



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Thirty-seventh Report of Session 2017–19

Drawing special attention to:

Animal Health and Welfare (Miscellaneous Amendments) (England) (EU Exit) Regulations 2018 (S.I. 2018/1033)

Zootechnical Standards (England) Regulations 2018 (S.I. 2018/1037)

*Ordered by the House of Lords
to be printed 14 November 2018*

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Joint Committee on Statutory Instruments

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House of Lords

[Baroness Bloomfield of Hinton Waldrist](#) (*Conservative*)

[Lord Lexden](#) (*Conservative*)

[Baroness Meacher](#) (*Crossbench*)

[Lord Morris of Handsworth](#) (*Labour*)

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

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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. 73, available on the Internet via www.parliament.uk/jcsi.

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

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 Jeanne Delebarre (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

Contacts

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Instruments reported

At its meeting on 14 November 2018 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 two 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. 2018/1033: Reported for failure to conform to proper drafting practice

Animal Health and Welfare (Miscellaneous Amendments) (England) (EU Exit) Regulations 2018

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that in one respect they do not conform to proper drafting practice.

1.2 These Regulations amend four instruments. Four provisions state that text is to be “omitted” but one states that text is to be “deleted”. It is not apparent that the two expressions are intended to have different meanings. In a memorandum printed at Appendix 1, the Department for Environment, Food and Rural Affairs accepts that the use of the two expressions is inconsistent, and regrets the oversight. It is an important principle of statutory interpretation that a change of language implies a change of meaning, and the drafter of an instrument should therefore ensure consistency of language within the instrument. **The Committee accordingly reports these Regulations for failing to conform to proper drafting practice, acknowledged by the Department.**

2 S.I. 2018/1037: Reported for failure to conform to proper legislative practice

Zootechnical Standards (England) Regulations 2018

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to conform to proper legislative practice in two related respects.

2.2 These Regulations implement in England Regulation (EU) 2016/1012. Regulation 2 designates the Secretary of State as the competent authority for the purpose of the Regulation. Regulation 3 states that the Regulation is enforced by the competent authority. Regulation 6 states that Article 47(1) of the Regulation makes provision in relation to non-compliance with the Regulation, including by setting out a list of particular actions which the competent authority may take in the event of non-compliance.

2.3 Article 39 of the Regulation requires Member States to designate the competent authorities for the verification of compliance of operators with the rules provided for in the Regulation, and for performing other official activities to ensure the application of those rules. It appeared to the Committee that this provision made regulation 3 redundant, as the Regulation itself provides that the competent authority is responsible for enforcing

compliance. Regulation 6 is more clearly redundant as it merely states what the Regulation says. The Committee asked the Department for Environment, Food and Rural Affairs to explain the reason for including Regulations 3 and 6 as apparently operative provisions.

2.4 In a memorandum printed at Appendix 2, the Department states that it did not consider that the designation of the competent authority was in itself sufficient to allocate responsibility in a manner that was entirely clear. The inclusion of regulation 6 was to comply with the requirement to lay down the penalties for infringements of the Regulation by indicating the enforcement action available to the Secretary of State.

2.5 The Committee does not find these answers persuasive. It considers that the Regulation itself makes it clear that enforcement is the responsibility of the competent authority, and regulation 6 makes nothing clear as it merely describes Article 39 of the Regulation. As it made clear in its First Special Report of the Session 2013–14, provisions which have no legal effect should not be presented as if they were operative provisions. **The Committee accordingly reports regulations 3 and 6 for failing to conform to proper legislative practice.**

Instruments not reported

At its meeting on 14 November 2018 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Draft instruments requiring affirmative approval

Draft S.I.	Trade Barriers (Revocation) (EU Exit) Regulations 2018
Draft S.I.	Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018
Draft S.I.	European Research Infrastructure Consortium (Amendment) (EU Exit) Regulations 2018
Draft S.I.	Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018
Draft S.I.	Competition (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Takeovers (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Postal and Parcel Services (Amendment etc.) (EU Exit) Regulations 2018
Draft S.I.	Accounts and Reports (Amendment) (EU Exit) Regulations 2018
Draft S.I.	Central Securities Depositories (Amendment) (EU Exit) Regulations 2018
Draft S.I.	Mental Health (Northern Ireland) (Amendment) Order 2018
Draft S.I.	Employment Rights (Amendment) (EU Exit) (No. 2) Regulations 2018
Draft S.I.	Employment Rights (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2018

Instruments subject to annulment

S.I. 2018/1078	Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018
S.I. 2018/1081	Airport Charges (Amendment) (EU Exit) Regulations 2018
S.I. 2018/1088	Airports (Groundhandling) (Amendment) (EU Exit) Regulations 2018
S.I. 2018/1089	Environmental Noise (England) (Amendment) Regulations 2018
S.I. 2018/1091	Civil Aviation Act 1982 (Amendment) (EU Exit) Regulations 2018
S.I. 2018/1092	Feed-in Tariffs and Contracts for Difference (Amendment) (EU Exit) Regulations 2018

- S.I. 2018/1099** Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 2) Order 2018
- S.I. 2018/1101** Further Education (Recognition of Professional Qualifications) (Amendment) Regulations 2018
- S.I. 2018/1102** Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations 2018
- S.I. 2018/1103** Occupational Pension Schemes (Governance) (Amendment) Regulations 2018
- S.I. 2018/1104** Merchant Shipping (Fees) Regulations 2018
- S.I. 2018/1105** Cultural Tests (Films, Television Programmes and Video Games) (Amendment) (EU Exit) Regulations 2018

Draft instruments subject to negative procedure

- Draft S.I.** Babergh (Electoral Changes) Order 2018
- Draft S.I.** Copeland (Electoral Changes) Order 2018
- Draft S.I.** Mid Suffolk (Electoral Changes) Order 2018
- Draft S.I.** Rutland (Electoral Changes) Order 2018
- Draft S.I.** Warwick (Electoral Changes) Order 2018

Instrument not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2018/1097** Pensions Act 2004 (Code of Practice) (Authorisation and Supervision of Master Trusts) Appointed Day Order 2018

Appendix 1

S.I. 2018/1033

Animal Health and Welfare (Miscellaneous Amendments) (England) (EU Exit) Regulations 2018

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

Explain why this instrument “deletes” some text and “omits” other text, instead of using consistent language throughout.

2. The Department accepts that the use of “delete” in one instance is inconsistent with the general use of “omit” elsewhere. The Department regrets this oversight.

Department for Environment, Food and Rural Affairs

30 October 2018

Appendix 2

S.I. 2018/1037

Zootechnical Standards (England) Regulations 2018

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

Explain the reason for including regulations 3 and 6 as apparently operative provisions rather than including their contents (if considered necessary) in the Explanatory Note or in a footnote. (The Department is referred to in the Committee’s First Special Report of the Session 2013–14.)

2. These Regulations implement Regulation (EU) 2016/1012 of the European Parliament and of the Council on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof (“the EU Regulation”).

Regulation 3

3. The purpose of these Regulations is to implement the EU Regulation in England. Specifically, the Regulations provide detail on how the EU Regulation is to be enforced domestically, and make provision related to enforcement activity.
4. The purpose of regulation 3 of the Regulations (read with regulation 2) is to give the Secretary of State responsibility for enforcing the EU Regulation in England. It was not considered that the designation of the Secretary of State as Competent Authority by regulation 2 was in itself sufficient to allocate enforcement responsibility in a manner that was entirely clear.

Regulation 6

5. Regulation 52 of the EU Regulation requires Member States to lay down the penalties applicable to infringements of the Regulation. The purpose of regulation 6 was to meet this requirement, in the absence of civil or criminal penalties (for which the Department had decided not to make provision), by indicating the enforcement action available to the Secretary of State.

Department for Environment, Food and Rural Affairs

30 October 2018