



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Ninth Report
of Session 2017–19**

Drawing special attention to:

Police Federation (England and Wales) Regulations 2017 (S.I. 2017/1140)

*Environmental Damage (Prevention and Remediation) (England)
(Amendment) Regulations 2017 (S.I. 2017/1177)*

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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, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach and John Crane (Lords).

Contacts

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Instruments reported

At its meeting on 17 January 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. 2017/1140: Reported for defective drafting

Police Federation (England and Wales) Regulations 2017

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.

1.2 These Regulations abolish the existing Police Federation Regulations and implement reform as set out in the Independent Police Federation Review (the Normington Review), including changes to the structure and operating procedures of the Federation.

1.3 Regulation 9(1) provides that members of the metropolitan police force branch are to elect one representative for every 65 police officers in the metropolitan police force. Where similar provisions are included elsewhere in the instrument (regulations 8(2), 10(3) and 14(3)), those provisions go on to specify that “the number of police officers in a force is the total number of police officers in that force on 31st March in the year that was two years before that in which the election is held.” There is no such provision in regulation 9. The Committee asked the Home Office to explain, for the purposes of regulation 9(1), on what date the number of police officers in the metropolitan police force is to be calculated.

1.4 In a memorandum printed at Appendix 1, the Department recognises that there is no express provision setting out on what date the number of police officers in the metropolitan police force in regulation 9(1) should be calculated, and that this leaves some ambiguity about the number of representatives who may be elected. The Department undertakes to correct this the next time that the Regulations are amended. **The Committee accordingly reports Regulation 9(1) for defective drafting, acknowledged by the Department.**

2 S.I. 2017/1177: Reported for defective drafting

Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.

2.2 These Regulations amend the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 to devolve enforcement responsibility under the EU Environmental Liability Directive (2004/35/EC) in Welsh offshore areas from the Secretary of State to Welsh Ministers and make further minor amendments.

2.3 Regulation 7 (inserted paragraph 5(3)) refers to “European site” having the same meaning as in regulation 8 of the Conservation of Habitats and Species Regulations 2010.

The 2010 Regulations have now been repealed and replaced with 2017 Regulations of the same name and the reference should be to regulation 8 of the 2017 Regulations. The Committee asked the Department for Environment, Food and Rural Affairs to explain the reference to the repealed regulation.

2.4 In a memorandum printed at Appendix 2, the Department acknowledges the error and states that it will correct it at the next opportunity. The Committee is grateful for the acknowledgment and for the undertaking to correct. As discussed in the Committee's Seventh Report of Session 2017/19 relating to S.I. 2017/1070, the Committee is content that, pending correction, section 17 of the Interpretation Act 1978 ensures that the provision made in these Regulations in relation to the 2010 Regulations remains effective. As in the case of S.I. 2017/1070, any suggestion that section 17 is contra-indicated by the obsolete reference having been inserted after the repeal should be sufficiently rebutted by the opportunity that this exchange with the Committee has given to the Department to record publicly that this was simply a drafting error. **The Committee accordingly reports regulation 7 for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 17 January 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.	Financial Services Act 2012 (Mutual Societies) Order 2018
Draft S.I.	Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2018
Draft S.I.	Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018
Draft S.I.	Representation of the People (England and Wales) (Amendment) Regulations 2018
Draft S.I.	Representation of the People (Northern Ireland) (Amendment) Regulations 2018
Draft S.I.	Representation of the People (Scotland) (Amendment) Regulations 2018
Draft S.I.	Building Societies (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018
Draft S.I.	Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018
Draft S.I.	Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2018
Draft S.I.	Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2018
Draft S.I.	Particulars of Proposed Designation of Age-Verification Regulator

Instruments subject to annulment

S.I. 2017/1127	Packaged Retail and Insurance-based Investment Products Regulations 2017
S.I. 2017/1149	Merchant Shipping (Working Time: Inland Waterways) (Amendment) Regulations 2017
S.I. 2017/1187	Social Security (Miscellaneous Amendments No. 5) Regulations 2017
S.I. 2017/1188	Maritime Enforcement Powers (Persons of a Specified Description) Regulations 2017
S.I. 2017/1196	Office for Students (Register of English Higher Education Providers) Regulations 2017

- S.I. 2017/1198 Common Agricultural Policy Basic Payment and Support Schemes (England) (Amendment) Regulations 2017
- S.I. 2017/1205 Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017
- S.I. 2017/1207 Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2017
- S.I. 2017/1208 Motor Vehicles (Driving Licences) (Amendment) Regulations 2017
- S.I. 2017/1211 West Northamptonshire Joint Committee (Revocation) Order 2017
- S.I. 2017/1213 Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017
- S.I. 2017/1221 Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2017
- S.I. 2017/1239 Road Vehicles (Payment of Duty by Credit Card) (Prescribed Fee) Regulations 2017
- S.I. 2017/1252 Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2017
- S.I. 2017/1255 Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017
- S.I. 2017/1256 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2017
- S.I. 2017/1257 Football Spectators (2018 World Cup Control Period) Order 2017
- S.I. 2017/1259 Whole of Government Accounts (Designation of Bodies) Order 2017
- S.I. 2017/1287 Crown Court (Amendment) Rules 2017
- S.I. 2017/1296 Magistrates' Courts (Detention and Forfeiture of Terrorist Assets) Rules 2017

Instrument not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2017/1210 Immigration Act 2016 (Commencement No. 6) Regulations 2017

Appendix 1

S.I. 2017/1140

Police Federation (England and Wales) Regulations 2017

1. At its meeting on 20 December 2017, the Committee requested a memorandum on the following point:

For the purposes of regulation 9(1), on what date is the number of police officers in the metropolitan police force to be calculated?

2. The Department recognises that there is no express provision setting out on what date the number of police officers should be calculated, and that this leaves some ambiguity about the number of representatives whom may be elected. It further recognises that there is such express provision in regulations 8(3) and 10(4).

3. The Department is grateful to the Committee for identifying this point and will remedy it at the next opportunity that the Regulations are amended.

Home Office

2 January 2018

Appendix 2

S.I. 2017/1177

Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following point:

Explain the inclusion of the reference to regulation 8 of the Conservation of Habitat and Species Regulations 2010 in regulation 7 of these Regulations (inserted paragraph 5(3)) which will have been repealed when these Regulations come into force.

2. The reference in paragraph 5(3) to which the Committee refers was an error. It should have referred to regulation 8 of the Conservation of Habitats and Species Regulations 2017. Those regulations, which revoke the Conservation of Habitats and Species Regulations 2010, were made but not yet in force when these Regulations were made; and, as the Committee observes, they came into force on 30 November 2017, in advance of the coming into force of these Regulations on 1 April 2018. The Department regrets the error, and will correct it at the next available opportunity.

Department for Environment, Food and Rural Affairs

21 December 2017