



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Eighteenth Report  
of Session 2017–19**

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**Drawing special attention to:**

*Homelessness (Review Procedure etc.) Regulations 2018 (S.I. 2018/223)*

*Ordered by the House of Lords  
to be printed 28 March 2018*

*Ordered by the House of Commons  
to be printed 28 March 2018*

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HC 542-xviii**

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and the House of Commons

## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

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

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

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

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

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

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

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

#### House of Commons

[Derek Twigg MP](#) (*Labour, Halton*) (Chair)

[Dan Carden MP](#) (*Labour, Liverpool, Walton*)

[Vicky Foxcroft MP](#) (*Labour, Lewisham, Deptford*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

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

[Lee Rowley MP](#) (*Conservative, North East Derbyshire*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

### 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](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 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 Mike Winter (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane 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 0AA. The telephone number for general inquiries is: 020 7219 2026; the Committee's email address is: [jcsi@parliament.uk](mailto:jcsi@parliament.uk).



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# Instruments reported

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At its meeting on 28 March 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 one of those considered. The Instrument and the ground for reporting it is given below. The relevant Departmental memorandum is published as an appendix to this report.

## 1 S.I. 2018/223: Reported for defective drafting

### *Homelessness (Review Procedure etc.) Regulations 2018*

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

1.2 Regulation 9(1)(a) states that notice of a decision on a review under section 203(3) of the Housing Act 1996 must be given to the applicant “three weeks beginning with the day on which the request for the review is made ...” (and other provisions of regulation 9 use the same formula but with different numbers of weeks). This is not grammatical, nor does it expressly achieve the purpose of the enabling power – section 203(7) of the Housing Act 1996 – which allows regulations to make provision “as to the period within which the review must be carried out and notice given of the decision”. The Committee asked the Ministry of Housing, Communities and Local Government to explain. In a memorandum printed as an Appendix, the Department confirms that the intention was to provide a period within which the review must be carried out and notice given of the decision, and asserts that regulation 9(1) has that effect. The Committee does not agree. Regulation 9(1) could have stated expressly that notice is to be given within the period specified; or it could simply have stated that the period for the purpose of section 203 is a specified number of weeks; but it does neither one nor the other. Stating that notice must be given “a period of X weeks” is not the same as stating that it must be given within that period. The Committee accepts that the courts will probably be driven to give the provision the meaning asserted by the Department; but instruments should be drafted clearly and precisely and not in a form which relies on the courts and other readers to apply a beneficial construction. **The Committee accordingly reports regulation 9(1) for defective drafting.**

## Instruments not reported

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At its meeting on 28 March 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

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### Draft instruments requiring affirmative approval

- Draft S.I.** Crime and Courts Act 2013 (Commencement No. 18) Order 2018
- Draft S.I.** Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018
- Draft S.I.** Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
- Draft S.I.** Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018
- Draft S.I.** East Suffolk (Local Government Changes) Order 2018
- Draft S.I.** East Suffolk (Modification of Boundary Change Enactments) Regulations 2018
- Draft S.I.** Employment Rights Act 1996 (NHS Recruitment—Protected Disclosure) Regulations 2018
- Draft S.I.** Renewable Heat Incentive Scheme Regulations 2018
- Draft S.I.** Transport Levying Bodies (Amendment) Regulations 2018
- Draft S.I.** West Suffolk (Local Government Changes) Order 2018
- Draft S.I.** West Suffolk (Modification of Boundary Change Enactments) Regulations 2018

### Instruments subject to annulment

- S.I. 2018/222** Motorways Traffic (England and Wales) (Amendment) Regulations 2018
- S.I. 2018/225** Motorways Traffic (Scotland) (Amendment) Regulations 2018
- S.I. 2018/245** Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018
- S.I. 2018/246** Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) (Amendment) Regulations 2018
- S.I. 2018/256** Borough of Weymouth and Portland (Change to Year of Election) Order 2018
- S.I. 2018/257** Social Security (Contributions) (Amendment No. 2) Regulations 2018

- S.I. 2018/258** Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018
- S.I. 2018/265** Housing (Right to Buy) (Designated Rural Areas and Designated Regions) (England) Order 2018
- S.I. 2018/269** London Government (London Fire Commissioner and Policing) (Amendment) Regulations 2018
- S.I. 2018/280** Social Security (Invalid Care Allowance) (Amendment) Regulations 2018
- S.I. 2018/307** Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations 2018
- S.I. 2018/358** Child Trust Funds (Amendment) Regulations 2018
- S.I. 2018/363** Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 2018
- S.I. 2018/365** Tax Credits and Childcare (Miscellaneous Amendments) Regulations 2018

### **Instrument subject to annulment (Northern Ireland)**

- S.R. 2018/37** Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations (Northern Ireland) 2018

### **Instruments not subject to Parliamentary proceedings not laid before Parliament**

- S.I. 2018/241** Higher Education and Research Act 2017 (Commencement No. 3) Regulations 2018
- S.I. 2018/251** Housing and Planning Act 2016 (Commencement No. 7 and Transitional Provisions) Regulations 2018
- S.I. 2018/252** Neighbourhood Planning Act 2017 (Commencement No. 4 and Transitional Provisions) Regulations 2018

# Appendix

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## S.I. 2018/223

### ***Homelessness (Review Procedure etc.) Regulations 2018***

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

*In regulation 9(1)(a) to (d), is it the intention that notice must be given within the period specified? If so, why is this not spelt out?*

2. The intention is that the notice must be given within the period specified.
3. Section 203(3) of the Housing Act 1996 provides that the authority, or as the case may be either of the authorities, concerned shall notify the applicant of the decision on the review. Section 203(7) provides that “provision may be made by regulations as to the period within which the review must be carried out and notice given of the decision”. We consider the effect of regulation 9(1) is to prescribe that period.

**Ministry of Housing, Communities and Local Government**

**20 March 2018**