



House of Lords
House of Commons

Joint Committee on Statutory
Instruments

Twelfth Report of Session 2021–22

Drawing special attention to:

*Proceeds of Crime Act 2002 (References to Financial Investigators)
(England and Wales and Northern Ireland) Order 2021 (S.I. 2021/640)*

*Immigration (Restrictions on Employment and Residential
Accommodation) (Prescribed Accommodation) (Prescribed
Requirements and Codes of Practice) and Licensing Act 2003 (Personal
and Premises Licences) (Forms) Order 2021 (S.I. 2021/689)*

*Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations
2021 (S.I. 2021/922)*

*Ordered by the House of Lords to be
printed 20 October 2021*

*Ordered by the House of Commons
to be printed 20 October 2021*

**HL 80
HC 56-xii**

Published on 22 October 2021
by authority of the House of Lords
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-Beedoe](#) (*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 20 October 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 three 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. 2021/640: Reported for unjustifiable delay and for requiring elucidation

Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales and Northern Ireland) Order 2021

1.1 The Committee draws the special attention of both Houses to this Order on the grounds that there was an unjustifiable delay in laying it before Parliament and that it requires elucidation in one respect.

1.2 This Order, which is subject to the negative resolution procedure, specifies which accredited financial investigators can exercise which functions under the Proceeds of Crime Act 2002 (POCA).

1.3 The Order was made on 25 May 2021 and laid on 7 June 2021. The Committee asked the Home Office to explain the reason for the delay between the making of this instrument and laying it before Parliament. In a memorandum printed at Appendix 1, the Department recognises that there was an unacceptable gap between the making and publication of the instrument and explains that it is taking steps to ensure the prompt laying and publication of instruments in future. As the Committee noted in its First Special Report of Session 2017–19, *Transparency and Accountability* in Subordinate Legislation at paragraphs 2.8 to 2.14, laying before Parliament is an important part of access to justice and the rule of law and there is no reasonable excuse for delay in such a simple administrative step. The Committee considers that, as a general rule, and unless there are exceptional circumstances, a delay of 10 calendar days or more will amount to an unjustifiable delay. **The Committee accordingly reports this instrument for unjustifiable delay in laying before Parliament, acknowledged by the Department.**

1.4 The list of organisations whose accredited financial investigators can exercise POCA functions includes government departments. Articles 2(2) and (3) provide that a reference to a member of staff of a government department includes a reference to a member of staff of any executive agency of that department and that where reference is made to a member of staff of the department at or above a particular grade, the reference to a member of staff at the executive agency is to a member of staff of the same grade “or a grade equivalent to that grade”. The Committee asked the Department to explain by reference to what criteria equivalence of grades is to be determined, and if the determination involves the application of discretion, by the person making that decision, to identify the vires for conferring that discretion. In its memorandum, the Department asserts that equivalence of grade as used in this context is not a matter of discretion, but a matter of an objective determination by reference to seniority and responsibility within grade. The Committee finds the methodology described in the Department’s memorandum reassuring, and

accordingly reports article 2 for requiring elucidation, provided by the Department's memorandum.

2 S.I. 2021/689: Reported for defective drafting

Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms) 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 one respect.

2.2 This Order, which is subject to the negative resolution procedure, makes changes to the documents which can be produced to evidence an individual's right to work in the United Kingdom. Article 4(5) (inserted 4C), article 4(6) (inserted 3B), article 6(2) (inserted 1C) and article 6(3)(b) (inserted 3B and 3C) refer to the "Home Office Employer Checking Service" without definition. The Committee asked the Home Office to explain. In a memorandum printed at Appendix 2 the Department, while asserting that the term is sufficiently clear without definition (a view with which the Committee does not agree), accepts that there is potential for confusion because the instrument uses a new defined term "Home Office online right to work checking service" in article 4(2) (which refers to an electronic check). The Department undertakes to consider how this can best be clarified at the next suitable legislative opportunity. **The Committee accordingly reports articles 4(5), 4(6), 6(2) and 6(3) for defective drafting, partly acknowledged by the Department.**

3 S.I. 2021/922: Reported for defective drafting

Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2021

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

3.2 These Regulations, which are subject to the made affirmative resolution procedure, amend the Belarus (EU Exit) (Sanctions) Regulations 2019 (S.I. 2019/600) ("the 2019 Regulations") to add new measures to the sanctions regime for Belarus. Regulation 17(2) amends regulation 23(1) of the 2019 Regulations which prohibits the making available of restricted goods or restricted technology to persons connected with Belarus or for use in Belarus. One of the effects of the amendment is to remove restricted technology from the scope of the prohibition. In a memorandum printed at Appendix 3 the Foreign, Commonwealth and Development Office confirms that this is an error and a further set of regulations has been made to correct the error. **The Committee accordingly reports regulation 17(2) for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 20 October 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. 2021/1029 | Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 |
| S.I. 2021/1073 | Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 3) Regulations 2021 |

Draft Instruments requiring affirmative approval

- | | |
|--------------|--|
| Draft | Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) (No. 2) Order 2021 |
| Draft | Green Gas Support Scheme Regulations 2021 |

Instruments subject to annulment

- | | |
|----------------------|---|
| S.I. 2021/717 | Care and Support (Charging and Assessment of Resources) (Amendment) Regulations 2021 |
| S.I. 2021/720 | Motor Vehicles (International Motor Insurance Card) (Amendment) Regulations 2021 |
| S.I. 2021/723 | Prosecution of Offences Act 1985 (Specified Proceedings) (Coronavirus) (Amendment) (No. 2) Order 2021 |
| S.I. 2021/732 | Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No. 2) Regulations 2021 |
| S.I. 2021/774 | Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 |
| S.I. 2021/807 | Universal Credit (Coronavirus) (Restoration of the Minimum Income Floor) Regulations 2021 |
| S.I. 2021/809 | Official Controls (Extension of Transitional Periods) Regulations 2021 |
| S.I. 2021/810 | Tax Credits and Child Benefit (Miscellaneous and Coronavirus Amendments) Regulations 2021 |

S.I. 2021/811	Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021
S.I. 2021/812	Benchmarks (Provision of Information and Documents) Regulations 2021
S.I. 2021/814	Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021
S.I. 2021/822	Technical Education Certificate (England) Regulations 2021
S.I. 2021/823	Somalia (Sanctions) (EU Exit) (Amendment) Regulations 2021
S.I. 2021/831	Road Vehicles (Display of Registration Marks) (Amendment) Regulations 2021
S.I. 2021/834	Human Medicines (Amendment) (EU Exit) Regulations 2021
S.I. 2021/872	Public Procurement (Agreement on Government Procurement) (Amendment) (No. 2) Regulations 2021
S.I. 2021/873	Medical Devices (Amendment) (EU Exit) Regulations 2021
S.I. 2021/966	Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 9) Regulations 2021

Draft Instruments subject to annulment

Draft	Bracknell Forest (Electoral Changes) Order 2021
Draft	East Staffordshire (Electoral Changes) Order 2021
Draft	London Borough of Havering (Electoral Changes) Order 2021
Draft	Medway (Electoral Changes) Order 2021
Draft	Norfolk (Electoral Changes) Order 2021
Draft	Rochdale (Electoral Changes) Order 2021
Draft	St. Albans (Electoral Changes) Order 2021

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2021/724	Criminal Finances Act 2017 (Commencement No. 5) Regulations 2021
S.I. 2021/736	Domestic Abuse Act 2021 (Processing of Victims' Data for Immigration Purposes) (Extension of Relevant Period) Regulations 2021

S.I. 2021/740	Finance Act 2020, Schedule 11 (Appointed Day) (Northern Ireland) Regulations 2021
S.I. 2021/752	Pension Schemes Act 2021 (Commencement No. 2) Regulations 2021
S.I. 2021/764	Financial Guidance and Claims Act 2018 (Commencement No. 8) Regulations 2021
S.I. 2021/769	Access to the Countryside (Coastal Margin) (Maldon to Salcott) Order 2021
S.I. 2021/771	Immigration Act 2014 (Commencement No. 7) Order 2021
S.I. 2021/819	Offensive Weapons Act 2019 (Commencement No. 1) Regulations 2021

Appendix 1

S.I. 2021/640

Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales and Northern Ireland) Order 2021

1. In a letter of 21 July 2021, the Committee requested a memorandum on the following points:

1. Explain the reason for the delay between the making of this instrument and laying it before Parliament.

2. In relation to article 2(3): (a) explain by reference to what criteria equivalence of grades is to be determined, and (b) if the determination involves the application of discretion, by the person making that decision, identify the vires for conferring that discretion.

2. In relation to the first point, the Order was signed earlier than intended before the cross-Government agreed laying slot which had been allocated. The Department accepts this meant that there was a longer period than usual between the Minister making the Order and it being laid before Parliament. The Department can only apologise and is taking steps to remind all those teams involved with the preparation and processing of SIs of the importance of ensuring prompt laying and publication of an SI. The Department will also seek to ensure that SIs are not sent up too early for ministerial signature in the future or, where there is a need to do so, clearer guidance is given to Private Office as to when the SI should be signed so that it is not done too far in advance of the cross-Government agreed laying slot.

3. The Department recognises that there was an unacceptable gap between when the SI was made and when it was published, but as it did not come into force until 28 June 2021 we are reassured that those affected will have had sufficient opportunity to respond to the changes made.

4. The second point relates to article 2(3) of this Order. The purpose of article 2(3) is to make clear, where the Order makes reference to the grade of a member of staff of a department, that reference should include a reference to a member of staff of the same, or equivalent, grade of a member of staff of an executive agency of that department.

5. The specified grades of departments are set out in Schedule 1 to this Order. Eight departments with grades attached are named. Those departments will have a variety of executive agencies with, potentially, different grade structures, which may depend on the extent of functional independence from the department in question. Some executive agencies will have the same grade structure as their parent department, but some will not.

6. In the Department's view, equivalence of grade as used in this context is not a matter of discretion, but a matter of an objective determination. That equivalence is determined on the grounds of relative seniority and responsibility within grade, considering how the grades in the executive agency concerned map across to the department in question. The Department considers that it is objectively possible to determine the equivalence of grades

between the parent department and its agency. In any event, however, the grades used are in all circumstances to be either a set grade or above (or the relevant equivalent).

7. Additionally, occasionally both departments and executive agencies change the naming of their grades and merge grades. Where that happens, it is not done for the purpose of this legislation, but is part of a wider exercise. Providing for equivalence, as this Order has done, enables that change to take place without needing a legislative change, because the issue of grade equivalence is an objective matter on which a determination can be made.

8. As a matter of practice, the National Crime Agency (“the NCA”) exercises the function of training and accreditation of financial investigators under section 3 of the Proceeds of Crime Act. The NCA makes decisions on whether to train and accredit individual financial investigators to a certain level.

9. In the unlikely event that the NCA had accredited a member of staff of an executive agency, but it was objectively clear that they could not be of the same grade as the departmental member of staff, they would not fall within article 2(3) of the Order and would not be able to exercise the functions under the provisions set out in Schedule 1 to the Order. The Order provides for named grades as a minimum, and, in the event that an accredited person was objectively of a more junior grade than the departmental equivalent, article 2(3) makes it clear that the reference would be to a member of staff who was more senior than the departmental equivalent.

10. The Department would draw the Committee’s attention to the fact that other orders made by the Secretary of State under section 453 of the Proceeds of Crime Act 2002 (for example, the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (S.I. 2009/975) and the Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015 (S.I. 2015/1853)) make similar provision in regard to members of staff (other than constables) of police forces who have a grade equivalent to the rank of inspector. No issues have arisen in relation to either of these Orders in practice.

Home Office

27 July 2021

Appendix 2

S.I. 2021/689

Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms) Order 2021

1. In a letter of 21 July 2021, the Committee requested a memorandum on the following point:

Indicate where “Home Office Employer Checking Service” (referred to in article 4(5) (inserted 4C), article 4(6) (inserted 3B), article 6(2) (inserted 1C) and article 6(3)(b) (inserted 3B and 3C)) is defined.

2. “Home Office Employer Checking Service” is not a defined term. It was first inserted into the Immigration (Restrictions on Employment) Order 2007 (S.I. 2007/3290) by S.I. 2014/1183 without definition on the basis that it was a sufficiently clear term – as its name suggests, it is a form of helpline whereby an employer can request verification from the Home Office that individuals have the right to work in the United Kingdom, for example if they have an outstanding application or appeal and so they cannot present valid documentary evidence of their right to work. It was also referenced and given further context in the statutory Code of Practice issued under section 19 of the Immigration, Asylum and Nationality Act 2006, and brought into force by S.I. 2014/1183.

3. Similarly, the term was used without definition in the Illegal Working Compliance Orders Regulations 2016 (S.I. 2016/1058).

4. In S.I. 2021/689 the term is used in essentially the same sense in amendments to S.I. 2007/3290 and S.I. 2016/1058 (albeit that the Home Office Employer Checking Service here is given the additional function of verifying certain documentation issued by immigration authorities in the Crown Dependencies).

5. The Department accepts that the clarity of the legislation may, however, been undermined because S.I. 2021/689 also uses a similar, new term “Home Office online right to work checking service”. This refers to a different service whereby a person can choose to share with their actual or potential employer a code which enables the latter to search Home Office systems to check whether that person is allowed to work in the United Kingdom and, if so, the nature of any restrictions on that person’s right to do so. It is therefore an electronic check as opposed to a check carried out by a member of Home Office staff. A definition of this service is inserted into S.I. 2007/3290 by article 4 of S.I. 2021/689.

6. Both terms are also referenced and given further context by the revised Code of Practice on preventing illegal working issued under section 19 of the Immigration, Asylum and Nationality Act 2006, and brought into force by S.I. 2021/689.

7. The Department accepts that the use of two similar terms in the same instrument in quick succession, one with a statutory definition and one without, could be liable to cause confusion. The Department will consider how this can best be clarified at the next suitable

legislative opportunity.

Home Office

27 July 2021

Appendix 3

S.I. 2021/922

Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2021

1. On 15 September 2021, the Committee requested that the Foreign, Commonwealth and Development Office (“FCDO”) submit a memorandum on the following point:

Regulation 17 amends regulation 23(1) of the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019, which prohibits the making available of restricted goods or restricted technology to persons connected with Belarus or for use in Belarus. One of the effects of the amendment is to remove restricted technology from the scope of the prohibition. Is this narrowing of the prohibition intentional, or was it done in error?

2. The FCDO is grateful for the Committee’s consideration of this instrument. The removal of the prohibition on making restricted technology available to a person connected with Belarus or for use in Belarus is an error. This prohibition should apply to restricted technology as well as to the specified types of goods.
3. The FCDO apologises for this error. The FCDO intends to make further regulations as soon as possible to replace the Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2021, correcting this error.

Foreign, Commonwealth and Development Office

21 September 2021

Formal Minutes

Wednesday 20 October 2021

Virtual meeting

Members present:

Jessica Morden (*in the Chair*)

Baroness D’Souza	Paul Holmes
Dr James Davies	Baroness Newlove
Baroness Gale	Baroness Scott of Needham Market
Lord Haskel	

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 3.2 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 3.

Resolved, That the Report be the Twelfth 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 till Wednesday 27 October at 3.40 p.m.]