



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Sixth Report  
of Session 2008-09**

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**Drawing special attention to:**

*Animals and Animal Products (Import and Export) (England) (Amendment) Regulations 2008 (S.I. 2008/3203)*

*General Dental Council (Constitution) (Amendment) Order of Council 2008 (S.I. 2008/3238)*

*Ordered by the House of Lords to be printed  
11 February 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 11 February 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. 2008/3203: reported for defective drafting

*Animals and Animal Products (Import and Export) (England) (Amendment) Regulations 2008 (S.I. 2008/3203)*

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 are made under powers conferred by the European Communities Act 1972, including paragraph 1A of Schedule 2 to that Act, which allows subordinate legislation to provide for a reference in that legislation to a Community instrument to be construed as a reference to that instrument as amended from time to time. The power arises where it appears to the person making the legislation that it is necessary or expedient for that reference to be so construed.

1.3 Regulation 2(3) of these Regulations inserts a new paragraph (7) into regulation 1 of the Animals and Animal Products (Import and Export) (England) Regulations 2006, which states that any reference in [those] Regulations to an instrument of the European Community is a reference to that instrument as amended from time to time.

1.4 The preamble to these Regulations recites that it appears to the Secretary of State that it is expedient for *the references to the legislation set out in the Schedule* to be construed as references to that legislation as amended from time to time. Although the Schedule to these Regulations contains references to a considerable number of Community instruments, it does not include a reference to all of the instruments which are referred to in the 2006 Regulations.

1.5 In a memorandum printed at Appendix 1, the Department of Environment, Food and Rural Affairs admits that the preamble was defectively drafted, and should have referred to all the Community legislation referred to in the amended 2006 Regulations. It is currently in the process of re-writing the 2006 regulations, and will resolve any problems then. **The Committee accordingly reports the preamble to these Regulations for defective drafting, acknowledged by the Department.**

## 2 S.I. 2008/3238: reported for not conforming to proper drafting practice

*General Dental Council (Constitution) (Amendment) Order of Council 2008 (S.I. 2008/3238)*

**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.**

2.2 Article 2 of this Order, which came into force on 19 January 2009, substitutes a new article 4(2) of the General Dental Council (Constitution) Order of Council 2006. The new provision twice refers to “the coming into force of this paragraph”. Article 4 of the 2006 Order as originally made did not contain a paragraph (2), but one was introduced by an amendment made by a 2007 Order, which came into force on 3 December 2007.

2.3 Literally, the reference to the coming into force of paragraph (2) must be a reference to 3 December 2007, although the provision would not make sense if it were read in that way. In a memorandum printed at Appendix 2, the Department of Health accepts that the meaning would have been clearer if paragraph (2) had referred to the Coming into force of the General Dental Council (Constitution) (Amendment) Order of Council 2008. The Department attempts to pray in aid section 17(2)(a) of the Interpretation Act 1978, but the Committee does not consider that that section has any application here.

**2.4 The Committee accordingly reports article 2 of this Order for not conforming to proper drafting practice, acknowledged by the Department.**

## 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 S.I.</b>	Companies Act 2006 (Accounts, Reports and Audit) Regulations 2009
<b>Draft S.I.</b>	Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009
<b>Draft S.I.</b>	Parliamentary Constituencies (England) (Amendment) Order 2009
<b>Draft S.I.</b>	Social Security (Contributions) (Amendment No. 2) Regulations 2009
<b>Draft S.I.</b>	Social Security (Contributions) (Re-rating) Order 2009

### Instruments subject to annulment

<b>S.I. 2008/3066</b>	Antarctic (Amendment) Regulations 2008
<b>S.I. 2009/64</b>	Road Tunnel Safety (Amendment) Regulations 2009
<b>S.I. 2009/83</b>	Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2009
<b>S.I. 2009/104</b>	Street Works (Inspection Fees) (England) (Amendment) Regulations 2009
<b>S.I. 2009/105</b>	Joint Waste Authorities (Proposals) Regulations 2009
<b>S.I. 2009/111</b>	Social Security (Contributions) (Amendment) Regulations 2009

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

<b>S.I. 2009/39</b>	Safeguarding Vulnerable Groups Act 2006 (Commencement No. 3) Order 2009
<b>S.I. 2009/82</b>	Pensions Act 2008 (Commencement No. 2) Order 2009



