



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Twenty-fourth Report
of Session 2008-09**

Drawing special attention to:

Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009 (S.I. 2009/1607)

Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747)

Police Act 1997 (Criminal Records) (Disclosure) (Amendment) Regulations (Northern Ireland) 2009 (S.I. 2009/1798)

Armed Forces (Disposal of Property) Regulations 2009 (S.I. 2009/1923)

*Ordered by the House of Lords to be printed
4 November 2009*

*Ordered by the House of Commons to be printed
4 November 2009*

**HL Paper 177
HC 3-xxiv**

Published on 10 November 2009
by authority of the House of Lords
and the House of Commons
London: The Stationery Office Limited
£0.00

Joint Committee on Statutory Instruments

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Baroness Jones of Whitchurch (*Labour*)
Lord Kimball (*Conservative*)
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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. 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*).

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Instruments reported

At its meeting on 4 November 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 four 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. 2009/1607 Reported for defective drafting

Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009 (S.I. 2009/1607)

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 make provision about fees to be paid by independent schools. The fees vary according to whether the school is a small school or a large school. Large schools and small schools are defined in regulation 1(3) by reference to the number of pupils who, in the calendar year in question, have attained the age of three.

1.3 Regulation 1(5) provides that, in the Regulations a reference to the number of pupils of a school who have attained the age of three in relation to a calendar year is a reference to the number of registered pupils at the school who attained that age during the period of 12 months ending with the 31st August immediately preceding the calendar year in question. (There is another criterion which is immaterial for the purposes of this Report.)

1.4 The effect of the interplay between these two provisions is that the fees to be charged will vary according to the number of pupils aged between 3½ years and 4½ years on 1st January in the year in question.

1.5 In a memorandum printed at Appendix 1, the Department for Children, Schools and Families confirms that the policy is that the size of the school should depend on the number of pupils who have attained the age of three in the previous school year and the number of older pupils, acknowledges that the drafting of regulation 1(3) is defective, and undertakes to amend the Regulations as soon as it reasonably can.

1.6 The Committee accordingly reports regulation 1(3) for defective drafting, acknowledged by the Department.

2 S.I. 2009/1747 Reported for defective drafting

Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747)

2.1 The Committee draws the special attention to this Order on the ground that the preamble to the instrument is defectively drafted.

2.2 This instrument is an Order in Council made under section 1 of the United Nations Act. The recital of enabling powers in the preamble cites that section as the only relevant enabling power.

2.3 The Order refers to “the Council Regulation”, which is defined in article 2(1) as meaning Council Regulation (EC) No. 2580/2001 as amended from time to time.

2.4 In a memorandum printed at Appendix 2, HM Treasury states that the ambulatory definition of the Council Regulation was included in reliance on paragraph 1A of Schedule 2 to the European Communities Act 1972 (which expressly permits what might otherwise have exceeded the power cited), and acknowledges that the preamble should have cited both the exercise of the power conferred by that provision and the fact that the conditions precedent to the exercise of that power had been fulfilled.

2.5 The Committee accordingly reports the preamble to the Order for defective drafting, acknowledged by the Department.

3 S.I. 2009/1798 Reported for defective drafting

Police Act 1997 (Criminal Records) (Disclosure) (Amendment) Regulations (Northern Ireland) 2009 (S.I. 2009/1798)

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

3.2 Regulation 3(3) inserts a new regulation 11 in the Police Act 1997 (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008. Although it is neither lengthy nor complex, the new regulation contains four distinct drafting errors. In the case of two, the intended wording is clear, but in the case of the other two the errors produce uncertainty as to by whom certain action is to be taken.

3.3 In a memorandum printed at Appendix 3, the Northern Ireland Office acknowledges the errors and undertakes to correct them at the first available opportunity. The Committee has also noted that regulation 3(1) contains a further editorial error in that it refers to 2000 Regulations instead of 2008 Regulations—the footnote identifies the correct instrument. **The Committee accordingly reports regulation 3(3) for defective drafting, acknowledged by the Department, and urges the Department to make the necessary amendments as soon as possible.**

4 S.I. 2009/1923 Reported for defective drafting

<i>Armed Forces (Disposal of Property) Regulations 2009 (S.I. 2009/1923)</i>
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4.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.

4.2 Regulation 3(1) states that:

Where any property has come into the possession of the service police or a person's commanding officer in connection with the investigation of a service offence and –

- (a) the Director has directed a charge to be allocated for disposal in the Court Martial or Service Civilian Court, or*
- (b) a notice of appeal to the Summary Appeal Court has been served on the person's commanding officer, and*
- (c) an application for an order under paragraph (2) has been sent to the court administration officer,*

a judge advocate may make an order under paragraph (2).

4.3 This could be taken as meaning that an order can be made if either (a) alone applies or both (b) and (c) apply or, alternatively, that an order can be made if either (a) or (b) applies and also (c) applies.

4.4 In a memorandum printed at Appendix 4, the Ministry of Defence states that it was intended that an application for an order under paragraph (2) must be made before such an order can be made (i.e. the second of the options set out above), and accepts that the intended result is not clearly presented.

4.5 The Committee accordingly reports regulation 3(1) for defective drafting, acknowledged by the Department.

Instruments not reported

At its meeting on 4 November 2009 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported.

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.	Criminal Defence Service (Contribution Orders) Regulations 2009
Draft S.I.	Criminal Defence Service (Representation Orders) (Amendment) Regulations 2009
Draft S.I.	Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations 2009
Draft S.I.	Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2009
Draft S.I.	Health Professions (Hearing Aid Dispensers) Order 2009

Instruments subject to annulment

S.I. 2009/2261	Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009
○ S.I. 2009/1852	Export Control (Amendment) (No. 2) Order 2009
○ S.I. 2009/1922	Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009
S.I. 2009/2262	Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2009
S.I. 2009/2263	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
S.I. 2009/2264	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
S.I. 2009/2268	Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009
S.I. 2009/2269	Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009
S.I. 2009/2270	Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009
S.I. 2009/2271	Valuation Tribunals (Consequential Modifications and Saving and Transitional Provisions) (England) Regulations 2009
S.I. 2009/2272	Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2009
S.I. 2009/2342	Seed Potatoes (England) (Amendment) Regulations 2009
S.I. 2009/2344	Electricity (Exemption from the Requirement for a Generation Licence) (Lynn and Inner Dowsing) (England and Wales) Order 2009
S.I. 2009/2350	Aerodromes (Designation) (Detention and Sale of Aircraft) (England and Wales) Order 2009

S.I. 2009/2362	Motor Vehicles (Driving Licences) (Amendment) (No. 2) Regulations 2009
S.I. 2009/2363	Commonhold (Amendment) Regulations 2009
S.I. 2009/2376	Mental Health and Mental Capacity (Advocacy) Amendment (England) Regulations 2009
S.I. 2009/2392	Registrar of Companies (Fees) (Limited Partnerships and Newspaper Proprietors) Regulations 2009
S.I. 2009/2393	Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009
S.I. 2009/2394	Protection of Wrecks (Designation) (England) Order 2009
S.I. 2009/2396	Enterprise Act 2002 (Merger Fees) (Amendment) Order 2009
S.I. 2009/2397	Building (Amendment No. 2) Regulations 2009
S.I. 2009/2398	Private Security Industry Act 2001 (Licences) Regulations 2007 (Amendment No. 2) Regulations 2009
S.I. 2009/2399	European Economic Interest Grouping (Amendment) Regulations 2009
S.I. 2009/2400	European Public Limited-Liability Company (Amendment) Regulations 2009
S.I. 2009/2401	European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009
S.I. 2009/2402	European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009
S.I. 2009/2403	Registrar of Companies (Fees) (European Economic Interest Grouping and European Public Limited-Liability Company) Regulations 2009
S.I. 2009/2404	Company, Limited Liability Partnerships and Business Names (Miscellaneous Provisions) (Amendment) Regulations 2009
S.I. 2009/2425	Companies (Authorised Minimum) Regulations 2009
S.I. 2009/2426	Accession (Worker Authorisation and Worker Registration) (Amendment) Regulations 2009
S.I. 2009/2428	Police Act 1997 (Criminal Records) (Amendment) Regulations 2009
S.I. 2009/2436	Unregistered Companies Regulations 2009
S.I. 2009/2437	Companies (Companies Authorised to Register) Regulations 2009
S.I. 2009/2438	Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009
S.I. 2009/2439	Registrar of Companies (Fees) (Amendment) Regulations 2009
S.I. 2009/2446	National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009
S.I. 2009/2457	Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2009
S.I. 2009/2459	Rent Officers (Housing Benefit Functions) Amendment Order 2009
S.I. 2009/2460	National Savings Bank (Investment Deposits) (Limits) (Amendment) Order 2009
S.I. 2009/2461	Financial Services and Markets Act 2000 (Amendment) Regulations 2009

S.I. 2009/2462	Financial Collateral Arrangements (No. 2) Regulations 2003 (Amendment) Regulations 2009
S.I. 2009/2463	Measuring Equipment (Intoxicating Liquor) (Amendment) Regulations 2009
S.I. 2009/2464	Trade Marks (International Registration) (Amendment) Order 2009
S.I. 2009/2465	Building and Approved Inspectors (Amendment No. 2) Regulations 2009
S.I. 2009/2467	Central Lincolnshire Joint Strategic Planning Committee Order 2009
S.I. 2009/2468	Constitutional Reform Act 2005 (Consequential Amendments) Order 2009
S.I. 2009/2469	Companies (Unfair Prejudice Applications) Proceedings Rules 2009
S.I. 2009/2471	Companies (Disqualification Orders) Regulations 2009
S.I. 2009/2472	Insolvency (Amendment) (No. 2) Rules 2009
S.I. 2009/2475	Payment Services (Amendment) Regulations 2009
S.I. 2009/2476	Companies Act 2006 and Limited Liability Partnerships (Transitional Provisions and Savings) (Amendment) Regulations 2009
S.I. 2009/2477	Water Industry (Special Administration) Rules 2009
S.I. 2009/2478	Human Fertilisation and Embryology (Supplementary Provision) Order 2009
S.I. 2009/2492	European Economic Interest Grouping and European Public Limited-Liability Company (Fees) Revocation Regulations 2009
S.I. 2009/2494	Local Land Charges (Amendment) Rules 2009
S.I. 2009/2495	Police Act 1997 (Criminal Records) (Disclosure) (Amendment No. 2) Regulations (Northern Ireland) 2009
S.I. 2009/2502	The Medicines (Pharmacies) Applications for Registration and Fees - Amendment) Regulations 2009
S.I. 2009/2516	Vaccine Damage Payments (Specified Disease) Order 2009
S.I. 2009/2542	Business Rate Supplements (Rateable Value Condition) (England) Regulations 2009
S.I. 2009/2559	Energy Information (Miscellaneous Amendments) Regulations 2009
S.I. 2009/2560	Ecodesign for Energy-Using Products (Amendment) Regulations 2009
S.I. 2009/2561	Companies Act 2006 (Allotment of Shares and Right of Pre-emption) (Amendment) Regulations 2009
S.I. 2009/2563	Adoptions with a Foreign Element (Amendment) Regulations 2009
S.I. 2009/2569	Court Martial Appeal Court (Evidence) Order 2009
S.I. 2009/2571	Identity Cards Act 2006 (Civil Penalties) Regulations 2009
S.I. 2009/2572	Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009
S.I. 2009/2574	Identity Cards Act 2006 (National Identity Registration Number) Regulations 2009

- S.I. 2009/2581** Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) (Amendment) Regulations 2009
- S.I. 2009/2608** Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009
- S.I. 2009/2613** Valuation Tribunal for England (Membership and Transitional Provisions) (Amendment) Regulations 2009

Instruments not subject to Parliamentary proceedings laid before Parliament

- **S.I. 2009/1749** North Korea (United Nations Sanctions) Order 2009

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2009/2130** Communications Act 2003 (Commencement No. 4) Order 2009
- S.I. 2009/2305** General Chiropractic Council (Registration) (Amendment) Rules Order of Council 2009
- S.I. 2009/2395** Political Parties and Elections Act 2009 (Commencement No.1 and Transitional Provisions) Order 2009
- S.I. 2009/2455** Civil Courts (Amendment) Order 2009
- S.I. 2009/2466** Northern Ireland Act 2009 (Commencement No. 1) Order 2009
- S.I. 2009/2474** Veterinary Surgeons (Registration Appeals) Rules Order of Council 2009
- S.I. 2009/2500** Parliamentary Standards Act 2009 (Commencement No. 1) Order 2009
- S.I. 2009/2501** Domestic Violence, Crime and Victims Act 2004 (Commencement No. 11) Order 2009
- S.I. 2009/2517** Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009
- S.I. 2009/2565** Identity Cards Act 2006 (Commencement No. 4) Order 2009
- S.I. 2009/2567** Health and Social Care Act 2008 (Commencement No. 11) Order 2009
- S.I. 2009/2573** Planning Act 2008 (Commencement No. 3) Order 2009
- S.I. 2009/2577** London Olympic Games and Paralympic Games Act 2006 (Commencement No. 3) Order 2009
- S.I. 2009/2605** Crime (International Co-operation) Act 2003 (Commencement No. 5) Order 2009
- S.I. 2009/2606** Criminal Justice and Immigration Act 2008 (Commencement No. 11) Order 2009
- S.I. 2009/2612** Parliamentary Standards Act 2009 (Commencement No. 2) Order 2009
- S.I. 2009/2616** Domestic Violence, Crime and Victims Act 2004 (Commencement No. 12) Order 2009

Appendix 1

S.I. 2009/1607: memorandum from the Department of Children, Schools and Families

<p><i>Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009 (S.I. 2009/1607)</i></p>
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1. In its letter dated 21 October 2009 the Committee requested a memorandum on the following point –

“Given regulation 1(5), should the definitions of “large school” and “small school” in regulation 1(3) have something like “or are older” at the end?

2. The Department for Children, Schools and Families confirms the policy is that, in any calendar year, whether a school is a “large school” or a “small school” within the definitions in regulation 1(3) depends on the number of pupils who attained the age of 3 in the previous school year and the number of older pupils. The Department agrees that, in the light of regulation 1(5), the definitions in regulation 1(3) only refer to pupils who attained the age of 3 in the previous school year and not to older pupils who attained that age before then.

3. We will amend the Regulations to address this, and propose to do so as soon as we reasonably can.

Department for Children, Schools and Families
28 October 2009

Appendix 2

S.I. 2009/1747: memorandum from HM Treasury

<i>Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747)</i>
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1. By a letter dated 21 October 2009, the Committee sought a memorandum on the following point:

Given that one of the enabling powers for this Order appears to be paragraph 1A of Schedule 2 to the European Communities Act 1972 (see paragraph 4.5 of the Explanatory Memorandum), why is there no reference to that provision in the preamble?

2. The Order makes provision (in the definition of “the Council Regulation” in article 2(1)) for references to Council Regulation (EC) No. 2580/2001 (OJ No L 344, 28.12.2001) to be read as references to that Regulation as amended from time to time. Such provision was made in reliance on paragraph 1A of Schedule 2 to the European Communities Act 1972 and, as the Committee has noted, this provision should have been cited in the preamble to the Order. In particular, the necessity or expediency for such provision to be made should have been noted in the preamble. The Treasury regrets that this statement was omitted. Given that the necessity or expediency of the provision was the view of those making the law, and the reason for this is set out in paragraph 4.5 of the Explanatory Memorandum, it is the Treasury’s view that the legal position is not in doubt and an immediate correction is not required. However, the Treasury will include such provision when the instrument is next re-made or amended.

H M Treasury
26 October 2009

Appendix 3

S.I. 2009/1798: memorandum from the Northern Ireland Office

Police Act 1997 (Criminal Records) (Disclosure) (Amendment) Regulations (Northern Ireland) 2009 (S.I. 2009/1798)

The Committee requested the Northern Ireland Office to submit a memorandum on the following points in relation to the above Regulations:

In the new regulation 11, inserted by regulation 3(3) of this instrument, (which should begin with a capital letter)—

- (1) should paragraph (1) say “**the Secretary of State** shall notify the applicant”;*
- (2) should paragraph (2)(b) say “**that** he proposes to attend at a police station **specified by him**”;*
- (3) in paragraph (3), should “specified station” be “specified **police** station”;*
- (4) in paragraph (7)(a), should “paragraph (6)(b)” be “paragraph (5)(b)?”*

In response the Northern Ireland Office says as follows:-

We agree with each of the four points made by the Committee. The Northern Ireland Office very much regrets that these errors have occurred and will correct them at the first available opportunity.

Northern Ireland Office
29 October 2009

Appendix 4

S.I. 2009/1923: memorandum from the Ministry of Defence

<i>Armed Forces (Disposal of Property) Regulations 2009 (S.I. 2009/1923)</i>
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1. The Committee has requested the Ministry of Defence to submit a memorandum on the following points in relation to the above regulations:
 - (1) In regulation 3(1), is sub-paragraph (c) intended to fasten on sub-paragraph (b) only, or is it intended to fasten on sub-paragraph (a) also?
 - (2) Why is the intended result not clearly presented in that provision?
2. It is intended that an application for an order under paragraph (2) must be made before an order under paragraph (2) can be made. Regulation 3(1)(c) is therefore intended to fasten on both sub-paragraph (a) and sub-paragraph (b). If Regulation 3(1)(c) does not apply to (a) (as well as (b)) it would mean that in the circumstances within (a), an order could be made under paragraph (2) without anyone applying for it. Although the intended interpretation is readily apparent the MoD accepts with apologies that the intended result is not clearly presented and will take the first available opportunity to make an amendment clarifying the wording.

Ministry of Defence
27th October 2009