



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Sixth Report of
Session 2021–22**

Drawing special attention to:

*National Health Service Trust (Scrutiny of Deaths) (England) Order 2021
(S.I. 2021/504)*

Antarctic (Amendment) Regulations 2021 (S.I. 2021/509)

*Marriage (Keeping of Records in Churches and Chapels) Regulations 2021
(S.I. 2021/538)*

*Health Protection (Coronavirus, International Travel and Operator Liability)
(England) Regulations 2021 (S.I. 2021/582)*

*Ordered by the House of Lords
to be printed 23 June 2021*

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Joint Committee on Statutory Instruments

Current membership

House of Lords

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[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. 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).

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Instruments reported

At its meeting on 23 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. 2021/504: Reported for requiring elucidation

National Health Service Trust (Scrutiny of Deaths) (England) Order 2021

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

1.2 This Order, which is not subject to Parliamentary procedure, confers power on NHS trusts to scrutinise deaths in England where the coroner has no duty to investigate or where “it is unclear whether the death is one which a registered medical practitioner would be required to notify to the relevant senior coroner under the Notification of Deaths Regulations 2019” (article 3(1)(b)). Given that the factors determining the requirement to notify the coroner under the 2019 Regulations include subjective opinions of a particular medical practitioner, the Committee asked the Department of Health and Social Care to explain how it can be clear or unclear in the abstract whether the requirement applies. In a memorandum printed at Appendix 1, the Department explains that the purpose of article 3(1)(b) is to “allow for scrutiny of a death by a medical examiner” employed by an NHS Trust where a medical practitioner is not certain whether they are required to notify the senior coroner; in such circumstances, the medical practitioner is in a position to know and to inform the NHS trust whether the practitioner considers it is unclear whether they are required to notify the senior coroner. The Committee notes this explanation (while noting that article 3(1)(b) and the wording of the Explanatory Note appear to include circumstances in addition to the referral by a medical practitioner). **The Committee accordingly reports article 3(1)(b) for requiring elucidation, provided in part by the Department’s memorandum.**

2 S.I. 2021/509: Reported for requiring elucidation

Antarctic (Amendment) Regulations 2021

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

2.2 These Regulations, which are subject to the negative resolution procedure, update the internationally recognised descriptions of places that have been designated under the Antarctic Treaty System as historic sites and monuments. Section 10(1) of the Antarctic Act 1994 makes it an offence to damage, destroy or remove any site or monument designated as a historic site and monument by the Secretary of State except in accordance with a permit granted under that section. Schedule 2 of this instrument designates the wreck of the Endurance (including all artefacts contained or formerly contained within the ship within a 150m radius of the wreck) as a historic site and monument but without

giving a location of the wreck because the exact location is unknown. Given the lack of any positional information in respect of the wreck, the Committee asked the Foreign, Commonwealth & Development Office whether it is intended that there should be an exception or defence to the offence in section 10(1) of reasonable excuse or ignorance of the nature of the wreck or the provenance of fixtures and fittings. In a memorandum printed at Appendix 2, the Department explains that it shares the Committee's concerns about the prospect of prosecution in the event of genuinely inadvertent act but believes that there is adequate mitigation without introducing a specific statutory defence. The Department adds that it intends to bring the designation of the wreck to the attention of anyone seeking authorisation for any British expedition to Antarctica with potential to encounter it and that, as proceedings for offences under section 10 may only be instituted by the relevant Secretary of State or Director of Public Prosecutions, the Department expects the discretion not to prosecute to be exercised where an offence arises from a genuine lack of knowledge as to the wreck's location or as to an object's provenance. Although a statutory defence of lack of knowledge might have been helpful, given the practical circumstances explained by the Department **the Committee is content to report these Regulations for requiring elucidation, provided by the Department's memorandum.**

3 S.I. 2021/538: Reported for requiring elucidation

Marriage (Keeping of Records in Churches and Chapels) Regulations 2021

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

3.2 These Regulations, which are not subject to Parliamentary procedure, provide for registers of marriage services to be kept in churches and chapels of the Church of England and the Church in Wales. Regulation 2(4) states that the "register must be made of durable material." The Committee asked the Home Office to explain (preferably by reference to industry standards, published guidance or established practice in relation to legislative usage in similar contexts) what class of material is considered sufficiently durable for this purpose or what degree of durability is regarded as acceptable. In a memorandum printed at Appendix 3, the Department explains that there are no relevant industry standards for durability in this context and no relevant published guidance and refers to other instruments where a similar requirement for registers to be made of "durable materials" have been included. The Department asserts that the long-established practice is that register books should at least be hard-backed and that "it is intended that registers must be made of materials (including the paper used for the pages of the register) which are sufficiently hard-wearing to withstand regular use without significant deterioration and to resist deterioration and damage in the ordinary course of things when these register books are kept as records in the church or chapel in question (including after they have been filled)." Although in some contexts it might be necessary or desirable to provide express statutory criteria for durability, in this context the Committee is satisfied with the information given by the Department as to the practical expectations; **and on that basis the Committee is content to report regulation 2(4) for requiring elucidation, provided by the Department's memorandum.**

4 S.I. 2021/582: Reported for defective drafting

Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021

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

4.2 These Regulations, which are subject to the negative resolution procedure, consolidate and replace three sets of Regulations relating to international travel, passenger information, testing and operator liability. Regulation 19(19) defines “relevant passenger” for the purposes of paragraphs (9) and (11) of that regulation. The Committee asked the Department for Transport to explain the reference to “relevant passenger” given that those words do not appear in paragraphs (9) and (11). In a memorandum printed at Appendix 4, the Department explains that paragraph (9) contains a drafting error and should have referred to the defined “relevant passenger” and that the cross-references in paragraph 19 should have been to paragraphs (9) and (10). The Department undertakes to amend these errors in the next amending instrument. **The Committee accordingly reports regulations 19(9) and (19) for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 23 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

Instruments requiring affirmative approval

S.I. 2021/705 Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021

Draft Instruments requiring affirmative approval

Draft	Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021
Draft	Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021
Draft	Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021
Draft	Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021
Draft	Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2021
Draft	Market Surveillance (Northern Ireland) Regulations 2021
Draft	Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021

Instruments subject to annulment

S.I. 2021/547	Elected Local Policing Bodies (Specified Information) (Amendment) Order 2021
S.I. 2021/552	Road Tunnel Safety (Amendment) Regulations 2021
S.I. 2021/553	Civil Procedure (Amendment No. 3) Rules 2021
S.I. 2021/558	Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021
S.I. 2021/565	Accounts and Audit (Amendment No. 2) Regulations 2021
S.I. 2021/566	Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2021
S.I. 2021/574	Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021

S.I. 2021/579	Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2021
S.I. 2021/586	Export Control (Amendment) Order 2021
S.I. 2021/595	Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Civil Aviation Authority) Regulations 2021
S.I. 2021/600	Immigration (Control of Entry through Republic of Ireland) (Amendment) Order 2021
S.I. 2021/670	Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 2) Regulations 2021
S.I. 2021/682	Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment) Regulations 2021

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2021/597	Agriculture Act 2020 (Commencement No. 1 and Transitional Provision) (England) Regulations 2021
S.I. 2021/605	Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (Commencement and Transitional Provisions) Regulations 2021

Appendix 1

S.I. 2021/504

National Health Service Trust (Scrutiny of Deaths) (England) Order 2021

1. In its letter to the Department of 9 June 2021, the Committee requested a memorandum on the following point:

In relation to article 3(1)(b), given that the factors determining the requirement to notify the coroner include subjective opinions of a particular medical practitioner, explain how it can be clear or unclear in the abstract whether the requirement applies.

2. The Department's response is as follows.

3. Article 3(1)(a) of the National Health Service Trust (Scrutiny of Deaths) (England) Order 2021 ('the Order') confers a power on an NHS trust to scrutinise a death where the senior coroner has no duty to investigate under section 1 of the Coroners and Justice Act 2009. A medical examiner employed by an NHS trust carries out an independent scrutiny of the cause of death before the medical practitioner's certification of the cause of death on the Medical Certificate of Cause of Death.

4. The purpose of Article 3(1)(b) of the Order is to allow for scrutiny of a death by a medical examiner where a medical practitioner is not certain whether they are required to notify the senior coroner under the Notification of Deaths Regulations 2019 ("the 2019 Regulations"). In such circumstances the medical practitioner may refer a death to a medical examiner to scrutinise until such time as it might become clear whether the death must be notified to a senior coroner.

5. Both the decision to notify under the 2019 Regulations and a decision by a medical practitioner to refer a death for scrutiny in reliance on Article 3(1)(b) involve the subjective opinions of a medical practitioner. The medical practitioner is in a position to know, and to inform the trust whether the practitioner considers it is unclear whether they are required to notify the death. Certainty in the abstract is not required for the purposes of this Order, which is intended to clarify the power of a trust to scrutinise a death where there is uncertainty as to the medical practitioner's obligations under the 2019 Regulations.

Department of Health and Social Care

15 June 2021

Appendix 2

S.I. 2021/509

Antarctic (Amendment) Regulations 2021

1. On 9 June 2021, the Committee requested that the Foreign, Commonwealth and Development Office (“FCDO”) submit a memorandum on the following point:

Given the lack of coordinates in respect of the wreck of the Endurance and the breadth of the designation including fixtures and fittings, is it intended that there should be an exception or defence (in relation to the offence in section 10(1) of the Antarctic Act 1994) of reasonable excuse or ignorance of the nature of the wreck or the provenance of fixtures and fittings and, if so, how effect is given to that intention.

2. The FCDO is grateful for the Committee’s consideration of this instrument and we respond as follows. To note, we refer below to ‘disturbance’ as encompassing the full range of acts that may amount to an offence under section 10 of the Antarctic Act 1994 (“the Act”).

3. We note that the wreck of the Endurance is not unique amongst designated Antarctic Historic Sites and Monuments in lacking detailed information as to its location. The location for ‘Amundsen’s Tent’ is given as “In the vicinity of 90°S” and described as being “buried beneath the snow and ice in the vicinity of the South Pole.” However, we acknowledge the absence of any positional information in the designation of the Endurance in the Regulations. There is an accurate positioning of the location of the sinking of the vessel, but its final resting place on the seafloor has yet to be located.

4. Given that the wreck of the Endurance is in an area usually beset with sea ice and potentially in quite deep water, we consider there to be very little risk that it would be disturbed inadvertently or as a result of activity other than a deliberate attempt to locate it. Indeed, its designation as a Historic Site or Monument under the Antarctic Treaty System was motivated by specific expeditions planned with that purpose. FCDO would bring the designation of the wreck to the attention of those seeking authorisation for any British expedition to Antarctica with potential to encounter it.

5. We note that under section 28 of the Act, proceedings for offences under section 10 may only be instituted by the Secretary of State or a person authorised by him for that purpose; by the Director of Public Prosecutions; or by the Director of Public Prosecutions for Northern Ireland. In the unlikely event of disturbance arising from a genuine and reasonable lack of knowledge as to the wreck’s location, or as to an object’s provenance, particular attention would no doubt be given to the public interest in prosecuting in such circumstances.

6. Therefore, while we share the Committee’s concerns about the prospect of prosecution in the event of genuinely inadvertent disturbance, we believe that there is adequate mitigation without introducing a specific statutory defence.

Foreign, Commonwealth and Development Office

15 June 2021

Appendix 3

S.I. 2021/538

Marriage (Keeping of Records in Churches and Chapels) Regulations 2021

1. In its letter of 9 June 2021 to the Department, the Joint Committee on Statutory Instruments has asked for a memorandum on the following point on S.I. 2021/538:

In relation to the requirement in regulation 2(4) for “durable material”, explain (preferably by reference to industry standards, published guidance or established practice in relation to legislative usage in similar contexts) what class of material is considered sufficiently durable for this purpose or what degree of durability is regarded as acceptable.

2. Regulation 2(4) requires registers of marriage services to be made of durable material. There are no relevant industry standards for durability in this particular context and no relevant published guidance. The nearest similar legislative context is section 7(3) of the Marriage Act 1949, which deals with the provision by parochial church councils of register books of banns and requires such books to be “made of durable materials”. In that context, the long-established practice is that register books should at least be hard-backed (rather than soft-backed). The same expectation applies in relation to regulation 2(4) of S.I. 2021/538. In addition, it is intended that registers must be made of materials (including the paper used for the pages of the register) which are sufficiently hard-wearing to withstand regular use without significant deterioration and to resist deterioration and damage in the ordinary course of things when these register books are kept as records in the church or chapel in question (including after they have been filled).

3. The Committee may wish to note that the Church of England has addressed the requirement for registers of marriage services to be made of durable material by providing for high-quality, hard-backed register books to be available to purchase from Church House Publishing (though there is no legal requirement to use these published registers). In the Church in Wales high-quality, hard-backed registers are being provided free of charge.

4. The Committee may wish to note the similar requirement in section 1(3) of the Parochial Registers and Records Measure 1978 for baptism and burial registers to be made of “durable material”. Until recently, section 54 of the Marriage Act 1949 also provided for the provision of marriage register books and these were likewise required to be “of durable materials”.

Home Office

15 June 2021

Appendix 4

S.I. 2021/582

Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021

1. By a letter dated 9th June 2021, the Joint Committee on Statutory Instruments requested a memorandum on the following point:

In regulation 19(19), explain the reference to “relevant passenger” given that those words do not appear in paragraphs (9) and (11).

2. Regulation 19(9) should say “unique passenger reference number for the relevant passenger” and regulation 19(19) should refer to paragraphs (9) and (10). The omission of “relevant” from paragraph (9) was an editing error and the incorrect reference to paragraph (11) in paragraph (19) was caused by the late removal of a provision at paragraph (10) from the draft instrument, resulting in what was then paragraph (11) becoming paragraph (10). The cross-reference in paragraph (19) should have been updated. The Department is grateful to the Committee for highlighting these errors and they will be corrected in the next amending instrument.

Department for Transport

15 June 2021

Formal Minutes

Wednesday 23 June 2021

Virtual Meeting

Members present:

Jessica Morden (*in the Chair*)

Baroness D’Souza	Baroness Scott of Needham Market
Baroness Gale	Lord Smith of Hindhead
Lord Haskel	Richard Thomson
Lord Rowe-Beedoe	

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 Sixth Report of the Committee 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 30 June at 3.40 p.m.]