



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Third Report of
Session 2021–22**

Drawing special attention to:

*Gas (Standards of Performance) (Amendment) Regulations 2021
(S.I. 2021/257)*

*Town and Country Planning (General Permitted Development etc.) (England)
(Amendment) Order 2021 (S.I. 2021/428)*

*Finance Act 2009, Sections 101 and 102 (Social Security Contributions,
Intermediaries) (Appointed Day) Order 2021 (S.I. 2021/445)*

Protection of Wrecks (RMS Titanic) (Amendment) Order 2021 (S.I. 2021/470)

*Ordered by the House of Lords
to be printed 26 May 2021*

*Ordered by the House of Commons
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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*)

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House of Commons

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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. 74](#), 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 26 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. 2021/257: Reported for defective drafting

Gas (Standards of Performance) (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 two respects.**

1.2 These Regulations, which are not subject to any parliamentary procedure, amend the Gas (Standards of Performance) Regulations 2005 (S.I. 2005/1135), which impose minimum standards of performance on gas transporters.

1.3 Regulation 5(2) (inserted regulation 9(2B)) introduces a new obligation on gas transporters to provide, in specified circumstances, access to “hot water for washing in each 24 hour period where ... the priority domestic customer is medically dependent on water for bathing or is water dependent for medical reasons”. The Committee asked the Department for Business, Energy and Industrial Strategy to explain the intended meanings of being “medically dependent on water for bathing” and “water dependent for medical reasons” (and the difference between them), and how persons falling within these categories will be identified for the purposes of the provision. In a memorandum printed at Appendix 1, the Department explains that these expressions are intended to “reflect categories of ‘needs codes’ (specifically, needs codes 23 and 37) used in the energy industry for the Priority Services Register, which is a list of vulnerable consumers with their corresponding specific needs marked as needs codes.” It provides a link to the list of needs codes, and it asserts that the terms “are readily understood by gas transporters for the purposes of fulfilling their [statutory] obligations”. The Committee notes the Department’s intentions but does not accept that they have been achieved effectively. The phrases to which the Committee drew attention are expressly not limited in their application in the instrument to circumstances where classification under the Register is relevant (“where, under the Priority Service Register or otherwise notified by the customer, the priority domestic customer is medically dependent on water for bathing or is water dependent for medical reasons”): so the usage in the instrument is expressly not confined to the accepted industry meanings identified by the Department. There is nothing to suggest that a mere assertion by a customer of a medical need is to be determinative, but there is also no provision that clarifies what more is required. These phrases are pivotal components of legislation that is clearly intended to confer rights on customers, and it is therefore particularly important that their meaning should be expressed with clarity and certainty. (Even to the extent that the codes are expressly or impliedly adopted by the instrument, the Committee has concerns about accessibility of the codes.) **The Committee accordingly reports regulation 5(2) (inserted regulation 9(2B)) for defective drafting.**

1.4 Regulation 10 of the 2005 Regulations sets out the penalties that apply where a gas transporter fails to meet specified minimum standards. It is amended by regulation 6 of this instrument. The combined effect of amended paragraph (1)(b) and new paragraph (3A) is that where a customer challenges a quotation under the gas transporter’s published accuracy scheme, a gas transporter that has failed to give an accurate quotation for providing a new connection or altering an existing one must refund any overcharges the customer has paid. The Committee asked the Department to explain what this adds to regulation 10 that is not already achieved by paragraphs (4) (as amended by regulation 6(7)) and (5):

(4) In the event that the customer challenges a quotation with regards to the provision of a connection or alteration of an existing connection provided by the relevant gas transporter in accordance with any published accuracy scheme and such quotation is found not to be accurate, the quotation will be deemed invalid and the provisions of paragraph 3(a) and 3(b) shall apply until the relevant gas transporter issues a revised quotation to the customer.

(5) Notwithstanding paragraph (4), the relevant transporter shall refund to the customer any overcharge.

1.5 In a memorandum printed at Appendix 1, the Department asserts that regulation 10(3A) creates an obligation to refund “regardless of whether any challenge has been received in accordance with the published accuracy scheme”. This is not correct: paragraph (1)(b) provides that regulation 10 only applies “where, in respect of paragraph (3A), a customer challenges a quotation ... under the relevant gas transporter’s published accuracy scheme”. In that context, there is no substantive difference between failing to provide an accurate quotation under paragraph (3A) and a quotation being found to be inaccurate under paragraph (4): in both cases, a quotation has been challenged and its accuracy is a question of fact. While paragraph (4) does clarify the effects of inaccuracy, this appears to the Committee to be the only real difference between the two sets of provisions. If the policy intent was as described in the Department’s memorandum, the amendments have not achieved it. If the intent was merely to replicate the original provisions, the Department has provided no good reason why the amending legislation replicated the redundancy rather than correcting it. **The Committee accordingly reports regulation 6(6) for defective drafting.**

2 S.I. 2021/428: Reported for defective drafting

Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

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

2.2 This Order, which is subject to the negative resolution procedure, amends three instruments relating to planning, including the Town and Country Planning (General Permitted Development) (England) Order 2015 (the amended Order). The amendments include creating a new permitted development right and amending existing permitted development rights.

2.3 Article 10 amends the permitted development right relating to dock, pier, harbour, water transport, canal or inland navigations undertakings to allow development on operational land required in connection with the provision of services and facilities. Development is not permitted where it consists of or includes the erection of a building other than “an operational building” or the alteration or reconstruction of a building other than “an operational building” (article 10(3)(b)). The Committee asked the Ministry of Housing, Communities and Local Government to explain the omission of a definition for “operational building”. In a memorandum printed at Appendix 2, the Department acknowledges the omission. **The Committee accordingly reports article 10 for defective drafting, acknowledged by the Department.**

2.4 Article 9 amends a permitted development right in respect of schools, colleges, universities and hospitals by expanding the right and including certain prisons within its scope. Where a new proposed development relates to a university building, there is a requirement to apply to the local planning authority for determination as to whether the authority’s prior approval is required. The procedure that will apply for such an application stipulates that the procedure set out in another part of the amended Order applies, with the modification that the words ““except for” to “paragraph Q.2(1)(f)” are to be omitted. As “paragraph Q.2(1)(f)” does not exist, the Committee asked the Department to explain. In its memorandum, the Department explains that the reference should have been to paragraph Q.2(1)(g). **The Committee accordingly reports article 9 for defective drafting, acknowledged by the Department.**

3 S.I. 2021/445: Reported for defective drafting

Finance Act 2009, Sections 101 and 102 (Social Security Contributions, Intermediaries) (Appointed Day) 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 not subject to Parliamentary procedure, appoints the day on which sections 101 and 102 of the Finance Act 2009 come into force for specified purposes. Section 101 provides for late payment interest on sums due to HMRC and section 102 provides for repayment interest on sums to be paid by HMRC.

3.3 Article 2 of this Order states that these sections come into force “in relation to amounts payable or paid to Her Majesty’s Revenue and Customs under Part 3AA of Schedule 4 to the Social Security Contributions Regulations 2001”. The Committee asked the Treasury to confirm that the words should have read “payable or paid by or to” instead of simply “payable or paid to”, to include interest on sums payable by HMRC. In a memorandum printed at Appendix 3, HMRC explains, on behalf of the Treasury, that the wording “payable or paid to” reflects the intention to commence the sections for payments to HMRC and that the wording “in relation to” allows for repayments by HMRC. The Committee does not consider that “in relation to” obviously bears in this context the meaning asserted by HMRC, and notes that previous instruments (S.I. 2010/1878, S.I. 2013/67, S.I. 2013/2472, S.I. 2014/3269, S.I. 2014/3324, S.I. 2015/974, S.I. 2018/468) use an entirely different formula which is clear and concise. **The Committee accordingly reports article 2 for defective drafting.**

4 S.I. 2021/470: Reported for failure to comply with proper legislative practice

Protection of Wrecks (RMS Titanic) (Amendment) Order 2021

4.1 The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with proper legislative practice in one respect.

4.2 This Order, which is subject to the negative resolution procedure, corrects a defect in the Protection of Wrecks (RMS Titanic) Order 2003 (S.I. 2003/2496). The Committee asked the Department for Transport to explain why, that being the case, this Order is not being issued free of charge to everyone known to have received the earlier defective instrument (in accordance with Statutory Instrument Practice, 5th Ed.). In a memorandum printed at Appendix 4, the Department acknowledges and apologises for the omission. **The Committee accordingly reports this Order for failure to comply with proper legislative practice, acknowledged by the Department.**

Instruments not reported

At its meeting on 26 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

Draft Instruments requiring affirmative approval

Draft	Contracts for Difference (Miscellaneous Amendments) Regulations 2021
Draft	Climate Change Act 2008 (Credit Limit) Order 2021
Draft	Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc.) Regulations 2021
Draft	Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021
Draft	Public Procurement (International Trade Agreements) (Amendment) Regulations 2021
Draft	Calorie Labelling (Out of Home Sector) (England) Regulations 2021
Draft	Birmingham Commonwealth Games (Compensation for Enforcement Action) Regulations 2021
Draft	Social Security (Scotland) Act 2018 (Disability Assistance, Young Carer Grants, Short-term Assistance and Winter Heating Assistance) (Consequential Provision and Modifications) Order 2021

Instruments subject to annulment

S.I. 2020/964	Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020
S.I. 2021/153	European Grouping of Territorial Cooperation and Limited Liability Partnerships etc. (Revocations and Amendments) (EU Exit) Regulations 2021
S.I. 2021/482	Education (Pupil Information) (England) (Coronavirus) (Amendment) Regulations 2021
S.I. 2021/487	Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) (No. 2) Regulations 2021
S.I. 2021/495	Social Security and Tax Credits (Miscellaneous and Coronavirus Amendments) Regulations 2021
S.I. 2021/555	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 14) Regulations 2021
S.I. 2021/571	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 15) Regulations 2021

Appendix 1

S.I. 2021/257

Gas (Standards of Performance) (Amendment) Regulations 2021

1. In its letter to the Department for Business, Energy and Industrial Strategy, the Committee requested a memorandum on the following points:

1) In relation to regulation 5(2) (new paragraph (2B)), explain—

(a) the intended meanings of being “medically dependent on water for bathing” and “water dependent for medical reasons” (and the intended difference between the two expressions); and

(b) how it is intended that persons falling within these categories will be identified for the purposes of the provision and how effect is given to that intention.

(2) In relation to regulation 10 of the Principal Regulations, as amended by regulation 6, explain what is added by new paragraph (3A) (inserted by regulation 6(6)) that is not already achieved by paragraphs (4) (as amended by regulation 6(7)) and (5).

2. With respect to points (1)(a) and (b), the terms “medically dependent on water for bathing” and “water dependent for medical reasons” are intended to capture vulnerable consumers who have a dependency on water and should therefore be eligible under these provisions. These terms reflect categories of “needs codes” (specifically, needs codes 23 and 37)¹ used in the energy industry for the Priority Services Register, which is a list of vulnerable consumers with their corresponding specific needs marked as needs codes. This register is maintained by gas supply companies as part of their gas supply licence obligations,² and is shared with gas transporters through established data sharing protocols within the industry. The needs codes are developed and maintained by industry and are standard across the gas, electric and water markets.

3. Customers may register for priority services if they have ongoing health conditions or meet certain vulnerability criteria. The needs codes that are relevant to the customer are specified at the time of registration, and may be updated from time to time.

4. When carrying out, or planning to carry out, works at customers’ premises, gas transporters refer to the Priority Services Register to assess customer needs in relation to any services they may require, including the provision of services to meet obligations under the Gas (Standards of Performance) Regulations 2005 (as amended), in the event that the works result in an interruption to customers’ gas supply.

1 The list of needs codes is available on this website: <https://dtc.mrasco.com/> under a document entitled “Priority Services Category” (item reference number: J1699). This can be found through the “view items” link from the main page. In that document, needs code 23 is listed as “medically: dependent showering/bathing”, and needs code 37 is “water dependent”.

2 The obligation to establish and maintain a Priority Services Register is set out in Condition 26 (Priority Services Register) of the Standard Conditions of Gas Supply Licence, which is available on Ofgem’s website: <https://www.ofgem.gov.uk/publications-and-updates/standard-conditions-gas-supply-licence>.

5. The term “medically dependent on water for bathing” is intended to capture customers who, due to a medical condition, require hot water to bathe every day or multiple times a day. Energy industry bodies have developed guidance for the needs codes which includes a non-exhaustive list of conditions that may be captured under this category, and this includes: epidermolysis bullosa simplex, eczema and dermatitis, disability, and degenerative disease.
6. The term “water dependent for medical reasons” is intended to capture those customers who for medical reasons need access to water for purposes other than for bathing. Industry guidance lists the following as examples of conditions that may come under this category: desquamating conditions (flaky skin loss), weeping skin disease (eczema, psoriasis, varicose ulceration), catheter usage, abdominal stoma, Chron’s disease, colostomy, urostomy, and incontinence.
7. While there may be some overlap between the two categories, there may be instances where a customer is only registered under one of these, and so we considered it necessary to include both terms.
8. As the expressions “medically dependent on water for bathing” and “water dependent for medical reasons” reflect the needs codes categories in the Priority Services Register, these terms are readily understood by gas transporters for the purposes of fulfilling their obligations under the Gas (Standards of Performance) Regulations 2005 (as amended).
9. With respect to point (2), regulation 10(3A) (as amended) places the obligation on the gas transporter to ensure the quotations they provide are “accurate” (as defined in the Regulations) and, where this has not been the case, to refund the customer any overcharge that has been paid. Paragraph (3A) places the obligation on the gas transporter to provide a refund regardless of whether any challenge has been received in accordance with the published accuracy scheme.
10. Regulation 10(4) (as amended) requires that in the event that a customer challenges a quotation provided by a gas transporter (whether or not payment has been made by the customer pursuant to the quotation) under the published accuracy scheme and is successful, the quotation will be deemed invalid and the relevant obligations under regulation 10(3)(a) and 10(3)(b) and associated prescribed periods would then reapply in relation to the provision of the new quotation by the gas transporter.
11. Regulation 10(5) states that the gas transporter will remain liable to provide a refund to the customer in the event that the quote is deemed invalid by regulation 10(4).
12. Regulation 10(3A) (as amended) reinstates the language of the old regulation 10(3) (c) and 10(3)(ii). The new regulation 10(3A) was inserted as part of the structural drafting changes to regulation 10 rather than introducing substantively new requirements.

Department for Business, Energy and Industrial Strategy

13 May 2021

Appendix 2

S.I. 2021/428

Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

1. The Committee requested a memorandum on two points in relation to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021.

1. In relation to article 10(3)(b), explain the omission of a definition for “operational building” (noting that the definition in paragraph O of Part 8 in Schedule 2 of S.I. 2015/596 is restricted to airports).

2. In relation to article 9(6) inserting new paragraph M.2A(3)(a)(i), explain the reference to “paragraph Q.2(1)(f)”.

2. The Department acknowledges the issues with the drafting of article 10(3)(b) and article 9(6), for which the Department apologises. The reference to paragraph Q.2(1)(f) should have been a reference to paragraph Q.2(1)(g).

3. The Department will amend the instrument to correct the omission and incorrect reference at the first available opportunity, which is expected to be in the Summer.

Ministry of Housing, Communities and Local Government

18 May 2021

Appendix 3

S.I. 2021/445

Finance Act 2009, Sections 101 and 102 (Social Security Contributions, Intermediaries) (Appointed Day) Order 2021

1. In its letter to HM Treasury of 12 May 2021, the Joint Committee requested a memorandum on the following point:

Confirm whether in Article 2 “payable or paid to” ought to read “payable or paid by or to” (to include all limbs of s.102(1) of the Finance Act 2009).

2. This memorandum has been prepared by Her Majesty’s Revenue and Customs on behalf of HM Treasury.

3. The drafting reflects the policy intention which is to commence these sections for payments to HMRC of transferred National Insurance contributions debts (under Part 3AA of Schedule 4 to the Social Security (Contributions) Regulations 2001) in the same way that those sections were commenced by paragraph 29 of Schedule 1 to the Finance Act 2020 for equivalent payments of transferred income tax debts (that paragraph also reads “payable or paid to”).

4. We consider that “in relation to” in Article 2 allows any repayments by HMRC that arise in consequence of a payment to HMRC under Part 3AA to be subject to section 102, whereas including “payable or paid by or to” would imply that Part 3AA specifically provides for payments to be made by HMRC, which is not the case.

Her Majesty’s Revenue and Customs

17 May 2021

Appendix 4

S.I. 2021/470

Protection of Wrecks (RMS Titanic) (Amendment) Order 2021

1. By a letter dated 12th May 2021 the Committee asked for a memorandum on the following point—

Given that, according to paragraph 7 of the Explanatory Memorandum, this instrument merely corrects a minor error in the 2003 Order, explain whether the Department intends to comply with paragraph 3.5.22 of Statutory Instrument Practice and provide replacement copies to recipients of the 2003 Order.

2. The Department does not feel that paragraph 3.5.22 is relevant in this case because it relates to draft statutory instruments; whereas this particular Order has been made and has come into force.

3. However, in view of paragraph 7 of the Explanatory Memorandum, the Department acknowledges that the amendment was necessary to rectify a defect and that the Order should have included the appropriate headnote in accordance with the requirements of Statutory Instrument Practice.

4. Arrangements are being made, including with the National Archives, for the amending Order to be made available free of charge to all known recipients of the 2003 Order, or, as necessary, for an appropriate credit note/refund to be made available for anyone who has already purchased a copy.

5. The Department is grateful to the Committee for raising this point and apologises for not following the appropriate procedure.

Department for Transport

18 May 2021

Formal Minutes

Wednesday 26 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	Lord Smith of Hindhead
John Lamont	Richard Thomson

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.

In the absence of the Chair, Baroness Scott was called to the Chair.

Annex agreed to.

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

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

Jessica Morden resumed the Chair.

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 9 June at 3.40 p.m.]