



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**First Report of
Session 2021–22**

Drawing special attention to:

Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2021 (S.I. 2021/81)

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2021 (S.I. 2021/286)

Personal Injuries (Civilians) Scheme (Amendment) Order 2021 (S.I. 2021/292)

Magistrates' Courts (Amendment) Rules (Northern Ireland) 2021 (S.R. 2021/51)

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Joint Committee on Statutory Instruments

Current membership

House of Lords

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

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

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

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

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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

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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

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Instruments reported

At its meeting on 12 May 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 four 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. 2021/81: Reported for defective drafting.

Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) 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 one respect.

1.2 These Regulations, which are subject to the negative resolution procedure, amend the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999 (S.I. 1999/1869) to implement Directive (EU) 2017/2109. Regulation 2(7) (c) inserts a new paragraph that sets out how long personal data collected under the 1999 Regulations may be kept and what must be done with it when that time has elapsed. The Committee asked the Department for Transport to confirm that the words “after which it shall be erased without undue delay” in inserted paragraph (2)(b) should apply to both limbs of paragraph (2) and so appear after, rather than in, sub-paragraph (b), in order properly to reflect the EU provisions being transposed. In a memorandum printed at Appendix 1, the Department acknowledges the error and undertakes to correct it at the next legislative opportunity. **The Committee accordingly reports regulation 2(7)(c) for defective drafting, acknowledged by the Department.**

2 S.I. 2021/286: Reported for failure to comply with proper legislative practice

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2021

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

2.2 These Regulations, which are subject to the negative resolution procedure, increase the rates payable by a relevant body for NHS funded nursing care, by amending the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996). The Regulations operate by amending definitions in regulation 20 of the 2012 Regulations, and those definitions refer to regulations 29 and 30 of the 2012 Regulations. Regulations 29 and 30 operate by reference to the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007 (which therefore have to be capable of being understood in order to understand the full effect of the amendment made by these

Regulations). The National Archives' website version of the 2012 Regulations gives a link to those Directions, but it no longer works. The Committee asked the Department of Health and Social Care to explain where the Directions can be found. In a memorandum printed at Appendix 2, the Department explains that the Directions (which were revoked by regulation 32(7)(a) of the 2012 Regulations) have been archived, and it provides a link to the archived version. Since these amending regulations cannot be fully understood without access to the Directions, the link should have been maintained in an active form. **The Committee accordingly reports the 2012 Regulations as amended by these Regulations for failure to comply with proper legislative practice.**

3 S.I. 2021/292: Reported for defective drafting

Personal Injuries (Civilians) Scheme (Amendment) Order 2021

3.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

3.2 This Order, which is subject to the negative resolution procedure, amends the pension and allowance rates payable under the Personal Injuries (Civilians) Scheme 1983 in respect of civilians who were killed or injured during World War II.

3.3 The footnote to the preamble sets out how the power to make and amend a scheme was transferred from “the Minister” to the Secretary of State. The Committee questioned the application of one of the instruments cited in the footnote, the Transfer of Functions (War Pensions etc.) Order 2001. In a memorandum printed at Appendix 3, the Ministry of Defence accepts that the 2001 Order was not part of the chain that vested the power to make this Order in the Secretary of State. **The Committee accordingly reports the footnote to the preamble for defective drafting, acknowledged by the Department.**

4 S.R. 2021/51: Reported for requiring elucidation

Magistrates' Courts (Amendment) Rules (Northern Ireland) 2021

4.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they require elucidation in one respect.**

4.2 These Rules, which are subject to the negative resolution procedure, amend the Magistrates' Courts Rules (Northern Ireland) 1984 (S.R. 1984/225) to re-insert provisions that were erroneously revoked by S.I. 2019/908. That instrument is identified in a footnote to rule 2 as having made the most recent relevant amendments to rules 52D, 52L and 52M, which rule 2 amends. To understand the cumulative effect of amendments, readers need to be able to identify earlier relevant amending legislation. The Committee asked the Ministry of Justice to identify the other instruments that, in addition to S.I. 2019/908, made relevant amendments to S.R. 1984/225. In a memorandum printed at Appendix 4, the Department provides the information requested, **and the Committee accordingly reports rule 2 for requiring elucidation, provided in the Department's memorandum.**

Instruments not reported

At its meeting on 12 May 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. 2021/488 Global Anti-Corruption Sanctions Regulations 2021

Draft Instruments requiring affirmative approval

Draft S.I. Carbon Budget Order 2021

Draft S.I. Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2021

Instruments subject to annulment

S.I. 2021/261 Adoption and Children (Coronavirus) (Amendment) Regulations 2021

S.I. 2021/355 Patents (European Patent with Unitary Effect and Unified Patent Court) (Repeal and Revocation) Regulations 2021

S.I. 2021/366 Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) (Amendment) Regulations 2021

S.I. 2021/393 Vegetable and Ornamental Plant Propagating Material and Fodder Plant Seed (Amendment) Regulations 2021

S.I. 2021/476 Social Security (Coronavirus) (Miscellaneous Amendments) Regulations 2021

S.I. 2021/498 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 13) Regulations 2021

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2021/433 Financial Guidance and Claims Act 2018 (Commencement No. 7) (Dissolution of the Consumer Financial Education Body) Regulations 2021

Appendix 1

S.I. 2021/81

Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2021

1. By a letter dated 21st April the Committee asked for a memorandum on the following point—

Confirm that the words “after which it shall be erased without undue delay” in regulation 2(7)(c) (inserted paragraph (2)(b)) should apply to both sub-paragraphs (a) and (b) in order properly to reflect the meaning of Articles 5(4) and 8(2) of Directive 98/41/EC, and that they should therefore appear after rather than in sub-paragraph (b).

2. The Department confirms that the words “after which it shall be erased without undue delay” in regulation 2(7)(c) (inserted paragraph (2)(b)) should apply to both sub-paragraphs (a) and (b) and accepts that they should therefore appear after rather than in sub-paragraph (b). The Department does not consider that the current wording will in practice lead to uncertainty, since the [Merchant Shipping Notice 1794 \(M\) Amendment 1](#) provides information on how the Regulations work in practice. In particular, paragraph 57 refers in substance to the same requirements as those in sub-paragraphs (a) and (b) of the Regulations. Paragraph 57 includes a separate sentence referring to the need to erase information automatically and without undue delay, in the context of ‘the information’, and that has applicability to both requirements. Nevertheless, the Department will ensure that the necessary amendment is made at the next legislative opportunity to provide more clarity.

Department for Transport

27 April 2021

Appendix 2

S.I. 2021/286

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2021

1. In its letter to the Department of 21 April 2021, the Committee requested a memorandum on the following point:

“Explain where the Directions referred to in regulations 29(1) and 30(1) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996 can be found, given that the link in the amended Regulations no longer works.”.

2. The Department’s response to the Committee’s point is as follows.

3. The Directions referred to in regulations 29(1) and 30(1) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) (“**the Standing Rules Regulations**”) are the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007.

4. Those Directions were revoked by regulation 32(7)(a) of the Standing Rules Regulations on 1 April 2013 and have since been archived. They can be found at the following link:

https://webarchive.nationalarchives.gov.uk/20091106071836/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_078047.pdf

Department of Health and Social Care

26 April 2021

Appendix 3

S.I. 2021/292

Personal Injuries (Civilians) Scheme (Amendment) Order 2021

1. The Joint Committee on Statutory Instruments requested a memorandum in response to the following question in relation to the above-mentioned instrument.

Explain which of paragraphs (a) and (b) of article 2 of the Transfer of Functions (War Pensions etc.) Order 2001 vests the power to make this Order in the Secretary of State and explain how it applies.

2. The Transfer of Functions (War Pensions etc.) Order 2001 (S.I. 2001/3506) (the 2001 Order) is referred to in footnote (a) on page 1 of the Order in a list of legislation relating to transfers of ministerial functions. The footnote is said to explain how functions to make this Order “*now sit with the Secretary of State*”. It implies that article 2 of the 2001 Order was part of the chain of legislation that transferred those functions to the Secretary of State. The Department now accepts that article 2 of the 2001 Order was not part of that chain. The following sets out how the functions came to be vested with the Secretary of State and the relevance of the 2001 Order:

- a) Section 1 of the Personal Injuries (Emergency Provisions) Act 1939 (the 1939 Act) provides that the Minister may make a scheme, with the consent of the Treasury, in respect of certain war injuries. Section 2 deals with procedural matters, including the power of the Minister to amend the scheme, with the consent of the Treasury. Section 8(1) of the 1939 Act originally defined “the Minister” to mean the Minister of Pensions.
- b) The functions vested in the Minister of Pensions under the 1939 Act were transferred in succession to the Minister of National Insurance by virtue of articles 2(1)(c) and 5(4) of the Transfer of Functions (Ministry of Pensions) Order 1953 (S.I. 1953/1198), and then to the Minister of Social Security by virtue of section 2 of the Ministry of Social Security Act 1966.
- c) In 1968, under article 2 of the Secretary of State for Social Services Order 1968 (S.I. 1968/1699) (the 1968 Order), all functions of the Minister of Social Security were transferred to the Secretary of State. Article 5(4)(a) of the 1968 Order made consequential provision so that references in the 1939 Act which were read as references to the Minister of Social Security were to be read as the Secretary of State.
- d) The functions conferred on the Minister in the 1939 Act have therefore been vested in the Secretary of State in accordance with the 1968 Order since that time. After this point, the functions could in law be exercised by any Secretary of State, albeit that they were in practice allocated to particular Secretaries of State from time to time.
- e) Following the 1968 Order, the functions of the Minister/Secretary of State under the 1939 Act were in practice exercised by the Secretary of State for Social

Services. Responsibility for these functions in practice was then allocated to the Secretary of State for Social Security in 1988 and then, in 2001, to the Secretary of State for Defence. Transfer of functions orders were made to give effect to matters relating to those allocations. These were, respectively, the Transfer of Functions (Health and Social Security) Order 1988 (S.I. 1988/1843) (the 1988 Order) and the 2001 Order. However, the 1988 Order and the 2001 Order did not alter the fact that the functions under the 1939 Act remained in law vested in the Secretary of State.

3. In light of this, the Department accepts that article 2 of the 2001 Order does not vest the power to make this Order in the Secretary of State. It was therefore incorrect to cite the 2001 Order in the context of a footnote setting out the history of how the Secretary of State came to exercise this function. Likewise, it was incorrect to cite article 3 of the 1988 Order. As set out above, the power to make the Order has vested in law in the Secretary of State since 1968. We apologise for these errors. The Department will review how to cite the transfer of functions in respect of this Order in future exercises of the powers under the 1939 Act.

Ministry of Defence

27 April 2021

Appendix 4

S.R. 2021/51

Magistrates' Courts (Amendment) Rules (Northern Ireland) 2021

1. The Committee has requested a memorandum on the following point:

(1) In relation to rule 2, footnote (c), identify the other instruments that, in addition to S.I. 2019/908, made relevant amendments to S.R. 1984 No.225.

2. The other relevant amendment was made by S.R. 2010 No. 12. Footnote (c) cited the most recent relevant amendment, S.I. 2019/908.

Ministry of Justice

27 April 2021

Formal Minutes

Wednesday 12 May 2021

Virtual meeting

Members present:

Jessica Morden (*in the Chair*)

Baroness D’Souza	Baroness Newlove
Dr James Davies	Lord Rowe-Beddoe
Baroness Gale	Baroness Scott of Needham Market
Lord Haskel	Liz Twist
John Lamont	

Draft Report, proposed by the Chair, brought up and read.

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

Paragraphs 1.1 to 4.2 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 4.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

[Adjourned till Wednesday 19 May at 3.40 p.m.]