



House of Lords
House of Commons

Joint Committee on Statutory Instruments

Ninth Report of Session 2024–25

291-ix / HL Paper 57

Drawing special attention to:

*Army and Royal Air Force (Terms of Service) (Amendment)
Regulations 2024*

*Costs in the Court Martial Appeal Court (Amendment)
Regulations 2024*

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.** 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.

Current membership

House of Lords

[Lord Beith](#) (Liberal Democrat)

[Lord Chartres](#) (Crossbench)

[Lord Haselhurst](#) (Conservative)

[Lord Meston](#) (Crossbench)

[Lord Sahota](#) (Labour)

[Baroness Sater](#) (Conservative)

[Lord Watson of Wyre Forest](#) (Labour)

House of Commons

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

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

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

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

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

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

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

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 11 December 2024, to be printed.

It was published on 13 December 2024. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee reports are published on the Committee's website at www.parliament.uk/copyright and in print by Order of the House.

Contacts

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Instruments reported

At its meeting on 11 December 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. 2024/1059: Reported for unjustifiable delay in laying before Parliament

Army and Royal Air Force (Terms of Service) (Amendment) Regulations 2024

Procedure: Made negative

- 1.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that there was an unjustifiable delay in laying them before Parliament.**
- 1.2 These Regulations make provision for the Armed Forces training return of service commitment (which requires a person to return to service for a specified period after completion of a training course funded by the Armed Forces) to be imposed regardless of the length of training course to be undertaken. The Regulations were made on 15 October 2024 and laid before Parliament on 28 October 2024. The Committee asked the Ministry of Defence to explain the delay.

In a memorandum printed at Appendix 1, the Department explains that the delay was due to a misunderstanding within the Department. As set out in the Committee's First Special Report of Session 2017-19, Transparency and Accountability in Subordinate Legislation at paragraphs 2.2 to 2.14, laying before Parliament is the formal measure by which publicity is assured and there is no reasonable excuse for delay in such a simple administrative step. Once a statutory instrument has been made, it is law from that point. Even if the instrument comes into force some months after being made, Parliament and the public are entitled to as much notice of the prospective law as the Government has itself. The Committee considers that, as a general rule, a delay of 10 calendar days or more will amount to an unjustifiable delay. The Committee accordingly reports these Regulations for unjustifiable delay in laying before Parliament, acknowledged by the Department.

2 S.I. 2024/1062: Reported for failure to comply with proper legislative practice

Costs in the Court Martial Appeal Court (Amendment) Regulations 2024

Procedure: Made negative

- 2.1 **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.**
- 2.2 These Regulations set out procedures to determine the amounts to be paid where the Court Martial Appeals Court directs the Secretary of State to pay the costs of a person who has successfully appealed against their sentence. The preamble cites section 31(4) of the Court Martial Appeals Act 1968 as an enabling power but that subsection contains no power to make regulations. The Committee asked the Ministry of Defence to explain this apparent error.
- 2.3 In a memorandum printed at Appendix 2, the Department acknowledges that section 31(4) was cited in error and that section 31(5)(b) which refers to procedures being specified in regulations made by the Lord Chancellor should have been cited instead. Given that failure to cite an enabling provision can go to vires (*Vibixa Ltd and another v Komori UK Ltd and others* [2006] EWCA Civ 536), care should be taken when drafting preambles. However, in this instance, **the Committee is content to report the preamble for failure to comply with proper legislative practice, acknowledged by the Department.**

Instruments not reported

At its meeting on 11 December 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. Numbers	S.I. Title
Draft	Devon and Torbay Combined County Authority Regulations 2024
Draft	Lancashire Combined County Authority Regulations 2024
Draft	Heat Networks (Market Framework) (Great Britain) Regulations 2025

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I.2024/1095	The Whole of Government Accounts (Designation of Bodies) Order 2024
S.I.2024/1101	The Feed Additives (Authorisations) and Uses of Feed Intended for Particular Nutritional Purposes (Amendment of Commission Regulation (EU) 2020/354) (England) Regulations 2024
S.I.2024/1110	The Medicines (Gonadotrophin-Releasing Hormone Analogues) (Emergency Prohibition) (Extension) (No. 2) Order 2024

S.I. Numbers	S.I. Title
S.I.2024/1127	The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2024
S.I.2024/1131	The Crown Court (Amendment No. 2) Rules 2024
S.I.2024/1133	The General Medical Council (Miscellaneous Amendments) Order of Council 2024
S.I.2024/1135	The Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) and Civil Enforcement of Moving Traffic Contraventions Designation Order 2024
S.I.2024/1158	Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2024
S.I.2024/1163	The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2024
S.I.2024/1205	The Health and Care Act 2022 (Further Consequential Amendments) Regulations 2024
S.I.2024/1221	The Rural Development and Farming Advice Service (Amendment) (England) Regulations 2024

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2024/1128	The Turks and Caicos Islands Constitution (Amendment) Order 2024

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2024/1104	The Free Zone (Customs Site No. 1 Humber) Designation Order 2024
S.I. 2024/1105	The Free Zone (Customs Site No. 1 Inverness & Cromarty Firth Green) Designation Order 2024
S.I. 2024/1106	The Free Zone (Customs Site No. 1 Thames) Designation (Amendment) Order 2024
S.I. 2024/1166	The Electricity and Gas (Standards of Performance) (Suppliers) (Amendment) (No. 2) Regulations 2024

Appendix 1: Memorandum from the Ministry of Defence

S.I. 2024/1059

Army and Royal Air Force (Terms of Service) (Amendment) Regulations 2024

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

Explain the delay between the making of this instrument and laying it before Parliament.

2. The Ministry of Defence sincerely apologises for the delay between the making of this instrument and laying it before Parliament.
3. The signatories were instructed to sign, and therefore make this instrument, shortly before laying. However, due to a misunderstanding, the signatories signed the instrument early. The Ministry of Defence took all steps to ensure that the instrument was laid as quickly as parliamentary scheduling allowed once this was discovered.
4. The Ministry of Defence will make sure going forward that all signatories are comprehensively briefed on the need to sign, and therefore make, statutory instruments shortly before laying so as to avoid any future delay between the making of instruments and their laying before Parliament.

Ministry of Defence

3 December 2024

Appendix 2: Memorandum from the Ministry of Defence

S.I. 2024/1062

Costs in the Court Martial Appeal Court (Amendment) Regulations 2024

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

Explain whether section 31(4) of the Court Martial Appeals Act 1968 has been cited in the preamble in error and, if so, whether the intention was to cite another provision in section 31.

2. The Department acknowledges that section 31(4) has been cited in error. The provision that should have been cited is section 31(5)(b), which refers to procedures being specified in regulations made by the Lord Chancellor.
3. Noting that preambles are generally not amended, the Department will not amend the existing drafting, however it does commit to take care to avoid such errors in the future.

Ministry of Defence

4 December 2024

Formal Minutes

Wednesday 11 December 2024

Members present

Sir Bernard Jenkin, in the Chair

Lewis Atkinson

Lord Chartres

Mark Ferguson

Lord Meston

Baroness Sater

Report consideration

Draft Report (Ninth 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 Ninth 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 18 December at 3.40 p.m.