



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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# Thirty-third Report of Session 2017–19

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**Drawing special attention to:**

*Freedom of Information (Designation as Public Authority and Amendment)  
Order 2018 (Draft S.I.)*

*Ordered by the House of Lords  
to be printed 10 October 2018*

*Ordered by the House of Commons  
to be printed 10 October 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 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**

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 10 October 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 Draft S.I.: Reported because commencement provision needs the justification provided by the Home Office in its memorandum to the Committee

### *Freedom of Information (Designation as Public Authority and Amendment) Order 2018*

1.1 The Committee draws the special attention of both Houses to this draft Order on the ground that the commencement provision requires the explanation now given by the Home Office.

1.2 Article 2 of the Order designates the National Police Chiefs' Council ('NPCC') as a public authority for the purposes of the Freedom of Information Act 2000 ('the 2000 Act') with respect to the NPCC's functions listed in paragraph (1)(a) to (f) of that article. This will require the NPCC to disclose information relating to the exercise of those functions in response to requests made under the 2000 Act.

1.3 Article 1 would bring the draft Order into force on the day after the day on which it is made. The Committee asked the Home Office to justify this provision in light of the Committee's First Report of Session 2014–15<sup>1</sup> and 26th Report<sup>2</sup> of the current session.

1.4 In each report, the Committee expressed the view that, where an affirmative procedure instrument imposes new duties which are significantly more onerous than before, and requires those affected to adopt different patterns of behaviour, there should be a period between the making of the instrument and its commencement which gives those affected a reasonable chance to adapt to the changes required. The Committee considered that, as a starting assumption, the period should be at least 21 days, and that the Government should provide strong policy reasons to justify any shorter period.

1.5 The Department's detailed response is provided in a memorandum printed as an Appendix. In summary, the Home Office contends that it is appropriate for the draft Order to come into force on the day after the day on which it is made because:

- the additional burdens imposed by the Order on the NPCC are modest;
- the NPCC has had extensive notice of the proposed change in the law and is anxious for it to come into force without delay; and
- the Order will extend the public's right to know, and it would be undesirable to delay opening up the NPCC to further public scrutiny under the 2000 Act.

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1 In relation to the draft Openness of Local Government Bodies Regulations 2014. (HL Paper 4; HC 332-i).

2 In relation to the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2018. (HL Paper 155; HC 542-xxvi.).

1.6 The Committee considers that the Home Office has made out a persuasive case for commencing the Order on the day after it is made. Nonetheless it is disappointed that the justification was not given in the Explanatory Memorandum laid with the draft Order. In section 3.1 of that Memorandum, the Home Office reports that there are no matters of special interest to the Committee – despite the concerns expressed in recent reports of the Committee about affirmative procedure instruments which are brought into force without giving adequate time to those affected to adapt to significant new obligations imposed by the instruments.

**1.7 The Committee therefore reports article 1 of the draft Order on the ground that it requires the justification now provided by the Home Office in its memorandum to the Committee.**

# Instruments not reported

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At its meeting on 10 October 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

<b>Draft S.I.</b>	European Union (Definition of Treaties) (Economic Partnership Agreements and Trade Agreement) (Eastern and Southern Africa States, Southern African Development Community States, Ghana and Ecuador) Order 2018
<b>Draft S.I.</b>	Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority (Establishment and Functions) Order 2018
<b>Draft S.I.</b>	Further Education Bodies (Insolvency) Regulations 2018
<b>Draft S.I.</b>	Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018
<b>Draft S.I.</b>	EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

### Instruments subject to annulment

<b>S.I. 2018/852</b>	Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018
<b>S.I. 2018/939</b>	Export Control (Amendment) (No. 2) Order 2018
<b>S.I. 2018/942</b>	Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018
<b>S.I. 2018/946</b>	Apprenticeships (Modifications to the Specification of Apprenticeship Standards for England) Order 2018
<b>S.I. 2018/947</b>	Architects Act 1997 (Amendments etc.) Order 2018
<b>S.I. 2018/952</b>	Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018
<b>S.I. 2018/960</b>	Prison and Young Offender Institution (Amendment) (No. 2) Rules 2018
<b>S.I. 2018/961</b>	Magistrates' Courts Warrants (Specification of Provisions) (Amendment) Order 2018
<b>S.I. 2018/974</b>	Marketing of Ornamental Plant Propagating Material (Amendment) (England and Wales) Regulations 2018
<b>S.I. 2018/984</b>	Road Vehicles (Approval) (Amendment) Regulations 2018
<b>S.I. 2018/988</b>	Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018

- S.I. 2018/989** Social Security (Claims and Payments) (Social Fund Maternity Grant) (Amendment) Regulations 2018
- S.I. 2018/993** Adoption and Children Act Register (Search and Inspection) (Amendment) Regulations 2018
- S.I. 2018/995** Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018
- S.I. 2018/997** Police and Firefighters' Pensions (Amendment) Regulations 2018
- S.I. 2018/999** Immigration and Nationality (Fees) (Amendment) (EU Exit) (No. 2) Regulations 2018

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

- S.I. 2018/940** Investigatory Powers Act 2016 (Commencement No. 8 and Transitional and Saving Provisions) Regulations 2018
- S.I. 2018/945** Children and Social Work Act 2017 (Commencement No. 5) Regulations 2018
- S.I. 2018/949** Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2018
- S.I. 2018/976** Veterinary Surgeons (Examination of Commonwealth and Foreign Candidates) (Amendment) Regulations Order of Council 2018
- S.I. 2018/977** Veterinary Surgeons and Veterinary Practitioners (Registration) (Amendment) (No. 2) Regulations Order of Council 2018
- S.I. 2018/990** Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018
- S.I. 2018/991** Reserve Forces Act 1996 (Isle of Man) (Amendment) Regulations 2018
- S.I. 2018/992** Reserve Forces (Payments to Employers and Partners) (Isle of Man) Regulations 2018

# Appendix

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## Draft S.I.

### ***Freedom of Information (Designation as Public Authority and Amendment) Order 2018***

1. The Committee has asked the Home Office for a memorandum on the following question:

*Explain, in light of paragraph 5 of the Committee’s First Report of Session 2014–15 and paragraph 4 of its 26th Report of the current Session, the justification for the provision that would bring the Order into force on the day after the day on which it is made.*

2. Paragraph 4 of the Committee’s Twenty-sixth Report of Session 2017–19 states:

*In [the First Report of Session 2014–15], the Committee expressed the view that, where an affirmative procedure instrument imposes new duties which are significantly more onerous than before, and requires those affected to adopt different patterns of behaviour, there should be a period between the making of the instrument and its commencement which gives those affected a reasonable chance to adapt to the changes required. The Committee considered that, as a starting assumption, the period should be at least 21 days, and that the Government should provide strong policy reasons to justify any shorter period.*

3. The Home Office has fully considered the Committee’s Report. However, we consider that there are strong policy reasons for the instrument to come into force on the after the day on which it is made.

4. The Home Office has considered whether the duty imposed on the National Police Chiefs’ Council (‘NPCC’) would impose a significant new burden or require the adoption of different patterns of behaviour. Our view is that the duties imposed on public authorities by the Act are not significantly onerous: see paragraph 10.2 of the draft Explanatory Memorandum. Further, the NPCC has voluntarily complied with the spirit of the Act since its creation in 2015. Its predecessor, the Association of Chief Police Officers, was subject to the Act from 2011. In this particular case, therefore, the changes required in the NPCC’s behaviour will be minimal (primarily consisting of beginning to defend cases before the Information Commissioner and Tribunals if and when requesters bring applications under s.50 of the Act).

5. This draft Order will extend the public’s right to information under s.1 of the Freedom of Information Act 2000 (‘the Act’) so as to include the National Police Chiefs’ Council (‘NPCC’). Both the Home Office and the NPCC wish this to occur as soon as possible. Delaying the Order’s entry into force means delaying the extension of the public’s right to know and delaying the opening of the NPCC up to further public scrutiny. It is this benefit that must be weighed against the modest burdens this Order will impose on the NPCC.

6. Furthermore, the NPCC has been intimately involved in the process leading to this Order, including by way of the formal consultation undertaken pursuant to s.5(3) of the Act last December (see paragraph 8.1 of the draft Explanatory Memorandum). It is aware that the Order is before Parliament. It has had (and continues to have) substantial time to adapt to the changes required. Adding a further delay to the draft Order's entry into force will not serve the stated rationale of this rule, namely to protect the interests of those affected by it. To the contrary: the NPCC has repeatedly expressed its desire to be brought within the Act as quickly as possible.

7. This Order will extend the public's right to know; it will impose modest additional burdens on the NPCC; and the NPCC, who wish this advance to happen as quickly as possible, have had extensive notice of it. In our view, therefore it is appropriate for the Order to come into force the day after the day on which it is made.

8. We hope that this Memorandum helps the Committee and are, of course, happy to provide any further assistance that the Committee requires.

**Home Office**

**11 September 2018**