



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Twentieth Report of Session 2017–19

Drawing special attention to:

*Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018
(S.I. 2018/306)*

*Ordered by the House of Lords
to be printed 25 April 2018*

*Ordered by the House of Commons
to be printed 25 April 2018*

**HL 127
HC 542-xx**

Published on 27 April 2018
by authority of the House of Lords
and the House of Commons

Joint Committee on Statutory Instruments

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House of Lords

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

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

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

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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 Mike Winter (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 25 April 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. 2018/306: Reported for defective drafting

Greenhouse Gas Emissions Trading Scheme (Amendment) 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 2(3) amends regulation 32A of the Greenhouse Gas Emissions Trading Scheme Regulations 2012. Sub-paragraph (e) substitutes a new regulation 32A(8), which defines “application date” for the purpose of that regulation. In the case where “relevant activities” (as defined) are due to commence in the scheme year 2015 [or 2016], the definition refers to the date on which the 2015 activities [or 2016 activities] are due to commence. The expressions “2015 activities” and “2016 activities” are not defined in the 2012 Regulations, although they were before the amendment made by regulation 2(3)(b) of this instrument, which replaces them with the expression “the relevant activities”. The Committee asked the Department for Business, Energy and Industrial Strategy why the definitions of the two expressions were revoked when they are used in the substituted regulation 32A(8).

1.3 In a memorandum printed as an Appendix, the Department accepts that it could have used an alternative phrase in regulation 32A(8), such as “the activities” or “these activities”, but states that it is satisfied that the meaning is clear and unambiguous.

1.4 The Committee does not agree with the Department that the meaning of the undefined expressions would be clear and unambiguous to a reader of the amended instrument without knowledge of its history. Where legislation uses an expression which has no obvious everyday meaning, that expression needs to be defined if the reader is to know precisely what is intended. In this case, the Department could have used an alternative expression along the lines it now suggests, or it could have retained the original definitions; the Committee fails to understand why the Department did not use one of those approaches, and accordingly **reports regulation 2(3) for defective drafting.**

Instruments not reported

At its meeting on 25 April 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.	Immigration (Alcohol Licensing and Late Hours Catering) (Scotland) Regulations 2018
Draft S.I.	Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2018
Draft S.I.	Welsh Ministers (Transfer of Functions) Order 2018
Draft S.I.	Bournemouth, Dorset and Poole (Structural Changes) Order 2018
Draft S.I.	Dorset (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2018
Draft S.I.	European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2018
Draft S.I.	Somerset West and Taunton (Local Government Changes) Order 2018
Draft S.I.	Somerset West and Taunton (Modification of Boundary Change Enactments) Regulations 2018
Draft S.I.	Cash Ratio Deposits (Value Bands and Ratios) Order 2018
Draft S.I.	Package Travel and Linked Travel Arrangements Regulations 2018
Draft S.I.	Restriction on the Preparation of Adoption Reports (Amendment) Regulations 2018

Instruments subject to annulment

S.I. 2018/330	Immigration and Nationality (Fees) Regulations 2018
S.I. 2018/358	Child Trust Funds (Amendment) Regulations 2018
S.I. 2018/362	Energy Performance of Buildings (England and Wales) (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
S.I. 2018/366	Railways (Penalty Fares) Regulations 2018

S.I. 2018/378	Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions (Commonhold Land) Order 2018
S.I. 2018/384	Health Service Medicines (Price Control Penalties and Price Control Appeals Amendment) Regulations 2018
S.I. 2018/390	Personal Protective Equipment (Enforcement) Regulations 2018
S.I. 2018/409	Short-term Holding Facility Rules 2018
S.I. 2018/410	Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2018
S.I. 2018/411	Detention Centre (Amendment) Rules 2018
S.I. 2018/428	Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018
S.I. 2018/429	Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (England) (Amendment) Regulations 2018
S.I. 2018/430	Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018
S.I. 2018/440	Family Procedure (Amendment) Rules 2018

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2018/263	Wireless Telegraphy (Exemption and Amendment) (Amendment) Regulations 2018
S.I. 2018/300	Education and Adoption Act 2016 (Commencement No. 4) Regulations 2018
S.I. 2018/382	Digital Economy Act 2017 (Commencement No. 4) Regulations 2018
S.I. 2018/438	Welfare Reform and Work Act 2016 (Commencement No. 6 and Transitional Provision) Regulations 2018

Appendix

S.I. 2018/306

Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2018

1. In its letter to the Department of 28th March 2018, the Joint Committee requested a memorandum on the following point:

Explain why regulation 2(3)(b) revokes the definitions of “the 2015 activities” and “the 2016 activities” when those expressions are used in paragraph (8)(a)(i) and (ii), as substituted by regulation 2(3)(e).

2. Prior to amendment, the Greenhouse Gas Emissions Trading Scheme Regulations 2012 used the defined terms “the 2015 activities” and “the 2016 activities” in a series of provisions which allowed for a derogation for aviation operators from requirements (such as to monitor, report and surrender emission allowances) in respect of flights between the EEA and other regions/countries. In each provision which allowed for the derogation, the activities commenced in the two years of 2015 and 2016 were referred to specifically by using the defined terms. The current Regulations extend that derogation so that it will additionally apply to activities commenced in each year from 2017 to 2023. To give effect to that, the concept of “the 2015 activities” and “the 2016 activities” has been replaced with the umbrella term “the relevant activities” which covers the years from 2015 to 2023. The definitions relating to specific years have consequently been removed. The Department felt that following the approach of the 2012 Regulations prior to amendment and referring to each year specifically in each provision allowing for the derogation would have been cumbersome.

3. In referring to the years 2015 and 2016 specifically where it was necessary to do so in paragraph (8)(a)(i) and (ii), the Department used the phrases “the 2015 activities” and “the 2016 activities” as one-off descriptors. In each case, the meaning of the phrase is clear without the need for further definition because it relates back to a longer description earlier in the same sentence. The Department accepts that using an alternative phrase, such as “the activities” or “these activities”, would have avoided the question of whether a definition is necessary, given that the phrase had been defined when used more widely in the 2012 Regulations. However, the Department is satisfied that in paragraph 8(a)(i) and (ii) the activities to which these expressions refer is clear and unambiguous, and that the provision achieves its purpose.

Department for Business, Energy and Industrial Strategy

9 April 2018