



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Third Report  
of Session 2008-09**

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**Drawing special attention to:**

*Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations 2008 (S.I. 2008/2908)*

*Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924)*

*Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008 (S.I. 2008/2928)*

*Ordered by the House of Lords to be printed  
21 January 2009*

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## Joint Committee on Statutory Instruments

### Current membership

#### House of Lords

Lord Campbell of Alloway (*Conservative*)  
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

David Maclean MP (*Conservative, Penrith and The Border*)  
(Chairman)  
Dr Roberta Blackman-Woods MP (*Labour, City of Durham*)  
Mr Peter Bone MP (*Conservative, Wellingborough*)  
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](http://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](http://www.parliament.uk/jcsi).

### Committee staff

The current staff of the Committee are John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jacqueline Cooksey (*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

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At its meeting on 21 January 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 three of those considered. The Instruments and the grounds for reporting them are given below. Relevant Departmental memoranda are published as appendices to this report.

### 1 S.I. 2008/2908: reported for defective drafting

*Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations 2008 (S.I. 2008/2908)*

**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 Paragraph A5 of the questionnaire in Schedule 2 includes a reference to additional requests for “approval under paragraph 8, 11, 17 and 23” of Schedule 7 to the Crossrail Act 2008. In a memorandum printed at Appendix 1 the Department for Transport acknowledges that the reference to paragraph 11 is incorrect because that paragraph does not relate to any requests for approval. The Department proposes to make an amending instrument in the near future, which they will also use to change a further error they have unearthed. **The Committee reports paragraph A5 of the questionnaire in Schedule 2 for defective drafting, acknowledged by the Department.**

### 2 S.I. 2008/2924: reported for defective drafting

*Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924)*

**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 implement Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978. Regulation 10(2) prohibits a ship from proceeding to sea or remaining at sea in certain circumstances unless an additional survey has been carried out in respect of the ship and related criteria are met. One of those circumstances is where “an important repair or renewal” has been made to the ship (regulation 10(1)(b)). The term “important” is not defined in the Regulations. A contravention of regulation 10(2) is an offence by the owner and by the master of the ship in question (regulation 32(1)(a)). The Committee accordingly asked what “important” meant and why the Regulations contained neither a definition of “important” nor a mechanism by which owners and masters could get an advance authoritative ruling as to whether a particular repair or renewal was important.

2.3 In a memorandum printed at Appendix 2 the Department for Transport explains that the requirement to obtain an additional survey after an “important” repair or renewal has been made stems directly from Annex VI to the Convention which does not define what constitutes an important repair or renewal. The Department states that the word “important” should therefore be given its ordinary meaning; and that what is regarded as an important repair or renewal will vary from case to case as it will depend on the type of vessel and the type of repair or renewal in question. The Committee accepts the Department’s explanation as to why a definition of “important” has not been included in the Regulations.

2.4 However, given that views may differ on what would amount to an important repair or renewal in particular cases, the question remains as to how the owner or master of a ship might establish with sufficient certainty whether regulation 10 applied in those cases and thus whether any steps needed to be taken under that regulation to avoid criminal liability. Here the Committee, which does not accept that protection of those to whom criminal sanctions could apply should depend solely on restraint on the part of enforcement authorities, was not reassured by the Department’s statement in its memorandum that prosecution would be used only as a last resort.

2.5 The Committee finds more persuasive the Department’s additional statement that the Secretary of State will issue a Marine Guidance Note informing masters and ship owners that advice may be sought from the Maritime and Coastguard Agency (MCA) as to what constitutes an important repair or renewal. Thus, while the Department correctly adds that any such advice would not be a definitive ruling, the Committee notes that, where the MCA advise that a repair or renewal is not important, it is reasonable to assume in any prosecution that the due diligence defence in regulation 37(1) would be available. It follows that, once that guidance is issued, the concern underlying the Committee’s question will be met in principle. Nonetheless the Committee, while welcoming the statement, notes that guidance was apparently not available when the Regulations came into force.

**2.6 The Committee accordingly reports the Regulations for defective drafting in so far as they came into force without the existence of a published mechanism for clarifying the scope of the prohibition in regulation 10(2) as it applies by virtue of regulation 10(1)(b).**

### **3 S.I. 2008/2928: reported for defective drafting**

<p><i>Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008 (S.I. 2008/2928)</i></p>
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**3.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

3.2 Regulation 9 provides for the reduction of a person’s benefit as a consequence of a failure to take part in a work-focused interview. So far as relevant to this Report, regulation 9(12) provides as follows:

*“Despite anything to the contrary in this regulation, no benefit is to be reduced in any benefit week—*

*(a) below 10 pence;*

*(b) ...;*

*(c) ....”.*

3.3 The Committee asked the Department for Work and Pensions to explain the intended effect of this provision and how the drafting achieved that unambiguously. In a memorandum printed at Appendix 3 the Department explains that its intention is to ensure that despite any reduction in benefit a person continues to receive a nominal level of benefit so that entitlements to certain other benefits such as free NHS prescriptions do not cease. The Department states that the formulation used reflects that in other Regulations. It takes the view that the use of the word “below” precludes any interpretation that the provision limits the amount of a reduction of benefit to 10 pence in each week, and considers that the provision is drafted as unambiguously as possible.

3.4 The Committee agrees that the alternative interpretation specifically mentioned by the Department is untenable and that it is possible to read the provision in the way intended. But the Committee considers that it is equally possible to read the provision as requiring the amount of the *reduction* in any benefit week to be at least 10 pence. Had the word “to” been inserted before “below 10 pence” in sub-paragraph (a), the provision would have been unambiguous. **The Committee accordingly reports regulation 9(12)(a) for defective drafting.**

## Instruments not reported

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**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

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## 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

<b>Draft</b>	Alterations to the Northern Ireland Criminal Injuries Compensation Scheme 2002
<b>Draft S.I.</b>	Child Trust Funds (Amendment) Regulations 2009
<b>Draft S.I.</b>	Criminal Damage (Compensation) (Amendment) (Northern Ireland) Order 2009
<b>Draft S.I.</b>	Criminal Justice and Police Act 2001 (Amendment) Order 2009
<b>Draft S.I.</b>	European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009
<b>Draft S.I.</b>	Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009
<b>Draft S.I.</b>	Welsh Ministers (Transfer of Functions) (No. 2) Order 2008

## Instruments subject to annulment

<b>S.I. 2008/2927</b>	Council for Healthcare Regulatory Excellence (Appointment, Procedure etc.) Regulations 2008
<b>S.I. 2008/3071</b>	Childcare (Provision of Information About Young Children) (England) (Amendment) Regulations 2008
<b>S.I. 2008/3072</b>	Education (Information About Individual Pupils) (England) (Amendment) Regulations 2008
<b>S.I. 2008/3078</b>	Non-Domestic Rating Contributions (England) (Amendment) Regulations 2008
<b>S.I. 2008/3080</b>	National Child Measurement Programme Regulations 2008
<b>S.I. 2008/3083</b>	Leeds City College (Incorporation) Order 2008
<b>S.I. 2008/3084</b>	Leeds City College (Government) Regulations 2008
<b>S.I. 2008/3086</b>	Education (School and Local Education Authority Performance Targets) (England) (Amendment) Regulations 2008
<b>S.I. 2008/3087</b>	Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008
<b>S.I. 2008/3089</b>	School Admissions (Admission Arrangements) (England) Regulations 2008
<b>S.I. 2008/3090</b>	School Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008
<b>S.I. 2008/3091</b>	School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008

- S.I. 2008/3092** Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2008
- S.I. 2008/3093** School Information (England) Regulations 2008
- S.I. 2008/3095** Parish Councils (Power to Promote Well-being) (Prescribed Conditions) Order 2008
- S.I. 2008/3097** Medicines for Human Use (Marketing Authorisations Etc.) Amendment Regulations 2008
- S.I. 2008/3098** National Savings Bank (Amendment) (No. 4) Regulations 2008
- S.I. 2008/3099** Social Security (Contributions) (Amendment No. 6) Regulations 2008
- S.I. 2008/3103** Parks for People (England) Joint Scheme (Authorisation) Order 2008
- S.I. 2008/3104** Housing Renewal Grants (Amendment) (No. 2) (England) Regulations 2008
- S.I. 2008/3105** Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) (No. 2) Regulations 2008
- S.I. 2008/3106** Family Proceedings Fees (Amendment No. 2) Order 2008
- S.I. 2008/3107** Home Information Pack (Amendment) (No. 3) Regulations 2008
- S.I. 2008/3108** Health in Pregnancy Grant (Entitlement and Amount) Regulations 2008
- S.I. 2008/3109** Health in Pregnancy Grant (Administration) Regulations 2008
- S.I. 2008/3112** Local Authorities (Elected Mayors) (England) Regulations 2008
- S.I. 2008/3113** General Optical Council (Committee Constitution) (Amendment) Rules Order of Council 2008
- S.I. 2008/3125** Air Navigation (Overseas Territories) (Amendment) Order 2008
- S.I. 2008/3134** Transfer of Functions (Administration of Rent Officer Service in England) Order 2008
- S.I. 2008/3139** Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) (No. 3) Order 2008
- S.I. 2008/3140** Social Security (Child Benefit Disregard) Regulations 2008
- S.I. 2008/3145** Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2008
- S.I. 2008/3148** Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008
- S.I. 2008/3149** Legal Services Act 2007 (Commencement No. 3 and Transitory Provisions) Order 2008
- S.I. 2008/3156** Rent Officers (Housing Benefit Functions) Amendment (No. 2) Order 2008
- S.I. 2008/3157** Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008
- S.I. 2008/3158** UK Borders Act 2007 (Code of Practice on Children) Order 2008
- S.I. 2008/3160** Civil Enforcement of Parking Contraventions (St. Helens) Designation Order 2008
- S.I. 2008/3161** Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Amendment) (No. 2) Order 2008
- S.I. 2008/3162** Intestate Succession (Interest and Capitalisation) (Amendment) Order 2008

- S.I. 2008/3168** Health and Social Care Act 2008 (Commencement No. 6, Transitory and Transitional Provisions) Order 2008
- S.I. 2008/3196** Zoonoses and Animal By-Products (Fees) (England) (No. 2) Regulations 2008
- S.I. 2008/3198** Civil Enforcement of Parking Contraventions (County of Cheshire) (City of Chester and Borough of Ellesmere Port & Neston) Designation Order 2008
- S.I. 2008/3233** Plant Health (Import Inspection Fees) (England) (Amendment) Regulations 2008
- S.I. 2008/3261** Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008

#### **Instruments subject to annulment (Northern Ireland)**

- S.R. 2008/477** Police Service of Northern Ireland (Promotion) Regulations 2008
- S.R. 2008/494** Road Traffic (Northern Ireland) Order 1981 (Retention and Disposal of Seized Motor Vehicles) Regulations (Northern Ireland) 2008
- S.R. 2008/495** Criminal Justice (Northern Ireland) Order 2008 (Retention and Disposal of Seized Motor Vehicles) Regulations (Northern Ireland) 2008

#### **Instruments not subject to Parliamentary proceedings laid before Parliament**

- S.I. 2008/3102** European Parliamentary Elections (Appointed Day of Poll) Order 2008
- S.I. 2008/3146** Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Code A) (No.2) Order 2008
- S.I. 2008/3201** Land Registration (Proper Office) Order 2008

#### **Instruments not subject to Parliamentary proceedings not laid before Parliament**

- S.I. 2008/3077** Education and Skills Act 2008 (Commencement No. 1 and Savings) Order 2008
- S.I. 2008/3081** Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) (Amendment) Order 2008
- S.I. 2008/3110** Local Government and Public Involvement in Health Act 2007 (Commencement No. 8) Order 2008
- S.I. 2008/3136** UK Borders Act 2007 (Commencement No. 5) Order 2008
- S.I. 2008/3137** Health and Social Care Act 2008 (Commencement No. 5) Order 2008
- S.I. 2008/3150** Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (Commencement No. 2) Order of Council 2008
- S.I. 2008/3151** Tax Credits Act 2002 (Transitional Provisions) Order 2008
- S.I. 2008/3164** Road Safety Act 2006 (Commencement No. 5) Order 2008
- S.I. 2008/3165** Finance Act 2008, Section 31 (Specified Tax Year) Order 2008
- S.I. 2008/3167** Welfare Reform Act 2007 (Commencement No. 9) Order 2008
- S.I. 2008/3190** Wireless Telegraphy (Licence Award) (Cardiff) Regulations 2008
- S.I. 2008/3191** Wireless Telegraphy (Licence Award) (Manchester) Regulations 2008

- S.I. 2008/3192** Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 3) Regulations 2008
- S.I. 2008/3193** Wireless Telegraphy (Register) (Amendment) (No. 3) Regulations 2008
- S.I. 2008/3197** Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008
- S.I. 2008/3204** Safeguarding Vulnerable Groups Act 2006 (Commencement No. 1) (England) Order 2008

# Appendix 1

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## S.I. 2008/2908: memorandum from the Department for Transport

*Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations 2008 (S.I. 2008/2908)*

By a letter dated 10th December 2008 the Committee has asked for a memorandum on the following point:

*Explain the reference in paragraph A5 of the questionnaire in Schedule 2 to any additional requests for approval under paragraph 11 of Schedule 7 to the Crossrail Act 2008*

The Department has considered this point and accepts that the reference to paragraph 11 is incorrect. This is because paragraph 11 does not relate to any requests for approval under Schedule 7 to the Crossrail Act.

The Department proposes to make amending Regulations in the near future and will be using the opportunity to correct another error which was identified as a consequence of the review of paragraph A5 in Schedule 2.

The Department apologises for this error and is grateful to the Committee for pointing it out.

**Department for Transport**  
19th January 2009

## Appendix 2

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### S.I. 2008/2924: memorandum from the Department for Transport

<p><i>Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924)</i></p>
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By a letter dated 10th December 2008 the Committee has asked for a memorandum on the following point—

*In relation to regulation 10(1)(b), what is the meaning of “important” and why is there not either—*

*(a) a definition of the term, or*

*(b) given that a contravention of regulation 10(2) is an offence, a mechanism by which the owner and master of a ship can obtain an advance authoritative ruling as to whether a particular repair or renewal is important?*

The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 implement Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978.

The requirement to obtain an additional survey after an “important” repair or renewal has been made stems directly from Annex VI. Annex VI does not define what constitutes an important repair or renewal. The word “important” should therefore be given its ordinary meaning. What is regarded as an important repair or renewal will vary from case to case as it will depend on the type of vessel and the type of repair or renewal in question.

Against that background, the Secretary of State will issue a Marine Guidance Note informing masters and ship owners that advice may be sought from the Maritime and Coastguard Agency (‘MCA’) as to what constitutes an important repair or renewal, though such advice will not be a definitive ruling as that could only be given by an arbitrator or the courts.

In practice, prosecution under regulation 32 for a breach of regulation 10(2) where it applies by virtue of regulation 10(1)(b) will be used only as a last resort, in cases where there could be no reasonable doubt that the repair or renewal is “important”. If a repair or renewal which the MCA considers “important” has been undertaken and no additional survey has been conducted, the normal course of action would be for the ship to be detained under regulation 28; regulation 31 then provides a mechanism for appealing against the detention.

**Department for Transport**  
15th December 2008

## Appendix 3

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### S.I. 2008/2928: memorandum from the Department for Work and Pensions

***Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008 (S.I. 2008/2928)***

1. In its letter to the Department of 10 December 2008, the Joint Committee requested a memorandum on the following point:

*Explain (by means of examples, hypothetical if necessary) the intended effect of regulation 9(12)(a) and how the drafting achieves that unambiguously.*

2. The Department's response is set out below.
3. Regulation 9 provides for a benefit sanction, i.e. the reduction of a person's benefit, as a consequence of a failure to take part in a work-focused interview. Regulation 9(12)(a) provides that, despite anything to the contrary in regulation 9, no benefit is to be reduced below 10 pence per week. This type of provision is common to all benefits Regulations. While regulation 9 only reduces an amount worked out by reference to the "work-related activity component" (currently £24.00) of the Employment and Support Allowance Regulations 2008 (S.I. 2008/794), it is possible that the person is only receiving an amount equal to or less than the work-related activity component. This could be because they have savings in a bank account or are receiving an occupational pension.

If the full amount of the work-related activity component is subsequently sanctioned, the person would find their benefit reduced to zero. However, a person who has been sanctioned down to zero would no longer be considered to be on benefit and would therefore lose entitlement to passporting benefits such as free NHS prescriptions, NHS dental treatment, sight tests, housing benefit, council tax benefit, free school meals for children, legal aid etc. Regulation 9(12)(a) ensures that, despite any reduction in benefit, a person continues to receive a nominal level of benefit so that these entitlements do not cease.

The formulation in regulation 9(12)(a) reflects that used in other Regulations, such as regulation 12(3) of the Social Security (Jobcentre Plus Interviews) Regulations 2002 (S.I. 2002/1703) and regulation 8(2) of the Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000 (S.I. 2000/1926). Each of these regulations provides that a benefit should not be reduced "below 10 pence". The word "below" is the key here and, in our view, would preclude any interpretation that the provision limits the amount of a reduction of benefit to 10 pence in each week. Such an interpretation would, in any event, make little sense having regard to the context. The only difference with the present provision is that it has been grouped with other provisions that are to apply notwithstanding the other provisions

in regulation 9. Nevertheless, we believe it operates as effectively as the other examples we have cited and is drafted as unambiguously as possible.

**Department for Work and Pensions**

15 December 2008