



House of Lords
House of Commons

Joint Committee on Statutory Instruments

Tenth Report of Session 2024–25

HC 291-x / HL Paper 63

Drawing special attention to:

*The Power to Award Degrees Etc (Lamda Limited)
(Amendment) Order 2024*

The Code Manager Selection 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 18 December 2024, to be printed.

It was published on 20 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

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 0316; the Committee's email address is jcsi@parliament.uk.

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Instruments reported

At its meeting on 18 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. 2024/1063: Reported for defective drafting

The Power to Award Degrees Etc (Lamda Limited) (Amendment) Order 2024

Procedure: Not subject to parliamentary procedure

- 1.1 The Committee draws the special attention of both Houses to this Order on the grounds that it is defectively drafted in one respect.**
- 1.2** This Order extends the period for which degrees can be awarded by Lamda Limited (the trading name of the London Academy of Music and Dramatic Art). This period was due to expire on 31 October 2024 and it is extended to 31 October 2026. Noticing that this Order came into force on 1 November 2024, the Committee asked the Office for Students to explain the basis on which it concluded that the expiry took place at the end of the day on 31 October 2024 rather than the beginning of that day.
- 1.3** In a memorandum printed at Appendix 1, it was unable to locate a rule or convention that governs the meaning of a period that is expressed to come to an end “on” a particular day but acknowledges the ambiguity that can be created by expressing the end of a period in this way. The Committee agrees that there is no definitive rule that deals with the ending of periods and makes the general observation that particular care needs to be taken when expressing a period of time so that it is clear exactly when the period begins and ends (see Craies at 8.2.20). The Department goes on to explain how it will avoid this ambiguity in the future and invites the Committee’s comments on the matter. The Committee is neutral regarding the proposed solution to specify a specific time of expiry and notes that other approaches

are available (such as referring to a period “ending with” a particular day). What is of most importance to the Committee is that such periods are drafted with clarity so as to achieve the intended effect. **The Committee accordingly reports article 2 for defective drafting, acknowledged by the Department.**

2 S.I. 2024/1081: Reported for doubt as to vires

The Code Manager Selection Regulations 2024

Procedure: Made negative

- 2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that there is doubt as to whether they are intra vires in one respect.**
- 2.2** These Regulations are made under Part 6 of the Energy Act 2023, which makes provision for the governance of Gas and Electricity Industry Codes. The Gas and Markets Authority (GEMA) is empowered to licence code managers, each of which will be responsible for making arrangements for the governance of their respective codes. These Regulations set out the basis on which the GEMA must decide under section 187(1) whether to select a code manager on a competitive or non-competitive basis. The enabling power (section 187(2)(a)) provides that—

(2) The Secretary of State may by regulations make—

(a) provision about the making of determinations under subsection (1) by the GEMA (which may include provision specifying criteria to be applied by the GEMA in making determinations)

Instead of specifying criteria to be applied by the GEMA when determining the basis of selection, regulation 3(1) provides that “The [GEMA] may establish criteria by which it will determine the basis of selection.” This appeared to the Committee to sub-delegate the power to specify the criteria from the Secretary of State to the GEMA. Accordingly, the Committee asked the Department for Energy Security and Net Zero to explain what statutory authority is relied upon to make this provision.

- 2.3** In a memorandum printed at Appendix 2, Department says that the regulations do not sub-delegate the power to specify criteria to the GEMA. The Department asserts that it is inherent in the obligation imposed on the GEMA by section 187(1) to determine the basis of selection that it can specify criteria for doing so. The Department’s position appears to be that

because the GEMA is required to make a choice as to the basis of selection under section 187(1), this provides a basis for giving it a statutory power in this instrument to set out the relevant criteria on its own behalf. The Committee does not agree with this position. In the Committee's view, the correct interpretation of section 187(1) is that it requires the GEMA to make decisions about the basis of selection (and it must do so in accordance with ordinary principles of public law). For these purposes, and in the absence of any criteria specified in regulations by the Secretary of State under section 187(2)(a), the GEMA might choose to have a non-statutory policy that gives guidance to prospective code managers as to how it proposes to make determinations under section 187(1). However, if the Secretary of State makes regulations under section 187(2)(a) that specify criteria to be applied, then the GEMA must act in accordance with those regulations. That reflects the wording and purpose of the power in section 187(2)(a) which is to provide the Secretary of State with an ability to set conditions and constraints on how determinations under section 187(1) are made (as explained to Parliament in the Department's Delegated Powers Memorandum relating to the Energy Bill 2022-3 published on 7 June 2022, page 67).

- 2.4** Therefore, in the Committee's view, the provisions cited by the Department in its memorandum do not provide the statutory authority for the sub-delegation of the power to specify the criteria from the Secretary of State to the GEMA. **The Committee accordingly reports regulation 3(1) for doubt as to whether it is intra vires.**

Instruments not reported

At its meeting on 18 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. Number	S.I. Title
Draft	Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2025
Draft	Separation of Waste (England) Regulations 2025
Draft	Airports Slot Allocation (Alleviation of Usage Requirements etc.) Regulations 2025
Draft	Hull and East Yorkshire Combined Authority Order 2025
Draft	Armed Forces (Court Martial) (Amendment No. 2) Rules 2024
Draft	Register of Overseas Entities (Protection and Trusts) (Amendment) Regulations 2025

Instruments subject to annulment

S.I. Number	S.I. Title
S.I.2024/1111	The Police Act 1997 (Criminal Records) (Amendment) Regulations 2024
S.I.2024/1112	The Police Act 1997 (Criminal Records and Registration) (Guernsey) (Amendment) Regulations 2024

S.I. Number	S.I. Title
S.I.2024/1113	The Police Act 1997 (Criminal Records and Registration) (Jersey) (Amendment) Regulations 2024
S.I.2024/1114	The Police Act 1997 (Criminal Records and Registration) (Isle of Man) (Amendment) Regulations 2024
S.I.2024/1115	The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2024
S.I.2024/1124	The Copyright and Performances (Application to Other Countries) (Amendment) (No. 2) Order 2024
S.I. 2024/1139	The Local Authorities (Rental Auctions) (England) and Town and Country Planning (General Permitted Development) (Amendment) Regulations 2024 ¹
S.I.2024/1147	The Representation of the People (Variation of Limits of Candidates' Election Expenses) (City of London) Order 2024
S.I.2024/1149	The Dangerous Dogs (Exemption Schemes) (England and Wales) (Amendment) (No. 2) Order 2024
S.I.2024/1162	The Bread and Flour (Amendment) (England) Regulations 2024
S.I.2024/1169	The Official Controls (Import of High-Risk Food and Feed of Non-Animal Origin) (Amendment of Commission Implementing Regulation (EU) 2019/1793) (England) (No. 2) Regulations 2024
S.I.2024/1174	The Occupational Pensions (Revaluation) Order 2024
S.I.2024/1208	The State Pension Debits and Credits (Revaluation) Order 2024
S.I.2024/1209	The State Pension Revaluation for Transitional Pensions Order 2024
S.I.2024/1217	The Prison and Young Offender Institution (Interception of Communications) (Amendment) Rules 2024
S.I.2024/1218	Immigration (Passenger Transit Visa) (Amendment) (No. 2) Order 2024
S.I.2024/1220	Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) (Amendment) Regulations 2024
S.I.2024/1225	The Allocation of Housing (Qualification Criteria for Armed Forces) (England) (Amendment) Regulations 2024

¹ A memorandum was requested in relation to this instrument and a satisfactory response was received.

S.I. Number	S.I. Title
S.I.2024/1250	The National Health Service (Ophthalmic Services and Optical Charges and Payments) (Amendment) Regulations 2024

Draft instruments subject to annulment

S.I. Number	S.I. Title
Draft	Gloucestershire (Electoral Changes) Order 2025
Draft	Oxfordshire (Electoral Changes) Order 2025

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Number	S.I. Title
S.I. 2024/1191	The Domestic Abuse Act 2021 (Commencement No. 6 and Saving Provisions) Regulations 2024
S.I. 2024/1207	The Power to Award Degrees etc. (The Engineering and Design Institute London) Order 2024
S.I.2024/1226	The Digital Markets, Competition and Consumers Act 2024 (Commencement No. 1 and Savings and Transitional Provisions) Regulations 2024

Appendix 1: Memorandum from the Office for Students

S.I. 2024/1063

The Power to Award Degrees Etc (Lamda Limited) (Amendment) Order 2024

1. The Committee has asked the Office for Students for a memorandum on the following points:

Given that this instrument came into force on 1 November 2024, explain the basis on which the Department concluded that the expiry referred to in article 2 of S.I. 2021/559 took place at the end of the day on 31 October 2024 rather than at the beginning of that day.
2. The Office for Students has carefully examined whether there is any rule or convention related to the time of day when the expiry of a clause in a statutory instrument expressed as expiring ‘on’ a particular day (such as article 2 of S.I. 2021/559) takes place. The Office for Students has been unable to locate a rule or convention on this matter. The Office for Students notes that there is a rule which provides that a statutory instrument expressed as commencing ‘on’ a particular day comes into force at the beginning of that day (sections 4(a) and 23 of the Interpretation Act 1978).
3. The Office for Students acknowledges that there is ambiguity as to the time of day when article 2 of S.I. 2021/559 expired, and is grateful to the Committee for bringing this matter to its attention. Going forward, where the Office for Students is amending a clause in a statutory instrument which is expressed as expiring ‘on’ a particular day, it intends to avoid this ambiguity by commencing the amendment instrument on the same day that the clause in the instrument it is amending expires (or earlier). Further, when the Office for Students is drafting a new statutory instrument which refers to an expiry date, it intends to include a specific time of expiry to ensure that there is no ambiguity around the time of day a particular clause expires.
4. The Office for Students would be grateful to receive any comments from the Committee on its proposed approach to this matter.

The Office for Students

9 December 2024

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

S.I. 2024/1062

The Code Manager Selection Regulations 2024

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

Given that regulation 3(1) appears to sub-delegate to the Gas and Electricity Markets Authority a power to specify criteria for the basis of selection, explain the statutory authority to make such provision.

The DESNZ response:

2. DESNZ does not consider that the Regulations contain a delegation of powers to the Gas and Electricity Markets Authority (GEMA) to specify criteria for the basis of selection.
3. DESNZ submits that the power for GEMA to specify criteria is inherent in section 187(1) Energy Act 2023 (“the Act”).
4. DESNZ further submits that section 187(2) of the Act clearly contemplates that the Secretary of State may decide not to specify criteria.
5. If, in accordance with section 187(2), the Secretary of State decides not to specify criteria, that decision cannot, DESNZ would submit, have the effect that GEMA is unable to have or apply or publish criteria under its inherent power in section 187(1).
6. Furthermore, in DESNZ’s view, if the Secretary of State had decided not to make regulations under section 187(2), the inherent power of GEMA to specify selection criteria under section 187(1) would remain unaffected.

Department for Energy Security and Net Zero

10 December 2024

Formal Minutes

Wednesday 18 December 2024

Members present

Sir Bernard Jenkin, in the Chair

Lewis Atkinson

Lord Beith

Mark Ferguson

Lord Meston

Ms Julie Minns

Lord Sahota

Baroness Sater

Lord Watson of Wyre Forest

Report consideration

Draft Report (Tenth 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 Tenth 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 15 January at 3.40 p.m.