



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Forty-seventh Report of Session 2017–19

Drawing special attention to:

*Local Government Pension Scheme (Miscellaneous Amendment) Regulations
2018 (S.I. 2018/1366)*

*Ordered by the House of Lords
to be printed 6 February 2019*

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Joint Committee on Statutory Instruments

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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

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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).

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Instruments reported

At its meeting on 6 February 2019 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 grounds for reporting it are given below. The relevant Departmental memorandum, is published as an appendix to this report.

1 S.I. 2018/1366: Reported for defective drafting

Local Government Pension Scheme (Miscellaneous 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 two related respects.

1.2 Regulation 4 substitutes a new regulation 3(5A)(a) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. The substituted provision provides that regulation D11 of the Local Government Pension Scheme Regulations 1995 has effect as if ... (ii) in paragraphs (2)(d) and (4) the references to age 60 were substituted with references to age 55; (iii) in paragraph (3) – (aa) the reference to employing authority were substituted with references to administering authority.

1.3 As the Ministry of Housing, Communities and Local Government explains in a memorandum printed as an Appendix, the purpose of regulation 4(a) is to make minor changes to a provision which saved, with modifications, the application of an earlier provision which had been revoked. That earlier provision related to deferred benefits for members of an earlier scheme who had ceased to be scheme members.

1.4 This is therefore not the simplest of provisions for the reader to follow, and in the Committee's view such circumstances call for particular emphasis on accuracy and clarity in drafting. In the case of this instrument, however, although the Committee thought it knew what the intended effect was—and the Department's explanation shows that it was correct - it could not be sure as the drafting was not sufficiently precise, as described below.

1.5 To substitute something is to put it in the place of something else. In the present case, it must be intended that references to age 55 are to be substituted for references to age 60 and a reference to administering authority is to be substituted for the reference to employing authority. The language used fails to clearly achieve that intention. (The Committee accepts that this is merely the repetition of an error which existed in an earlier instrument, but that does not excuse the failure to use the opportunity of an amendment to correct the earlier error.)

1.6 Moreover, as there is only one reference to the employing authority in regulation D11(3), it is confusing to purport to replace it with more than one reference to the administering authority.

1.7 The Committee accordingly reports regulation 4 for defective drafting.

Instruments not reported

At its meeting on 6 February 2019 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.	Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019
Draft S.I.	Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019
Draft S.I.	Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
Draft S.I.	Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019
Draft S.I.	Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Securitisation (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Armed Forces Act (Continuation) Order 2019
Draft S.I.	Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019
Draft S.I.	Money Market Funds (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019

Draft S.I.	Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019
Draft S.I.	European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019
Draft S.I.	National Minimum Wage (Amendment) Regulations 2019
Draft S.I.	Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019
Draft S.I.	European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019
Draft S.I.	Medicines for Human Use (Clinical Trials) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

S.I. 2019/31	Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/32	Water and Floods (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/35	Renewables Obligation (Amendment) (EU Exit) Regulations 2019
S.I. 2019/36	Homes and Communities Agency (Transfer of Property etc.) Regulations 2019
S.I. 2019/39	Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
S.I. 2019/44	Food for Specific Groups (Information and Compositional Requirements) (Amendment) (England) Regulations 2019
S.I. 2019/47	Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019
S.I. 2019/62	Human Medicines (Amendment) Regulations 2019
S.I. 2019/72	Animals (Scientific Procedures) Act 1986 (EU Exit) Regulations 2019
S.I. 2019/74	Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019
S.I. 2019/76	Zoonotic Disease Eradication and Control (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/82	Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019

- S.I. 2019/85 Social Security (Contributions) (Amendment) Regulations 2019
- S.I. 2019/87 Electronic Commerce (Amendment etc.) (EU Exit) Regulations 2019
- S.I. 2019/89 Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019

Instrument not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2019/69 Taxation (Cross-border Trade) Act 2018 (Appointed Day No. 2) (EU Exit) Regulations 2019

Appendix

S.I. 2018/1366

Local Government Pension Scheme (Miscellaneous Amendment) Regulations 2018

1. The Committee has requested a memorandum on the following points:

Clarify the intended modifying effect of sub-paragraphs (ii) and (iii)(aa) of regulation 4(a).

2. These amendments relate to regulation D11 of the Local Government Pension Scheme Regulations 1995 (S.I. 1995/1019) (“the 1995 Regulations”) as preserved by the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (S.I. 2014/525) (“the 2014 Regulations”). Regulation D11 makes provision for deferred entitlement to retirement benefits for members of the scheme established under the 1995 Regulations where they cease to hold a local government employment before they are entitled to retirement benefits under that scheme.

3. The 1995 Regulations were revoked by paragraph 1 of Schedule 1 to the 2014 Regulations. Regulation 3(1) of the 2014 Regulations preserves the effect of regulation D11 in respect of membership accrued in the scheme established under the 1995 Regulations in respect of service before 1st April 2014, the pension rights accrued at that date, and any rights and obligations imposed on any person under that scheme in relation to service before 1st April 2014.

4. Regulation 4(a) substitutes regulation 3(5A)(a) of the 2014 Regulations in order to modify the effect of regulation D11 of the 1995 Regulations as it is preserved.

5. Substituted regulation 3(5A)(a)(ii) of the 2014 Regulations modifies the effect of regulation D11(2)(d) of the 1995 Regulations to enable a member of the Scheme established by the 1995 Regulations who left active membership prior to 1st April 1998 (deferred members), to elect for voluntary early payment of their pension benefits prior to their normal retirement date from age 55, rather than from age 60.

6. This amendment brings the 1995 Scheme in line with all other Local Government Pension Schemes and Government policy on choice in accessing pension benefits. It means that deferred members may take their accrued benefits from age 55 (subject to actuarial reduction for early payment) without the consent of their former employer. The pension they receive is actuarially reduced so that there is no cost to the employer from their benefits coming into payment earlier.

7. Substituted regulation 3(5A)(a)(iii)(aa) of the 2014 Regulations modifies the effect of regulation D11(2)(d) of the 1995 Regulations in respect of the provision by a deferred member of written notice of their choice to receive voluntary early payment of their pension benefits prior to their normal retirement date. As modified, the written notice is provided to the administering authority of the scheme established by the 1995 Regulations, instead of the employing authority.

8. As there is no cost to the former scheme employer where someone exercises their right to early payment, the Government believes that it is more efficient and appropriate for the deferred member to make their application directly to the administering authority as the body which arranges payment. In addition, some of the former scheme employers may have ceased to exist, changed name or be for another reason hard for a deferred member to contact. As all deferred members should receive an annual benefit statement from their administering authority, members should have up to date contact details for them.

Ministry of Housing, Communities and Local Government

29 January 2019