



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Eighteenth Report
of Session 2008–09**

Drawing special attention to:

Export Control (Uzbekistan) (Amendment) Order 2009 (S.I. 2009/1174)

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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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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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Instrument reported

At its meeting on 24 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 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. 2009/1174: reported for an unexpected delay in making the order

Export Control (Uzbekistan) (Amendment) Order 2009 (S.I. 2009/1174)

1.1 The Committee draws the special attention of both Houses to this Order on the ground that there appears to have been an unexpected delay in making it.

1.2 This Order was made on 6 May 2009, laid before Parliament on 7 May 2009, and came into force on 8 May 2009. There was therefore a contravention of the 21-day rule, whereby an instrument subject to annulment should be laid before Parliament at least 21 days before it comes into force.

1.3 This Order amends the Export Control (Uzbekistan) Order 2005 to reflect the enactment of a Council Regulation which was published in the Official Journal on 24 February 2009 and came into force on 27 February 2009. The only amendment made by this Order is to add to the end of the definition in the 2005 Order of “the Regulation” the words “as amended by Council Regulation (EC) No 154/2009 of 23 February 2009”.

1.4 In the explanatory memorandum accompanying the Order, the then Department for Business, Enterprise and Regulatory Reform explained the breach of the 21-day rule: the 2009 Regulation is directly applicable and it was necessary for this amendment Order to come into force as soon as possible. The Committee asked the Department why the Order was not made sooner.

1.5 In a memorandum printed at the Appendix, the Department for Business, Innovation and Skills states that the delay in making the Order arose because the Department was considering how best to draft the Order. The Department was looking at the possibility of introducing an ambulatory reference in the Order so as to reduce the need to amend references to the Regulation when future amendments to Annex I of the Regulation are made. This raised some relatively complex drafting questions and, after having considered the option in detail, the Department decided that an ambulatory reference was not appropriate in this instance.

1.6 The Committee accepts that it was not inappropriate for the Department to have considered the possibility of introducing an ambulatory reference to the Regulation. The Committee also acknowledges that there would have been a breach of the 21-day rule irrespective of the day on which the Order was made. However, given the Department’s acknowledgement of the need for this amendment Order to come into force as soon as possible after 26 February, it is surprising that the Department, on realising that complex

drafting questions had arisen, did not simply make an order in the form of this one and then consider the question of ambulatory references at its leisure. **To leave a period of 10 weeks between the publication of the 2009 Regulation and the making of this Order is hardly consistent with the Department's recognition of the need for urgency, and the Committee accordingly reports the Order for an unexpected delay in its making.**

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*

Draft Instruments requiring affirmative approval

Draft S.I.	Banking Act 2009 (Restriction of Partial Property Transfers) (Amendment) Order 2009
Draft S.I.	Children Act 1989 (Higher Education Bursary) (England) Regulations 2009
Draft S.I.	Community Interest Company (Amendment) Regulations 2009
Draft S.I.	Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009
Draft S.I.	Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2009
Draft S.I.	Companies Act 2006 (Consequential Amendments) (Uncertificated Securities) Order 2009
Draft S.I.	Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009
Draft S.I.	Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009
Draft S.I.	Groundwater (England and Wales) Regulations 2009
Draft S.I.	Human Fertilisation and Embryology (Special Exemption) Regulations 2009
Draft S.I.	Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2009
Draft S.I.	Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009
Draft S.I.	Statistics and Registration Service Act 2007 (Disclosure of Higher Education Student Information) Regulations 2009

Instruments subject to annulment

- **S.I. 2009/1210** Merchant Shipping (Implementation of Ship-Source Pollution Directive) Regulations 2009
- S.I. 2009/1346** Cosmetic Products (Safety) (Amendment No. 2) Regulations 2009
- S.I. 2009/1347** Magnetic Toys (Safety) (Revocation) Regulations 2009
- S.I. 2009/1348** Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009
- S.I. 2009/1349** Gas and Electricity (Dispute Resolution) Regulations 2009
- S.I. 2009/1360** Audit Commission for Local Authorities and the National Health Service in England (Specified Organisations) (England) Order 2009
- S.I. 2009/1361** Marketing of Fresh Horticultural Produce Regulations 2009

- S.I. 2009/1363** Fixed Penalty (Amendment) (No 2) Order 2009
- S.I. 2009/1365** Legal Services Act 2007 (Commencement No. 5, Transitory and Transitional Provisions) Order 2009
- S.I. 2009/1487** Fixed Penalty (Amendment) (No. 3) Order 2009

