House of Lords
House of Commons

Joint Committee on Statutory Instruments

Tenth Report of Session 2021–22

Drawing special attention to:

Magistrates' Courts (Amendment No. 2) Rules 2021 (**S.I. 2021/626**)

Ordered by the House of Lords to be printed 21 July 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*)

Lord Smith of Hindhead (*Conservative*)

House of Commons

Jessica Morden MP (*Labour, Newport East*) (Chair)

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

Paul Holmes MP (*Conservative, Eastleigh*)

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

Sir Robert Syms MP (*Conservative, Poole*)

Richard Thomson MP *(Scottish National Party, Gordon)*

Liz Twist MP *(Labour, Blaydon)*

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 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

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

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Instruments reported

At its meeting on 21 July 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 one of those considered. The instrument and the grounds for reporting it are given below. The relevant departmental memorandum is published as an appendix to this report.

1 S.I. 2021/626: Reported for requiring elucidation

Magistrates' Courts (Amendment No. 2) Rules 2021

1.1 **The Committee draws the special attention of both Houses to these Rules on the ground that they require elucidation in two respects.**

1.2 These Rules, which are subject to the negative resolution procedure, clarify the procedure to be followed by people applying for access to court documents.

1.3 Rule 2(8) inserts new rule 66B which applies to any person, including a member of the public or a reporter, who requests information about a case, and new rule 66C which applies where a party or a person directly affected by a direction or order requests information about their case. Each rule (paragraph 5) lists circumstances in which a designated officer must not supply the information requested, one of which is that information is not "readily available" to the designated officer. The Committee asked the Ministry of Justice to explain whether there are any general rules to be applied in determining the meaning of "readily" in this context compared, for example, with a standard limitation to what is reasonably practicable. In a memorandum printed as an Appendix, the Department asserts that the word "readily" has a clear natural meaning in this context and gives examples of how it is intended to be applied in this case. The Committee denies that the word has a natural meaning here, but finds the examples helpful in explaining how this rule is intended to be operated and on that basis **is content to report rule 2(8) (inserted rules 66B(5) and 66C(5)) for requiring elucidation, provided by the Department's memorandum.**

1.4 New Rules 66B(3) and 66(C)(3) set out the form in which the request for information must be made including (at paragraph (b)) that the request must be in writing and must explain why the information is requested if the designated officer is not required to supply the information. Given that a designated officer is not required to supply information that is not readily available, the Committee asked the Department to explain how a person requesting information is expected to know that in advance and therefore make the request in the correct format. In its memorandum, the Department accepts that the applicant cannot know in advance, and explains that if a person specifies the requested information orally and it is established that the requested information is not readily available, that person will be informed promptly by court staff and asked to supplement the request so that it satisfies rule 66B(3)(b) or 66C(3)(b) as appropriate. **The Committee accordingly reports rule 2(8) (inserted rules 66B(3) and 66C(3)) for requiring elucidation in another respect, provided by the Department's memorandum.**

Instruments not reported

At its meeting on 21 July 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. 2021/718	Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2021
S.I. 2021/827	Money Laundering and Terrorist Financing (Amendment) (No. 2) (High-Risk Countries) Regulations 2021
S.I. 2021/848	Health Protection (Coronavirus, Restrictions) (Steps etc.) (England) (Revocation and Amendment) Regulations 2021
S.I. 2021/851	Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021
S.I. 2021/864	Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 2) Regulations 2021

Draft Instruments requiring affirmative approval

Draft	Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021
Draft	Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021
Draft	Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) Order 2021
Draft	Capital Requirements Regulation (Amendment) Regulations 2021

Instruments subject to annulment

S.I. 2021/641	Phytosanitary Conditions (Amendment) Regulations 2021
S.I. 2021/672	Insolvency (England and Wales) (Amendment) Rules 2021
S.I. 2021/673	Insolvency Proceedings (Monetary Limits) (Amendment) Order 2021
S.I. 2021/674	Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2021
S.I. 2021/676	Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendment and Modification) Regulations 2021
S.I. 2021/684	Public Lending Right Scheme 1982 (Commencement of Variations) (Northern Ireland) Order 2021
S.I. 2021/695	Customs (Declaration Modification) Regulations 2021

S.I. 2021/795 Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 5) Regulations 2021

Instruments not subject to parliamentary proceedings not laid before Parliamentd

S.I. 2021/678 Overseas Operations (Service Personnel and Veterans) Act 2021 (Commencement) Regulations 2021

S.I. 2021/680 Digital Economy Act 2017 (Commencement No. 1) (Northern Ireland) Regulations 2021

S.I. 2021/690 Customs Tariff (Establishment) (EU Exit) (Amendment) (No. 2) Regulations 2021 (Appointed Day) Regulations 2021

S.I. 2021/694 Offshore Installations (Safety Zones) Order 2021

Appendix

S.I. 2021/626

Magistrates' Courts (Amendment No. 2) Rules 2021

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

> *(1) In relation to rule 2(8), inserted rules 66B(5)(d) and 66C(5)(b), explain whether there are any general rules to be applied in determining the meaning of "readily" in this context (compared, for example, with a standard limitation to what is reasonably practicable); for example, is it intended that as a general rule material still on the premises will be made available under this rule and material which has been sent to storage offsite will be made available only on reference under rule 66B(7) or 66C(7)?*
>
> *(2) Given that a designated officer is not required to supply information that is not readily available, explain how a person requesting information under rule 66B(3) or 66C(3) is expected to know that in advance and therefore make the request in the correct format.*

Question 1

2. The word 'readily' has its ordinary English meaning of 'without difficulty', or 'easily'. 'Reasonably practicably' may be almost synonymous but is less succinct. Increasingly frequently, information in court records is stored electronically and such information will be readily available to the designated officer (in practice, members of court staff) as long as the information sought is sufficiently specified to render it identifiable (in practice, while some requests are clear some are opaque). However, and clarity of request apart, as the parenthesis in each of rules 66B(5)(d) and 66C(5)(b) indicates, location and conditions of storage may affect availability, too. If the only material records available are on paper which has been removed from the court office to storage elsewhere then the information sought may or may not be readily available to the designated officer even if sufficiently clearly specified.

Question 2

3. Those making requests under rule 66B or rule 66C cannot be, and are not, expected to know whether the information that they request is or is not readily available to the designated officer. The variety of potential requests renders it impossible comprehensively to list every instance in which information will or will not be so (though the record retention schedules published by HM Courts and Tribunals Service[1] may offer some indication). Court staff themselves may need to make initial enquiries, including enquiries of the person making the request, before the availability of the information sought can be established. However, those making requests the content and means of which satisfy only rules 66B(2)(b) and 66B(3)(a), or 66C(2)(b) and 66C(3)(a), as the case may be, will be informed promptly by court staff where necessary if the relevant information is not readily available and will be asked, if necessary, to supplement the request so that it satisfies rule

1 https://www.gov.uk/government/publications/record-retention-and-disposition-schedules.

66B(3)(b) or 66C(3)(b), as appropriate. In practice, many requests for information are received in writing, by email, and include an indication of the reason for the request, thus satisfying the latter two rules in any event.

Ministry of Justice

12 July 2021

Formal Minutes

Wednesday 21 July 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
Paul Holmes	Richard Thomson
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 1.4 read and agreed to.

Annex agreed to.

A Paper was appended to the Report.

Resolved, That the Report be the Tenth Report of the Committee to both Houses.

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

[Adjourned to a day and time to be fixed by the Chair.