



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Twenty-second Report of Session 2017–19

Drawing special attention to:

Animals (Scientific Procedures) Act 1986 (Fees) Order 2018 (S.I. 2018/375)

Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 (S.I. 2018/389)

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Joint Committee on Statutory Instruments

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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 9 May 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. 2018/375: Reported for defective drafting

Animals (Scientific Procedures) Act 1986 (Fees) Order 2018

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.

1.2 The purpose of this Order is twofold: to increase the amount of fees and to change the basis for charging fees from years beginning on 1 April to years beginning on 6 April. Article 2(1) of this Order states that, in addition to the fees payable under the Animals (Scientific Procedures) Act 1986 (Fees) Order 2015, in respect of the period of twelve months beginning with 6 April 2018 the holder of a relevant licence must pay an additional fee which is to be determined in accordance with the provisions which follow. Article 2 of the 2015 Order prescribed the fees payable by the holder of a relevant licence in respect of the period of twelve months beginning on 1 April in any year. Article 4 of this Order revokes the 2015 Order on 6 April 2018, the date this Order came into force.

1.3 The Committee asked the Home Office how fees are payable under the 2015 Order on or after 6 April, this question applying in particular in the case of a person who does not hold a licence before that date. In a memorandum printed at Appendix 1, the Department states that it believes that the requirement of article 2 of the 2015 Order triggered a requirement to pay the specified annual fee from 1 April 2018 for any licence holder who holds a licence during the following year and that this requirement was not extinguished by the revocation of that Order due to the operation of section 16(1)(c) of the Interpretation Act 1978. The Department asserts that this would mean that a person applying for a licence after 6 April 2018 is required to pay the fee specified in the 2015 Order as well as the additional fee specified in this Order.

1.4 Section 16(1)(c) of the Interpretation Act 1978 provides that the repeal of an enactment does not, unless the contrary intention appears, affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment. The Committee accepts that a person who held a relevant licence on 1 to 5 April was required to pay a fee in respect of the current year in accordance with the 2015 Order, and that that requirement is not affected by the revocation of that Order. In the case of a person who is granted a licence on or after 6 April 2018, however, no obligation or liability has been incurred under that Order (because the Order no longer had the force of law when the licence was first held) so it must follow that section 16(1)(c) cannot apply. Such a person is therefore required to pay only the additional fee for the year ending on 5 April 2019 (or, arguably, no fee at all).

1.5 Normal ways of achieving the Department's stated policy would have been to revoke the 2015 Order as from 1 April 2019, or to revoke it now but subject to an express

saving provision. Failure to use either approach means that the Order fails to achieve the Department's stated policy, and **the Committee accordingly reports the Order for defective drafting.**

2 S.I. 2018/389: Reported for failure to comply with proper legislative practice

Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018

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 two respects.

2.2 These Regulations are made by the Secretary of State under section 2(2) of the European Communities Act 1972. The preamble to the instrument states that the Secretary of State is a Minister designated for the purposes of that section in relation to measures relating to safety as regards appliances burning gaseous fuels.

2.3 The first 19 regulations and the first five Schedules of this instrument deal with matters covered by that designation. Regulation 20 and Schedule 6, however, amend unrelated statutory instruments relating to lifts, recreational craft, and radio equipment respectively. The three instruments concerned were also made under section 2(2) and their preambles each cited a relevant designation in relation to the relevant matters.

2.4 In a memorandum printed at Appendix 2, the Department for Business, Energy and Industrial Strategy accepts that the further designations should have been cited in the preamble to this instrument. **The Committee accordingly reports the preamble to this instrument for failure to comply with proper legislative practice, acknowledged by the Department.**

2.5 The Committee also asked the Department whether the subject heading to this instrument should have included a reference to telecommunications as well as to consumer protection and health and safety. The Department agrees that it could validly have done so, but points out that the amendment made by this instrument does relate to health and safety. As the heading of the amended instrument contained only the word "TELECOMMUNICATIONS" the Committee considers that the heading to this instrument should at least have included that word. **The Committee accordingly reports the subject heading of this instrument for failure to comply with proper legislative practice.**

Instruments not reported

At its meeting on 9 May 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.	Offshore Combustion Installations (Pollution Prevention and Control) (Amendment) Regulations 2018
Draft S.I.	Breaching of Limits on Ticket Sales Regulations 2018
Draft S.I.	Electronic Presentment of Instruments (Evidence of Payment and Compensation for Loss) Regulations 2018
Draft S.I.	Scotland Act 2016 and Wales Act 2017 (Onshore Petroleum) (Consequential Amendments) Regulations 2018

Instruments subject to annulment

S.I. 2018/493	Local Government Pension Scheme (Amendment) Regulations 2018
S.I. 2018/498	Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment No. 2) Regulations 2018
S.I. 2018/506	Network and Information Systems Regulations 2018
S.I. 2018/507	Export (Penalty) (Amendment) Regulations 2018
S.I. 2018/509	First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2018
S.I. 2018/510	Plant Health etc. (Fees) (England) (Amendment) Regulations 2018
S.I. 2018/511	Tribunal Procedure (Amendment) Rules 2018
S.I. 2018/514	Oil and Gas Authority (Offshore Petroleum) (Retention of Information and Samples) Regulations 2018

Appendix 1

S.I. 2018/375

Animals (Scientific Procedures) Act 1986 (Fees) Order 2018

1. This Explanatory Memorandum has been prepared by the Home Office at the request of the Joint Committee on Statutory Instruments (“the Committee”) in a letter dated 25 April 2018.

2. The Committee requested a memorandum on the following point:

Given that article 4 revokes the 2015 Order on 6 April 2018, explain how fees are payable under that Order on or after that date as appears to be envisaged by article 2(1). (This question applies in particular in the case of a person who does not hold a licence before that date.)

3. The Home Office believes that the operation of article 2 of the 2015 Order triggered a requirement to pay the specified annual fee from 1st April 2018 for any licence holder who holds a licence during the following year and that this requirement was not extinguished by the revocation of that Order due to the operation of section 16(1)(c) of the Interpretation Act 1978. This would mean that a person applying for a licence after 6 April 2018 is required to pay the fee specified in the 2015 Order as well as the additional fee specified in the 2018 Order.

4. If the Committee requires any further information the Home Office would be happy to provide it.

Home Office

27 April 2018

Appendix 2

S.I. 2018/389

Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018

1. In its letter to the Department of Business, Energy and Industrial Strategy of 25 April 2018, the Joint Committee requested a memorandum on the following points:

1. *Why is there no mention in the preamble of the Secretary of State’s designation in relation to the matters dealt with in the instruments amended by article 20 and Schedule 6?*
2. *Should not the subject headings of this instrument include “TELECOMMUNICATIONS”?*

(a) Why is there no mention in the preamble of the Secretary of State’s designation in relation to the matters dealt with in the instruments amended by article 20 and Schedule 6?

2. On the Committee’s first question, the Department accepts that the Secretary of State designation for matters included in Schedule 6 should have been cited in the preamble to the instrument. The designations do exist (SI 1996/1912 for lifts, SI 1995/2983 for recreational craft, and SI 1999/2788 for radio equipment). The Department thanks the Committee for drawing its attention to the point and apologises for the failure to refer to all the necessary designations, which was an oversight.

(b) Should not the subject headings of this instrument include “TELECOMMUNICATIONS”?

3. On the Committee’s second question, the Department considers that the headings used allow the SI to be classified correctly in accordance with the matter that is most clearly relevant to the subject matter of the SI. The amendment to the Radio Equipment Regulations 2017 specifies a penalty in respect of an offence which is about failure to cooperate with authorities who are evaluating radio equipment, which equipment has to comply with certain essential requirements including health and safety requirements. As such all the amending regulations relate to health and safety. However, the Department accepts that the Radio Equipment Regulations 2017 do have as their heading ‘Telecommunications’ so this heading could have been included.

Department for Business, Energy and Industrial Strategy

1 May 2018