



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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# Thirty-first Report of Session 2017–19

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**Drawing special attention to:**

*Equine Identification (England) Regulations 2018 (S.I. 2018/761)*

*Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018 (S.I. 2018/764)*

*Ordered by the House of Lords  
to be printed 5 September 2018*

*Ordered by the House of Commons  
to be printed 5 September 2018*

**HL 184  
HC 542-xxxi**

Published on 7 September 2018  
by authority of the House of Lords  
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-Beddoe](#) (*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*)

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[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 Jeanne Delebarre (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

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At its meeting on 5 September 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. 2018/761: Reported for defective drafting

### *Equine Identification (England) 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 three discrete respects.

1.2 Regulation 17 provides an exemption from the requirements of the Regulations in respect of certain wild or semi-wild equines which are identified in the lists or stud book kept by one of four bodies. Paragraph (3) of regulation 17 requires such a body, on request from the Secretary of State, to provide the Secretary of State with a copy of that list or stud book within 14 days of the date of the request. Although a failure to comply with other requirements imposed by the Regulations is an offence, no provision is included whereby a contravention of this requirement attracts any sanction.

1.3 In a memorandum printed at Appendix 1, the Department for Environment, Food and Rural Affairs states that it did not wish to create a sanction in respect of the requirement. It undertakes to amend the provision to remove the requirement at the earliest opportunity.

1.4 Regulation 29 provides that a person is guilty of an offence if the person knowingly—

- a) implants, or attempts to implant, into an equine, a device which—
  - i) is not a genuine transponder; or
  - ii) has previously been inserted into, or used for, another animal; or
  - iii) tampers with, or otherwise alters, a transponder with intent to deceive.

1.5 Given the absence of any paragraph (b), it appeared to the Committee that either a provision had been accidentally omitted or sub-paragraph (iii) was intended to be read as paragraph (b). The Department confirms that the latter is the case, and undertakes to correct the error at the next available opportunity.

1.6 Regulation 36 provides that, subject to regulations 32 and 37, a person who is guilty of an offence under the Regulations is liable, on summary conviction, to a fine. Regulation 37 enables an enforcing authority to impose a civil sanction instead of bringing criminal proceedings, but regulation 32 deals with criminal proceedings for an offence alleged to have been committed by a partnership or unincorporated association; it in no way qualifies the provisions of regulation 36. The Department states that it wanted to make clear on the face of the Regulations that an unincorporated association could be subject to the penalties in regulation 36. On reflection, it appears to accept that the drafting is inappropriate. It undertakes to review regulation 36 “when we next amend the

Regulations”. The Committee invites the Department to take into account when it does so the fact that, although regulation 32 can be seen as adding to regulation 36 in that it treats an unincorporated association as a person for relevant purposes, it cannot be seen as detracting from the clear provisions of regulation 36. It is therefore inappropriate to refer to the latter as being subject to the former.

**1.7 The Committee accordingly reports regulations 17(3), 29 and 36 for defective drafting, acknowledged by the Department.** It also notes that the Department appears unsure when it intends to rectify the errors. This could be “at the earliest opportunity”, “at the next available opportunity” or “when we next amend the Regulations”. The Committee considers that the errors should be corrected without delay, and asks the Department to advise it when this is done.

## **2 S.I. 2018/764: Reported for doubt as to whether they are *intra vires***

### ***Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018***

**2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that there is a doubt as to whether they are *intra vires* in one respect.**

2.2 Regulation 11 deals with the service of documents under the Regulations and paragraph (4) provides that, for the purpose of that regulation and section 7 of the Interpretation Act 1978 in its application to that regulation, the proper address in relation to specified categories of person is a particular physical address.

2.3 The Committee considered similar provisions in its Nineteenth Report of this Session (in relation to S.I. 2018/230) and its Twenty-First Report of this Session (in relation to S.I. 2018/437), where it reported its view that such a provision improperly purports to limit the effect of section 7, which is a provision of universal application, and was of doubtful *vires*. The Committee accordingly asked the Department for Transport to explain why regulation 11(4) purports to define proper address for the purposes of section 7 and why, in the light of the Committee’s earlier reports, the Explanatory Memorandum states that there are no matters of concern to the Committee.

2.4 In a memorandum printed at Appendix 2, the Department for Transport states that regulation 11(4) follows a formulation used in many previous instruments and that, as consideration of such provisions by the Statutory Instrument Hub of the Government Legal Department and the Office of Parliamentary Counsel has not yet been completed, it was not thought appropriate to change its long-standing approach. It apologises for omitting to amend the Explanatory Memorandum to refer to the issue.

**2.5 The Committee does not consider that anything in the Department’s response alters the views expressed in its earlier reports, and accordingly reports regulation 11(4) on the ground that there is a doubt as to whether it is *intra vires*.**

## Instruments not reported

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At its meeting on 5 September 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 Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

### Instruments subject to annulment

<b>S.I. 2018/665</b>	Time Off for Public Duties Order 2018
<b>S.I. 2018/780</b>	Transfer of Functions (Parliamentary Constituencies Act 1986) Order 2018
<b>S.I. 2018/781</b>	Scottish Administration (Offices) Order 2018
<b>S.I. 2018/810</b>	Education (Student Loans) (Repayment) (Amendment) (No. 3) Regulations 2018
<b>S.I. 2018/816</b>	Cableway Installations Regulations 2018
<b>S.I. 2018/825</b>	Trade Marks Regulations 2018
<b>S.I. 2018/827</b>	Combined Authorities (Spatial Development Strategy) Regulations 2018
<b>S.I. 2018/833</b>	Financial Market Infrastructure Administration (England and Wales) Rules 2018
<b>S.I. 2018/844</b>	National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2018
<b>S.I. 2018/849</b>	Sea Fishing (Enforcement) Regulations 2018
<b>S.I. 2018/851</b>	British Nationality (General) (Amendment) Regulations 2018
<b>S.I. 2018/869</b>	Safety of Sports Grounds (Designation) (Amendment) Order 2018
<b>S.I. 2018/872</b>	Social Security (Scotland) Act 2018 (Consequential Modifications) Order 2018
<b>S.I. 2018/874</b>	Cross-border Railway Services (Working Time) (Amendment) (EU Exit) Order 2018
<b>S.I. 2018/902</b>	Animals (Scientific Procedures) Act 1986 (Fees) (No. 2) Order 2018
<b>S.I. 2018/910</b>	Plant Health (England) (Amendment) (No. 3) Order 2018

- S.I. 2018/911** Non-Domestic Rating (Alteration of Lists, Appeals and Procedure) (England) (Amendment) Regulations 2018
- S.I. 2018/924** Combined Authorities (Spatial Development Strategy) (Amendment) Regulations 2018

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

- S.I. 2018/809** Education Act 2011 (Commencement No. 4 and Transitional and Savings Provisions) (Amendment) Order 2018
- S.I. 2018/836** Visiting Forces (Designation) Order 2018
- S.I. 2018/848** Financial Services (Banking Reform) Act 2013 (Commencement No. 1) (England and Wales) Order 2018
- S.I. 2018/876** Armed Forces Act 2016 (Commencement No. 2) Regulations 2018

# Appendix 1

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## S.I. 2018/761

### ***Equine Identification (England) Regulations 2018***

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on three points.

2. Firstly:

*Regulation 24(4) provides that it is not an offence to fail to provide a copy of a list or a stud book under regulation 17(3). What is the sanction in the event of such a failure, and where is this made clear?*

3. The Department did not wish to create a sanction where the bodies named in regulation 17(1) failed to provide a list or stud book. However, we will amend the regulation to remove the duty at the earliest opportunity.

4. Secondly:

*In regulation 29, should paragraph (a)(iii) be paragraph (b)?*

5. The Department acknowledges that in regulation 29, what is currently “(a)(iii)” should be “(b)”. Again, we will amend the regulation to correct this typographical error at the next available opportunity.

6. Finally:

*Why is regulation 36 expressed to be subject to regulation 32?*

7. Regulation 36 was drafted this way to ensure that unincorporated associations were caught by the penalties in regulation 36. Regulation 36 refers to “a person”, whereas regulation 32 deals separately with offences committed by unincorporated associations, and we wanted to make clear on the face of the Regulations that an unincorporated association could be subject to the penalties in regulation 36. On reflection, this may have been an overly cautious approach, and also arguably creates an inconsistency in how the regulation 36 deals with regulations 31 and 32. We will review this provision when we next amend the Regulations.

**Department for Environment, Food and Rural Affairs**

**17 July 2018**

## Appendix 2

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### S.I. 2018/764

#### ***Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018***

1. By letter dated 11 July 2018, the Joint Committee on Statutory Instruments has requested a memorandum on the following point:

*Why does regulation 11(4) purport to define proper address for the purposes of section 7 of the Interpretation Act 1978, and why, given paragraph 2 of the Committee's 19th Report and paragraph 9 of its 21st Report of this Session, does the Explanatory Memorandum state that there are no matters of concern to the Committee?*

2. This instrument is one of a sequence of instruments relating to type-approval made by the Department in recent months. In common with the rest of those instruments (and, indeed, many previous instruments made over previous years) it makes use of a formulation referencing section 7 of the Interpretation Act 1978 and supplements that provision by specifying that the requirement to be properly addressed under that provision includes a requirement that a particular address must be used.

3. The Department notes the Committee's invitation, in paragraph 2.7 of the Committee's 19th Report of this Session and in paragraph 9.5 of the 21st Report of this Session, to the Statutory Instrument Hub of the Government Legal Department and the Office of Parliamentary Counsel. We understand that this is being taken forward, but that this work has not yet been completed. In the circumstances, it is felt that it would be inappropriate for the Department to pre-empt that review by changing its longstanding approach and introducing what the Department believes would be a new inconsistency into legislation for which it is responsible.

4. The Department is of the view that the power relied upon to make this instrument (section 2(2) of the European Communities Act 1972) provides the requisite *vires* to enable it to supplement the operation of section 7 in this manner in order to give effect to a European obligation.

5. The Department recognises that the Explanatory Memorandum should have drawn this matter to the attention of the Committee. However, the Committee will appreciate that the preparation of statutory instruments and accompanying memoranda necessarily happen some time before they are presented to Parliament. The Committee's views on this point were not known to the Department at the time the documents were being prepared, and a late amendment to the Explanatory Memorandum was, unfortunately, not inserted once the Committee had opined. The Department apologises for this oversight.

**Department for Transport**

**16 July 2018**