House of Lords
House of Commons

Joint Committee on Statutory Instruments

Thirty-seventh Report of Session 2024-26

HC 291-xxxvii / HL Paper 198

The Electricity and Gas (Energy Company Obligation) (Amendment, Saving and Transitional Provisions) Order 2025

The Power to Award Degrees Etc. (LTE Group Limited) Order 2025

The Postal Services (Universal Postal Service) (Amendment) (No. 2) Order 2025

The Firearms (Amendment) Rules 2025

The National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Miscellaneous Amendments) Regulations 2025

The Electricity (Individual Exemption From the Requirement for a Generation License) (Riverside Energy Park) (England) Order 2025

The Non-Contentious Probate (Amendment) Rules 2025

The Building Regulations Etc. (Amendment) (England) 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. 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 Carter of Haslemere (Crossbench; Life peer)

Lord Meston (Crossbench; Excepted Hereditary)

Baroness Miller of Chilthorne Domer (Liberal Democrat; Life peer)

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)

Helena Dollimore (Labour; Hastings and Rye)

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 29 October 2025, to be printed.

It was published on 31 October 2025. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Contacts

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Contents

Instruments reported

At its meeting on 29 October 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 eight 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. 2025/802: Reported for defective drafting

The Electricity and Gas (Energy Company Obligation) (Amendment, Saving and Transitional Provisions) Order 2025

Procedure: Made negative

1.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in two respects.**

1.2 This Order amends two earlier instruments (S.I. 2022/875 (the "2022 Order") and S.I. 2023/873 (the "2023 Order")) that impose home-heating cost reduction obligations on certain licensed gas and electricity suppliers. The amendments update both the 2022 Order and 2023 Order to maintain alignment with industry standards in energy performance methodologies. Article 11(8) of this Order sets out a number of definitions for the purposes of that article. The Committee noticed that the definition of "post-project energy efficiency assessment" was not cross-referenced in article 11(8)(i) despite the use of that term in article 11(8)(d), whereas other relevant definitions in the 2022 Order were cross-referenced. Further, article 11(8)(j) cross-referred to the definition of "post-installation energy efficiency assessment" in the 2023 Order, when it appeared that there was no such definition in that Order. The Committee asked the Department for Energy Security and Net Zero to explain.

1.3 In a memorandum printed at Appendix 1, the Department explains that these were unintended drafting errors: the definition of "post-project energy efficiency assessment" in the 2022 Order should have been cross-referenced in article 11(8)(i), and an express definition of “post-installation energy efficiency assessment” should have been set out in article 11(8)(j) as that term is not defined in the 2023 Order. The Department undertakes to correct these errors at the earliest opportunity. **The Committee accordingly reports article 11(8)(i) and (j) for defective drafting, acknowledged by the Department.**

2 S.I. 2025/826: Reported for doubt as to vires

The Power to Award Degrees Etc. (LTE Group Limited) Order 2025

Procedure: Not subject to Parliamentary procedure

2.1 **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.**

2.2 This Order purports to grant degree-awarding powers to “LTE Group Limited”, an organisation identified in the Order by reference to its company number (as set out in article 2). The Order was made on 7 July 2025. In a letter to the Committee dated 19 August 2025, the Office for Students acknowledged that the Order contained an error, in that “LTE Group Limited” is not a higher education provider and the Order should in fact have named “LTE Group” – an entirely separate entity – as the organisation to whom the powers were granted. In a further letter dated 29 September 2025 and accompanying S.I. 2025/1039 (which grants degree-awarding powers to “LTE Group”), the Office for Students explained that its intention is to revoke this instrument in due course. The Committee asked the Office for Students whether it had any further comment to add to the circumstances and explanations it had set out in this correspondence.

2.3 In a memorandum printed at Appendix 2 [together with its letters of 19 August and 29 September 2025], the Department reiterates its intention to revoke this instrument, and to do so before it comes into force on 1 January 2026. The Committee’s view is that there is doubt as to whether the Order is intra vires for two reasons. First, the power under which the Order is made (section 42(1) of the Higher Education and Research Act 2017) expressly grants the Office for Students the power to authorise “registered higher education providers” to award degrees, but “LTE Group Limited” is not a registered higher education provider. Second, the statutory pre-conditions for the granting of any authorisation, as cited in the pre-amble, cannot in fact have been met for the entity purportedly authorised by the Order.

The Office for Students cannot have requested advice about the quality of higher education provided by "LTE Group Limited" as it does not provide any such education. The Committee does not share the Department's view, expressed in its letter of 19 August 2025, that the Order is necessarily void or "has no legal effect". Legislation is valid until it is either revoked by further legislation or quashed by a court (see R (Majera v Secretary of State for the Home Department [2021] UKSC 46 at [35] - [37]). **The Committee therefore welcomes the Department's intention expressly to revoke this Order. The Committee accordingly reports this Order for doubt as to whether it is intra vires, acknowledged by the Department.**

3 S.I. 2025/890: Reported for doubt as to vires

The Postal Services (Universal Postal Service) (Amendment) (No. 2) Order 2025

Procedure: Not subject to Parliamentary procedure

3.1 **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 one respect.**

3.2 This Order amends the Postal Services (Universal Postal Service) Order 2012 which sets out the description of services that OFCOM considers should be provided as a universal postal service. It revokes an instrument (S.I. 2025/854) that had been made in substantively identical terms six days earlier than this Order but which contained an error (the coming into force date having been left incomplete). The Committee noted that the power under which this Order was made (section 30(11) of the Postal Services Act 2011) is subject to pre-conditions set out in section 403 of the Communications Act 2003 (the "2003 Act"). In particular, section 403(4) of the 2003 Act requires that OFCOM must give notice of any proposal to make an order, and consider any representations received in response to that notice. In accordance with section 403(6), a period of at least 30 days must be given for the receipt of such representations. On the basis that section 14 of the Interpretation Act 1978 is relied on for the implied power to revoke S.I. 2025/854 (effected by article 9 of this Order), those pre-conditions apply equally to this instrument as to that earlier instrument. Indeed, the pre-amble to this Order expressly indicates that these pre-conditions were complied with for this instrument. However, the Committee was unclear as to how that could be the case when this Order was made only six days later than the instrument it revokes, given the required minimum 30-day period for the making of representations, and asked OFCOM to explain.

3.3 In a memorandum printed at Appendix 3, the Department acknowledges that no separate consultation took place in respect of the making of this instrument (as opposed to the making of S.I. 2025/854). It also acknowledges that the power to revoke S.I. 2025/854, effected by this instrument, was exercisable subject to the same conditions as the power to make it had been, specifically those requirements in section 403 of the 2003 Act. However, the Department asserts that, given that stakeholders had been given an opportunity to comment on the policy and substantive issues in this instrument, as the result of the consultation that took place before the making of S.I. 2025/854 in accordance with the 2003 Act requirements, those requirements had been met "in practice" for this instrument also.

3.4 The Committee accepts that there are no substantive differences between the two instruments, save that the second revokes the first. However, compliance with statutory pre-conditions for the making of an instrument is not optional based on the circumstances of that making, and, in particular, where the implied revocation power in section 14 of the Interpretation Act 1978 is relied on its use is expressly subject to the same conditions as the original enabling power, unless a contrary intention appears – and the Department does not suggest that there is such a contrary intention in this case. Even if the requirements of section 403 of the 2003 Act may have been met "in practice" for this instrument in relation to articles 1 to 8, in the Committee's view the legal effect of this is debatable. However, on any view those requirements were not met for the purposes of article 9 (the provision revoking S.I. 2025/854). **Accordingly, the Committee reports this instrument for doubt as to whether it is intra vires, acknowledged in part by the Department.**

4 S.I. 2025/914: Reported for doubt as to vires

The Firearms (Amendment) Rules 2025

Procedure: Not subject to Parliamentary procedure

4.1 **The Committee draws the special attention of both Houses to these Rules on the ground that there is doubt as to whether it is intra vires in one respect.**

4.2 These Rules amend the Firearms Rules 1998 (S.I. 1998/1941), in particular as to the form of applications for firearm and shotgun certificates. The Rules are made under powers in the Firearms Act 1968. The Committee noticed that the powers cited in the pre-amble were limited, in that they did not include provisions that refer expressly to the requirement that photographs of applicants be supplied with applications. Further, one of the powers that is cited (section 26B(2)(b)) contains reference to “those photographs”, referring to photographs mentioned in section 26B(2)(a), but 26B(2)(a) itself is not cited. Given that apparent anomaly, and that the form of application prescribed by these Rules does require an accompanying photograph, the Committee asked the Home Office to explain why the citation of enabling powers had been limited in this way.

4.3 In a memorandum printed at Appendix 5 the Department accepts that it should have cited sections 26A(2) and 26B(2)(a) of the Firearms Act 1968 as enabling powers in connection with the requirement for an accompanying photograph. The Department further undertakes to correct these errors in a statutory instrument due to be made shortly. In respect of any proposed correction, the Committee notes that, as the pre-amble to an instrument is evidence of the powers relied on at the time when that instrument was made, subsequent amendment is inappropriate; a more appropriate approach is to revoke and remake the instrument in reliance on all necessary powers. In respect of this instrument, where the preamble fails to cite all powers needed to cover all its content, this can give rise to a doubt as to whether its provisions are intra vires. **The Committee accordingly reports rule 2(4) and Schedule 1 for doubt as to whether they are intra vires, acknowledged by the Department.**

5 S.I. 2025/989: Reported for failure to comply with proper legislative practice and for doubt as to vires

The National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Miscellaneous Amendments) Regulations 2025

Procedure: Made negative

5.1 **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 there is doubt as to whether they are intra vires in another respect.**

5.2 These Regulations amend a number of provisions in the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349, the “2013 Regulations”), making changes to reflect new arrangements for “hub and spoke” pharmacy dispensing. The 2013 Regulations are also amended to reflect updated NHS organisational arrangements and operational tools, and to align wording with other related legislation as to where pharmaceutical services can be delivered ("at or from" premises, rather than "at" premises).

5.3 The Committee noted that section 7 of the National Health Service Act 2006 (the "2006 Act") was cited in its entirety as one of the enabling powers for these Regulations. Regulations made under section 7(1C) are subject to the affirmative procedure (in accordance with section 272(6) of the 2006 Act). This instrument, however, was made subject to the negative procedure. The Committee was therefore unclear as to why, if section 7(1C) was not in fact relied on for the making of these Regulations as the use of the negative procedure implied, section 7 as a whole had been cited as an enabling power, rather than the relevant subsection. The Committee asked the Department of Health to explain.

5.4 In a memorandum printed at Appendix 6, the Department explains the nature of the amendments this instrument makes in Part 2 means that the only provision of section 7 relied on for the making of this instrument was section 7(1), and so only that section should have been cited in the pre-amble. Where a pre-amble to an instrument cites unnecessary powers, that is considered a failure to follow good legislative practice, unless the instrument is making substantive provision that attracts the affirmative procedure in which case there may be a question of vires (for a recent example, see the Committee's Thirty-fifth Report of the current Session in relation to S.I. 2025/824 et seq). In this case, the Department has explained that the instrument is not making provision pursuant to section 7(1C) (namely giving a Special Health Authority additional functions) and **the Committee accordingly reports the pre-amble for failure to comply with proper legislative practice, acknowledged by the Department.**

5.5 These Regulations insert new provisions into Schedules 4, 6 and 7 to the 2013 Regulations which provide for information sharing between "hub and spoke" providers of pharmaceutical services. Article 36(4) of the UK General Data Protection Regulation ((EU) 2016/679) requires the Department to consult the Information Commissioner during the preparation of a proposal for a legislative measure which relates to data processing. Noting that no such consultation was referenced in either the pre-amble to the instrument nor the accompanying Explanatory Memorandum, the Committee asked the Department whether it had occurred.

5.6 In its memorandum, the Department, having considered which of the provisions in this instrument are subject to the consultation requirement, sets out that a fresh consultation with the Information Commissioner in respect of this instrument did not take place and should have done, although there had been consultation in respect of similar provisions in another, related, instrument (S.I. 2025/758). The Department spends some time in its memorandum considering guidance and feedback provided to it on the article 36(4) requirement and how consultation is effected; the Committee makes no comment on any such guidance, which is outside its purview, but does note that compliance (however achieved) with the requirement is required for each "legislative measure … or … regulatory measure based on such a legislative measure, which relates to processing." The Department also states that it does not consider that consultation under article 36(4), where it has taken place, needs to be recited in the pre-amble to the relevant instrument. As the Committee set out in its Thirty-fifth Report of the current Session, in relation to S.I. 2025/797, it disagrees with the statement in paragraph 3.11.28 of Statutory Instrument Practice that it is only the fulfilment of conditions set out in the enabling Act that should be set out in the preamble. The Committee's view is that, as a matter of proper legislative practice, compliance with article 36(4) should be cited consistently in the pre-amble and, where an Explanatory Memorandum is provided, the Department should set out whether consultation has happened.

5.7 In this instance, however, the Department has set out that the consultation required did not in fact take place before the instrument was made. As the Committee said in its Thirty-fifth Report of the current Session in relation to S.I. 2025/797, whilst there are arguments to the contrary the Committee considers that article 36(4) is a condition precedent as it requires a certain step to have occurred before the power to make legislative measures relating to processing can be exercised. On this basis, **the Committee reports this instrument for doubt as to whether it is *intra vires*.**

6 S.I. 2025/1001: Reported for requiring elucidation

The Electricity (Individual Exemption From the Requirement for a Generation License) (Riverside Energy Park) (England) Order 2025

Procedure: Made negative

6.1 **The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.**

6.2 This Order grants Riverside Energy Park Limited an exemption, in respect of the facility known as Riverside 2 on the River Thames, from the requirement under section 4(1)(a) of the Electricity Act 1989 to have a generation licence for electricity. The exemption is subject to conditions, set out in article 2(3) of the Order. The condition set out in article 2(3)(b) is that “Riverside 2 does not export more than 100 megawatts of electrical power to the total system, except in circumstances outside the reasonable control of Riverside Energy Park Limited”. The Committee was unclear as to whether this condition was intended to apply to the export of electrical power at any one time, or over the duration of the exemption, and asked the Department for Energy Security and Net Zero to explain.

6.3 In a memorandum printed at Appendix 7, the Department explains that the condition is intended to apply to the export of electrical power at any one time. It further explains that use of the term “megawatts” (which is a measurement of instantaneous power) as opposed to “megawatt-hours” is sufficient to indicate that intent, which would be understood by the generator to which the exemption applies and more widely by stakeholders in the industry. The Committee is grateful for the Department’s explanation of this technical point. Given that some (but not all) other exemption orders of this type have included the wording “at any time”, the Committee’s view is that a consistency of approach as to this drafting would be helpful, but is content on this occasion to r**eport article 2(3)(b) for requiring elucidation, provided by the Department’s memorandum.**

7 S.I. 2025/1004: Reported for requiring elucidation

The Non-Contentious Probate (Amendment) Rules 2025

Procedure: Made negative

7.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they require elucidation in three related respects.**

7.2 These Rules amend the Non-Contentious Probate Rules 1987 (S.I. 1987/2024, “the NCPR”). The NCPR govern practice and procedure in the Probate Registry where there is no dispute about entitlement to a grant of representation or the validity of any will or codicil. One of the enabling powers cited for these Rules is section 2(5) of the Colonial Probates Act 1892 (the “1892 Act”). That provision grants a power to make rules of court for regulating the procedure and practice in United Kingdom courts in relation to an application for sealing a grant of probate or letters of administration granted in a British possession. Given the drafting of section 2(5), the Committee was unclear which provision or provisions in these Rules were enabled by this power and, further, to whom that rule-making power was granted and what parliamentary procedure applied to statutory instruments containing rules made under it. The Committee asked the Ministry of Justice to explain.

7.3 In a memorandum printed at Appendix 8, the Department explains that section 2(5) of the Colonial Probates Act 1892 is cited as an enabling power because certain of the amendments made by this instrument affect the re-sealing process set out in rule 39 of the NCPR, even though rule 39 itself remains unchanged. Rule 39 of the NCPR is the provision that governs the re-sealing of grants under the Colonial Probates Acts 1892 and 1927 and therefore falls within the scope of the power in section 2(5) of the 1892 Act.

7.4 The Department further explains that, by virtue of the definition in Schedule 1 to the Interpretation Act 1978 of "Rules of Court", rules made under section 2(5) of the 1892 Act – as with other probate rules under section 127 of the Senior Courts Act 1981 (the "1981 Act") – fall to be made by a judicial office holder nominated by the Lord Chief Justice with the agreement of the Lord Chancellor. In this instance, that is the President of the Family Division of the High Court. The Department also explains its reasoning for combining in one instrument the use of powers subject to the negative procedure (section 127 of the 1981 Act) and those subject to no parliamentary procedure (section 2(5) of the 1892 Act). In essence, the Department's position is that the wording of the relevant legislation contemplates the "mixing" of provisions subject to different (or no) parliamentary procedures, and that in the instance where an instrument contains rules subject to the negative procedure and no procedure, it is the negative procedure that prevails. The Department perceives no risk in that approach, but notes the situation would be different were provisions subject to the negative procedure combined with provisions subject to the affirmative procedure. The Committee does not disagree with that approach in principle but notes that if an instrument combines material that is subject to the negative procedure with material that is subject to no parliamentary procedure, there is an inherent risk that the material subject to no parliamentary procedure could be annulled given that it forms part of a negative instrument. Ultimately, this is a question of judgment for the Department to take.

7.5 Whilst the Committee is grateful for the explanations provided by the Department's memorandum, the Committee notes that at two points the Department considers it worth noting that previous instruments made under the same powers were not reported by the Committee. As the Committee has said on previous occasions, the fact that the Committee has decided not to report an instrument in the past does not prevent the Committee from reporting similar instruments in the future. A decision by the Committee to not draw an instrument to the attention of both Houses is not to be equated with the Committee providing its approval of the instrument, given that this is not a function of the Committee. Nonetheless, in respect of this instrument and on this occasion the Committee is content to **report the pre-amble for requiring elucidation, provided by the Department's memorandum.**

8 S.I. 2025/1017: Reported for defective drafting

The Building Regulations Etc. (Amendment) (England) Regulations 2025

Procedure: Made negative

8.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

8.2 These Regulations amend the Building (Registered Building Control Approvers etc.) England Regulations 2024 (S.I. 2024/110, the "RBCA Regulations") and the Building Regulations 2010 (S.I. 2010/2214, the "2010 Regulations"). Regulation 4 inserts a new regulation 22A into the RBCA Regulations which refers, at inserted paragraph (2)(e)(iii) (in both sub-paragraphs (aa) and (bb)) to "Part 2A … of these Regulations". The Committee noticed, however, that there is no Part 2A in the RCBA Regulations into which this reference is inserted, and asked the Ministry of Housing, Communities and Local Government to explain.

8.3 In a memorandum printed at Appendix 9, the Department explains that this is a drafting error, and that the reference is intended to be to Part 2A of the 2010 Regulations. The Department undertakes to correct the error at the earliest opportunity. **The Committee accordingly reports regulation 4 for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 29 October 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	The Merchant Shipping (Marine Equipment) Regulations 2025
Draft	The Immigration Skills Charge (Amendment) Regulations 2025
Draft	The Infrastructure Planning (Business or Commercial Projects) (Amendment) Regulations 2025
Draft	The Victims and Prisoners Act 2024 (Permitted Disclosures) Regulations 2025
Draft	The Financial Services and Markets Act 2023 (Prudential Regulation of Credit Institutions) (Consequential Amendments) Regulations 2025

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2025/988	The Housing Benefit (Habitual Residence) (Amendment) Regulations 2025

S.I. Numbers	S.I. Title
S.I. 2025/1000	The Heather and Grass etc. Burning (England) (Amendment) Regulations 2025
S.I. 2025/1030	The Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2025
S.I. 2025/1066	The Online Safety (CSEA Content Reporting by Regulated User-to-User Service Providers) (Revocation) Regulations 2025
S.I. 2025/1082	The Veterinary Surgeons (Recognition of University Degree) (Harper and Keele) Order of Council 2025
S.I. 2025/898[1]	The OTC Derivatives Risk Mitigation and Central Counterparties (Equivalence) (Switzerland) Regulations 2025

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2020/919	The Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2020
S.I. 2020/920	The Designation of Schools Having a Religious Character (England) Order 2020
S.I. 2020/1600	The Designation of Schools Having a Religious Character (Independent Schools) (England) (No. 2) Order 2020
S.I. 2023/371	The Health and Care Act 2022 (Commencement No. 4) Regulations 2023
S.I. 2023/1431	The Health and Care Act 2022 (Commencement No. 8 and Transitional and Saving Provision) Regulations 2023
S.I. 2024/883	The Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2024
S.I. 2025/972	The Power to Award Degrees etc. (The Liverpool Institute for Performing Arts) Order 2025

1 The Committee requested a Memorandum on this instrument and a satisfactory response was received. The Memorandum is printed at Appendix 10

S.I. Numbers	S.I. Title
S.I. 2025/984	The Dentists Act 1984 (Medical Authorities) Order 2025
S.I. 2025/1045	The Designation of Schools Having a Religious Character (England) Order 2025
S.I. 2025/1046	The Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2025
S.I. 2025/1053	The Wireless Telegraphy (Licence Charges for the 2100 MHz Frequency Band) Regulations 2025
S.I. 2025/1064	The Online Safety Act 2023 (Commencement No. 5) (Revocation) Regulations 2025
S.I. 2025/1078	The Financial Services and Markets Act 2023 (Commencement No. 11 and Saving Provisions) Regulations 2025

Appendix 1: Memorandum from the Department for Energy Security and Net Zero

S.I. 2025/802

The Electricity and Gas (Energy Company Obligation) (Amendment, Saving and Transitional Provisions) Order 2025

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

    a. *In relation to article 11(8)(i), explain why this does not include a reference to the definition of "post-project energy efficiency assessment" in S.I. 2022/875 (noting that this term is used in article 11(8)(d)).*

    b. *In relation to article 11(8)(j), explain why this refers to "post-installation energy efficiency assessment" having the same meaning as in in S.I. 2023/873, when it appears that there is no such definition in that instrument.*

2. We thank JCSI for their careful consideration of this SI. The errors were unintended, and we sincerely apologise for them.
3. For (a), the definition of "post-project energy efficiency assessment" should be added from the S.I. 2022/875.
4. For (b), JCSI has correctly identified that "post-project energy efficiency assessment" has not been defined in S.I. 2023/873. This needs to be separately defined as follows –

    "post-project energy efficiency assessment" means an assessment performed under article 22(1)(b) of the 2023 Order;

5. DESNZ intends to bring forward legislation at the earliest opportunity to correct both these errors.

Department for Energy Security and Net Zero

20 October 2025

Appendix 2: Memorandum and correspondence from the Office for Students

S.I. 2025/826

The Power to Award Degrees Etc. (LTE Group Limited) Order 2025

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

   Does the Office for Students have any further comment to add to its letters to the Committee of 19 August 2025 and 29 September 2025 setting out the naming of the incorrect entity in this instrument?

2. As stated in our letter of 29 September 2025, we confirm that the OfS intends to revoke the above-named order once the necessary OfS internal governance processes (which apply to revocation orders) have been completed, and that we will notify the JCSI when the revocation order has been made.

3. For completeness, we note that the above-named order is not currently in force and is not due to commence until 1 January 2026, and that we intend to make the revocation order before the above-named order commences.

Office for Students

21 October 2025

Correspondence from the Office for Students

(i) Letter from the Office for Students - 19 August 2025

1. We are writing to notify you of a drafting error in the recently registered Power to Award Degrees etc. (LTE Group Limited) Order 2025 (“the Order”).1 We note that the Order comes into force on 1st January 2026 and is therefore not currently in force.

2. The Order purports to authorise “LTE Group Limited (registered company number 11726027)” to grant certain awards for a time limited period from 1st January 2026 to 31st December 2029. The Order was made pursuant to section 42 of the Higher Education and Research Act 2017 (“HERA”), which gives the OfS the power to authorise a “registered higher education provider” to grant certain awards.

3. It has recently come to our attention that a drafting error has been made on the Order, in that the incorrect entity is named in the Order – the Order should have authorised “LTE Group” (a registered higher education provider) to grant awards, not “LTE Group Limited” (a separate and unrelated entity which is not a registered higher education provider).

4. We wish to remedy this issue as soon as possible and would be grateful for any views from the JCSI as to whether it would be possible to issue a correction slip to correct the name in the Order, given the circumstances set out in paragraph 3.

5. If a correction slip is not permissible in these circumstances, we anticipate that the OfS will need to make a new order authorising “LTE Group” to grant the awards referred to in the Order for the above time period. In such a case, we would be grateful for any guidance from the JCSI as to whether it is necessary to revoke the Order or whether it can be left in place as it has no legal effect (having been granted to an entity which is not a registered higher education provider). If your advice is to revoke the Order, we would plan to do so under section 44(4) of HERA.

6. Lastly, we wish to reassure the JCSI that we have since reviewed and strengthened our internal drafting processes to avoid this issue being repeated.

(ii) Letter from the Office for Students - 19 August 2025

The Power to Award Degrees etc. (LTE Group) Order 2025 (S.I. 2025/1039)

I enclose a copy of the above-mentioned statutory instrument. The following information applies:

Date Made: 17 September 2025

Enabling powers: sections 42(1) and 42(9) of the Higher Education and Research Act 2017

This instrument is subject to no procedure.

Previous order

The above-mentioned statutory instrument is intended to replace S.I. 2025/826 which contains a drafting error naming the incorrect entity. We notified the JSCI of this drafting error on 19 August 2025 and received a response from a JSCI legal adviser on 22 August 2025. We intend to revoke S.I. 2025/826 once the necessary OfS internal governance processes (which apply to revocation orders) have been completed. We will notify the JCSI when these processes are concluded and the revocation order has been made.

Appendix 3: Memorandum from the Office of Communications

S.I. 2025/890

The Postal Services (Universal Postal Service) (Amendment) (No. 2) Order 2025

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

> *Explain how the pre-conditions set out in section 403 of the Communications Act 2003 were complied with in relation to this instrument, noting that—*
>
> *i. section 403(6) of that Act requires that a period of not less than 30 days elapses for representations to be made to OFCOM further to a notification under section 403(4), but that this instrument was made only six days later than S.I. 2025/854, which it revokes and replaces as a result of an error in that instrument, and*
>
> *ii.where the implied power in section 14 of the Interpretation Act 1978 is relied upon, this provides that the power is subject to the same conditions and limitations as the main power (unless a contrary intention appears.*

2. The Office of Communications ("Ofcom") is grateful for the Committee's consideration of this instrument and for giving Ofcom the opportunity to explain its position.

3. As set out in the explanatory notes to the instrument, Ofcom made this instrument to revoke and replace the Postal Services (Universal Postal Service) (Amendment) Order 2025 (S.I. 2025/854), which did not include the coming into force date in article 1 and was therefore defective. S.I. 2025/890 amends the Postal Services (Universal Postal Service) Order 2012 (S.I. 2012/936)[2] in order to implement Ofcom's decisions to reform the universal postal service, as specified in the instrument.

4. Ofcom consulted on proposals to reform the universal postal service between 30 January and 10 April 2025.[3] Consistent with section 403(4) to (6) of the Communications Act 2003 (the 2003 Act), the consultation: gave notice of our proposal to amend S.I. 2012/936 by way of a draft Order included in an annex to the consultation document; explained the effect of the proposed Order; included Ofcom's address; specified a period of ten weeks for submitting consultation responses; and was published on our website and brought to the attention of persons who were likely to be affected by the proposals.

5. On 10 July 2025, having considered all responses to the consultation in accordance with section 403(4)(c) of 2003 Act, we published our decisions to reform the universal postal service.[4] Schedule 1 to Annex 6 of the statement contained an indicative Order to give effect to certain of the decisions, which we confirmed we would proceed to make. Having considered stakeholder representations, our statement confirmed that we had decided that the Order would come into force on 28 July 2025.

6. Ofcom proceeded to make S.I. 2025/854 on 10 July 2025. However, this instrument inadvertently omitted the commencement date in article 1, and was therefore defective in giving effect to our policy decisions. We acknowledge that this error should not have occurred and apologise to the Committee for our oversight.

7. Considering the pressing public interest in giving effect to our policy decisions, we were keen to rectify the error and make an order implementing the relevant decisions as soon as possible for the benefit of all stakeholders, including postal users, companies and the general public. Therefore, on 16 July 2025, we made S.I. 2025/890 to revoke and replace S.I. 2025/854. S.I. 2025/890 is identical to S.I. 2025/854, save for the inclusion of the commencement date in article 1 and an additional provision at article 9 to revoke S.I. 2025/854.

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2 As amended by the Postal Services (Universal Postal Service) (Amendment) Order 2013 (S.I. 2013/3108).

3 https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-review-of-the-universal-postal-service-and-other-postal-regulation/consultation-review-of-the-universal-postal-service-and-other-postal-regulation.pdf

4 https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-review-of-the-universal-postal-service-and-other-postal-regulation/statement-docs/statement-review-of-the-universal-postal-service-and-other-postal-regulation.pdf

8. We acknowledge that stakeholders did not have the chance to comment on the additional provision in S.I. 2025/890 revoking S.I. 2025/854. We also acknowledge that, under section 14 of the Interpretation Act 1978, the power to revoke S.I. 2025/854 was exercisable subject to the same conditions as the power to make it, namely the requirements in section 403(4) to (6) of the 2003 Act.

9. As the legal effect of S.I. 2025/890 was identical to S.I. 2025/854 in respect of the policy which it sought to implement, Ofcom's view was that, by carrying out the consultation referred to in paragraph 4 above, stakeholders had been given the opportunity to comment on the policy and substantive issues arising from the making of S.I. 2025/890, consistent with section 403(4) to (6) of the 2003 Act. We therefore considered that in practice the requirements of section 403 had been met.

10. We trust the explanation set out in this memorandum answers the questions posed by the Committee. We take this opportunity to apologise again for the error in S.I. 2025/854, and to thank the Committee for giving Ofcom the opportunity to explain its position.

Office for Communications

21 October 2025

Appendix 4: Memorandum from the Home Office

S.I. 2025/914

The Firearms (Amendment) Rules 2025

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

   Noting that—

   (i) the form of application prescribed by these Rules requires an accompanying photograph; and

   (ii) section 26B(2)(b) is cited as an enabling power in the pre-amble, which refers to “those photographs”,

   explain why sections 26A(2) and 26B(2)(a) are not cited as enabling powers for the instrument.

2. The Home Office accepts it should have cited sections 26A(2) and 26B(2)(a) of the Firearms Act 1968 as enabling powers in connection with the requirement in the form for an accompanying photograph. The Home Office apologises for this omission and will correct this in a statutory instrument due to be made shortly.

Home Office

21 October 2025

Appendix 5: Memorandum from the Department of Health and Social Care

S.I. 2025/989

The National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Miscellaneous Amendments) Regulations 2025

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

> *1.Noting that regulations made under section 7(1C) of the National Health Service Act 2006 are subject to the affirmative procedure (see section 272(6) of that Act), explain whether section 7(1C) is relied on for the making of this instrument. If it is not, explain why section 7 as a whole is cited as an enabling power, rather than the relevant sub-section.*
>
> *2.Explain whether consultation in accordance with Article 36(4) of the UK General Data Protection Regulation ((EU) 2016/679) took place during the preparation of these Regulations. If so, explain why this is not referenced in the pre-amble to the instrument or the Explanatory Memorandum.*

2. In relation to point 1, the Department can confirm that section 7(1C) of the National Health Service Act 2006 ("the 2006 Act") was not relied on for the making of this instrument.

3. Section 7 was cited because of the recognition (regrettably, nearly eight years late) that the transfer of functions from the National Health Service Business Services Authority ("BSA") to the National Health Service Counter Fraud Agency ("CFA") required a substitution of a number of references, from the former to the latter, in the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349, as amended – "the PLPS Regulations").

4. The CFA was established by the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (S.I. 2017/958, as amended – "the Establishment Order") to take on the counter fraud functions of the Secretary of State in relation to the NHS. Prior to 1 November 2017, the BSA performed functions relating to fraud investigations on behalf of the Secretary of State. However, with the establishment of CFA, these functions became functions of the CFA by virtue of article 4 of the Establishment Order.

5. The CFA-related amendments to the PLPS Regulations relate to information about fraud investigations and their outcomes. Accordingly, what the CFA will do as a consequence of these changes will, in effect, be part of what they do under article 4 of the Establishment Order. To the extent that reliance is placed on section 7 of the 2006 Act to enable this enlargement of the effect of article 4, reliance is placed on subsection (1) of section 7 rather than on any other subsection of section 7 – and so only section 7(1) should have been cited in the preamble to this instrument.

6. In relation to point 2, Department takes the thrust of the question to relate to three areas of changes to the PLPS Regulations: the amendments relating to hub and spoke dispensing; the CFA changes; and the NHS.net Connect changes. None of these changes was preceded by a fresh consultation of the Information Commissioner's Office (ICO).

7. In the case of the hub and spoke dispensing changes, the medicines legislation framework on which they are largely based was the subject of the ICO consultation in March 2023 referenced in paragraph 7.6 of the Explanatory Memorandum to the Human Medicines (Amendments Relating to Hub and Spoke Dispensing etc.) Regulations 2025 (S.I. 2025/758)

8. The Department proceeded on the basis that it had to consider, in terms, whether the new hub and spoke provisions in this instrument amounted to introducing a new requirement to collect personal data or additional requirements for the disclosure of personal information (for why this was the case, see the non-exhaustive list in paragraph 2.16 of the guidance on Article 36(4) consultations, available at Guidance on the application of Article 36(4) of the General Data Protection Regulation (GDPR) - GOV.UK).

9. Whilst, relative to S.I. 2025/758, there are three significant differences between the schemes in the new hub and spoke provisions – (i) different product coverage and types of order coverage for hub and spoke dispensing (i.e. an enlarged group of products and types of orders is covered, although there is no difference in practice in the patient groups affected), (ii) new NHS terms of service requirements to be fulfilled (and so, in the case of NHS prescriptions in England, there are now parallel obligations under the PLPS Regulations and the Human Medicines Regulations 2012) and (iii) new notification requirements (which in practice will include declarations

to the NHS commissioner of the dispensing services that arrangements between the two businesses will include adherence to the NHS information sharing standard) – there appeared to the Department not to be “new requirements” in the sense of anything to change the assessment already made about the hub and spoke scheme by the ICO under Article 36(4) pursuant to the consultation in March 2023 as referred to above. In this regard, the Department notes that the summaries it provides in the Article 36(4) Enquiry From, when it does consult the ICO on draft legislation, tend to be broad summaries, in keeping with the nature of the form itself.

10. Further, feedback that the Department received from the ICO about the March 2023 consultation about when it “declines to engage” on proposals was interpreted by the Department, but perhaps misinterpreted, as indicating that if proposals were not going to change a pre-existing assessment under Article 36(4), or if there was nothing practically new in proposals relative to the pre-existing legislative scheme, there was no need to undertake an Article 36(4) consultation.

11. Having reviewed the matter in the light of the request for a Memorandum from the Committee, and having reviewed again the published guidance, the Department considers that, on reflection, a further consultation should have been undertaken under Article 36(4) in relation to this instrument and potentially in relation to S.I. 2025/758 – and it will contact the ICO about that. At the same time, it will ask the ICO about the two other sets of changes to the PLPS Regulations for which a consultation potentially should have been undertaken on this occasion – the CFA changes and the NHS.net Connect changes.

12. In the case of the CFA changes, it will be apparent that the character of the information sharing will be unchanged even though a different Special Health Authority investigating fraud is named in the legislation. In the case of the NHS.net Connect changes, NHS.net Connect is what was formerly known as NHSmail. NHS England have confirmed to us that it is only the name that has changed, rather than the system that sits behind the name. This is therefore perhaps an even clearer example of a legislative change with no practical impact on the underlying data processing arrangements.

13. To be clear, the Department is confident that the intended processing covered by this instrument will all be compliant with the UK General Data Protection Regulation. However, the Department will be guided by the ICO in terms of what it needs from the Department on the occasions represented by these three examples.

14. For completeness, the Department does not consider it necessary to recite consultation under Article 36(4) of the UK General Data Protection Regulation in the preambles to statutory instruments.

15. Paragraph 3.11.28 of Statutory Instrument Practice provides: “The preamble should also set out the fulfilment of any condition that the enabling Act requires before the SI can be made.”.

16. The Department does not consider this to apply to consultation under Article 36(4) of the UK General Data Protection Regulation since it is not an “enabling Act”.

Department of Health and Social Care

21 October 2025

Appendix 6: Memorandum from the Department for Energy Security and Net Zero

S.I. 2025/1001

The Electricity (Individual Exemption from the Requirement for a Generation Licence) (Riverside Energy Park) (England) Order 2025

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

   > *Noting that the condition in article 2(3)(b) prevents a generating station from exporting more than 100 megawatts, explain whether this condition is intended to apply to the export of electricity at any one time rather than cumulatively over the duration of the exemption.*

2. In power systems, megawatts (MW) is a measurement of instantaneous power: that is, the rate at which energy is being generated, transmitted, or consumed at any moment in time. When measuring energy delivered or consumed over a period of time, the measurement used is megawatt-hours (MWh).

3. The condition in article 2(3)(b) is therefore intended to apply to the export of electricity at any moment in time. We consider that this will be recognised as the legislative intent and effect by the generator to which the exemption applies, and more generally by other stakeholders in the industry.

4. If it had been intended that the condition of 100MWs should be cumulative, the condition would have been expressed in megawatt-hours, and the generating station would run for no more than a day before exceeding that limit and contravening the condition.

5. Although some previous S.I.s include the words “at any time” in connection with the measurement of megawatts, those words are not necessary and may have been intended as providing extra clarification. The approach taken has not been consistent (see for example see article 4(b) of S.I. 2006/2978 which does not include such words).

6. Please let us know if any further information would assist.

Department for Energy Security and Net Zero

20 October 2025

Appendix 7: Memorandum from the Ministry of Justice

S.I. 2025/1004

The Non-Contentious Probate (Amendment) Rules 2025

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

   i. which provision(s) in this instrument are enabled by the power in section 2(5) of the Colonial Probates Act 1892;

   ii. to whom that rule-making power is granted; and

   iii. what parliamentary procedure applies to statutory instruments containing rules made under that power?

2. The Ministry of Justice is grateful for the Committee's careful consideration of this instrument and for drawing these points to its attention.

   i. **Which provision(s) in this instrument are enabled by the power in section 2(5) of the Colonial Probates Act 1892**

Section 2(5) of the Colonial Probates Act 1892 (the "CPA 1892") is cited (together with section 127 of the Senior Courts Act 1981) because certain amendments introduced by the Non-Contentious Probate (Amendment) Rules 2025 (the "2025 Rules") affect the re-sealing process set out in rule 39 of the Non-Contentious Probate Rules 1987 (the "NCPR 1987"), even though rule 39 itself remains unchanged.

Rule 4 of the 2025 Rules amends rule 4(5) of the NCPR 1987 to include a reference to Scotland. This means that any solicitor or probate practitioner through whom an application for a grant is made must provide the address of their place of business within England, Wales, or Scotland.

"Grant" is defined in rule 2 of the NCPR 1987 as "a grant of probate or administration and includes the resealing of such a grant under the Colonial Probates Acts 1892 and 1927", so the amendment made by rule 4 of the 2025 Rules also applies to applications for the resealing of a foreign grant under rule 39 of the 1987 Rules.

Rule 39 of the NCPR 1987, which governs the re-sealing of grants under the Colonial Probates Acts 1892 and 1927, clearly falls within the scope of the rule making power in section 2(5) of the CPA 1892. As a result, any amendments affecting the re-sealing procedure set out in rule 39 are given effect through section 2(5) of the CPA 1892. This mechanism ensures that changes, such as those introduced by the 2025 Rules, are fully operative in relation to resealing applications.

We also note that the following three Non-Contentious Probate (Amendment) Rules relied upon the power in section 2(5) of the Colonial Probates Act 1892:

- The Non-Contentious Probate (Amendment) Rules 1999 (S.I. 1999/1015);
- The Non-Contentious Probate (Amendment) Rules 2003 (S.I. 2003/185); and
- The Non-Contentious Probate (Amendment) Rules 2020 (S.I. 2020/1059).

The Non-Contentious Probate (Amendment) Rules 2020 added a Third Schedule to the NCPR 1987, which expressly refers to rule 39, whereas the 1999 and 2003 amendments did not directly amend rule 39. Instead, they amended rules 3 and 60 of the NCPR 1987, respectively, likely because these changes also impacted provisions on the resealing of grants under rule 39 of the NCPR 1987. It is worth noting that none of those SIs (and in particular neither the 1999 or 2003 SI) was reported by the JCSI – please see Joint Committee on Statutory Instruments - Seventeenth Report and Joint Committee on Statutory Instruments - Eleventh Report.

ii. To whom that rule-making power is granted

Section 2(5) of the Colonial Probates Act 1892 does not explicitly specify who is empowered to exercise this authority; however, it refers to "rules of court".

Schedule 1 to the Interpretation Act 1978 provides that "'Rules of Court', in relation to any court, means rules made by the authority having power to make rules or orders regulating the practice and procedure of that court [...]".

Pursuant to the Senior Courts Act 1981 and the Constitutional Reform Act 2005, the authority to make these court rules which fall within the overarching term 'probate rules' in section 127 of the Senior Courts Act 1981) rests in England and Wales with the Lord Chief Justice or their nominee, with the agreement of the Lord Chancellor.

The enabling power in section 127 of the Senior Courts Act 1981 confirms that these rules can be made pursuant to the procedure in Part 1 of Schedule 1 to the Constitutional Reform Act 2005. This, in turn, states that a judicial office holder nominated by the Lord Chief Justice can make rules with the agreement of the Lord Chancellor. Section 109(4) of the Constitutional Reform Act 2005 confirms that a judicial office holder is a senior judge. Section 109(5)(c) adds that the President of the Family Division is a senior judge. The Lord Chief Justice nominated the President of the Family Division for this role in April 2006.[5]

iii. What parliamentary procedure applies to statutory instruments containing rules made under that power

The 2025 Rules are made in exercise of the powers conferred by section 127 of the Senior Courts Act 1981 and section 2(5) of the Colonial Probates Act 1892. While the power in the former provision is subject to the negative procedure, the latter is silent regarding the applicable parliamentary procedure for making rules of court.

We have combined powers subject to the negative procedure with those not requiring parliamentary procedure and provide the following justification for this approach.

- Schedule 1 of the Constitutional Reform Act 2005 provides powers to make "designated rules".
- Paragraph 1 of Schedule 1 (powers to make rules) to the Constitutional Reform Act 2005 specifies that "designated rules" are rules made under another Act which, by virtue of a provision in that Act, are to be made in accordance with this Part.
- Section 127 of the Senior Courts Act 1981 (as amended by paragraph 12 of Schedule 1 to the Constitutional Reform Act 2005) requires that probate rules are made in accordance with Schedule 1 to the Constitutional Reform Act 2005, which aligns with the definition of designated rules - i.e., rules under section 127 of the Senior Courts Act 1981 are designated rules.

5 https://www.judiciary.uk/wp-content/uploads/2015/12/LCJ-Delegations-Schedule-No-1-of-2020.pdf

- Paragraph 4(2) of Schedule 1 to the Constitutional Reform Act 2005 states that "A statutory instrument containing designated rules is subject to annulment pursuant to a resolution of either House of Parliament."
- The word "containing" in paragraph 4(2) envisages the possibility of an instrument including rules made under other procedures. That is, it seems to say that, even if no procedure were required, once rules are contained within the instrument, it must be subject to the negative procedure. In these circumstances, therefore, paragraph 4(2) dictates that the entire statutory instrument is to be made under the negative resolution procedure. We do not perceive any risk or issue in combining the negative resolution procedure with powers that do not require a parliamentary procedure (the situation would have required different consideration if the negative procedure were combined with the affirmative procedure).

It is again worth noting that the JCSI did not criticise the three previous SIs (S.I. 2020/1059, 1999/1015 or 2003/185) which used both powers in the manner we propose, nor has there been a legal challenge to those instruments.

Ministry of Justice

21 October 2025

Appendix 8: Memorandum from the Ministry of Housing, Communities and Local Government

S.I. 2025/1017

The Building Regulations Etc. (Amendment) (England) Regulations 2025

1. The Committee has asked the Ministry of Housing, Communities and Local Government for a memorandum on the following point(s):

> *Noting that S.I. 2024/110 contains no Part 2A, explain the references in regulation 4 (in inserted regulation 22A(2)(e)(iii)(aa) and (bb)) to "Part 2A … of these Regulations).*

2. We acknowledge that the reference to "Part 2A.. of these Regulations" was an error. The correct reference should be to Part 2A of the Building Regulations 2010 (S.I. 2010/2214). We apologise for the error and we will rectify this error at the earliest opportunity.

Ministry of Housing, Communities and Local Government

17 October 2025

Appendix 9: Memorandum from HM Treasury

S.I. 2025/898

The OTC Derivatives Risk Mitigation and Central Counterparties (Equivalence) (Switzerland) Regulations 2025

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

> *Explain the basis on which the equivalence determination under regulation 2(a) is limited to the requirements under Article 11 of EMIR (as defined in regulation 1(4)), noting that the power under which regulation 2 is made (Article 13(2) of EMIR) refers to an equivalence determination in respect of the requirements of Articles 4, 9, 10 and 11).*

2. HM Treasury thank the Committee for their request and have considered the point they raise on the use of the power set out in Article 13(2) of EMIR where in S.I. 2025/898 the use is restricted to a determination of equivalence in respect of Article 11 of EMIR only.

3. EMIR forms part of assimilated law. The UK "onshored" version, as amended by S.I. 2019/335, substitutes a domestic regulation-making power for the power of the Commission to adopt implementing acts.

4. The drafting of Article 13(2)(a) of UK EMIR is identical to the wording of the EU power.

5. As the Committee will of course be aware, under section 3 of the European Union Withdrawal Act 2018, EU legislation forms part of UK domestic law as it had effect in EU law immediately before IP completion day). HM Treasury is aware of seven EU Commission determinations where equivalence was granted to a state using the power in Article 13(2) of EMIR in respect of only some, and not all, of Articles 4, 9, 10 and 11.

6. For example, Commission Implementing Decision (EU) 2021/1108 of 5 July 2021 in respect of the USA used the power in to grant equivalence in respect of Article 11(3) only. Commission Implementing Decision (EU) 2021/1106 of 5 July 2021 granted Australia equivalence in respect of Article11 only. We consider this 'selective' use by the Commission to be supportive of our approach in the drafting of the 2025 Regulations.

7. HM Treasury itself granted equivalence to the EEA states in the European Market Infrastructure Regulation (Article 13) Equivalence Directions 2020, in respect of certain aspects of Article 4 and Article 11 only. These directions were made under regulation 2(1) of and paragraph 4(2) of Schedule 1 (equivalence directions: EMIR) to the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541).

8. The power there is to "make a determination set out in Schedule 1 for the purposes of that Schedule". The reference in paragraph 4 of the Schedule is to EMIR, and includes, in reference to the "purposes of Article 13 of EMIR", the same relevant wording, namely "..are equivalent to the requirements laid down under Articles 4, 9, 10 and 11 of EMIR."

9. We suggest that the use of a power based on reference to the powers in Article 13(2), reproducing the "and", and yet granting equivalence only in respect of some, but not all requirements, supports an interpretation that the literal "and" should be taken to mean "and/or".

10. We would also point to Article 84a of EMIR, which gives the power for any regulations made under EMIR to be make different provision for different purposes. This power is intended to give flexibility to the use of the power set out in Article13(2) and we would argue that a selective use of the power is within the meaning of Article 84a, where the purpose of these regulations is to grant equivalence to Switzerland in respect of Article 11 activities as part of a wider mutual recognition agreement on financial services between Switzerland and the UK. We believe that this use is transparent and does not lead to legal uncertainty.

11. We have also considered the purpose of Article13(2) which is to provide a mechanism to avoid duplicative and conflicting rules. Whilst Articles 4, 9, 10 and 11 are concerned with trading in OTC derivative contracts, they concern different parts of the trading process:

    - Article 4 concerns how and when OTC derivative contracts need to be cleared through a central counterparty (CCP).
    - Article 9 concerns how OTC derivative transactions are reported to trade repositories.

- Article 10 concerns treatment of non-financial counterparties and when they need to clear OTC derivative contracts through a CCP.
- Article 11 concerns margin (financial collateral) requirements for OTC derivative contracts not dealt with through a CCP.

12. These requirements are separate, and do not rely on each other. In fact, Article 4 and Article 11 set out essentially 'opposite' situations, in that Article 4 concerns transactions that need to be cleared through a CCP, and Article 11 concerns requirements on transactions not cleared through a CCP.

13. There has never been a use of Article 13(2) in UK legislation or, as far as we can determine, in EU legislation, where a state is granted equivalence in respect of all the Articles listed in Article 13(2). In our view, this suggests that they are not intended to be a "full set", but rather are intended to allow for separate determinations relating to similar (but distinct) parts of the regulation of the OTC derivative process.

14. As the different articles cover distinct parts of the process they may be regulated differently in the overseas state. It is highly likely that some parts of the overseas jurisdiction process will be equivalent to the UK approach and that some parts are not equivalent – or not regulated at all. If the correct interpretation of Article 13(2) was essentially "all or nothing" then this approach would prevent the UK government from advancing the aim of reducing duplicative requirements within the scope of EMIR Article 13, and in our view would risk reducing the UK's international competitiveness by limiting the potential uses of the UK's equivalence framework.

15. Prior to an equivalence decision being made by HM Treasury, a full assessment is made of the relevant parts of the overseas jurisdiction's regulatory regime, which (absent exceptional circumstances) will be supported by technical advice from the UK's financial services regulators. In the case of EMIR Article 13, this means advice was received from both the Financial Conduct Authority and Prudential Regulation Authority.

16. An equivalence determination will only proceed once this assessment is completed, and determines that the other jurisdiction is equivalent. This ensures that the parts of the overseas jurisdiction's regulatory framework that benefit from an equivalence decision are considered not to pose undue risks from a regulatory perspective. These assessments take time to complete and are very thorough, to ensure that equivalence decisions meet the criteria of the relevant equivalence regime.

17. We respectfully suggest that the use of selected articles from the list covering OTC derivates contracts trading set out in Article 13(2) of EMIR is, in view of existing similar decisions under the same power, an entirely expected use of the power. The purpose of Article 13 is to provide a mechanism to avoid duplicative or conflicting rules.

18. In our view, this purpose may in fact be frustrated if an equivalence determination for an overseas state could only be made if the conditions in each of Articles 4,9, 10 and 11 were met. The conditions are not interdependent and refer to different parts of the trading process. The power is discretionary and its purpose must, in our view, involve facilitating smoother cross-border trade in services. Previous 'selective' uses of the power would seem to support this position.

19. If it would assist the Committee for HM Treasury to clarify any of the points in the above memorandum, or provide any further detail, we will endeavour to respond as quickly as possible.

HM Treasury

20 October 2025

Formal Minutes

Wednesday 29 October 2025

Members present

Sir Bernard Jenkin, in the Chair

Lord Carter of Haselmere

Lord Meston

David Pinto-Duschinsky

Baroness Sater

Gareth Snell

Report consideration

Draft Report (*Thirty-seventh 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 8.3 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 9.

Resolved, That the Report be the Thirty-seventh 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 5 November 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 2024–26

Number	Title	Reference
36th	2 Statutory Instruments Reported	HC 291-xxxvi
35th	8 Statutory Instruments Reported	HC 291-xxxv
34th	2 Statutory Instruments Reported	HC 291-xxxiv
33rd	1 Statutory Instrument Reported	HC 291-xxxiii
32nd	No Statutory Instruments Reported	HC 291-xxxii
31st	2 Statutory Instruments Reported	HC 291-xxxi
30th	2 Statutory Instruments Reported	HC 291-xxx
29th	2 Statutory Instruments Reported	HC 291-xxix
28th	1 Statutory Instrument Reported	HC 291-xxviii
27th	3 Statutory Instruments Reported	HC 291-xxvii
26th	3 Statutory Instruments Reported	HC 291-xxvi
25th	2 Statutory Instruments Reported	HC 291-xxv

Number	Title	Reference
24th	2 Statutory Instruments Reported	HC 291-xxiv
23rd	2 Statutory Instruments Reported	HC 291-xxiii
22nd	3 Statutory Instruments Reported	HC 291-xxii
21st	2 Statutory Instruments Reported	HC 291-xxi
20th	5 Statutory Instruments Reported	HC 291-xx
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
1st Special	Scrutinising Statutory Instruments: Departmental Returns, October 2024 – September 2025	HC 1342