



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Seventeenth Report of Session 2008–09

Drawing special attention to:

Armed Forces (Evidence in Proceedings before Civilian Courts) Regulations 2009 (S.I. 2009/1112)

European Parliamentary Elections (Local Returning Officers' Charges) (Scotland) Order 2009 (S.I. 2009/1120)

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Joint Committee on Statutory Instruments

Current membership

House of Lords

Lord Campbell of Alloway (*Conservative*)
Lord Clinton-Davis (*Labour*)
Baroness Jones of Whitchurch (*Labour*)
Lord Kimball (*Conservative*)
Countess of Mar (*Crossbench*)
Earl of Mar and Kellie (*Liberal Democrat*)
Lord Walpole (*Crossbench*)

House of Commons

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Michael Jabez Foster MP (*Labour, Hastings and Rye*)
Mr David Kidney MP (*Labour, Stafford*)
David Simpson MP (*Democratic Unionist, Upper Bann*)

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. 74, 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 The Stationery Office 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 John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jennifer Steele (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank and Christine Cogger (*Commons*); Allan Roberts and Peter Milledge (*Lords*).

Contacts

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Instruments reported

At its meeting on 17 June 2009 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. 2009/1112: Reported for not according with proper legislative practice

Armed Forces (Evidence in Proceedings before Civilian Courts) Regulations 2009 (S.I. 2009/1112)

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they do not accord with proper legislative practice in one respect.

1.2 These Regulations (“the Evidence Regulations”) were made on 24 April 2009, laid on 1 May 2009 and come into force on 31 October 2009. Regulation 2 provides that “enlistment paper” and “recruiting officer” have the same meaning as in regulations made under section 328 of the Armed Forces Act 2006. There were no such regulations in existence when the Evidence Regulations were made; draft regulations under that section were laid on 5 May subject to the affirmative resolution procedure. The Committee asked the Ministry of Defence to explain why this instrument failed to deal expressly with the possibility that such regulations might not be made.

1.3 In a memorandum printed at Appendix 1 the Department explains that the references to regulations not yet made is an error. The error is the result of an oversight which occurred in the making and laying of a package of more than 60 statutory instruments comprising both affirmative and negative instruments, all of which are to come into force on the same day, 31 October 2009.

1.4 The Committee welcomes the Department’s general aim in handling the package which has been to spread the making and laying of the instruments involved to allow adequate time for Parliamentary consideration and debate. The Committee recognises that there is time to make any necessary amendment of the Evidence Regulations before they come into force, in the event that Parliamentary approval is not given to the draft regulations under section 328 or they are not made.

1.5 Nevertheless the Committee is called on to examine instruments as presented (rather than as they may later be amended or completed) and accordingly considers that, where an instrument (A) depends for completeness on an instrument (B) not yet made, failure to include recognition of the possibility that B will not be made renders A incomplete. So, while recognising that the reference in the Evidence Regulations to regulations not yet made was inadvertent and that (even so) it is likely that by 31 October 2009 there will be no shortfall, **the Committee reports the Evidence Regulations for failure to comply with proper legislative practice, in that they do not include any provision recognising the possibility that the planned affirmative regulations may not come to be made.**

2 S.I. 2009/1120: Reported for not conforming with proper drafting practice

European Parliamentary Elections (Local Returning Officers' Charges) (Scotland) Order 2009 (S.I. 2009/1120)

2.1 The Committee draws the special attention of both Houses to this Order on the ground that it does not conform to proper drafting practice in two identical respects.

2.2 This Order is made under the European Parliamentary Elections Regulations 2004. Article 2 of the Order defines “local counting area” and “register of electors” as having the meaning given in regulation 2(1) of those Regulations. In a memorandum printed at Appendix 2 the Scotland Office acknowledges that those definitions are unnecessary given the effect of sections 11 and 23 of the Interpretation Act 1978 - they do no more than restate the effects of those sections and do not have an impact on the legal effect of the instrument. However, the Department considers the definitions to be of assistance to the reader of the instrument and consistent with the approach taken in an earlier order. The Committee accepts that it was reasonable for the Department to regard it as desirable to draw the reader’s attention to the definitions in question, but considers that clear separation of that material (which was purely referential in effect) from legally essential material not only was desirable in principle but also could have been achieved straightforwardly by means of a footnote, the Explanatory Note or a separate explanatory document. **The Committee accordingly reports the definitions of “local counting area” and “register of electors” in article 2 for not conforming with proper drafting practice.**

Instruments not reported

The Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to the respective Houses.

Annex

Instruments to which the Committee does not draw the special attention of both Houses

- denotes that the written evidence submitted in connection with the instrument is printed with this Report
- denotes written evidence has been submitted but not printed

Instruments requiring affirmative approval

S.I. 2009/1342	Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009
S.I. 2009/1389	Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2009

Draft Instruments requiring affirmative approval

- Draft S.I.** Draft Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009
- Draft S.I.** Draft Amendments to Law (Resolution of Dunfermline Building Society) (No. 2) Order 2009
- Draft S.I.** Draft Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2009
- Draft S.I.** Draft Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009
- Draft S.I.** Draft Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009
- Draft S.I.** Draft Identity Cards Act 2006 (Prescribed Information) Regulations 2009
- Draft S.I.** Draft National Minimum Wage Regulations 1999 (Amendment) Regulations 2009
- Draft S.I.** Draft Scottish Parliament (Elections etc.) (Amendment) Order 2009
- Draft S.I.** Draft Data Protection (Processing of Sensitive Personal Data) Order 2009
- Draft S.I.** Draft Criminal Defence Service (Provisional Representation Orders) Regulations 2009
- Draft S.I.** Draft Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2009

Instruments subject to annulment

- S.I. 2009/1223** Contaminants in Food (England) Regulations 2009
- S.I. 2009/1254** Cambridge City Fringes Joint Committee Order 2009
- S.I. 2009/1255** Standards Committee (Further Provisions) (England) Regulations 2009
- S.I. 2009/1264** Surface Waters (Fishlife) (Classification) (Amendment) Regulations 2009
- S.I. 2009/1266** Surface Waters (Shellfish) (Classification) (Amendment) Regulations 2009
- S.I. 2009/1272** Gambling Act 2005 (Limits on Prize Gaming) Regulations 2009

- S.I. 2009/1273** Seeds (National Lists of Varieties) (Amendment) Regulations 2009
- S.I. 2009/1274** Seed (Conservation Varieties Amendments) (England) Regulations 2009
- S.I. 2009/1297** Products of Animal Origin (Disease Control) (England) (Amendment) Regulations 2009
- S.I. 2009/1298** National Health Service Pension Scheme (Amendment) Regulations 2009
- S.I. 2009/1299** Swine Vesicular Disease Regulations 2009
- S.I. 2009/1301** Education (Areas to which Pupils and Students Belong) (Amendment) (England) Regulations 2009
- S.I. 2009/1302** Infrastructure Planning (National Policy Statement Consultation) Regulations 2009
- S.I. 2009/1304** Town and Country Planning (General Development Procedure) (Amendment) (No. 2) (England) Order 2009
- S.I. 2009/1305** Export Control (Amendment) Order 2009
- S.I. 2009/1309** Fisheries (Miscellaneous Amendments) Regulations 2009
- S.I. 2009/1312** Crossrail (Planning Appeals) (Written Representations Procedure) (England) (Amendment) Regulations 2009

Instruments subject to annulment (Northern Ireland)

- S.R. 2009/207** Rules of the Supreme Court (Northern Ireland) (Amendment) 2009
- S.R. 2009/208** Criminal Appeal (Serious Crime Prevention Orders) Rules (Northern Ireland) 2009
- S.R. 2009/209** Criminal Appeal (Offenders Assisting Investigations and Prosecutions) (Amendment) Rules (Northern Ireland) 2009
- S.R. 2009/210** Criminal Appeal (Amendment) (Northern Ireland) Rules 2009

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2009/1263** National Savings (Unclaimed Moneys) Regulations 2009

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2009/1256** Counter-Terrorism Act 2008 (Commencement No. 3) Order 2009
- S.I. 2009/1261** Housing and Regeneration Act 2008 (Commencement No.5) Order 2009
- S.I. 2009/1269** Energy Act 2004 (Commencement No. 9) Order 2009
- S.I. 2009/1270** Energy Act 2008 (Commencement No. 3) Order 2009
- S.I. 2009/1303** Planning Act 2008 (Commencement No. 1) (England) Order 2009
- S.I. 2009/1310** Health and Social Care Act 2008 (Commencement No. 10) Order 2009

