



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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# Thirtieth Report of Session 2021–22

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**Drawing special attention to:**

*Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022*  
(S.I. 2022/94)

*Universal Credit and Jobseeker's Allowance (Work Search and Work  
Availability Requirements—limitations) (Amendment) Regulations 2022*  
(S.I. 2022/108)

*Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022*  
(S.I. 2022/194)

*Ordered by the House of Lords  
to be printed 30 March 2022*

*Ordered by the House of Commons  
to be printed 30 March 2022*

**HL 189**  
**HC 56-xxx**

Published on 1 April 2022  
by authority of the House of Lords  
and the House of Commons

## Joint Committee on Statutory Instruments

### Current membership

House of Lords

[Lord Beith](#) (*Liberal Democrat*)

[Lord Chartres](#) (*Crossbench*)

[Baroness D'Souza](#) (*Crossbench*)

[Baroness Gale](#) (*Labour*)

[Lord Haskel](#) (*Labour*)

[Baroness Newlove](#) (*Conservative*)

[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](http://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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# Contents

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|                                                                                                                                      |           |
|--------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Instruments reported</b>                                                                                                          | <b>3</b>  |
| 1 S.I. 2022/94: Reported for defective drafting                                                                                      | 3         |
| Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022                                                             | 3         |
| 2 S.I. 2022/108: Reported for failure to comply with proper legislative practice                                                     | 4         |
| Universal Credit and Jobseeker's Allowance (Work Search and Work Availability Requirements—limitations) (Amendment) Regulations 2022 | 4         |
| 3 S.I. 2022/194: Reported for defective drafting                                                                                     | 4         |
| Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022                                                                    | 4         |
| <b>Instruments not reported</b>                                                                                                      | <b>5</b>  |
| <b>Annex</b>                                                                                                                         | <b>5</b>  |
| <b>Appendix 1: Memorandum from the Department for Environment, Food and Rural Affairs</b>                                            | <b>7</b>  |
| S.I. 2022/94                                                                                                                         | 7         |
| Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022                                                             | 7         |
| <b>Appendix 2: Memorandum from the Department for Work and Pensions</b>                                                              | <b>9</b>  |
| S.I. 2022/108                                                                                                                        | 9         |
| Universal Credit and Jobseeker's Allowance (Work Search and Work Availability Requirements—limitations) (Amendment) Regulations 2022 | 9         |
| <b>Appendix 3: Memorandum from the Foreign, Commonwealth and Development Office</b>                                                  | <b>11</b> |
| S.I. 2022/194                                                                                                                        | 11        |
| Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022                                                                    | 11        |
| <b>Formal Minutes</b>                                                                                                                | <b>12</b> |



# Instruments reported

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At its meeting on 30 March 2022 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. 2022/94: Reported for defective drafting

### *Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022*

1.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in two respects.

1.2 These Regulations, which are subject to the negative resolution procedure, make provision for the implementation of the Ivory Act 2018. The Schedule specifies institutions permitted to carry out expert assessment of items for which an application for an exemption certificate is made. The Committee asked the Department for Environment, Food and Rural Affairs to explain why this instrument does not contain precise descriptions and unique identifiers for the institutions listed in the Schedule. In a memorandum printed at Appendix 1, the Department acknowledges that the absence of a precise description of each institution may cause confusion and undertakes to correct this error by amending instrument at the earliest opportunity. **The Committee accordingly reports the Schedule for defective drafting, acknowledged by the Department.**

1.3 Regulation 4(5) requires the applicant (where there has been a previous application for an exemption certificate) to provide the reference number of the previous unsuccessful application or the number of any revoked exemption certificate. The Committee asked the Department to explain how a current owner who does not know those numbers (for example, because they were gifted or inherited the item) is expected to comply with the obligation that they “must provide” the number of the previous application or the number of the revoked exemption certificate relating to the item. In its memorandum, the Department refers to a method for ascertaining those numbers and to guidance to the Ivory Act which indicates that where an owner cannot track down the number of a previous application or is uncertain whether the item has had a previous exemption certificate, the owner may proceed with an application by stating that there has been no previous application. That may be so, but the fact remains that regulation 4(5) is drafted as an absolute obligation – the applicant must provide the relevant number where there has been a previous application. The regulation contains no qualification to that obligation, for example, that the relevant number must be provided only where known after reasonable investigation. **The Committee accordingly reports regulation 4(5) for defective drafting.**

## 2 S.I. 2022/108: Reported for failure to comply with proper legislative practice

### ***Universal Credit and Jobseeker's Allowance (Work Search and Work Availability Requirements—limitations) (Amendment) Regulations 2022***

**2.1 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.**

2.2 These Regulations, which are subject to the negative resolution procedure, amend the Universal Credit Regulations 2013 and the Jobseeker's Allowance Regulations 2013. They reduce the period for which jobseekers may be permitted to look for work only in their chosen field from 3 months to 4 weeks. The Regulations were laid on 7 February 2022 and came into force on 8 February 2022. The Committee asked the Department for Work and Pensions whether it had anything to add to its explanation in paragraph 3.2 of the Explanatory Memorandum as to why this instrument breached the 21-day rule. In a memorandum printed at Appendix 2 the Department explains that these Regulations were part of a multifaceted package of initiatives and “the urgency is necessary to allow the Department to promote opportunities in any sector for claimants more quickly. Any delay—even the usual 21 days—would have had a negative impact on the Department's ability to achieve the target of getting half a million people into jobs by June...”. The Committee refers to its First Special Report of Session, 2017–19, *Transparency and Accountability in Subordinate Legislation* at paragraphs 2.18 to 2.23. The Committee stresses the importance of compliance with the 21-day rule, which is designed to protect those affected by changes in the law made by subordinate legislation from being subject to the effect of the changes before they have had a reasonable opportunity to understand the effects and what they must do to satisfy any requirements. A desire to satisfy Government targets will not generally be regarded as justification for breach of the 21-day rule. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice.**

## 3 S.I. 2022/194: Reported for defective drafting

### ***Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022***

**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 procedure, make amendments to the Russia (Sanctions) (EU Exit) Regulations 2019 (“the 2019 Regulations”). Regulation 12 amends regulation 64 of the 2019 Regulations which is concerned with the issue of licences by the Treasury. Although the introductory words of regulation 12 suggest that paragraph (d) of that regulation is intended to operate as an amendment to regulation 64, paragraph (d) is a freestanding provision without anything to indicate that the text of the provision is to be inserted into regulation 64. In a memorandum printed at Appendix [], the Foreign, Commonwealth and Development Office acknowledges that the provision should operate as an amendment to regulation 64 rather than as a freestanding provision, and indicates that it will be corrected at the earliest opportunity. **The Committee accordingly reports regulation 12(d) for defective drafting, acknowledged by the Department.**

# Instruments not reported

At its meeting on 30 March 2022 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. Numbers  | S.I. Title                                                                                                                                               |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| S.I. 2022/319 | Judicial Pensions Regulations 2022                                                                                                                       |
| S.I. 2022/362 | Coronavirus Act 2020 (Delay in Expiry: Inquests, Courts and Tribunals, and Statutory Sick Pay) (England and Wales and Northern Ireland) Regulations 2022 |

### Draft Instruments requiring affirmative approval

| S.I. Numbers | S.I. Title                                                                 |
|--------------|----------------------------------------------------------------------------|
| Draft        | Industrial Training Levy (Construction Industry Training Board) Order 2022 |
| Draft        | Licensing Act 2003 (Platinum Jubilee Licensing Hours) Order 2022           |

### Instruments subject to annulment

| S.I. Numbers  | S.I. Title                                                                                                                                                          |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| S.I. 2022/46  | Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022                                                                              |
| S.I. 2022/196 | Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2022 |
| S.I. 2022/197 | Houses in Multiple Occupation (Specified Educational Establishments) (England) (Amendment) Regulations 2022                                                         |
| S.I. 2022/198 | Housing (Approval of Code of Management Practice) (Student Accommodation) (England) Order 2022                                                                      |
| S.I. 2022/200 | Direct Payments to Farmers (Allocation of Payment Entitlements from the National Reserve) (England) Regulations 2022                                                |
| S.I. 2022/204 | Oil and Gas Authority (Levy and Fees) Regulations 2022                                                                                                              |
| S.I. 2022/206 | Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 3) Regulations 2022                                                           |
| S.I. 2022/211 | Air Traffic Management (Regulation (EU) No 716/2014) (Amendment) Regulations 2022                                                                                   |
| S.I. 2022/218 | Cremation (England and Wales) (Amendment) Regulations 2022                                                                                                          |
| S.I. 2022/228 | Saint Mawes Pier and Harbour Revision Order 2022                                                                                                                    |
| S.I. 2022/235 | Immigration and Asylum Act 1999 (Part 5 Exemption: Licensed Sponsors) Order 2022                                                                                    |
| S.I. 2022/236 | Guardian's Allowance Up-rating Regulations 2022                                                                                                                     |

|                      |                                                                                                                                                                                                                |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>S.I. 2022/242</b> | Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms), etc., Regulations 2022 |
| <b>S.I. 2022/246</b> | Certification Officer (Amendment of Fees) Regulations 2022                                                                                                                                                     |
| <b>S.I. 2022/247</b> | Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2022                                                                                                                                 |
| <b>S.I. 2022/257</b> | Universal Credit (Energy Rebate Scheme Disregard) Regulations 2022                                                                                                                                             |
| <b>S.I. 2022/260</b> | Universal Credit and Employment and Support Allowance (Terminal Illness) (Amendment) Regulations 2022                                                                                                          |

# Appendix 1: Memorandum from the Department for Environment, Food and Rural Affairs

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**S.I. 2022/94**

## ***Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022***

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following points:

*1. Explain why this instrument does not contain precise descriptions and unique identifiers for the institutions listed in Schedule 1.*

*2. Explain how a current owner who does not know the numbers required by regulations 4(5)(a) and (b) (for example, because they were gifted or inherited the item) is expected to comply with the obligation that they “must provide” the number of the previous application or the number of the revoked exemption certificate relating to the item.*

2. This instrument does not contain precise descriptions and unique identifiers for the institutions listed in Schedule 1 because we believed that the name of each institution, being unique within the United Kingdom, was sufficient to identify it. We were advised by each institution of its official name, to be used in prescribing the institution for the purposes of the Ivory Act. In the light of your question, we now recognise that there is a possibility of confusion in relation to some of the institutions listed in Schedule 1. In particular, it appears that in the name ‘Glasgow Museums’, is a brand name for Glasgow museums belonging to a community interest company, rather than a specific entity. We agree that the absence of a precise description of each institution could cause confusion. We undertake to correct this by laying an amending SI at the earliest opportunity.

3. Section 3(3)(b) of the Ivory Act 2018 requires an expert assessor to whom an application for an exemption certificate for an ivory item is referred to notify the Secretary of State as to whether or not, in the assessor’s opinion, the item satisfies the conditions in section 2(2)(a) and (b) of the Act. That assessment will inevitably involve some element of subjective judgement. In order to remove any element of perceived bias, the policy is that a fresh application for an exemption certificate should be sent to a fresh expert assessor wherever possible. In order to put this policy into practice, regulation 4(5)(a) and (b) of these Regulations requires an owner who is making a fresh application for an exemption certificate to provide the reference number of the previous application or, in the case of a revoked certificate relating to the item, the certificate number. The Department would then be able to avoid sending the fresh application to an assessor associated with a previous failed application.

4. A current owner who does not know the numbers required by regulations 4(5)(a) and (b) would be able to contact the Animal and Plant Health Agency (‘APHA’) with a description of the item and the name of the previous owner, which should enable APHA to track down the previous application and supply the numbers. In a case where an owner

cannot track down the number of a previous application or is uncertain whether or not the item has had an exemption certificate in the past, the owner may proceed with an application by answering ‘no’ to the question about a previous application. This has been made clear in the Guidance to the Act which reads:

*If you do not know if your item already has an exemption certificate or a revoked exemption certificate or if a previous application for an exemption certificate has been made, then you can answer no to these questions in the application process, provided you have taken all reasonable steps to find it out. You can then proceed with making an application for an exemption certificate. This application will cost £250.*

**Department for Environment, Food and Rural Affairs**

**23 March 2022**

## Appendix 2: Memorandum from the Department for Work and Pensions

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S.I. 2022/108

### ***Universal Credit and Jobseeker's Allowance (Work Search and Work Availability Requirements—limitations) (Amendment) Regulations 2022***

1. The Committee has asked the Department for Work and Pensions for a memorandum on the following point:

*Does the Department have anything to add to its explanation in paragraph 3.2 of the Explanatory Memorandum as to why this instrument breached the 21-day rule?*

2. The Committee will be aware that the Secondary Legislation Scrutiny Committee (SLSC) raised a similar question (among others) as to whether the Regulations, which came into force the day after they were laid, were urgent enough to warrant a breach of the 21-day rule. The Department provided written answers to SLSC's initial request for further information about these Regulations. Following receipt of those, SLSC invited Baroness Stedman-Scott, Parliamentary Under Secretary of State at DWP, Jonathan Mills, Director-General of Labour Market Policy and Implementation, DWP, and Hilton Leslie, Deputy Director, DWP Legal Advisers, Government Legal Department, to attend an oral evidence session to provide fuller explanations, which took place on 8 March 2022. Following that evidence session, SLSC drew these Regulations to the special attention of the House in its 33rd Report of Session 2021–2022.<sup>1</sup>

3. In its initial request for further information, SLSC asked, “Do you have anything to add to the justification for breaching the 21-day rule set out in the Explanatory Memorandum?”. The Department provided the following response:<sup>2</sup>

*Following the Prime Minister's announcement of the Way to Work campaign on 27 January we have had to make the changes quickly to deliver on his commitment. As Plan B restrictions have lifted, we recognised the opportunity to respond quickly to maximise the current labour market and levels of vacancies. The urgency is necessary to allow the Department to promote opportunities in any sector for claimants more quickly. Any delay—even the usual 21 days—would have had a negative impact on the Department's ability to achieve the target of getting half a million people into jobs by June, which is designed to help the prosperity and wellbeing of unemployed people.*

*This is particularly pressing given the cost-of-living rise, of which our claimants will be among those feeling the sharpest impact. By encouraging claimants to widen their employment opportunities, we can best support them during the crisis. The national economic and recruitment situation requires significant movement of claimants into work to support our Government's economic*

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1 HOUSE OF LORDS Secondary Legislation Scrutiny Committee 33rd Report of Session 2021–22 (“SLSC's Report”). See paragraphs 4 and 5.

2 See Appendix 1 to the SLSC's Report, Q7.

*recovery strategy. We need to use every measure possible to enhance our ability to support claimants into work. Given the need to start supporting people as quickly as possible it was important that the regulations were brought into force immediately to ensure our work coaches could get to work.*

4. In its oral evidence to SLSC, the Department gave further evidence that these Regulations were part of a multifaceted package of initiatives.<sup>3</sup> The Department is grateful to the Joint Committee for giving us the opportunity to add to its explanation. The Department has nothing further to add to its written and oral evidence before SLSC on this same issue. SLSC found that the Explanatory Memorandum for this Instrument “did not adequately justify its assertion of urgency and failed to include any practical explanation of the policy context or how achievement of the target would be assessed”.<sup>4</sup> The Department is considering SLSC’s report carefully for Explanatory Memoranda in the future.

### **Department for Work and Pensions**

**22 March 2022**

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<sup>3</sup> See paragraph 8 of SLSC’s Report.

<sup>4</sup> See paragraph 22 of SLSC’s Report.

## Appendix 3: Memorandum from the Foreign, Commonwealth and Development Office

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**S.I. 2022/194**

### ***Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2022***

1. In its letter of 16th March 2022, the Committee asked the Foreign, Commonwealth and Development Office (“FCDO”) for a memorandum on the following point:

*Explain the intended effect of regulation 12(d). In particular, confirm that it is intended to operate as an amendment to regulation 64 of the Russia (Sanctions) (EU Exit) Regulations 2019, and that it is defectively drafted in failing to indicate how the text of the provision is to be inserted into that regulation.*

2. The FCDO is grateful for the Committee’s consideration of this instrument and responds as follows:

*The intention of regulation 12(d) of the Russia (Sanctions) (EU Exit) (Amendment) (No.2) Regulations 2022 (“the No. 2 Regulations”) is to give effect to new Part A1 of Schedule 5 to the Russia (Sanctions) (EU Exit) Regulations 2019 (“the 2019 Regulations”). The FCDO accepts that the provision should operate as an amendment to regulation 64 of the 2019 Regulations, rather than as a freestanding provision in the No. 2 Regulations. This will be corrected at the earliest opportunity.*

**Foreign, Commonwealth & Development Office**

**21 March 2022**

# Formal Minutes

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**Wednesday 30 March 2022**

Virtual meeting

## **Members present**

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Dr James Davies

Baroness D’Souza

Baroness Gale

Lord Haskel

John Lamont

Baroness Newlove

Lord Smith of Hindhead

Liz Twist

## **Report consideration**

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 Thirtieth 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.

## **Adjournment**

Adjourned till Wednesday 27 April at 3.40 p.m.