



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Tenth Report
of Session 2017–19**

Drawing special attention to:

*Immigration Act 2016 (Commencement No. 7 and Transitional Provisions)
Regulations 2017 (S.I. 2017/1241)*

*Ordered by the House of Lords
to be printed 24 January 2018*

*Ordered by the House of Commons
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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

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[Lee Rowley MP](#) (*Conservative, North East Derbyshire*)

[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.

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 24 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 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 S.I. 2017/1241: Reported for defective drafting

Immigration Act 2016 (Commencement No. 7 and Transitional Provisions) 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 three identical respects.

1.2 These Regulations bring specified provisions of the Immigration Act 2016 into force on 15 January 2018. Regulation 3 introduces the Schedule, which makes transitional provision in relation to the commenced provisions. In three places, the Schedule refers to circumstances which existed, or actions which occurred, before 20 November 2017, and how those circumstances or actions are to be treated on or after that date.

1.3 In a memorandum printed as an Appendix, the Home Office states that the references to 20 November 2017 should have been to 15 January 2018, and apologises for this error. It goes on to explain the action which it took to rectify the error, which resulted in an amending instrument being made the day after the Committee raised the matter with it.

1.4 The Committee accordingly reports these Regulations for defective drafting, acknowledged by the Department, and commends the Department for the speedy action it took to avoid any problems which might have resulted from its original error.

Instruments not reported

At its meeting on 24 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.	Immigration and Nationality (Fees) (Amendment) Order 2018
Draft S.I.	Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018
Draft S.I.	Guaranteed Minimum Pensions Increase Order 2018
Draft S.I.	Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2018
Draft S.I.	Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2018
Draft S.I.	Social Security Benefits Up-rating Order 2018
Draft S.I.	Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2018
Draft S.I.	Tax Credits and Guardian's Allowance Up-rating etc. Regulations 2018
Draft S.I.	Renewable Transport Fuels and Greenhouse Gas Emissions Regulations 2018
Draft S.I.	Seafarers (Insolvency, Collective Redundancies and Information and Consultation Miscellaneous Amendments) Regulations 2018

Instruments subject to annulment

S.I. 2017/1238	Cremation (England and Wales) (Amendment) Regulations 2017
S.I. 2017/1307	Building Societies (Restricted Transactions) (Amendment to the Limit on the Trade in Currencies) Order 2017
S.I. 2017/1308	National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) (Amendment) Regulations 2017
S.I. 2017/1318	Care and Support (Deferred Payment) (Amendment) Regulations 2017
S.I. 2017/1319	Criminal Legal Aid (Amendment) Regulations 2017
S.I. 2017/1320	Blood Safety and Quality (Amendment) Regulations 2017
S.I. 2017/1321	Non-Domestic Rating (Rates Retention) (Amendment) Regulations 2017

- S.I. 2017/1322 Ionising Radiation (Medical Exposure) Regulations 2017
- S.I. 2017/1323 Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2017
- S.I. 2017/1328 Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment No. 2) Order 2017

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2017/1277 Democratic People’s Republic of Korea (Sanctions) (Overseas Territories) (Amendment) (No. 4) Order 2017
- S.I. 2017/1278 North Korea (United Nations Sanctions) (Amendment) (No. 3) Order 2017

Instrument not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2017/1316 Designation of Rural Primary Schools (England) Order 2017

Appendix

S.I. 2017/1241

Immigration Act 2016 (Commencement No. 7 and Transitional Provisions) Regulations 2017

1. In a letter dated 10 January 2018, the Committee requested the Home Office to submit a memorandum on the following point:

Are the references to 20 November 2017 in paragraphs 1 and 2 of the Schedule correct? If so, explain the intended effect of those provisions. If not, what should the date be?

2. The Home Office acknowledges that the date in the Schedule is incorrect, and is grateful to the Committee for drawing attention to this matter. The date, in each place that it appears, should read 15th January 2018, and thereby be consistent with both Regulation 2 and with text of the Explanatory Note.

3. Following receipt of the Committee's letter on the evening of Wednesday 10 January, we checked the regulations in question. On checking, it became apparent that the regulations required correction. We made enquiries early the following day as to the appropriate mechanism to effect the necessary change. Subsequently we drafted a very short set of regulations to amend the defective regulations. This was made later that day and published the following day as the Immigration Act 2016 (Commencement No. 7 and Transitional Provisions) (Amendment) Regulations 2018.

4. Importantly, the necessary change was made before the date on which the transitional provisions were intended to have effect, and before the date on which the provisions to which they relate were commenced. This means that the change did not alter retrospectively the effect of the transitional provisions in an unexpected way or otherwise have any practical consequences.

5. This was a genuine error which occurred in the context of drafting, at considerable pace, three alternative versions of the regulations. Swift corrective action was taken and there have been no lasting adverse consequences for the Home Office or others. The Home Office are considering how to ensure drafting processes within the Home Office can be revised to minimise the risk of errors of this kind emerging in the future.

Home Office

16 January 2018