



House of Lords
House of Commons

Joint Committee on Statutory Instruments

Fifty-third Report of Session 2024–26

HC 291-liii / HL Paper 289

*Draft Ministerial and other Salaries Act 1975 (Amendment)
Order 2026*

*The National Institute for Health and Care Excellence
(Amendment) Regulations 2026*

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 Carter of Haslemere](#) (Crossbench; Life peer)

[Baroness Kennedy of Cradley](#) (Labour; Life peer)

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

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

[Lord Stewart of Dirleton](#) (Conservative; Life peer)

[Lord Young of Norwood Green](#) (Labour; Life peer)

House of Commons

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

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

[Charlotte Cane](#) (Liberal Democrat; Ely and East Cambridgeshire)

[Helena Doolimore](#) (Labour; Hastings and Rye)

[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 15 April 2026, to be printed.

It was published on 17 April 2026. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

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Instruments reported

At its meeting on 15 April 2026 the Committee scrutinised a number of instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to two of those considered. The instruments and the grounds for reporting are given below. The relevant departmental memoranda are published as appendices to this report.

1 Draft S.I.: Reported for purported retrospective effect

Draft Ministerial and other Salaries Act 1975 (Amendment) Order 2026

Procedure: Draft affirmative

- 1.1 The Committee draws the special attention of both Houses to this draft Order on the ground that it appears to have retrospective effect without the express authority of the parent legislation.**
- 1.2** The draft Order is proposed to be made under the Ministerial and other Salaries Act 1975 (“the 1975 Act”). Section 1 of that Act makes provision for the payment of salaries, of amounts specified in the Act, to certain Ministers and other office holders. Section 1A provides for automatic increases of most of those salaries for each financial year beginning 1st April, by reference to increases in salaries in the Senior Civil Service. Section 1B enables an Order in Council to change the amount of the salaries.
- 1.3** The draft Order changes the annual amount of salaries payable under section 1 of the 1975 Act to Ministers, Opposition Leaders and Whips and the Commons and Lords Speakers. It also updates the formula in section 1A of the 1975 Act that provides for annual alterations of those salaries. Article 2 provides that the amounts of salaries specified in the draft Order have effect from the beginning of 1st April 2026

- 1.4** In a memorandum printed at Appendix 1, the Cabinet Office states that the 1975 Act does not confer express authority for the instrument to have retrospective effect. However, the Cabinet Office considers that the Act does provide power for limited retrospection and that the retrospective effect of the draft Order is justified and fair:
- a.** Backdating of salary increases reflects normal practice, something we acknowledged in our 21st Report of Session 2007–08.
 - b.** Senior Civil Servants' salary increases are not usually known until the summer, as it is not until then that pay settlements are concluded. It would therefore be normal for the application of the formula in section 1A of the 1975 Act to require a calculation to be made later in the year, once the average increase of the SCS mid-point can be ascertained.
 - c.** No unfairness arises from this retrospection. Most individuals affected by the legislation have waived an increase in their salary. Even if an individual has not, the impact is only minimal - in effect to put them in the position they would expect to be (where their salary is paid over a financial year) and at a level they could expect (reflecting the law).
- 1.5** The Cabinet Office states that the relevant data, on which the Order is based, are not usually known until the summer. But it has taken until now to lay the draft Order. If this intervening period had not been so long, the Order could have been made in time to avoid any retrospection. Furthermore, although the Order is not detrimental to individuals, it is detrimental to those who must pay the increased salaries, which are paid out of public funds.
- 1.6** **We consider that both Houses should be made aware that the parent legislation makes no express provision for retrospectivity and we report accordingly ...**

2 S.I. 2026/202: Reported for unexpected use of the enabling power

The National Institute for Health and Care Excellence (Amendment) Regulations 2026

Procedure: Made negative

- 2.1** **The Committee draws the special attention of both Houses to these Regulations on the ground that they make an unexpected use of the enabling power in one respect.**

- 2.2** These Regulations introduce a power for the Secretary of State to direct the National Institute for Health and Care Excellence (“NICE”) with regard to the cost-effectiveness threshold NICE is to apply when carrying out technology appraisals. However, both section 237(4) of the Health and Social Care Act 2012 and regulations 7(14) and 8(13) of S.I. 2013/259 state that directions cannot be given about the ‘substance’ of NICE’s recommendations. The Committee asked the Department of Health and Social Care to explain whether allowing the Secretary of State to set the applicable cost-effectiveness threshold that applies to a health technology appraisal amounts to giving a direction about the ‘substance’ of a recommendation. The Committee also asked how this is consistent with regulations 7(14) and 8(13) of the 2013 Regulations.
- 2.3** In a memorandum printed at Appendix 1, the Department asserts that the amendments made by this instrument do not amount to giving a direction about the ‘substance’ of a recommendation and are also consistent with regulations 7(14) and 8(13) of the 2013 Regulations. In the Department’s view, examples of matters that would constitute the ‘substance’ of a recommendation include whether a recommendation is made, the terms of the recommendation or the period within which a body must fund the health technology in compliance with the recommendation. The cost-effectiveness threshold, which this instrument allows the Secretary of State to set by direction, is the figure against which NICE assesses the economic value of a health technology when conducting its appraisal. The Department asserts that the cost-effectiveness threshold does not relate to the ‘substance’ of a recommendation but rather is only a matter pertaining to the process by which an assessment is made.
- 2.4** The Department’s memorandum to the Committee must be read alongside the Explanatory Memorandum that accompanied this instrument. At paragraphs 5.1 and 5.2 of the Explanatory Memorandum, the Department provides more information about technology appraisals and the cost-effectiveness threshold used by NICE when evaluating these technologies. According to the Department, this threshold plays a “central role” in determining whether technologies are recommended for use in the NHS and goes onto say—

“The Government’s policy objective is to ensure transparency, accountability and ministerial oversight in how NICE’s cost-effectiveness thresholds are set, given their direct impact on NHS affordability and patient access. Introducing a power of direction ensures thresholds remain aligned with wider health system priorities and public spending decisions.”

- 2.5** Given this background, the Committee considers there to be at least two technical problems with the Department's position: one relating to the 2012 Act and another relating to the 2013 Regulations. First, in relation to the 2012 Act, this expressly prevents regulations being made that allow directions to be given about the substance of a recommendation by NICE. The Department accepts that the substance of a recommendation includes the question of whether a recommendation is made and that the cost-effectiveness threshold has a central role in answering that question. It follows from this that there may be cases where the setting of a cost-effectiveness threshold will be determinative of NICE's appraisal and therefore go to the substance of NICE's recommendation. Whilst this is consistent with the Government's stated policy, this is not consistent with section 237(4) of the 2012 Act which is clearly designed to give NICE a measure of independence in whether it makes a recommendation. The Committee is therefore surprised that the Department has made an instrument that appears to be inconsistent, or at least in tension, with the enabling Act. If the Government wants to change section 237(4) it should do so using primary legislation in the conventional way.
- 2.6** However, the Committee does not consider there to be a doubt as to the vires of this instrument. This is because of the Committee's second point relating to the 2013 Regulations, regulations 7(14) and 8(13) of which specifically prevent a direction being given about the substance of a recommendation. As a result, the ability to give NICE a lawful direction must be relatively narrow if the Secretary of State is to avoid giving a direction about the substance of NICE's recommendation. However, this appears to be inconsistent with the Department's policy position which is "to ensure ministerial oversight in how NICE's cost-effectiveness thresholds are set". Accordingly, the power to give directions in this instrument may well be defectively drafted to the extent that it fails to achieve the Department's policy intention. It appears to be incoherent to want to influence NICE's decision-making by setting a threshold that plays a central role in NICE's analysis but then create a power that can only be lawfully exercised in such a way that does not actually influence whether NICE makes a recommendation or otherwise creates a risk in giving unlawful directions that do influence such recommendations.
- 2.7** Drawing these points together, the Committee considers that this is an instrument that ought to be drawn to the attention of both Houses for making unexpected use of the enabling power. The Committee remains surprised about how the enabling power was used in this case given the terms of the 2012 Act and is then further concerned about how the power to give directions will be used in practice given the intended effect of the

power and the constraints imposed by the 2013 Regulations. **The Committee accordingly reports these Regulations for making an unexpected use of the enabling power.**

Instruments not reported

At its meeting on 15 April 2026 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	Energy Prices Act 2022 (Amendment) (Northern Ireland) Regulations 2026
Draft	Control of Trade in Endangered Species (Amendment and Revocation) Regulations 2026
Draft	First-tier Tribunal (Property Chamber) Fees (Amendment) Order 2026

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2026/171	The Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2026
S.I. 2026/183	The Intellectual Property Fees (Miscellaneous Amendments, Revocation and Transitional Provisions) Rules 2026
S.I. 2026/186	The Town and Country Planning (Local Planning) (England) Regulations 2026

S.I. Numbers	S.I. Title
S.I. 2026/188	The Requirement to Assist with Certain Plan Making (Prescribed Public Bodies) (England) Regulations 2026
S.I. 2026/191	The Social Security (Contributions) (Amendment) Regulations 2026
S.I. 2026/194	The Merchant Shipping (International Safety Management (ISM) Code) Regulations 2026
S.I. 2026/201	The Social Security and Statutory Maternity Pay (Evidence of Pregnancy and Compensation of Employers) (Amendment) Regulations 2026
S.I. 2026/209	The Asylum Support (Amendment) Regulations 2026
S.I. 2026/230	The Aviation Security (Amendment, Revocation and Consequential Provision) Regulations 2026
S.I. 2026/235	The On-demand Programme Services (Tier 1 Services) Regulations 2026
S.I. 2026/239	The Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2026
S.I. 2026/241	The Supreme Court Fees (Amendment) Order 2026
S.I. 2026/244	The Seafarers' Wages (Amendment) Regulations 2026
S.I. 2026/257	The Enterprise Act 2002 (Bodies Designated to make Super-complaints) (Amendment) Order 2026
S.I. 2026/265	The National Health Service (Primary Dental Services and Dental Charges) (Amendment) Regulations 2026
S.I. 2026/266	The National Savings (Amendment) Regulations 2026
S.I. 2026/268¹	The Online Safety (CSEA Content Reporting by Regulated User-to-User Service Providers) Regulations 2026

1 Note to the Committee: The Committee will wish to note that this instrument corrects errors identified by the Committee in its Twenty-Fourth Report of Session 2024-25 in relation to S.I. 2025/368 (includes definition of “hash value”, consistent use of dialling codes and does not use indistinguishable terms in the context of the instrument namely “as soon as possible” and “as soon as reasonably practicable”).

S.I. Numbers	S.I. Title
S.I. 2026/270	The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Revocation and Consequential Amendments) Regulations 2026
S.I. 2026/287	The Guardian's Allowance Up-rating Regulations 2026
S.I. 2026/298	The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2026
S.I. 2026/299	The Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2026
S.I. 2026/308	The Compulsory Purchase of Land (Conditional Confirmation) Regulations 2026

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. Numbers	S.I. Title
S.I. 2026/169	The Levelling-up and Regeneration Act 2023 (Commencement No. 11 and Saving and Transitional Provisions) Regulations 2026
S.I. 2026/175	The Veterinary Surgeons and Veterinary Practitioners (Registration) (Amendment) Regulations Order of Council 2026
S.I. 2026/220	The Code of Practice (Industrial Action Ballots and Notice to Employers) Order 2026
S.I. 2026/262	The Online Safety Act 2023 (Commencement No. 7) Regulations 2026
S.I. 2026/269	The Inspectors of Education, Children's Services and Skills Order 2026
S.I. 2026/286	The Protection of Military Remains Act 1986 (Designation of Vessels and Controlled Sites) Order 2026
S.I. 2026/317	The Victims and Prisoners Act 2024 (Commencement No. 10) and Data (Use and Access) Act 2025 (Commencement No. 8) Regulations 2026
S.I. 2026/320	The Terrorism (Protection of Premises) Act 2025 (Commencement No. 1) Regulations 2026

Appendix 1: Memorandum from the Cabinet Office

Draft S.I.

Draft Ministerial and other Salaries Act 1975 (Amendment) Order 2026

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

Explain whether the Ministerial and other Salaries Act 1975 confers express authority for the instrument to have retrospective effect.
2. The Ministerial and other Salaries Act 1975 does not confer express authority for the instrument to have retrospective effect.
3. However, the Cabinet Office considers that the Act does provide power for limited retrospection and that the retrospective effect of this Order is justified and fair.
4. First, this backdating of salary increases reflects normal practice. In this case, Senior Civil Servants' salary increases are not usually known until the summer, as it is not until then that pay settlements are concluded. It would therefore be normal for the application of the formula in section 1A of the Ministerial and Other Salaries Act 1975 to require a calculation to be made later in the year; once the average increase of the SCS mid-point can be ascertained. It is then usual practice to have the increase backdated, that is, paid in arrears, to the previous April. This is also how civil service salary increases are calculated and paid. In 2008, your predecessor Committee accepted that some backdating of salaries is common practice. It is even more common today.
5. Second, we do not consider there is unfairness arising from this retrospection. Most individuals affected by the legislation have waived an increase in their salary. Even if an individual has not, the impact is only minimal - in effect to put them in the position they would expect to be (where their salary is paid over a financial year) and at a level they could expect (reflecting the law).

Cabinet Office

1 April 2026

Appendix 2: Memorandum from the Department of Health and Social Care

S.I. 2026/202

The National Institute for Health and Care Excellence (Amendment) Regulations 2026

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

Noting that this instrument provides that the function of the National Institute for Health and Care Excellence (“NICE”) to give recommendations will be subject to directions and that section 237(4) of the Health and Social Care Act 2012 provides that provision cannot be made about the ‘substance’ of NICE’s recommendations—

1. *Explain whether the amendments made by this instrument that allow the Secretary of State to set the applicable cost-effectiveness threshold that applies to a health technology undergoing appraisal amounts to giving a direction about the ‘substance’ of a recommendation; and*
 2. *Explain whether this is consistent with regulations 7(14) and 8(13) of SI 2013/259 which also prevent a direction being given about the substance of a recommendation.*
2. The Department considers that the amendments made by this instrument that allow the Secretary of State to set the applicable cost-effectiveness threshold that applies to a health technology undergoing appraisal do not amount to giving a direction about the ‘substance’ of a recommendation. The Department also considers that this is consistent with regulations 7(14) and 8(13) of SI 2013/259, albeit those provisions specifically prevent a direction being given about the substance of a recommendation under regulations 7(1)(a) and 8(1)(a) respectively.

3. In developing this instrument, the Department has carefully borne in mind the restriction in section 237(4) of the Health and Social Care Act 2012 (the 2012 Act) on directing NICE as to the substance of its recommendations (as well as other matters such as respecting the independence and expertise of NICE in its exercise of the function of making recommendations).
4. Regulation 2 of SI 2013/259 defines “technology appraisal recommendation” as a recommendation made by NICE following an appraisal of the benefits and costs of a health technology conducted by NICE in accordance with NICE’s published methods and processes for appraisal of health technologies that results in a positive assessment; and “highly specialised technology recommendation” is similarly defined.
5. A positive assessment is, in effect, a recommendation that there is enough evidence to show that a particular health technology provides benefits and value for money to justify it being used in the NHS.
6. Accordingly, regulation 7 of SI 2013/259 enables NICE to make a technology appraisal recommendation that, inter alia, recommends that relevant health bodies provide funding within a specified period to ensure that the health technology be made available for the purposes of treating patients.
7. In this context, the Department considers the “substance” of a recommendation to concern matters such as whether a recommendation is made, the terms of the recommendation or the period within which a relevant body must fund the relevant health technology in compliance with the recommendation. These are matters which relevant health bodies must comply with under regulations 7 and 8 of SI 2013/259.
8. By contrast, the cost-effectiveness threshold, which the instrument allows the Secretary of State to set by direction in relation to health technologies undergoing appraisal, is the figure (unit of measure or scale) against which NICE assesses the economic value of a health technology when conducting its appraisal (please see the definition of “cost-effectiveness threshold” in regulation 3(5) of the instrument).
9. When evaluating health technologies, NICE currently uses a cost-effectiveness threshold known as the “Incremental Cost-Effectiveness Ratio” (commonly referred to as the ICER), where the unit of measure is the cost per Quality Adjusted Life Years (or QALY) gained.
10. The cost-effectiveness threshold is therefore a matter pertaining to the process by which an assessment is made rather than the substance of a recommendation based on that assessment – the assessment, and the decision as to whether or not to make a recommendation based on that assessment, rests with NICE. Setting the cost-effectiveness threshold in a direction does not, therefore, concern the substance of a recommendation.

11. This is consistent with the duty on NICE under section 233 of the 2012 Act, in exercising functions to have regard, inter alia, to the broad balance between the benefits and costs of the provision of health services (or of social care) in England.

Department of Health and Social Care

1 April 2026

Formal Minutes

Wednesday 15 April 2026

Members present

Sir Bernard Jenkin, in the Chair

Lewis Atkinson

Lord Brady of Altrincham

Charlotte Cane

Lord Carter of Haslemere

Baroness Kennedy of Cradley

Lord Meston

Baroness Miller of Chilthorne Domer

Gareth Snell

Lord Stewart of Dirleton KC

Report consideration

Draft Report (Fifty-third Report), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 2.7 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 and 2.

Resolved, That the Report be the Fifty-third 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 22 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 2024–26

Number	Title	Reference
52nd	Fifty-second Report - 2 Statutory Instruments Reported	HC 291-lii
51st	Fifty-first Report - 2 Statutory Instruments Reported	HC 291-li
50th	No Statutory Instruments Reported	HC 291-l
49th	3 Statutory Instruments Reported	HC 291-xlix
48th	1 Statutory Instrument Reported	HC 291-xlviii
47th	5 Statutory Instruments Reported	HC 291-xlvii
46th	3 Statutory Instruments Reported	HC 291-xlvi
45th	4 Statutory Instruments Reported	HC 291-xlv
44th	No Statutory Instruments Reported	HC 291-xliv
43rd	3 Statutory Instruments Reported	HC 291-xliii
42nd	1 Statutory Instrument Reported	HC 291-xlii
41st	1 Statutory Instrument Reported	HC 291-xli
40th	2 Statutory Instruments Reported	HC 291-xl
39th	1 Statutory Instrument Reported	HC 291-xxxix

Number	Title	Reference
38th	5 Statutory Instruments Reported	HC 291-xxxviii
37th	8 Statutory Instruments Reported	HC 291-xxxvii
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
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

Number	Title	Reference
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
2nd Special	Scrutinising Statutory Instruments: Departmental Returns, October 2024 – September 2025: Government response	HC 1501
1st Special	Scrutinising Statutory Instruments: Departmental Returns, October 2024 – September 2025	HC 1342