



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Forty-Seventh Report of Session 2019–21

Drawing special attention to:

*High Speed Rail (West Midlands—Crewe) (Planning Appeals)
(Written Representations Procedure) Regulations 2021 (S.I. 2021/182)*

*Immigration (Guidance on Detention of Vulnerable Persons) Regulations
2021 (S.I. 2021/184)*

*Health Protection (Coronavirus, International Travel and Information for
Passengers) (England) (Amendment) Regulations 2021 (S.I. 2021/252)*

*Ordered by the House of Lords
to be printed 21 April 2021*

*Ordered by the House of Commons
to be printed 21 April 2021*

**HL 270
HC 75-xlvii**

Published on 23 April 2021
by authority of the House of Lords
and the House of Commons

Joint Committee on Statutory Instruments

Current membership

House of Lords

[Baroness D'Souza](#) (*Crossbench*)

[Baroness Gale](#) (*Labour*)

[Lord Haskel](#) (*Labour*)

[Baroness Newlove](#) (*Conservative*)

[Lord Rowe-Beddoe](#) (*Crossbench*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

[Lord Smith of Hindhead](#) (*Conservative*)

House of Commons

[Jessica Morden MP](#) (*Labour, Newport East*) (Chair)

[Dr James Davies MP](#) (*Conservative, Vale of Clwyd*)

[Paul Holmes MP](#) (*Conservative, Eastleigh*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

[Owen Thompson MP](#) (*Scottish National Party, Midlothian*)

[Liz Twist MP](#) (*Labour, Blaydon*)

Powers

The full constitution and powers of the Committee are set out in [House of Commons Standing Order No. 151](#) and [House of Lords Standing Order No. 73](#), relating to Public Business.

Remit

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.

Publications

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at <https://www.parliament.uk/site-information/copyright-parliament/>.

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Sue Beeby (Committee Operations Officer), Apostolos Kostoulas (Committee Operations Officer), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 7599; the Committee's email address is: jcsi@parliament.uk.

Contents

Instruments reported	3
1 S.I. 2021/182: Reported for defective drafting	3
High Speed Rail (West Midlands—Crewe) (Planning Appeals) (Written Representations Procedure) Regulations 2021	3
2 S.I. 2021/184: Reported for failure to comply with proper legislative practice	4
Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021	4
3 S.I. 2021/252: Reported for unjustifiable delay and for unusual or unexpected use of enabling powers	4
Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) Regulations 2021	4
Instruments not reported	6
Annex	6
Appendix 1	8
S.I. 2021/182	8
High Speed Rail (West Midlands—Crewe) (Planning Appeals) (Written Representations Procedure) Regulations 2021	8
Appendix 2	9
S.I. 2021/184	9
Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021	9
Appendix 3	10
S.I. 2021/252	10
Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) Regulations 2021	10

Instruments reported

At its meeting on 21 April 2021 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 three of those considered. The instruments and the grounds for reporting them are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2021/182: Reported for defective drafting

High Speed Rail (West Midlands—Crewe) (Planning Appeals) (Written Representations Procedure) Regulations 2021

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two respects.

1.2 These Regulations, which are subject to the negative resolution procedure, make provision for the way written representations must be made in appeals against planning decisions relating to the HS2 railway between Fradley Wood (Staffordshire) and Crewe.

1.3 Several regulations impose time limits within which specified actions must be taken. Some are drafted by reference to “a period of X days beginning with” a specified date. But regulations 4(3) and 9(5) only refer to an action being taken “within 7 days of receipt” of a document. The Committee asked the Departments for Transport and Housing, Communities and Local Government to explain whether, in those cases, the seven-day period is intended to include the date of receipt. In a memorandum printed at Appendix 1, the Department for Transport explains that this is the intent and asserts that it is achieved by the use of “within”. The Committee disagrees: the formula “within X days of receipt” is ambiguous as to whether time begins to run from the date of receipt or from the following day. The ambiguity is particularly undesirable since a different and clear formula is used elsewhere in the same Regulations. **The Committee accordingly reports regulations 4(3) and 9(5) for defective drafting, partly acknowledged by the Department.**

1.4 Regulation 2(2) requires written representations made in the context of appeals to be made “in writing”, which is defined in regulation 2(1) as “including” transmissions sent electronically. Regulation 4 provides that where the Regulations require documents to be submitted or copied to various parties, this may be done either electronically (where the party has consented to electronic transmission and has not withdrawn that consent) or by post. Section 7 of the Interpretation Act 1978 will, of course, provide a presumption of receipt in accordance with “the ordinary course of post”; but that does not provide a clear date of receipt for the purposes of commencing a time period. The Committee therefore asked the Department to explain how it is intended that the date of receipt be determined for the purposes of regulation 9(5) where a document has been sent by post. In its memorandum, the Department asserts that “it is expected that arrangements would be made by the Planning Inspectorate (who undertakes the appeal process) to ensure that controls were put in place for the appropriate acknowledgment of receipt”. Administrative arrangements of this kind, even if operated consistently and effectively, cannot compensate for the legal uncertainty, which could have been avoided if

the time period had been expressed to start from the date of the sending of the document (as has been done elsewhere in the Regulations) or in some other equally clear way. **The Committee accordingly reports regulation 9(5) for defective drafting.**

2 S.I. 2021/184: Reported for failure to comply with proper legislative practice

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper legislative practice in one respect.

2.2 These Regulations, which are subject to the negative resolution procedure, bring into force guidance relating to adults at risk in immigration detention, which was laid before Parliament in draft on 22 February 2021. The Explanatory Note and the Explanatory Memorandum state that the guidance “will be published” in hard copy and that it “will also be available” on the gov.uk website. The Committee asked the Home Office to explain why the guidance had not been published to coincide with the making of the instrument. In a memorandum printed at Appendix 2, the Department provides details of, and a link to, the publication of the draft guidance. The Committee believes that where the sole purpose of Regulations is to give effect to a document, the document should be published in final form at the same time as the Regulations. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice.**

3 S.I. 2021/252: Reported for unjustifiable delay and for unusual or unexpected use of enabling powers

Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) Regulations 2021

3.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that there was an unjustifiable delay in laying them before Parliament and that they make unusual or unexpected use of the enabling powers in one respect.

3.2 These Regulations, which are subject to the negative resolution procedure, amend the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 (S.I. 2020/567) by imposing a duty on operators of commercial passenger transport services to provide specified information to passengers who are leaving England for a place outside the common travel area and are required by other Regulations to fill out a “travel declaration form”.

3.3 The instrument was made on Friday 5 March. Most of it came into force at 4am on Monday 8 March, before the instrument was laid before Parliament. The Committee asked the Department for Transport to explain why the instrument could not have been made in time to be laid before Parliament before coming into force, given that the document setting out the policy as to travel declaration forms was published on 22 February, and that the Regulations which implemented that policy (S.I. 2021/247) were made at 12:38pm on 5 March and laid at 2:25pm the same day. In a memorandum printed at Appendix 3,

the Department explains that as this instrument was not made until after S.I. 2021/247 for reasons of certainty, there was not enough time for the relevant administrative steps to be taken to lay it on the same day. The Committee has been clear that cross-Government business planning is not an acceptable reason to delay laying instruments before Parliament (see paragraphs 2.8 to 2.14 of its special report *Transparency and Accountability in Subordinate Legislation*), and although the Committee is normally only troubled by unjustifiable delay when it amounts to several days, in cases where an instrument has already come into force even a delay of a few hours becomes unacceptable. The Committee has noted with growing concern the number of coronavirus-related instruments that have come into force before being laid. Although section 4 of the Statutory Instruments Act 1946 implicitly acknowledges that this may at times be “essential”, that Act also makes the link between accessibility of subordinate legislation and enforceability (see, in particular, section 3(2)). It is inherently and obviously undesirable in rule of law terms for law to come into force before its text is available to the public who are bound to comply with it, and the Committee expects the Government to make every effort to avoid such a situation. In this case, particularly considering the two-week gap between the publication of the policy and the making of the implementing legislation, the Department should have taken the necessary administrative steps to ensure that this instrument was made and laid immediately after S.I. 2021/247 and before it came into force. **The Committee accordingly reports this instrument for an unjustifiable delay in laying before Parliament.**

3.4 Regulation 13 sets out the information that operators must provide to outbound travellers. It includes the statements “you can only travel for essential reasons” and “you can only travel internationally from England for legally permitted reasons. This does not include holidays”. The Committee asked the Department to identify the specific provisions where these restrictions are enacted. In its memorandum, the Department acknowledges that outbound international travel was not expressly restricted at the time this instrument was made. It asserts that because Schedules 3A and 4 of S.I. 2020/1374 prohibited a person in England from being outside the place where they were living without reasonable excuse, “leaving home to take a holiday abroad was effectively prohibited”. It makes no comment as to the statement about travelling “only for essential reasons”. The Department also asserts that “communications for the general public should focus on the consequences of measures” and that “an explanation of the indirect nature of the prohibition would not have assisted public understanding”. The Committee does not accept this. There has never been a prohibition on travel (or leaving home) for reasons that were not “essential”—they only needed to be “reasonable”. Even when the Government legislated on 22 March to restrict international travel they did so by reference to a non-exhaustive list of reasonable excuses, so to say that foreign holidays are “effectively prohibited” is still a gloss on the regulations rather than a statement of the law. A statement of the law in a prescribed statutory form must be an accurate reflection of the law as it is. A statement that purports to reflect what the law is, but in fact represents what the Government would like the law to be, is dangerously misleading; and the Committee is troubled by the suggestion that meticulous accuracy in stating the effect of the law “would not have assisted public understanding”. The Committee does not believe that Parliament intends enabling powers to be used to prescribe forms containing misleading statements about the law, **and accordingly reports regulation 13 for making an unusual or unexpected use of the enabling powers.**

Instruments not reported

At its meeting on 21 April 2021 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

S.I. 2021/365	Abortion (Northern Ireland) Regulations 2021
S.I. 2021/392	Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021
S.I. 2021/429	Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021

Draft Instruments requiring affirmative approval

Draft	Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021
Draft	Misuse of Drugs Act 1971 (Amendment) Order 2021
Draft	Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2021
Draft	Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2021

Instruments subject to annulment

S.I. 2021/219	Social Security (Contributions) (Amendment) Regulations 2021
S.I. 2021/226	Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) (Amendment) Order 2021
S.I. 2021/227	Communications (Television Licensing) (Amendment) (No. 2) Regulations 2021
S.I. 2021/240	Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2021
S.I. 2021/242	Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2021
S.I. 2021/256	Guardian's Allowance Up-rating Regulations 2021
S.I. 2021/267	Social Security Revaluation of Earnings Factors Order 2021
S.I. 2021/281	Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Amendment) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Amendment) Regulations 2021

S.I. 2021/283	Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) Regulations 2021
S.I. 2021/284	Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2021
S.I. 2021/285	Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2021

Draft Instruments subject to annulment

Draft	London Borough of Newham (Electoral Changes) Order 2021
Draft	London Borough of Waltham Forest (Electoral Changes) Order 2021

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2021/250	Wireless Telegraphy (Licence Award) (Amendment) Regulations 2021
----------------------	--

Appendix 1

S.I. 2021/182

High Speed Rail (West Midlands—Crewe) (Planning Appeals) (Written Representations Procedure) Regulations 2021

1. By a letter dated 24th March the Committee asked for a memorandum on the following points:

(1) In relation to regulations 4(3) and 9(5) explain: (a) whether it is intended that the period of 7 days should include the date of receipt; (b) how effect is given to that intention; and (c) why a formula of “period of X days beginning with” was not used here as elsewhere in the Regulations.

(2) In relation to regulation 9(5), explain how it is intended that the date of receipt be determined for a document that is sent in hard copy by post.

2. In relation to the first point:

(a) it is intended that the date of receipt is included within the 7 day period;

(b) the effect is given to that intention by the use of the word “within”; and

(c) the wording of these provisions is based on wording used in the equivalent Crossrail 2 and the HS2 Phase One Regulations. It is accepted that the suggested formula would provide greater clarity and consistency of drafting. The Department will ensure in due course that these changes are reflected in any equivalent Regulations to be made in respect of HS2 Phase 2b.

3. In relation to the second point, the Department understands from information provided by HS2 Ltd that as far as they are aware all appeals under the equivalent HS2 Phase One Regulations have been carried out by email.

4. The Regulations are accompanied by guidance. Paragraph 1.9 of this [guidance](#) encourages the use of email by the parties as the preferred format for the submission and exchange of documents.

5. It is on this basis that the Department believes that the trend for the use of email will continue in respect of appeals under the Regulations.

6. The Department accepts that regulation 4 of these Regulations makes provision for service by post and electronic transmission. So, if a party requested service by post, it is expected that arrangements would be made by the Planning Inspectorate (who undertakes the appeal process) to ensure that controls were put in place for the appropriate acknowledgment of receipt, such as by courier receipting.

Department for Transport

29 March 2021

Appendix 2

S.I. 2021/184

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021

1. In its letter of 24 March 2021, the Committee requested a memorandum in relation to the Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021 (“the Regulations”) as follows:

Explain why the draft guidance has not been published to coincide with the making of this instrument, given that it has already been laid before Parliament.

2. The guidance entitled “Immigration Act 2016: Revised guidance on adults at risk in immigration detention” referred to in regulation 2 of the Regulations was published in draft on 22 February 2021 via gov.uk, immediately after the draft guidance was laid before Parliament. The link to the published guidance is here:

<https://www.gov.uk/government/publications/draft-revised-guidance-on-adults-at-risk-in-immigration-detention-february-2021>

3. The Department apologises that although the third paragraph of the Explanatory Note indicated how to access the guidance (in hard copy and electronic form), the Regulations did not make clear that the draft guidance was accessible in the same way. The Department will explore whether it is appropriate to arrange for a correction slip to be issued.

Home Office

29 March 2021

Appendix 3

S.I. 2021/252

Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) Regulations 2021

1. By a letter dated 24 March 2021, the Joint Committee on Statutory Instruments requested a memorandum on the following points:

“(1) Given that the “Covid-19 Response - Spring 2021” roadmap published on 22 February included the plan for outbound travellers to be required from 8 March to fill out a ‘declaration to travel’ form, explain why this instrument could not have been made in time to be laid before Parliament before coming into force (as was S.I. 2021/247, which created the ‘declaration to travel’ form requirement).

(2) In relation to regulation 13, explain where it is enacted that a person leaving England for a destination outside the common travel area “can only travel for essential reasons” and that the “legally permitted reasons” for such international travel “[do] not include holidays” (identify specific provisions).”

2. The Department regrets that it was not possible to lay this instrument before its coming into force on Monday 8 March. As it contained a cross-reference to a provision inserted into S.I. 2020/1374 by S.I. 2021/247, it was not made until after that instrument had been made (at 12.38 p.m. on Friday 5 March) to ensure certainty. There was insufficient time available following the making to complete the administrative processes for registering, publishing and laying on Friday. The Speakers of the Houses were informed and the instrument was laid promptly on the following Monday.

3. In relation to regulation 13, the information provided to passengers was intended to highlight the impact of domestic restrictions on outbound international travel. As a person in England could not (at the time of the instrument’s coming into force) be outside the place where they were living without a reasonable excuse (Schedules 3A and 4 to S.I. 2020/1374), leaving home to take a holiday abroad was effectively prohibited. The Department acknowledges that outbound international travel was not expressly restricted at the time but considers that communications for the general public should focus on the consequences of measures. As the purpose of S.I. 2020/567 is to “increase public awareness of, and thereby compliance with, public health measures to be taken to reduce the spread of [coronavirus]”, it is important that the information which operators are required to give to passengers can be readily understood. Including an explanation of the indirect nature of the prohibition would not have assisted public understanding.

Department for Transport

30 March 2021