



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Twenty-third Report  
of Session 2010-12**

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**Drawing special attention to:**

*Jobseeker's Allowance (Employment, Skills and Enterprise Scheme)  
Regulations 2011 (S.I. 2011/917)*

*Child Trust Funds (Amendment No. 2) Regulations 2011 (S.I. 2011/992)*

*Social Security (Contributions) (Amendment No. 4) Regulations 2011  
(S.I. 2011/1000)*

*Residential Property Tribunal Procedures and Fees (England) Regulations  
2011 (S.I. 2011/1007)*

*Traffic Signs (Amendment) Regulations and General Directions 2011  
(S.I. 2011/1040)*

*Freedom of Information (Removal of References to Public Authorities)  
Order 2011 (S.I. 2011/1042)*

*Ordered by the House of Lords to be printed  
15 June 2011*

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# Joint Committee on Statutory Instruments

## Current membership

### House of Lords

Baroness Berridge (*Conservative*)  
Lord Clinton-Davis (*Labour*)  
Baroness Eccles of Moulton (*Conservative*)  
Lord Kennedy (*Labour*)  
Earl of Mar and Kellie (*Liberal Democrat*)  
Lord Rees-Mogg (*Crossbench*)  
Baroness Stern (*Crossbench*)

### House of Commons

Mr George Mudie MP (*Labour, Leeds East*) (Chairman)  
Mr Robert Buckland MP (*Conservative, South Swindon*)  
Michael Ellis MP (*Conservative, Northampton North*)  
John Hemming MP (*Liberal Democrat, Birmingham, Yardley*)  
Mr Ian Liddell-Grainger MP (*Conservative, Bridgwater and West Somerset*)  
Toby Perkins MP (*Labour, Chesterfield*)

## 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, available on the Internet via [www.parliament.uk/jcsi](http://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 The Stationery Office 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 John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jennifer Steele (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons*); Allan Roberts, Nicholas Beach and Peter Milledge (*Lords*).

## Contacts

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## Instruments reported

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At its meeting on 15 June 2011 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 six 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. 2011/917: Reported for defective drafting

*Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (S.I. 2011/917)*

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

1.2 These Regulations make provision for the introduction of the Employment, Skills and Enterprise Scheme in which claimants may be required to participate as a condition for entitlement to certain benefits.

1.3 Regulations 9 and 10 amend S.I. 1996/207 by introducing provisions numbered in a way which means that the non-textual modifications previously made to that instrument by S.I. 2010/1222 (to introduce the Work for Your Benefit Pilot Scheme) need to be amended. But the Regulations do not include any such amendments. The Department for Work and Pensions in a memorandum printed at Appendix 1 acknowledges that there is an error in this respect. **The Committee accordingly reports regulations 9 and 10 for defective drafting, acknowledged by the Department.**

1.4 Regulation 11(4) amends S.I. 1996/2890 in a manner that assumes (wrongly) that non-textual modifications made to that instrument by S.I. 2010/1222 were textual amendments. In the memorandum the Department accepts that it would have been preferable had the drafting recognised that S.I. 2010/1222 proceeded by non-textual modification rather than textual amendment. **The Committee accordingly reports regulation 11(4) for defective drafting, acknowledged in principle by the Department.**

1.5 Regulation 17 inserts into regulation 7 of S.I. 1999/991 a paragraph (8ZB) which, because it is widely drafted, renders unnecessary the non-textual modification of that regulation by S.I. 2010/1222 which treats a paragraph (8ZA) as being inserted in regulation 7. Regulation 17 also assumes (wrongly) that that non-textual modification was a textual amendment. In addition the regulation includes an unnecessary paragraph (a) and, in the text of the paragraph (8ZB) that it inserts, a repetition of the words "in regulation": the Department in the memorandum accepts that those last two slips were made. **The Committee accordingly reports regulation 17 for defective drafting, acknowledged in part by the Department.**

1.6

## 2 S.I. 2011/992: Reported for defective drafting

*Child Trust Funds (Amendment No. 2) Regulations 2011 (S.I 2011/992)*

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

2.2 These Regulations amend regulation 10 of S.I. 2004/1450 which imposes on account providers obligations to provide annual statements in relation to child trust funds (“annual statements”) and statements when child trust funds are transferred to a different provider (“transfer statements”).

2.3 Regulation 2(5) amends various provisions of paragraph (4) of regulation 10 by substituting references to “the relevant date” for the existing references to “the statement date”. Paragraph (4) applies both to annual statements and to transfer statements. The notion of a “relevant date” is defined in the paragraph (2A) added to regulation 10 by regulation 2(2) in the context of annual statements. But it is nowhere defined in relation to transfer statements. In a memorandum printed at Appendix 2 it is asserted by Her Majesty’s Revenue and Customs that, in the context of transfer statements, “the relevant date” can only sensibly be construed as meaning “the transfer date”. But the Regulations do not contain anything to confer that meaning on the term in relation to transfer statements. **The Committee accordingly reports regulation 2(5) for defective drafting.**

2.4 The paragraph (6) substituted in regulation 10 by regulation 2(8) provides a relaxation of the requirement to produce an annual statement where one of two conditions is met “at a relevant date”. Paragraph (2A) defines a “relevant date” in relation to an annual statement as a date not later than 12 months after a previous defined event (namely the opening of the account or the production of the most recent statement). It would appear surprising if paragraph (6) were intended to apply if either of the conditions in it were met on any date not later than 12 months after the previous defined event: that would mean (for instance) that, if no subscriptions were made to the child trust fund on the very next day after the previous defined event, there would in many cases be no requirement for an annual statement to be produced. The Committee therefore suspected that paragraph (6) wrongly assumed that a “relevant date” was the date 12 months after the previous defined event and not (as is in fact the case) any date after it. Paragraph 4 of the memorandum explains that flexibility in the date is in fact intended but fails to address the surprising potential outcome indicated above. The Committee is therefore of the view that a limit on flexibility was inadvertently omitted. **The Committee accordingly reports regulation 2(8) for defective drafting.**



































