



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Fourth Report
of Session 2008-09**

Drawing special attention to:

*Immigration (Biometric Registration) (Objection to Civil Penalty) Order 2008
(S.I. 2008/2830)*

*Police Service of Northern Ireland and Police Service of Northern Ireland
Reserve (Full-Time) (Severance) (Amendment) Regulations 2008
(S.R. 2008/439)*

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

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Joint Committee on Statutory Instruments

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Baroness Jones of Whitchurch (*Labour*)
Lord Kimball (*Conservative*)
Countess of Mar (*Crossbench*)
Earl of Mar and Kellie (*Liberal Democrat*)
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House of Commons

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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 Jacqueline Cooksey (*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 28 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 two 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. 2008/2830: reported for unexpectedly limited use of the enabling power

Immigration (Biometric Registration) (Objection to Civil Penalty) Order 2008 (S.I. 2008/2830)

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it makes an unexpectedly limited use of the enabling power.

1.2 Under the UK Borders Act 2007 and the Immigration (Biometric Registration) Regulations 2008 certain categories of people who are not UK nationals are required to apply for the issue of a biometric immigration document. If such a person fails to comply with a requirement of the 2008 Regulations he may be required by notice to pay a civil penalty. A person who is given such a penalty notice has the right under section 10(1) of the 2007 Act to object to the notice on the grounds that he has not failed to comply with a requirement of the 2008 Regulations, it is unreasonable to require him to pay a penalty, or that the amount of the penalty is excessive. Section 10(2) of the 2007 Act requires a notice of objection to specify the grounds of objection and the objector's reasons, comply with any prescribed requirements as to form and content, and be given within the prescribed period.

1.3 This Order prescribes the form and content of such a notice of objection. The form is set out in the Schedule to the Order. Page 1 of the form requires the provision of information as to the civil penalty notice concerned and the name and contact details of the person on whom the civil penalty notice was given. Page 2 is headed "GROUNDS FOR OBJECTING TO THE CIVIL PENALTY NOTICE". There then follows a table split into two columns, with three sections divided by horizontal lines. The second column in each section is blank. The first column contains wording as follows: in the first section "You, or a child for whom you are responsible, have/has not failed to comply with a requirement of the biometric registration regulations"; in the second section "It is unreasonable to require you to pay a penalty"; and in the third section "The amount of the penalty is excessive". At the bottom of the page appear the words "Please continue on a separate sheet if necessary."

1.4 The form contains no guidance as to how page 2 is intended to be completed. There is, for example, no indication as to whether the objector should delete a section which does not apply, or indicate (by ticking a box, perhaps) which sections do apply. There is certainly no indication of what, if anything, is required to be written in the second column; a factor arguably given added significance by the fact that the heading referred to above covers both columns.

1.5 In two memoranda printed at Appendix 1, the Home Office refer to certain guidance which is available, but this goes no further than to repeat the statutory requirement that a notice of objection must set out in writing the grounds and reasons for objecting.

1.6 The people who are likely to wish to object to a civil penalty notice will necessarily not be UK nationals. It is quite possible that English will not be their first language, and that they will have had limited experience of completing British official documents. Faced with a form with a page headed “Grounds for objecting” and three sections which, between them, already set out the only grounds that there are, such a person may not unreasonably assume that that part of the form has already been completed and that they need add nothing further. Reading a dictionary to find out the precise meaning of “reason” and “ground” is unlikely to help them, given the lack of any clear distinction. The Committee suspects, however, that if a notice of objection were to be submitted with the second column of page 2 left blank it would be rejected as invalid.

1.7 The Department was not required by the 2007 Act to include in the prescribed form some guidance as to how it should be completed. It is not unusual, however, for forms issued by Government departments or agencies to be accompanied by extensive guidance, often longer than the form to which the guidance relates. This is a case where such guidance might reasonably be considered particularly appropriate. **The omission in this Order, or in any accompanying document, of an indication of what sort of things should be written in the second column of page 2 of this form amounts, in the Committee’s opinion, to an unexpectedly limited use of the power conferred by the 2007 Act, and the Committee reports this Order accordingly.**

2 S.R. 2008/439: reported for defective drafting

Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Full-Time) (Severance) (Amendment) Regulations 2008 (S.R. 2008/439)

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

2.2 These Regulations amend the definition of “compulsory retirement age” in two earlier instruments dated 2003 and 2006 respectively. In each case, these Regulations state that the compulsory retirement age of certain persons serving on or after 1st July 1994 is the age of 55 years, and of such persons serving prior to 1st July 1994 is the age of 57 years.

2.3 In a memorandum printed at Appendix 2, the Northern Ireland Office appears to acknowledge that these provisions are ambiguous in the case of a person who was serving both before and after 1st July 1994, and undertakes to correct the definitions by amendment at the earliest suitable opportunity. **The Committee accordingly reports these Regulations for defective drafting, acknowledged in principle by the Department.**

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.	Contracting Out (Highway Functions) Order 2009
Draft S.I.	Criminal Defence Service (Information Requests) Regulations 2009
Draft S.I.	Immigration and Nationality (Fees) (Amendment) Order 2009
Draft S.I.	Mutual Societies (Transfers) Order 2009
Draft S.I.	Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2009

Instruments subject to annulment

S.I. 2008/2987	Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008
S.I. 2008/3117	European Communities (Designation) (No. 4) Order 2008
S.I. 2008/3119	Civil Aviation (Overseas Territories) (Gibraltar) (Revocations) Order 2008
S.I. 2008/3202	Town and Country Planning (Trees) (Amendment No. 2) (England) Regulations 2008
S.I. 2008/3206	Spirit Drinks Regulations 2008
S.I. 2008/3229	Companies (Model Articles) Regulations 2008
S.I. 2008/3230	Products of Animal Origin (Third Country Imports) (England) (Amendment) Regulations 2008
S.I. 2008/3231	Export Control Order 2008
S.I. 2008/3240	Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
S.I. 2008/3242	Fines Collection (Disclosure of Information) (Prescribed Benefits) Regulations 2008
S.I. 2008/3243	Financial Assistance for Environmental Purposes (England and Wales) Order 2008
S.I. 2008/3245	Local Government Pension Scheme (Administration) (Amendment) Regulations 2008
S.I. 2008/3252	Beef and Veal Labelling Regulations 2008
S.I. 2008/3253	Education (Independent School Standards) (England) (Amendment) Regulations 2008
S.I. 2008/3256	General Teaching Council for England (Disciplinary Functions) (Amendment) Regulations 2008
S.I. 2008/3258	Health Service Branded Medicines (Control of Prices and Supply of Information) (No. 2) Regulations 2008

- S.I. 2008/3264** Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) (No. 2) Regulations 2008
- S.I. 2008/3265** Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008
- S.I. 2008/3268** Charities Act 1993 (Exception from Registration) Regulations 2008
- S.I. 2008/3269** Criminal Procedure (Amendment No. 2) Rules 2008
- S.I. 2008/3270** Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008
- S.I. 2008/3295** Transmissible Spongiform Encephalopathies (England) (Amendment) Regulations 2008
- S.I. 2008/3297** Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2008
- S.I. 2008/3327** Civil Procedure (Amendment No. 3) Rules 2008
- S.I. 2009/5** Local Government (Structural Changes) (Further Financial Provisions and Amendment) Regulations 2009
- S.I. 2009/6** Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2009
- S.I. 2009/7** Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009
- S.I. 2009/11** 5875-5905 MHz Frequency Band (Management) Regulations 2009

Instruments subject to annulment (Northern Ireland)

- S.R. 2008/491** Explosives (Amendment) Regulations (Northern Ireland) 2008
- S.R. 2008/505** Crown Court (Amendment) Rules (Northern Ireland) 2008

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2008/3123** United Nations Arms Embargoes (Dependent Territories) (Amendment) Order 2008
- S.I. 2008/3127** Cayman Islands (Constitution) (Amendment) Order 2008
- S.I. 2008/3128** United Nations Arms Embargoes (Rwanda) (Amendment) Order 2008

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2008/3120** Civil Aviation (Overseas Territories) (Gibraltar) (Revocations) (No. 2) Order 2008
- S.I. 2008/3126** Inspectors of Education, Children's Services and Skills (No. 5) Order 2008
- S.I. 2008/3232** Employment Act 2008 (Commencement No. 1, Transitional Provisions and Savings) Order 2008
- S.I. 2008/3241** Pensions Act 2008 (Commencement No. 1 and Consequential Provision) Order 2008
- S.I. 2008/3244** Health and Social Care Act 2008 (Commencement No. 7) Order 2008
- S.I. 2008/3260** Criminal Justice and Immigration Act 2008 (Commencement No. 5) Order 2008
- S.I. 2008/3296** Counter-Terrorism Act 2008 (Commencement No. 1) Order 2008

- S.I. 2009/14** Wireless Telegraphy (Register) (Amendment) Regulations 2009
- S.I. 2009/15** Wireless Telegraphy (Limitation of Number of Grants of Crown Recognised Spectrum Access) Order 2009
- S.I. 2009/16** Wireless Telegraphy (Crown Recognised Spectrum Access) Regulations 2009
- S.I. 2009/17** Wireless Telegraphy (Recognised Spectrum Access and Licence) (Spectrum Trading) Regulations 2009

