



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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# Twenty-eighth Report of Session 2017–19

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**Drawing special attention to:**

*Water Supply (Water Quality) Regulations 2018 (S.I. 2018/647)*

*Single Source Contract (Amendment) Regulations 2018 (Draft. S.I.)*

*Ordered by the House of Lords  
to be printed 4 July 2018*

*Ordered by the House of Commons  
to be printed 4 July 2018*

## 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*)

[Julia Lopez MP](#) (*Conservative, Hornchurch and Upminster*)

[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, Klara Banaszak, 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 4 July 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. 2018/647: Reported for failure to comply with proper legislative practice

### *Water Supply (Water Quality) Regulations 2018*

1.1 **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 one respect.**

1.2 These Regulations revoke and replace the Water Supply (Water Quality) Regulations 2010. They implement two EU directives on the quality of water intended for human consumption and the protection of health with regard to radioactive substances in water. The Regulations are primarily concerned with the quality of water supplied by water undertakers (and water supply licensees) whose areas are wholly or mainly in Wales but they also apply in parts of England and consequently are laid simultaneously in Parliament and the National Assembly for Wales.

1.3 The Regulations refer to compliance with various standards (ISO (International Organization for Standardization), European and British). The Committee asked the Wales Office to explain why the instrument does not give an internet link nor an address where a hard copy of the standards is available for inspection free of charge.

1.4 In a memorandum printed at Appendix 1, the Department accepts that an internet link and an address where a hard copy of the standards is available for inspection free of charge should have been given and undertakes to include wording to that effect in the Explanatory Note.

1.5 The Committee is grateful for this undertaking given the importance the Committee attaches to the free accessibility of documents referred to in legislation (see First Special Report of Session 2017–19, Transparency and Accountability in Subordinate Legislation (paragraphs 4.1 to 4.8)). **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

## 2 Draft. S.I.: Reported for failure to comply with proper legislative practice

### *Single Source Contract (Amendment) 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 one respect.**

2.2 These Regulations amend the Single Source Contract Regulations 2014 which, together with Part 2 of the Defence Reform Act 2014, create a regulatory framework for “single source contracts” (contracts which are not subject to a legal obligation to be advertised and competed) in the defence area. The amendments made by regulations 3 and 5 correct errors in the 2014 Regulations that were identified by the Committee in its 15th Report of Session 2014–15. The amendments made by regulations 4 and 6 reflect new policy relating to categories of defence contract to which the regulatory framework is not to apply.

2.3 As the instrument corrects drafting errors as well as introducing new provisions, the Committee asked the Ministry of Defence if it had agreed with the Statutory Instrument Registrar whether free replacement copies ought to be provided in accordance with paragraph 4.7.6 of Statutory Instrument Practice (5th Edition, November 2017). That paragraph provides-

*“If your Department wants to introduce new amending provisions at the same time as it is correcting a defective instrument, it should include both the new and correcting provisions within the one instrument. You should then agree with the SI Registrar whether or not to provide free replacement copies.”*

2.4 In a memorandum printed at Appendix 2, the Ministry of Defence explains that it did consult with the Statutory Instrument Registrar and that the Registrar’s view was that free replacement copies should be provided. The Registrar is quoted as saying:

*“... the correcting provisions form a significant part of what is a very short two-page instrument. Of the six operative provisions, two are generic (regulations 1 and 2), whilst regulations 4 and 6 contain new provisions and regulations 3 and 5 correct the defects identified. On the grounds of proportionality but also in the interests of transparency, these Regulations would fall within the scope of the free issue procedure.”*

2.5 However, the Ministry of Defence decided not to provide free copies because it considers that, “the overriding purpose” of the instrument is “to give effect to... [new] policy,... not to remedy the deficiencies”.

2.6 This is despite the fact that paragraph 4.7.6 of Statutory Instrument Practice requires Departments to reach agreement with the SI Registrar as to whether the free issue procedure should be used.

2.7 The Committee considers that a primary purpose of this requirement is to ensure consistency in the operation of the free issue procedure across Departments.

2.8 Where the Registrar’s view is that an instrument falls within the scope of the free issue procedure but the Department decides nonetheless not to provide free copies, this creates a significant risk that the procedure does not operate consistently. The risk increases if the Department’s decision is based on different criteria from those applied by the Registrar. The present case is an example of this. The Registrar’s view was based on (a) the proportion of the instrument that corrects deficiencies, and (b) the interests of transparency. By contrast, the Ministry’s decision appears to have been based on its assessment that the new provisions are more important than those which correct deficiencies.

2.9 The Committee has no doubt that the Registrar reached the correct view that free replacement copies should have been provided, and is surprised that the Ministry of Defence has chosen to override it.

2.10 The Ministry's decision may mean, moreover, that recipients of the 2014 Regulations are treated differently from recipients of other instruments in comparable circumstances.

**2.11 The Committee accordingly reports these Regulations for failure to comply with proper legislative practice.**

## Instruments not reported

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At its meeting on 4 July 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 instrument requiring affirmative approval

**Draft S.I.** Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018

### Instruments subject to annulment

- S.I. 2018/706** Water Supply (Water Quality) (Amendment) Regulations 2018
- S.I. 2018/707** Private Water Supplies (England) (Amendment) Regulations 2018
- S.I. 2018/709** Civil Registration Fees (Data-Sharing) Regulations 2018
- S.I. 2018/715** Regulation of Investigatory Powers (Juvéniles) (Amendment) Order 2018
- S.I. 2018/717** M6 Motorway (Junctions 16 to 19) (Variable Speed Limits) Regulations 2018
- S.I. 2018/729** Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2018
- S.I. 2018/730** Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2018
- S.I. 2018/734** Banking Act 2009 (Fees) Regulations 2018
- S.I. 2018/739** Environment and Rural Affairs (Miscellaneous Revocations) Order 2018

### Instrument not subject to Parliamentary proceedings not laid before Parliament

**S.I. 2018/727** Coroners and Justice Act 2009 (Commencement No. 18) Order 2018

# Appendix 1

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## S.I. 2018/647

### ***Water Supply (Water Quality) Regulations 2018***

1. On 20 June 2018, the Joint Committee on Statutory Instruments requested a memorandum on the following point:

*In relation to the various standards referred to in the instrument (ISO, European and British), explain why the instrument does not give an internet link nor an address where a hard copy is available for inspection free of charge?*

2. The Welsh Government's response to the Committee's point is outlined below.

3. The point is accepted and the following wording will be inserted as the penultimate paragraph to the Explanatory Note in the online copies and a correction slip issued for the published copies:

Digital and hard copies of the British standards referred to in these Regulations published by the British Standards Institution can be purchased online from the BSI Group at <http://www.bsigroup.com>. Hard copies of the standards can also be purchased by post from the BSI Group Customer Services Department at 389 Chiswick High Road, London W4 4AL (Tel: 0345 086 9001).

Digital and hard copies of the ISO standards referred to in these Regulations can be purchased online from the International Organization for Standardization (<http://www.iso.org>). They can also be purchased online from the BSI Group internet address mentioned above and in hard copy form from the BSI Group at the postal address mentioned above.

Copies of the British and ISO standards referred to in these Regulations are available for inspection free of charge during normal office hours at the offices of the Welsh Government at the address mentioned below.

**Wales Office**

**26 June 2018**

## Appendix 2

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### Draft. S.I.

#### ***Single Source Contract (Amendment) Regulations 2018***

1. The Joint Committee on Statutory Instruments (JCSI) requested a memorandum in response to the following point in relation to the above mentioned instrument:

*As the draft instrument corrects drafting errors and introduces new provisions, did the Department agree with the Statutory Instrument Registrar whether or not to provide free replacement copies (see paragraph 4.7.6 of Statutory Instrument Practice (5th Edition, November 2017))?*

2. The Department has engaged with the Statutory Instrument Registrar on the issue of whether or not to provide free replacement copies. The Registrar took the view that “the main purpose of these Regulations may be to give effect to the policy on exclusions rather than to correct drafting defects in the 2014 Regulations. However, despite the fact that the defects may not have been identified as having caused concern for users, the correcting provisions still form a significant part of what is a very short two-page instrument (excluding the Explanatory Note on page three). Of the six operative provisions, two are generic (regulations 1 and 2), whilst regulations 4 and 6 contain new provisions and regulations 3 and 5 correct the defects identified.” He therefore concluded that “on the grounds of proportionality but also in the interests of transparency, that these Regulations would fall within the scope of the free issue procedure”. The Registrar indicated that the department is entitled to take a different view and reflect this in the explanatory memorandum for the instrument, flagging the risk of criticism from the JCSI.

3. Our view, however, remains that the Defence Secretary was required by section 39(3) and (4)(a) of the DRA 2014 to review both Part 2 of the Act and the regulations by 18 December 2017. He has done so, and a number of significant changes have been identified which could improve the operation on the framework. These are discussed in a white paper to be published shortly. The need to amend the exclusions for international co-operative programmes and intelligence activities, and add an exclusion for new contracts, was identified as a matter that was urgently required, and so this SI has been prepared to give effect to that. The other amendments identified in the consultation are still under consideration and will be the subject of another instrument which we intend to make later in 2018, if possible. The defects in drafting which are remedied by regulations 3 and 5 of this instrument were identified by the JCSI in 2014, and Ministers undertook to remedy them when a convenient opportunity arose, and so that is being done in this instrument. However, the overriding purpose of this instrument remains to give effect to the policy on exclusions, not to remedy the deficiencies, which were not identified in the consultation as matters which cause concern or confusion to users, and would not themselves have warranted a separate instrument. Therefore, the Department decided not to make the instrument available free of charge.

**Ministry of Defence**

**26 June 2018**