



House of Lords
House of Commons

Joint Committee on Statutory Instruments

Twentieth Report of Session 2024-25

HC 291-xx / HL Paper 107

Drawing special attention to:

The Carriage by Air (Revision of Limits of Liability under the Montreal Convention) Order 2021

The Armed Forces Pensions (Remediable Service) (Amendment) Regulations 2025

The Statutory Neonatal Care Pay (Persons Abroad and Mariners) Regulations 2025

The Statutory Neonatal Care Pay (Administration) Regulations 2025

Courses offered as an alternative to prosecution (Specified Fixed Penalty Offences) (Traffic) Regulations 2025

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 Brady of Altrincham](#) (Conservative; Life peer)

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

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

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

[Baroness Sater](#) (Conservative; Life peer)

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

House of Commons

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

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

[Rachel Blake](#) (Labour; Cities of London and Westminster)

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

[Andrew Pakes](#) (Labour; Peterborough)

[David Pinto-Duschinsky](#) (Labour; Hendon)

[Gareth Snell](#) (Labour; Stoke-on-Trent Central)

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.74, 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 2 April 2025, to be printed.

It was published on 4 April 2025. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

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Instruments reported

At its meeting on 2 April 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 five 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. 2021/1448: Reported for failure to comply with proper legislative practice

The Carriage by Air (Revision of Limits of Liability under the Montreal Convention) Order 2021

Procedure: Not subject to parliamentary procedure

- 1.1 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.**
- 1.2** This Order, made in 2021, certifies the updated limits of liability under the Montreal Convention for the Unification of Certain Rules for International Carriage by Air 1999. The Committee asked the Department for Transport to explain the extended delay in providing the instrument for scrutiny.
- 1.3** In a memorandum printed at Appendix 1, the Department explains that the failure to send the 2021 Order to the Committee for scrutiny at the time it was made was an oversight, for which it unreservedly apologises. The Department further apologises for not having sent a voluntary memorandum to the Committee along with the instrument when it was belatedly supplied. The Committee appreciates the Department's candour and is aware that there is a risk that such errors can occur where Orders are made as Orders in Council and not within the Department, as in this case. However, the Committee draws attention to paragraph 2.9.16 of Statutory Instrument Practice, which states that the originating Department is responsible for providing copies of the instrument to the relevant

parliamentary committees. **The Committee accordingly reports this Order for failure to comply with proper legislative practice, acknowledged by the Department.**

2 S.I. 2025/188: Reported for failure to comply with proper legislative practice

The Armed Forces Pensions (Remediable Service) (Amendment) Regulations 2025

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 make amendments to various instruments related to Armed Forces pension schemes. In doing so, they correct errors in S.I. 2023/998 that were noted by the Committee in its report on that instrument (see the Committee’s Third Report of Session 2023–24). In its memorandum in response to the Committee’s questions regarding the errors in S.I. 2023/998, the Ministry of Defence undertook that the errors identified would be remedied at the “next legislative opportunity”. The Committee noticed that, while the vast majority of those errors are corrected by this instrument, the error identified in relation to the definitions of “FTRS 1997” and “NRPS 2011” is not corrected. The Committee asked the Ministry of Defence to explain the omission of that correction, given the undertaking that had been provided.
- 2.3** In a memorandum printed at Appendix 2, the Department explains that it had not intended to make those corrections in this instrument, considering instead that such changes were more appropriately made under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004, and specifically in the annual up-rating Order made under that power. However, in the event, the necessary amendments were – in error – not included in that instrument either. The Department acknowledges and apologises for this oversight.
- 2.4** The Committee notes that since S.I. 2023/998 there have been two annual up-rating Orders in 2024 and 2025, neither of which included the corrections that the Department had undertaken to make. This further instrument was another opportunity to make the necessary change, and the Department would have been free to rely on the power in section 1(2) of the 2004 Act for that purpose. Given that the Department’s original commitment to

Parliament was to remedy the error “at the next legislative opportunity”, the continuing delay is deprecated. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

3 S.I. 2025/202: Reported for failure to comply with proper legislative practice

(and)

4 S.I. 2025/206: Reported for failure to comply with proper legislative practice

The Statutory Neonatal Care Pay (Persons Abroad and Mariners) Regulations 2025

The Statutory Neonatal Care Pay (Administration) Regulations 2025

*Procedure: **Made negative***

- 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 are part of a legislative package that make provision to implement the new statutory entitlement to neonatal care leave and pay under the Neonatal Care (Leave and Pay) Act 2023. The Statutory Neonatal Care Pay (Persons Abroad and Mariners) Regulations 2025 (S.I. 2025/202, the “Persons Abroad and Mariners Regulations”) deal with the entitlement to neonatal care pay for employees who fall into particular categories of employment. The Statutory Neonatal Care Pay (Administration) Regulations 2025 (S.I. 2025/206, the “Administration Regulations”) provide for employers to reclaim payments of statutory pay from HMRC and imposes obligations on employers in connection with such payments. The Committee noticed that both instruments cross-refer to another instrument within the same legislative package, the Statutory Neonatal Care Pay (General) Regulations 2025 (the “General Regulations”). The General Regulations are subject to the affirmative procedure and had not yet been approved by resolutions of both Houses or made into law at the time that both the Administration

Regulations and the Persons Abroad and Mariners Regulations were made. This had the effect that the Administration Regulations and the Persons Abroad and Mariners Regulations were imperfectly drafted because they included references to the General Regulations (“S.I. 2025/XXX”) that would require correction. Further, it was theoretically possible that the General Regulations would not be approved by Parliament and so would not be made into law. The Committee asked the Department for Business and Trade to explain.

- 3.3** In memoranda printed at Appendices 3 and 4, the Department acknowledges and regrets that in this instance correct legislative practice was not followed. The Department asserts that, as both the Administration Regulations and the Persons Abroad and Mariners Regulations come into force on the same day as the General Regulations (the latter having now been approved by Parliament and made into law), the error will not have caused a detriment to anyone seeking to rely on them. The Committee accepts that, in this case, the incorrect sequencing of the relevant instruments will not have caused any practical issue. However, the Committee’s view is that, where instruments that form part of the same legislative package are subject to different parliamentary control procedures, those instruments that are subject to the affirmative procedure should, wherever possible, be laid before parliament in good time such that their approval is concluded before any related instruments subject to the negative procedure are made and become law. This avoids both the constitutionally-questionable presumption that Parliament will approve those instruments subject to the affirmative procedure, and the infelicity of making laws that contain incomplete cross-references from the point of their making. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

5 S.I. 2025/238: Reported for failure to comply with proper legislative practice and for making an unusual use of the enabling power

Courses offered as an alternative to prosecution (Specified Fixed Penalty Offences) (Traffic) Regulations 2025

Procedure: Made negative

- 4.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they fail to comply with proper legislative practice in one respect and make an unusual use of the enabling power in another respect.**
- 4.2** These Regulations formalise the arrangements for educational courses offered as an alternative to prosecution for specified fixed penalty motoring offences. The Committee asked the Home Office to explain why UKROEd Limited in regulation 2 is not identified by a unique identifier (for example, a company number). In a memorandum printed at Appendix 5, the Department acknowledges that a company number should have been included and undertakes to make a correction as soon as possible. The Committee stresses that good drafting practice requires that companies and other private bodies referred to in legislation be given a unique identifier (even where the likelihood of confusion is small). **The Committee accordingly reports regulation 2 for failure to comply with proper legislative practice, acknowledged by the Department.**
- 4.3** Add Regulation 7(4) states that in determining what courses count as similar for the purposes of the legislation, the chief officer must have regard to relevant guidance published by the National Police Chiefs' Council. The Committee asked the Department to explain why availability details are not given for this guidance. In its memorandum, the Department confirms that the guidance exists but that availability details are not given because the guidance is not publicly available. The Department argues that this is enough to satisfy the enabling power (section 90H(2) of the Road Traffic Offenders Act 1988). Section 90H(2) states that:

“The regulations must include provision for the purpose of identifying what counts as a “similar” course and that provision may, in particular, confer power on a person to determine what courses count as similar.”

In the Committee's view, when Parliament enacted section 90H(2) it was requiring the Secretary of State to include provision that allows “similar” courses to be identified and that this can be done by giving a power to a person to make that determination. The Secretary of State has chosen to do this by reference to guidance but because that guidance is not publicly available the regulations do not ultimately allow similar courses to be identified. In the Committee's view, it would have been more consistent with the purpose of the power for there to be a requirement to publish the guidance, particularly where the guidance has an impact on whether a person may be prosecuted for an offence. **The Committee accordingly reports regulation 7(4) for making an unusual use of the enabling power.**

Instruments not reported

At its meeting on 2 April 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	Whiplash Injury (Amendment) Regulations 2025

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I.2025/198	The Port of Southampton Harbour Revision Order 2025
S.I.2025/227	The Social Security (Scotland) Act 2018 (Disability Assistance) (Consequential Amendments) Order 2025
S.I.2025/284	The Teachers' Pensions Schemes (Amendment) Regulations 2025
S.I.2025/299	The REACH Fees and Charges (Amendment of Commission Regulation (EC) No 340/2008) Regulations 2025
S.I.2025/310	The National Health Service (Dental Charges) (Amendment) Regulations 2025
S.I.2025/325	The Social Security (Contributions) (Amendment No. 3) Regulations 2025

S.I. Numbers	S.I. Title
S.I.2025/328	The Social Security (Contributions) (Amendment No. 4) Regulations 2025
S.I.2025/330	The Statutory Maternity Pay (Compensation of Employers) (Amendment) Regulations 2025

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2025/343	The Pensions Increase (Review) Order 2025
S.I. 2025/348	The Employment Rights (Increase of Limits) Order 2025

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2025/257	The Offshore Installations (Safety Zones) Order 2025

Appendix 1: Memorandum from the Department for Transport

S.I. 2021/1448

The Carriage by Air (Revision of Limits of Liability under the Montreal Convention) Order 2021

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

“Explain the extended delay in sending copies of this instrument, made in December 2021, to the Committee.”

2. A copy of this instrument was sent to the Committee in February 2025, following a request from the Committee while reviewing The Carriage by Air (Revision of Limits of Liability under the Montreal Convention) Order 2025.
3. A copy of this instrument was not sent to the Committee until this time due to an oversight. This was established when we received the request from the Committee. The Department apologises unreservedly for this oversight.
4. Moreover, the Department agrees and accepts that once the oversight had been discovered and the instrument was sent in, late, it should have been accompanied by a voluntary memorandum explaining the delay and containing an apology. The Department again offers an unreserved apology for failing to do this and for any discourtesy to the Committee.

Department for Transport

20 March 2025

Appendix 2: Memorandum from the Ministry of Defence

S.I. 2025/188

The Armed Forces Pensions (Remediable Service) (Amendment) Regulations 2025

1. The Committee has asked the Ministry of Defence for a memorandum on the following point(s):

“Given that, in relation to S.I. 2023/998, the Department undertook to address the errors identified by the Committee at the “next legislative opportunity”, explain why this instrument does not correct the error identified in relation to the definitions of “FTRS 1997” and “NRPS 2011” (noting that this instrument does correct all the other errors identified in 2023/998).”

2. Regulation 44(2) of the Armed Forces Pensions (Remediable Service) Regulations 2023 (S.I. 2023/998) made consequential changes to the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) (“the AFCS Order”).
3. Article 2 of the AFCS Order contains definitions for the “FTRSPS 2010” and the “NRPSPS” and the Department intends to replace these definitions with “FTRS 1997” and “NRPS 2011” to maintain consistency.
4. The Department considers that the appropriate mechanism for making these changes to the AFCS Order is through an amendment to that Order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (c. 32). It was intended that these amendments would be made in the annual updating Order which amends the AFCS Order. Due to an oversight within the Department, this was not done.
5. The Department apologises sincerely for this oversight, which will be rectified at the next available legislative opportunity.

Name of Department

24 March 2025

Appendix 3: Memorandum from the Department for Business and Trade

S.I. 2025/202

The Statutory Neonatal Care Pay (Persons Abroad and Mariners) Regulations 2025

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

“Explain why this instrument cross-refers to a draft instrument that had not been approved or made at the time this instrument was made (the Statutory Neonatal Care Pay (General) Regulations 2025 - see regulation 2 (and footnote (c) thereto) and in particular regulation 4).”
2. The Department is grateful for the Committee’s consideration of this instrument and regrets that in this instance the correct order for legislative practice was not followed.
3. However, the Statutory Neonatal Care Pay (Persons Abroad and Mariners) Regulations 2025 come into force on 6th April 2025, as do the Statutory Neonatal Care Pay (General) Regulations 2025. These latter regulations have since been made on the 20th March 2025. As such, by the time both instruments come into force the reference to the Statutory Neonatal Care Pay (General) Regulations 2025 in the Statutory Neonatal Care Pay (Persons Abroad and Mariners) Regulations 2025 will apply to an SI which has been approved and made and in force. The error will, therefore, not have caused a detriment to anyone seeking to rely on the regulations.
4. The department has amended its procedures and will examine what further changes can be made to ensure that this error is not repeated in the future.

Department for Business and Trade

24 March 2025

Appendix 4: Memorandum from the Department for Business and Trade

S.I. 2025/206

The Statutory Neonatal Care Pay (Administration) Regulations 2025

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

“Explain why this instrument cross-refers in regulation 2(1) to a draft instrument that had not been approved or made at the time this instrument was made (the Statutory Neonatal Care Pay (General) Regulations 2025), rather than setting out the relevant definition in this instrument.”

2. The Department is grateful for the Committee’s consideration of this instrument and regrets that in this instance the correct order for legislative practice was not followed.
3. However, the Statutory Neonatal Care Pay (Administration) Regulations 2025 come into force on 6th April 2025, as do the Statutory Neonatal Care Pay (General) Regulations 2025. These latter regulations have since been made on the 20th March 2025. As such, by the time both instruments come into force the reference to the Statutory Neonatal Care Pay (General) Regulations 2025 in the Statutory Neonatal Care Pay (Administration) Regulations 2025 will apply to an SI which has been approved and made and in force. The error will, therefore, not have caused a detriment to anyone seeking to rely on the regulations.
4. The department has amended its procedures and will examine what further changes can be made to ensure that this error is not repeated in the future.

Department for Business and Trade

24 March 2025

Appendix 5: Memorandum from the Home Office

S.I. 2025/238

The Courses Offered as an Alternative to Prosecution (Specified Fixed Penalty Offences) (Traffic) Regulations 2025

1. The Committee has asked the Home Office for a memorandum on the following point(s):
 - “(1) Explain why regulation 2 (or a footnote) does not contain a unique identifier for UKROEd Limited (for example, a company number).*
 - (2) (i) Explain why availability details are not given for the guidance referred to in regulation 7(4); and*
 - (ii) If that guidance does not yet exist, explain how the requirement that the regulations “must include provision for the purpose of identifying what counts as a “similar” course” is satisfied (section 90H(2) of the Road Traffic Offenders Act 1988).”*
2. In respect of (1), the Department recognises that a company number for UKROEd Limited should have been included, this was an oversight during the drafting of the SI. The Department will seek to correct this as soon as possible. The Department thanks the Committee for drawing this matter to its attention.
3. In respect of (2), guidance in relation to the factors which should be taken into account when police chiefs are required to decide which courses should count as a similar course for the purposes of regulation 7(4) titled “NDORS Course Eligibility” currently exists. The reason the availability details were not given for the guidance is because it is not publicly available but is distributed to UKROEd Limited scheme members (police forces) and course providers. In the Department’s view, the provision therefore satisfies section 90H of the Road Traffic Offenders Act 1988.

Home Office

25 March 2025

Formal Minutes

Wednesday 2 April 2025

Members present

Sir Bernard Jenkin, in the Chair

Lewis Atkinson

Lord Kakkar

Charlie Maynard

Lord Meston

David Pinto-Duschinsky

Lord Sahota

Baroness Sater

Gareth Snell

Lord Watson of Wyre Forest

Report consideration

Draft Report (Twentieth 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 4.3 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 5.

Resolved, That the Report be the Twentieth 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 23 April at 3.40 p.m.

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2024–25

Number	Title	Reference
19th	No Statutory Instruments Reported	HC 291-xix
18th	2 Statutory Instruments Reported	HC 291-xviii
17th	No Statutory Instruments Reported	HC 291-xvii
16th	1 Statutory Instrument Reported	HC 291-xvi
15th	1 Statutory Instrument Reported	HC 291-xv
14th	No Statutory Instruments Reported	HC 291-xiv
13th	8 Statutory Instruments Reported	HC 291-xiii
12th	2 Statutory Instruments Reported	HC 291-xii
11th	2 Statutory Instruments Reported	HC 291-xi
10th	2 Statutory Instruments Reported	HC 291-x
9th	2 Statutory Instruments Reported	HC 291-ix
8th	4 Statutory Instruments Reported	HC 291-viii
7th	1 Statutory Instrument Reported	HC 291-vii
6th	4 Statutory Instruments Reported	HC 291-vi
5th	5 Statutory Instruments Reported	HC 291-v
4th	2 Statutory Instruments Reported	HC 291-iv
3rd	10 Statutory Instruments Reported	HC 291-iii
2nd	No Statutory Instruments Reported	HC 291-ii
1st	2 Statutory Instruments Reported	HC 291-i