carbon Dioxide Transport and Storage (Determination of Turnover for Penalties) Regulations 2024
Draft	Contracts for Difference (Electricity Supplier Obligations) (Amendment) Regulations 2024
Draft	Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2024
Draft	Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024
Draft	Communications Act 2003 (Disclosure of Information) Order 2024
Draft	Franchising Schemes (Franchising Authorities) (England) Regulations 2024
Draft	Vehicle Emissions Trading Schemes (Amendment) Order 2024
Draft	Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024
Draft	Animal Welfare (Livestock Exports) Enforcement Regulations 2024
Draft	Immigration and Nationality (Fees) (Amendment) Order 2024
Draft	Online Safety Act 2023 (Priority Offences) (Amendment) Regulations 2024

S.I. Numbers	S.I. Title
Draft	Packaged Retail and Insurance-based Investment Products (Retail Disclosure) (Amendment) Regulations 2024
Draft	Prudential Regulation of Credit Institutions (Meaning of CRR Rules and Recognised Exchange) (Amendment) Regulations 2024
Draft	Reporting on Payment Practices and Performance (Amendment) (No. 2) Regulations 2024
Draft	Securitisation (Amendment) (No. 2) Regulations 2024
Draft	Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2024/538	Civil and Family Proceedings Fees (Amendment) Order 2024
S.I. 2024/570	Merchant Shipping (Prevention of Pollution by Garbage from Ships) (Amendment) Regulations 2024
S.I. 2024/571	Online Safety Act 2023 (Pre-existing Part 4B Services Assessment Start Day) Regulations 2024
S.I. 2024/579	Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2024
S.I. 2024/590	Aviation Security (Amendment) Regulations 2024
S.I. 2024/594	Insurance and Reinsurance Undertakings (Prudential Requirements) (Transitional Provisions and Consequential Amendments) Regulations 2024
S.I. 2024/595	Civil Procedure (Amendment No. 2) Rules 2024
S.I. 2024/598	Registration of Births, Deaths, Marriages and Civil Partnerships (Fees and Records) (Amendment) Regulations 2024
S.I. 2024/602	Local Authorities (Capital Finance and Accounting) (England) (Amendment) (No. 2) Regulations 2024
S.I. 2024/603	Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2024
S.I. 2024/608	Official Controls (Establishment Lists) (Revocation) Regulations 2024
S.I. 2024/610	Phytosanitary Conditions (Amendment) Regulations 2024

S.I. Numbers	S.I. Title
S.I. 2024/611	Social Security (State Pension Age Claimants: Closure of Tax Credits) (Amendment) Regulations 2024
S.I. 2024/622	Insolvency (England and Wales) (Amendment) Rules 2024
S.I. 2024/624	Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) (Amendment) Regulations 2024
S.I. 2024/626	Insolvency Proceedings (Monetary Limits) (Amendment) Order 2024
S.I. 2024/637	Merchant Shipping (Carriage of Cargoes) Regulations 2024
S.I. 2024/638	Markets in Financial Instruments (Equivalence) (United States of America) (Commodity Futures Trading Commission) Regulations 2024
S.I. 2024/640	Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2024
S.I. 2024/641	Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2024
S.I. 2024/642	Green Gas Support Scheme (Amendment) Regulations 2024
S.I. 2024/644	Sanctions (EU Exit) (Miscellaneous Amendments) Regulations 2024
S.I. 2024/645	Building (Amendment) (England) Regulations 2024
S.I. 2024/647	Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Regulations 2024
S.I. 2024/654	Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) Regulations 2024
S.I. 2024/666	Separation of Waste (England) Regulations 2024
S.I. 2024/668	Cremation, Coroners and Notification of Deaths (England and Wales) (Amendment) Regulations 2024
S.I. 2024/669	Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2024
S.I. 2024/670	Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) (No. 2) Order 2024
S.I. 2024/683	M621 Motorway (Speed Limit) Regulations 2024
S.I. 2024/700	Electricity (Individual Exemption from the Requirement for a Transmission Licence) (Seagreen) (Scotland) Order 2024
S.I. 2024/702	Glue Traps (Licensing) Regulations 2024

S.I. Numbers	S.I. Title
S.I. 2024/717	Education (Penalty Notices) (England) (Amendment) (No. 2) Regulations 2024
S.I. 2024/719	Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) (Amendment) Order 2024
S.I. 2024/723	Immigration (Exemption from Control) (Amendment) Order 2024

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2024/725	Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2024

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2024/108	Electricity and Gas (Standards of Performance) (Suppliers) (Amendment) Regulations 2024
S.I. 2024/568	Judicial Review and Courts Act 2022 (Commencement No. 6) Regulations 2024
S.I. 2024/585	Deregulation Act 2015 (Growth Duty Guidance) Order 2024
S.I. 2024/596	Civil Partnership Records (Revocation) Regulations 2024
S.I. 2024/620	Financial Services and Markets Act 2023 (Commencement No. 6) Regulations 2024
S.I. 2024/625	Health and Care Act 2022 (Storage of Gametes and Embryos) (Transitional Provision) Regulations 2024
S.I. 2024/639	Environment Act 2021 (Commencement No. 9 and Transitional Provisions) Regulations 2024
S.I. 2024/653	Parking (Code of Practice) Act 2019 (Commencement) Regulations 2024
S.I. 2024/662	British Wool Marketing Scheme (Amendment) Order 2024
S.I. 2024/664	Ivory Act 2018 (Commencement No. 3) Regulations 2024
S.I. 2024/678	Animal Welfare (Livestock Exports) Act 2024 (Commencement) (England) Regulations 2024

S.I. Numbers	S.I. Title
S.I. 2024/693	Parliamentary Elections (Returning Officers' Charges) Order 2024
S.I. 2024/714	Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 2 and Saving Provisions) Regulations 2024

Appendix 1: Memorandum from the Department for Transport

S.I. 2024/509

Merchant Shipping (Anti-Fouling Systems) Regulations 2024

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

Given that regulation 6(2)(a) prohibits a ship bearing an organotin compound which acts as a biocide in anti-fouling systems on its hull or another external part or surface, explain when the requirement in regulation 6(2)(b) to have a barrier to prevent an organotin compound, which acts as a biocide, leaching from the antifouling system arises (noting that regulation 12(1)(a) makes it an offence not to comply with that requirement).
2. The requirement in regulation 6(2)(b) to have a barrier coating arises if an organotin compound which acts as a biocide is retained in a ship's anti-fouling system. Regulation 6(2)(a) and (b) are intended to make provision for alternative, mutually exclusive, cases so ships are either prohibited from using organotin compounds which act as a biocide in their anti-fouling system, or ships are required to have a barrier coating to prevent the leaching of such compounds from anti-fouling systems.
3. The Department, however, accepts that the requirement in regulation 6(2)(b) is in effect a detraction from the prohibition in regulation 6(2)(a) and that this requires elucidation. The Department will therefore make an amendment to correct this error as soon as possible.

Department for Transport

21 May 2024

Appendix 2: Memorandum from the Department for Energy Security and Net Zero

S.I. 2024/524

Boiler Upgrade Scheme (Amendment) Regulations 2024

1. The Committee has asked the Department of Energy Security and Net Zero for a memorandum on the following point(s):

Explain what is meant in regulation 25 by a “grant application” that was “properly made”, noting that those terms are defined in S.I. 2022/565 but are undefined in this instrument.
2. The intention is that this provision would be read consistently with the definitions contained in S.I. 2022/565 i.e., the substantive regulations that are being amended by the current S.I. 2024/524.
3. The drafting of S.I. 2024/524 does not make this express link.
4. The Department is grateful to the Committee for pointing this out and, although the Department considers that the policy intention is clear, it will amend the provision at the next available opportunity.

Department of Energy Security and Net Zero

20 May 2024

Formal Minutes

Wednesday 16 October 2024

Members present

Sir Bernard Jenkin, in the Chair

Lewis Atkinson

Lord Beith

Lords Chartres

Mark Ferguson

Claire Hughes

Charlie Maynard

Gordon McKee

Lord Meston

Julie Minns

Lord Sahota

Baroness Sater

Lord Watson of Wyre Forest

Report consideration

Draft Report (*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 2.4 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 2.

Resolved, That the Report be the 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 23rd October at 3.40 p.m.