



House of Lords
House of Commons

Joint Committee on Statutory Instruments

Twelfth Report of Session 2024–25

HC 291-xii / HL Paper 73

Drawing special attention to:

London Port Health Authority Order 2024

*Power to Award Degrees etc. (The University of Law Ltd)
Order of Council 2018 (Amendment) Order 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 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 22 January 2025, to be printed.

It was published on 24 January 2025. 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 22 January 2025 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. 2024/1161: Reported for doubtful vires

London Port Health Authority Order 2024

Procedure: Not subject to Parliamentary procedure

- 1.1 The Committee draws the special attention of both Houses to this Order on the ground that there is doubt as to whether it is intra vires in two respects.**
- 1.2** This Order makes provision for the functions of the London port health district. The Schedule lists relevant functions of a local authority and food authority that are assigned to the port health authority. The Committee noticed that certain of the functions listed in the Schedule do not appear to be covered by the enabling power (section 7(3) of the Public Health (Control of Disease) Act 1984), namely functions under section 46 of the Public Health (Control of Disease) Act 1984, section 80 of the Water Industry Act 1991 and sections 108 and 109 of the Environment Act 1995. The Committee asked the Department of Health and Social Care to explain the basis for assigning those functions.
- 1.3** In a memorandum printed at Appendix 1, the Department acknowledges that the assignment of functions of a local authority under section 46 of the Public Health (Control of Disease) Act 1984 (duty to arrange for a body to be buried or cremated) are not covered by the enabling power. The Department undertakes to correct this error at the earliest opportunity and confirms that the London Port Health Authority has not purported to exercise the power under section 46 and will not do so. **The Committee accordingly reports the assignment of functions under section 46 for doubt as to whether it is intra vires, acknowledged by the Department.**

- 1.4 In relation section 80 of the Water Industry Act 1991, the Department asserts that the functions under that section are covered by the enabling power by virtue of a succession of repeals and re-enactments of section 138 of the Public Health Act 1936 (which is included within the enabling power) culminating in section 80 of the Water Industry Act 1991. By virtue of section 17(2)(a) of the Interpretation Act 1978 (which states that where an Act repeals and re-enacts, with or without modification, a previous enactment then any reference in any other enactment to the enactment so repealed shall be construed as a reference to the provision re-enacted) the Department explains that the reference to the Public Health Act 1936 in the enabling power should be construed as including a reference to section 80 of the Water Industry Act 1991. The Committee would otherwise agree with the Department except for one concern: the wording of section 17(2)(a) refers to where “an Act repeals and re-enacts” a previous enactment and in one of the succession of repeals and re-enactments referred to by the Department the repeal and re-enactment was made by different Acts in 1991. The Department asserts that this does not negate the operation of section 17(2)(a) since both Acts were part of a single legislative transaction. The Committee does not share the Department’s confidence in this interpretation of section 17(2)(a) and considers that some ambiguity as to the interpretation remains. **The Committee accordingly reports the assignment of functions under section 80 for doubt as to whether it is intra vires.**
- 1.5 In relation sections 108 and 109 of the Environment Act 1995, the Department similarly explains that these sections are covered by the enabling power by virtue of the repeal and re-enactment of sections of the Environment Protection Act 1990 and the operation of section 17(2)(a) of the 1978 Act. The Committee agrees with this explanation.

2 S.I. 2024/1171: Reported for failure to comply with proper legislative practice

Power to Award Degrees etc. (The University of Law Ltd) Order of Council 2018 (Amendment) Order 2024

Procedure: Not subject to Parliamentary procedure

- 2.1 **The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice in one respect.**
- 2.2 This Order amends the Power to Award Degrees etc. (The University of Law Ltd) Order of Council 2018 which is a Privy Council Order not made by statutory instrument. The Privy Council Order is not included on the legislation.gov website and nor is any indication given in this Order of where it can be found. The Committee asked the Office for Students to explain the lack of location information.
- 2.3 In a memorandum printed at Appendix 2, the Department explains that it intends to issue a correction slip to the explanatory note to this Order containing a link to the Privy Council Order being amended. The Committee agrees that this would be a proper use of a correction slip and considers that the location information for the Privy Council Order should be given in either a footnote or the explanatory note. Without such information, it is unnecessarily difficult for users to understand legislation, especially where, as in this case, the instrument being amended is not available from the usual sources. **The Committee accordingly reports this Order for failure to comply with proper legislative practice, acknowledged by the Department.**

Instruments not reported

At its meeting on 22 January 2025 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	Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2025
Draft	Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2025
Draft	Safeguarding Vulnerable Groups Act 2006 (Amendment) (Provision of Information) Order 2025
Draft	Social Security (Scotland) Act 2018 (Scottish Adult Disability Living Allowance) (Consequential Modifications) Order 2025
Draft	Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment and Transitional Provision) Regulations 2025

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2024/1155	The Employment Tribunal Procedure Rules 2024
S.I. 2024/1156	The Employment Tribunals (Procedure Rules) (Consequential Amendments) Regulations 2024
S.I. 2024/1228	The Local Authority (Duty to Secure Early Years Provision Free of Charge) and Childcare (Free of Charge for Working Parents) (England) (Amendment) Regulations 2024
S.I. 2024/1235	The Competition Act 1998 (Determination of Turnover for Penalties) Regulations 2024
S.I. 2024/1236	The Enterprise Act 2002 (Mergers and Market Investigations) (Determination of Control and Turnover for Penalties) Regulations 2024
S.I. 2024/1243	The Digital Markets, Competition and Consumers Act 2024 and Consumer Rights Act 2015 (Turnover and Control) Regulations 2024
S.I. 2024/1257	The National Security Act 2023 (Prohibited Place) Regulations 2024
S.I. 2024/1267	The Markets in Financial Instruments (Equivalence) (Singapore) Regulations 2024
S.I. 2024/1271	The Voter Identification (Principal Area, Parish and Greater London Authority Elections) (Amendment) Rules 2024
S.I. 2024/1276	The Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2024
S.I. 2024/1277	The Branded Health Service Medicines (Costs) (Amendment) Regulations 2024
S.I. 2024/1330	The Communications (Television Licensing) (Amendment) (No. 2) Regulations 2024
S.I. 2024/1334	The Cosmetic Products (Restriction of Chemical Substances) (No. 2) Regulations 2024
S.I. 2024/1342	The Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) (Amendment) Order 2024
S.I. 2024/1344	The Banking Act 2009 (Wholesale Cash Oversight Fees) Regulations 2024
S.I. 2024/1351	The General Medical Council (Registration Appeals Panels Procedure) (Amendment) Rules Order of Council 2024

S.I. Numbers	S.I. Title
S.I. 2024/1352	The General Medical Council (Applications for General Practice and Specialist Registration) (Amendment) Regulations Order of Council 2024
S.I. 2025/8	The Council Tax (Demand Notices and Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2025

Draft instruments subject to annulment

S.I. Numbers	S.I. Title
Draft	The Canterbury (Electoral Changes) Order 2025

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2024/1318	The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2024
S.I. 2024/1359	The Power to Award Degrees etc. (The London Interdisciplinary School Ltd) Order 2024
S.I. 2024/1367	The Air Navigation (Dangerous Goods) (Amendment) Regulations 2024
S.I. 2024/1376	The Power to Award Degrees etc. (Warwickshire College) Order 2024

Appendix 1: Memorandum from the Department of Health and Social Care

S.I. 2024/1161

London Port Health Authority Order 2024

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

Explain the basis for assigning the functions under the following enactments in the Schedule, when they do not appear to be covered by the enabling power (section 7(3) of the Public Health (Control of Disease) Act 1984):

 - *section 46 of the Public Health (Control of Disease) Act 1984;*
 - *Water Industry Act 1991;*
 - *Environment Act 1995.*
2. The Department agrees that the assignment of the functions of a local authority under section 46 of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) is not covered by the enabling power; section 7(4)(j) of the 1984 Act expressly excludes section 46 from the enactments to which the power in section 7(3)(a) applies.
3. The Department apologises for the error and will amend the instrument at the earliest opportunity.
4. We can confirm that the London Port Health Authority (“LPHA”) has not purported to exercise the power under section 46 and will not do so. Whilst this power relates to circumstances which the LPHA is not aware of ever having arisen in relation to the LPHA, should such circumstances arise prior to the amendment of the instrument, the LPHA will ensure that it makes the appropriate local authority aware of its potential continuing obligation under section 46, pending amendment of the instrument.

5. Section 80 of the Water Industry Act 1991 is included in the Schedule by virtue of the application of the enabling power in section 7(3)(a) of the 1984 Act to the Public Health Act 1936 (see section 7(4)(b)), the relevant provisions of which have been successively repealed and re-enacted as follows.
6. Section 138 of the Public Health Act 1936 (power of local authority to require any occupied house to be provided with sufficient water supply) was repealed by the Building Act 1984 and re-enacted with modifications in section 69 of that Act (provision of water supply in occupied house). Section 69 of that Act was subsequently repealed by the Water Act 1989 and re-enacted with modifications in section 57 of that Act (remedial powers of local authorities in relation to private supplies). Section 57 was repealed by the Water Consolidation (Consequential Provisions) Act 1991 (an Act to “make provision for consequential amendments and repeals ... in connection with the consolidation of certain enactments in the ... Water Industry Act 1991”); re-enactment of the relevant provisions with modification was effected by section 80 of the Water Industry Act 1991.
7. By virtue of section 17(2)(a) of the Interpretation Act 1978, the Department considers that the reference to the Public Health Act 1936 in the enabling power should be construed as including a reference to section 80 of the Water Industry Act 1991.
8. The Department does not consider that the reference in section 17(2)(a) to where “an Act repeals and re-enacts...” negates the operation of that provision by virtue of the fact that the repeal and re-enactment were respectively effected by different Acts in 1991, since both Acts were, as the long title of the repealing Act states, part of a single legislative transaction.
9. Sections 108 and 109 of the Environment Act 1995 are included in the Schedule by virtue of the application of the enabling power in section 7(3)(a) of the 1984 Act to Part 1 of the Environmental Protection Act 1990 (see section 7(4)(l)), the relevant provisions of which have been repealed and re-enacted as follows.
10. Sections 17 (powers of inspectors and others) and 18 (power to deal with cause of imminent danger of serious harm) of the Environmental Protection Act 1990 were repealed by the Environment Act 1995 and re-enacted with modifications as sections 108 (powers of enforcing authorities and persons authorised by them) and 109 (power to deal with cause of imminent danger of serious pollution etc) respectively of that Act.
11. By virtue of section 17(2)(a) of the Interpretation Act 1978, the Department considers that the reference to Part 1 of the Environmental Protection Act 1990 in section 7(4)(l) of the 1984 Act should be construed as including a reference to sections 108 and 109 of the Environment Act 1995.

Department of Health and Social Care

7 January 2025

Appendix 2: Memorandum from the Office for Students

S.I. 2024/1171

Power to Award Degrees etc. (The University of Law Ltd) Order of Council 2018 (Amendment) Order 2024

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

Explain why this Order does not provide information that allows the instrument being amended by this Order to be located.
2. The Office for Students is grateful to the Committee for pointing out this error and intends to correct it. We intend to do this by issuing a correction slip to the explanatory note for S.I. 2024/1171 containing a link to the Privy Council Order being amended (which is available on the Privy Council website, in the following link: [2018-09-24-The-University-of-Law-Ltd.pdf](#)).
3. The Office for Students would be grateful to receive any comments from the Committee on its proposed approach. In future cases, we intend to ensure that statutory instruments making reference to Privy Council Orders contain information about how those orders can be located.

The Office for Students

6 January 2025

Formal Minutes

Wednesday 22 January 2025

Members present

Sir Bernard Jenkin, in the Chair

Lord Beith

Lord Chartres

Claire Hughes

Lord Meston

Ms Julie Minns

Lord Sahota

Baroness Sater

Report consideration

Draft Report (Twelfth 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 Twelfth 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 29 January at 3.40 p.m.