



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Fourth Report of
Session 2021–22**

Drawing special attention to:

Early Years Foundation Stage (Miscellaneous Amendments) and Childcare Fees (Amendment) Regulations 2021 (S.I. 2021/432)

Removal and Disposal of Vehicles (Amendment) (England) Regulations 2021 (S.I. 2021/461)

Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021 (S.I. 2021/467)

Coronavirus Act 2020 (Suspension: Temporary Judicial Commissioners, Urgent Warrants and Disposal of Bodies) Regulations 2021 (S.I. 2021/486)

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to be printed 9 June 2021*

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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*)

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

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

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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 9 June 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. 2021/432: Reported for defective drafting

Early Years Foundation Stage (Miscellaneous Amendments) and Childcare Fees (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, introduce a reception baseline assessment to help measure the progress children make from starting school to the end of year 6. Regulation 2(4) (inserted article 3D) contains provision enabling the Secretary of State to make delegated supplementary provisions in relation to reception baseline assessments (that is, such provisions as appear to the Secretary of State to be expedient for giving full effect to, or otherwise supplementing, the provisions made by the instrument). Inserted article 3D(3) states that the “Secretary of State must publish any delegated supplementary provisions”. Section 42(6C) of the Childcare Act 2006 states that any delegated supplementary provisions “on being published as specified in the order under which they are made, are to have effect...as if made by the order”. The Committee asked the Department for Education to explain how the requirement in section 42(6C) to specify the manner of publication of delegated supplementary provisions is complied with. In a memorandum printed at Appendix 1, the Department acknowledges that the manner of publication should have been specified and undertakes to amend the instrument at the next available opportunity. **The Committee accordingly reports regulation 2(4) for defective drafting, acknowledged by the Department.**

1.3 (The Committee also asked the Department to explain where the delegated supplementary provisions will be published. In its memorandum the Department confirms that the gov.uk website is the usual online platform for publication. The Committee assumes that the precise url will be given in a footnote or the Explanatory Note when the instrument is amended, so as to provide a reasonable facility of access for readers.)

2 S.I. 2021/461: Reported for requiring elucidation, for defective drafting and for failure to comply with proper legislative practice

Removal and Disposal of Vehicles (Amendment) (England) Regulations 2021

2.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they require elucidation in one respect, are defectively drafted in one respect and fail to comply with proper legislative practice in one respect.**

2.2 These Regulations, which are subject to the negative resolution procedure, amend an error (which subsisted for six years) in the Removal and Disposal of Vehicles Regulations 1986 which resulted in a power of civil enforcement officers being unintentionally removed—the power to remove vehicles from a road in a civil enforcement area for parking contraventions in England following the issue of a penalty charge notice. The Committee asked the Department for Transport to explain why it was thought unnecessary to include transitional provision in respect of infractions occurring before commencement. In a memorandum printed at Appendix 2, the Department provides additional explanation of the background to the change and concludes that no transitional provision was thought necessary. It may be, in any event, that transitional provision would have been ineffective to address any significant part of the legal issues that arise in respect of enforcement without the power, but this is a matter that can be decided by the courts if necessary; **in the meantime the Committee is content to report regulation 1 for requiring elucidation.**

2.3 Regulation 1(2) states that these Regulations “extend to England and Wales and Scotland” and regulation 1(3) states that these Regulations “apply in relation to England only”. Given that the substantive provisions of this instrument expressly have no application to Scotland or Wales, the Committee asked the Department to explain why it was thought helpful to include either or both of regulation 1(2) and (3). In its memorandum, the Department explains that since January 2021, the Government Legal Department has encouraged drafters of statutory instruments to deal expressly with extent in every instrument, even where it can be inferred, in order to be helpful to lay users who may not infer extent in the absence of an express provision. Having included the extent provision, the Department explains that it considered that confirmation of a more limited application would make matters as clear as possible to the user. The Committee does not agree that this approach provides clarity if it purports to limit application in circumstances where the limitation can add nothing to the terms of the substantive provisions. It is difficult enough for readers of the statute book to cope with the increasing incidence of parallel texts for different extents; to include express limitations of application that can have no effect simply introduces another layer of unnecessary confusion for the reader and is to be avoided. **The Committee accordingly reports regulation 1 for defective drafting.**

2.4 The Committee also asked the Department to explain, given that this instrument rectifies defective legislation, whether the Department used the free issue procedure. In its memorandum, the Department acknowledges that the free issue procedure should have been used and explains that arrangements are being made with the National Archives, for an appropriate refund to be made available for anyone who has already purchased a copy of the instrument being rectified by these Regulations. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

3 S.I. 2021/467: Reported for requiring elucidation

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

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

3.2 This Order, which is subject to the negative resolution procedure, introduces a new temporary permitted development right (until 1 January 2022) to allow for the provision of moveable structures on land within the curtilage of cafes, restaurants and drinking establishments. Paragraph 7.6 of the Explanatory Memorandum states that this permitted development right “is being put in place to support the economic recovery of hospitality businesses and heritage attractions by allowing for the temporary provision of moveable structures within the existing curtilage, increasing outdoor seating capacity through new spaces to eat and drink in, such as temporary marquees, and enabling heritage visitor attractions to operate while minimising the need for visitors to gather in enclosed spaces.” Given the breadth of this policy and Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (which prohibits development contrary to any condition imposed by any planning permission granted), the Committee asked the Ministry of Housing, Communities and Local Government to explain whether the temporary permitted development rights granted by article 2 of this Order are intended to override any existing restrictive planning conditions applying to cafes, restaurants, drinking establishments and visitor attractions. In a memorandum printed at Appendix 3, the Department explains that article 3(4) continues to apply alongside the temporary permitted development rights granted by this Order and that any development subject to a restrictive planning condition prohibiting the erection of temporary moveable structures would not benefit from the new rights. The Department undertakes to consider the breadth of the wording at paragraph 7.6 of the Explanatory Memorandum when considering the explanation of any future amendments. **The Committee accordingly reports article 2 of this Order for requiring elucidation, provided by the Department’s memorandum.**

4 S.I. 2021/486: Reported for failure to comply with proper legislative practice

Coronavirus Act 2020 (Suspension: Temporary Judicial Commissioners, Urgent Warrants and Disposal of Bodies) Regulations 2021

4.1 **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.**

4.2 These Regulations, which are not subject to Parliamentary procedure, suspend two sections of and two parts of a Schedule to the Coronavirus Act 2020. The preamble recites that the regulations are made with the consent of the Department of Health and Department of Justice in Northern Ireland. However, the signature block does not record that consent and the Committee asked the Department of Health and Social Care to explain. In a memorandum printed at Appendix 4, the Department explains that it considers that there is no absolute requirement that consent must be established by signature and satisfaction of the pre-condition in section 88(8) of the Coronavirus Act 2020 can be achieved by properly obtaining the requisite consent and by recording that consent in the preamble. The Committee notes that paragraph 3.20 of Statutory Instrument Practice (5th edition, November 2017) indicates that a signature is expected. Inconsistency in this matter between different instruments is an unnecessary and unhelpful source of confusion for readers and the Committee expects the Government to follow its own practice as set out in Statutory Instrument Practice consistently. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice.**

Instruments not reported

At its meeting on 9 June 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	Scotland Act 2016 (Social Security) (Consequential Provision) (Miscellaneous Amendment) Regulations 2021
Draft	Local Elections (Northern Ireland) (Amendment) Order 2021
Draft	Introduction and the Import of Cultural Goods (Revocation) Regulations 2021
Draft	Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) (No. 2) Order 2021
Draft	Contracting Out (Functions in Relation to Space) Order 2021
Draft	Space Industry (Appeals) Regulations 2021
Draft	Space Industry Regulations 2021
Draft	Spaceflight Activities (Investigation of Spaceflight Accidents) Regulations 2021
Draft	Customs Safety and Security Procedures (EU Exit) Regulations 2021

Instruments subject to annulment

S.I. 2020/79	M23 Motorway (Junctions 8 to 10) (Variable Speed Limits) Regulations 2020
S.I. 2020/267	Healthy Start Scheme and Welfare Food (Miscellaneous Amendments) Regulations 2020
S.I. 2020/284	Magistrates' Courts (Functions of Authorised Persons – Civil Proceedings) Rules 2020
S.I. 2021/139	Newport (Isle of Wight) Harbour Revision Order 2021
S.I. 2021/499	British Museum (Authorised Repositories) Order 2021
S.I. 2021/519	Climate and Energy (Revocation) (EU Exit) Regulations 2021
S.I. 2021/521	G7 Presidency (Immunities and Privileges) Order 2021
S.I. 2021/531	Nursing and Midwifery (European Qualifications) (Amendment) Regulations 2021

- S.I. 2021/541** Education (School Day and School Year) (England) (Coronavirus) (Amendment) Regulations 2021
- S.I. 2021/543** Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021
- S.I. 2021/546** Housing Benefit and Universal Credit (Care Leavers and Homeless) (Amendment) Regulations 2021
- S.I. 2021/589** Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) Regulations 2021

Instruments subject to parliamentary proceedings not laid before Parliament

- S.I. 2021/518** Assured Tenancies and Agricultural Occupancies (Forms) (Moratorium Debt) (Consequential Amendment) (England) Regulations 2021
- S.I. 2021/526** Global Anti-Corruption Sanctions (Isle of Man) Order 2021
- S.I. 2021/529** Myanmar (Sanctions) (Isle of Man) Order 2021
- S.I. 2021/532** Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No. 11) Order 2021
- S.I. 2021/539** Marriage (Authorised Persons) Regulations 2021
- S.I. 2021/550** Trade Act 2021 (Commencement No. 1 and Expiry Provision) Regulations 2021

Appendix 1

S.I. 2021/432

Early Years Foundation Stage (Miscellaneous Amendments) and Childcare Fees (Amendment) Regulations 2021

1. In its letter to the Department for Education of 19 May 2021, the Joint Select Committee requested a memorandum on the following points

Explain (1) how the requirement in section 42(6C) of the Childcare Act 2006 to specify the manner of publication of delegated supplementary provisions is complied with, and (2) where it is intended that those provisions be published.

2. This memorandum has been prepared by the Legal Adviser's Office in the Department for Education.

3. Section 42(6C) of the Childcare Act 2006 provides: “*Any delegated supplementary provisions, on being published as specified in the order under which they are made, are to have effect for the purposes of this Chapter as if made by the order*”. The Department's interpretation of that section has been that any delegated supplementary provisions (DSP) published will have the same effect, i.e., the same legal force, as if they were made by the Order itself.

4. We acknowledge that in view of the fact that a delegated supplementary provision document is treated as if part of the Order made under section 39(1)(a), section 44 applies to it, including the publication requirement at sub section (1), and thus the manner of publication should have been specified. We will amend the Order at the next available opportunity.

5. In the meantime, we would like to reassure the Committee that Ofqual and other interested persons are and were aware of how and where the DSP would be published as Gov.uk is the usual online platform where these sorts of provisions are published.

6. The Standards and Testing Agency (STA) published the DSP for the RBA in May 2021 in the annual statutory guidance to schools on assessment and reporting arrangements for the RBA here: [2021 Reception baseline assessment: assessment and reporting arrangements](#). This sets out schools' legal duties on administering the assessment and reporting of assessment information for pupils.

7. An email was sent to schools, local authorities and stakeholders by the STA to alert them to the publication of the DSP (the Assessment and Reporting Arrangements) via an Assessment Update dated 6 May 2021, which was sent early on 7 May 2021.

Department for Education

25 May 2021

Appendix 2

S.I. 2021/461

Removal and Disposal of Vehicles (Amendment) (England) Regulations 2021

1. In its letter to the Department of 19th May 2021, the Committee requested a memorandum on the following points:

1. In relation to regulation 1(1), explain why it was thought unnecessary to include transitional provision in respect of infractions occurring before commencement.

2. Having regard to the terms of regulation 5C of the Removal and Disposal of Vehicles Regulations 1986, and to the absence of extent or application provisions in S.I. 2007/3484, explain why it was thought helpful to include either or both of regulation 1(2) and (3).

3. Given that, as stated in paragraph 6.3 of the Explanatory Memorandum, this instrument rectifies defective legislation, explain whether the Department has activated the free issue procedure (in accordance with Statutory Instrument Practice).

2. The version of regulation 5C of the Removal and Disposal of Vehicles Regulations 1986 (No. 183) in force between 1st April 2015 and 3rd May 2021 did not achieve the desired policy outcome of only permitting the removal of vehicles which had received a Penalty Charge Notice (PCN) for being parked on a road in a civil enforcement area for parking contraventions. It was never the policy intention to authorise the removal of vehicles which had received a PCN while parked otherwise than on a road in a civil enforcement area, even if subsequently they were parked on a road. SI 2021/461 has corrected this error and restored the policy objective to allow for the removal of vehicles parked in contravention on the road which have received a PCN. The Department is unsure whether, in formulating the first question, the Committee intended to refer to regulation 1(1) or regulation 2. Either way, the Department finds it difficult to see what type of transitional provision might be necessary. The Department would, however, be quite content to provide a further memorandum were the Committee to clarify what they had in mind.

3. Since January 2021, SI drafters within the Government Legal Departments have been encouraged to deal expressly with extent in every SI, even where it can be inferred. This change of approach has been adopted because not including an extent provision in cases where extent can be inferred is likely to be unclear and unhelpful to users in most cases. For example, user testing by The National Archives proves that significant numbers of lay users use legislation.gov, and that it is not only a legal database used by lawyers. The user testing also establishes that lay users do not in many cases have the knowledge or skills to infer extent in the absence of an express extent provision.

4. This approach is not entirely new. In practice, many SIs already adopt the recommended approach, and it has been the practice of Parliamentary Counsel to take the approach in comparable instances of primary legislation for some time. Overall, it seems sensible now

to adopt a standard approach, for the sake of consistency generally across primary and secondary legislation, and to help users in specific cases. The Department has accordingly followed the recommended approach in this case.

5. Having included the extent provision, the Department considered that confirmation of a more limited application would in the circumstances make matters as clear as possible to the reader.

6. In view of paragraph 6.3 of the Explanatory Memorandum, the Department acknowledges that the amendment was necessary to rectify a defect introduced into regulation 5C of the Removal and Disposal of Vehicles Regulations 1986. This was created inadvertently by overlooking the need for a consequential amendment arising out of an amendment made by the Ministry of Housing, Communities and Local Government to the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (No. 3483) by the Civil Enforcement of Parking Contraventions (England) General (Amendment No.2) Regulations 2015 (No. 1001). This instrument (SI 2021/461) should therefore have included the appropriate headnote in accordance with the requirements of Statutory Instrument Practice. Arrangements are being made, including with the National Archives, for an appropriate credit note/refund to be made available for anyone who has already purchased a copy of SI 2015/1001. The Department is grateful to the Committee for raising this point and apologises for not following the correct procedure.

7. We trust that the explanations above provide some assurance to the Committee.

Department for Transport

25 May 2021

Appendix 3

S.I. 2021/467

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

1. The Committee requested a memorandum on the following point in relation to the Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021 (“2021 Order”).

Having regard to the apparent breadth of the policy as stated in paragraph 7.6 of the Explanatory Memorandum, and having regard to Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015, explain whether the temporary permitted development rights granted by this Order are intended to override any existing restrictive planning conditions applying to cafes, restaurants, drinking establishments and visitor attractions and, if so, how effect is given to that intention.

2. The Department’s position is that article 3(4) continues to apply alongside the temporary permitted development rights granted by SI. 2021/467. Any development subject to a restrictive planning condition prohibiting the erection of temporary moveable structures would not benefit from the new rights. This position is consistent with earlier amendments to the Town and Country Planning (General Permitted Development) Order 2015, so no express reference was made to it in the Explanatory Memorandum. We are grateful to the JCSI for drawing the width of the wording at paragraph 7.6 of the Explanatory Memorandum to our attention, we will bear this point in mind when considering the explanation of any future amendments.

Ministry of Housing, Communities and Local Government

25 May 2021

Appendix 4

S.I. 2021/486

Coronavirus Act 2020 (Suspension: Temporary Judicial Commissioners, Urgent Warrants and Disposal of Bodies) Regulations 2021

1. In its letter to the Department of 19 May 2021, the Committee requested a memorandum on the following point:

“Explain why the signature block to this instrument does not record the consent of the Department of Health and Department of Justice in Northern Ireland as recited in the preamble”.

2. The Department’s response is as follows.

3. The Department considers that there is no absolute requirement that consent must be established by signature.

4. In the Department’s view, satisfaction of section 88(8) of the Coronavirus Act 2020 can be achieved by properly obtaining the requisite consent and by recording that consent in the preamble in accordance with legislative practice (consent being a matter upon which the validity of the instrument depends).

5. The Department therefore considers that it was sufficient to recite the fact of consent in the preamble and that no further steps were needed to give legal effect to the instrument (or to the provisions consented to by the relevant department of Northern Ireland).

6. The Department notes, for example, that a similar approach was taken in the Agriculture and Horticulture Development Board (Amendment) Order 2021 (S.I. 2021/23) which records in its preamble the approval of the Welsh ministers, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and the Scottish Ministers; that approval is not indicated by signature.

The Coronavirus Act 2020 (Early Expiry) Regulations 2021

7. It is also appropriate to draw the Committee’s attention to the Coronavirus Act 2020 (Early Expiry) Regulations 2021, a draft affirmative instrument laid on 20 April 2021. That instrument also records the consent of the Welsh Ministers, the Scottish Ministers and Department of Health in Northern Ireland in the preamble and does not contain corresponding signatures in the signature block.

8. For the reasons above, the Department considers that approach to be correct.

Department of Health and Social Care

25 May 2021

Formal Minutes

Wednesday 9 June 2021

Virtual Meeting

Members present:

Jessica Morden (*in the Chair*)

Baroness D’Souza	Lord Rowe-Beddoe
Baroness Gale	Baroness Scott of Needham Market
Lord Haskel	Lord Smith of Hindhead
John Lamont	Richard Thomson
Baroness Newlove	

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 Fourth 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 16 June at 3.40 p.m.]