



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Twelfth Report  
of Session 2009-10**

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**Drawing special attention to:**

*Royal Parks and Other Open Spaces (Amendment) etc. Regulations 2010  
(Draft S.I.)*

*Merchant Shipping and Fishing Vessels (Health and Safety at Work)  
(Chemical Agents) Regulations 2010 (S.I. 2010/330)*

*Notification of Conventional Tower Cranes Regulations 2010  
(S.I. 2010/333)*

*Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes)  
Order 2010 (S.I. 2010/345)*

*Ordered by the House of Lords to be printed  
24 March 2010*

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24 March 2010*

**HL Paper 105  
HC 3-xii**

Published on 30 March 2010  
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*)  
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Earl of Mar and Kellie (*Liberal Democrat*)  
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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](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 Jennifer Steele (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank and Christine Cogger (*Commons*); Allan Roberts, Peter Milledge and Nicholas Beach (*Lords*).

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# Contents

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<b>Report</b>	<i>Page</i>
<b>Instruments reported</b>	<b>2</b>
1 Draft S.I: Reported for defective drafting.	2
2 S.I 2010/330: Reported for defective drafting.	3
3 S.I 2010/333: Reported for defective drafting.	4
4 S.I 2010/345: Reported for defective drafting.	5
<b>Instruments not reported</b>	<b>7</b>
<b>Annex</b>	<b>7</b>
<b>Appendix 1</b>	<b>12</b>
1 Draft S.I: memorandum from the Department for Culture, Media and Sport	12
<b>Appendix 2</b>	<b>13</b>
2 S.I. 2010/330: memorandum from the Department for Transport	13
<b>Appendix 3</b>	<b>15</b>
3 S.I. 2010/333: memorandum from the Department of Health/Department for Work and Pensions	15
<b>Appendix 4</b>	<b>16</b>
4 S.I. 2010/345: memorandum from the Ministry of Defence	16

## Instruments reported

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At its meeting on 24 March 2010 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 Draft S.I: Reported for defective drafting.

*Royal Parks and Other Open Spaces (Amendment) etc. Regulations 2010 (Draft S.I.)*

1.1 The Committee draws the special attention of both Houses to these draft Regulations on the ground that they are defectively drafted in two respects.

1.2 Regulation 1 of this draft instrument deals with preliminaries, regulation 2 amends the Royal Parks and Other Open Spaces Regulations 1997, regulation 3 amends Regulations relating to Greenwich Park, regulation 4 amends regulations relating to Hyde Park and The Regent's Park, regulation 5 contains provision as to parking charges in respect of Bushy Park and Richmond Park, regulation 6 provides for excess charges to be payable where there is a breach of regulation 5, regulation 7, which is headed "Exemptions", prescribes three circumstances under which no parking charge is payable, and regulation 8 contains provisions relating to regulations 5, 6 and 7.

1.3 Regulation 7 (unlike regulations 6 and 8) is not expressed to relate solely to parking charges payable under regulation 5. In a memorandum printed at Appendix 1, the Department for Culture, Media and Sport suggests that it was not necessary to specify the application of regulation 7 which, in its view, must refer to the only charges imposed by a free-standing provision, namely regulation 5. The Committee does not agree. The powers under which this instrument would be made are capable of applying to numerous parks and open spaces, and there is nothing in the draft to indicate that regulation 7 applies only to Bushy Park and Richmond Park. **The Committee accordingly reports regulation 7 for defective drafting.**

1.4 Paragraph (1) of regulation 5 provides that a parking charge is payable in respect of a vehicle parked in Bushy Park or Richmond Park at any time between 08:30 hours and 18:30 hours (or the time at which the Park in question closes if that is earlier). Paragraphs (2) and (3) set out amount of charge (per 30 or 15 minutes respectively) and a maximum charge. Paragraph (4) provides that the charge shall be paid to the Secretary of State (or to a person authorised by him to receive such a charge on his behalf) by the person who parked the vehicle in the park. Paragraph (5) permits the Secretary of State (or authorised person) to refuse to accept a payment made other than by such means as are described in a notice exhibited in or at a parking place as means by which payment may be made.

1.5 The Committee asked how it is intended to be established that a contravention of regulation 5 has occurred, given that regulation 5 does not specify when a charge is payable. (The regulations imposing parking charges in other Royal Parks impose an obligation, not to pay a parking charge, but to display a parking permit, for which a charge

must be paid.) Regulation 8(2) confers powers on the court where, on any proceedings for a contravention of regulation 5, it is proved that any part of the amount which has become due has not been paid.

1.6 The Department considers that it is implicit in the wording of regulation 5(1) that the obligation to pay the charge is triggered by the act of parking a vehicle in a parking place in the Park in question. It states that the payment for the anticipated duration of the vehicle's stay must be made forthwith once the vehicle is parked and any additional payment must be made forthwith if the car remains parked after the initial paid period expires, and that *the administrative arrangements for operation of the scheme, including the various means by which the charge can be paid*, will be described in a notice exhibited by or on behalf of the Secretary of State at the relevant car park, as described in regulation 5(5).

1.7 The italicised words above, quoted from the Department's memorandum, suggest that the Department is simply assuming that the Regulations achieve what it wants them to achieve. Regulation 5(5) refers only to the means of payment and is entirely silent as to when payment must be made. It is arguable that a person could park a vehicle in Richmond Park every day for a year and pay the year's charges annually in arrears without contravening regulation 5. More likely is the situation where a person pays for 30 minutes' parking but does not return to the vehicle until 2 hours later. As long as that person pays the outstanding amount at some time there will be no contravention of regulation 5. Regulation 5(5) is not drafted widely enough to give any legal force to "administrative arrangements for the operation of the scheme" (other than as to the means of payment) set out in a notice.

**1.8 The Committee therefore considers regulation 5 to be more or less unenforceable, and accordingly reports it for defective drafting.**

## **2 S.I 2010/330: Reported for defective drafting.**

*Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010 (S.I. 2010/330)*

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

2.2 The enabling powers for these Regulations include paragraph 1A of Schedule 2 to the European Communities Act 1972, which permits subordinate legislation which makes provision for a purpose mentioned in section 2(2) of that Act to make express provision for a reference in that legislation to a provision of a Community instrument to be construed as a reference to that provision as amended from time to time where it appears to the person making that legislation that it is necessary or expedient for the reference to be so construed.

2.3 The preamble to the Regulations recites that it appears to the Secretary of State that it is expedient for certain references to provisions of Council Directive 98/24/EC to be construed as references to those provisions as amended from time to time.

2.4 Regulation 2(1) includes a definition of “national occupational exposure limit value” which refers to limit values established in two different Commission Directives as amended from time to time.

2.5 In a memorandum printed at Appendix 2, the Department for Transport acknowledges that the preamble to the Regulations should have included a reference to the two Commission Directives. **The Committee accordingly reports the preamble to the Regulations for defective drafting, acknowledged by the Department.**

2.6 Regulation 11(6)(b) as drafted appears to comprise a condition without an obligation for it to fasten on. The Department, in its memorandum, explains what it should have said and undertakes to make an amending instrument at the earliest opportunity. **The Committee accordingly reports regulation 11(6)(b) for defective drafting, acknowledged by the Department.**

### **3 S.I 2010/333: Reported for defective drafting.**

<i>Notification of Conventional Tower Cranes Regulations 2010 (S.I. 2010/333)</i>
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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 These Regulations, which are made under the Health and Safety at Work etc. Act 1974, impose obligations on employers in respect of conventional tower cranes (as defined in the Regulations).

3.3 Regulation 3(4) states that the requirements imposed by the Regulations on an employer do not apply to a person in respect of a conventional tower crane supplied by way of sale, agreement for sale or hire-purchase agreement. Literally, this would mean that the requirements apply only in respect of a crane used by its manufacturer (or given away by or stolen from the manufacturer).

3.4 In a memorandum printed at Appendix 3, the Department for Work and Pensions explains that, in an attempt to introduce gender-neutral drafting, the words “by him” which in similar legislation followed the word “supplied” were omitted, but inadvertently the words “by that person” were not inserted in their place. The Department made a correcting instrument (S.I. 2010/811), to be issued free of charge to purchasers of this instrument, on 16 March.

3.5 **The Committee accordingly reports regulation 3(4) for defective drafting, acknowledged by the Department, and commends the Department for the swift action it has taken to correct the error.**

## 4 S.I 2010/345: Reported for defective drafting.

*Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) Order 2010 (S.I. 2010/345)*

4.1 **The Committee draws the special attention to this Order on the ground that it is defectively drafted in two respects.**

4.2 Article 26 provides for the case where a person serving under a short service commission qualifies and opts for their service to be commuted as reckonable service under the Superannuation Act 1972 or the Superannuation (Northern Ireland) Order 1972. The heading to article 26 reads “Commuting service for teachers’ or NHS pension”, and the Explanatory Note also suggests that the article applies only in respect of teachers’ or NHS pensions. The 1972 Act and 1972 Order, however, apply to other public sector pensions as well.

4.3 In a memorandum printed at Appendix 4, the Ministry of Defence explains that article 26 is intended to apply in relation only to teachers’ or NHS pensions and accepts that it would have been clearer to have identified the pension schemes more precisely. Implicit in the Department’s response is the assumption that a legislative provision and its heading can be read together to determine the scope of the provision in question. In the Committee’s view, although headings provide a useful guide to the reader as to the subject matter of a provision, it is the provision itself that should state clearly what it means. **The Committee accordingly reports article 26 for defective drafting, acknowledged to a degree by the Department.**

4.4 Article 36 deals with the obligation to repay resettlement grant in two cases. Paragraph (1) requires a person to repay the relevant fraction of the amount paid where, within 121 days of the person’s service ceasing, that person rejoins the armed forces except in certain circumstances. Paragraph (2) states that, subject to paragraph (1), no refund is payable where the break in service is more than 121 days. Paragraph (2) cannot be subject to paragraph (1) as both are free-standing and mutually compatible. Paragraph (3) requires a person to repay the full amount paid where, within 30 days of service ceasing, that person rejoins the armed forces in certain circumstances. Paragraph (4) states that, subject to paragraph (3), no repayment is required where the break of service is at least 30 days. The Committee assumes that this was intended to refer to a repayment under paragraph (3) and not under paragraph (1), although the instrument does not make this clear. Whether or not that was the intention, the words of subjection are again superfluous.

4.5 In its memorandum, the Department accepts that the drafting of article 36 is not as it should be, and suggests that the removal of the words “subject to paragraph (1)” (or (3)) would resolve the problem. The Committee disagrees with this analysis. Although the words of subjection ought indeed to be omitted, paragraph (2) serves no purpose, as there would be no question of a repayment being required unless such a requirement were specified. If the break in service exceeds 121 days then no repayment is required, with or without paragraph (2). Paragraph (4) is not only unnecessary but is also incompatible with paragraph (1). If no repayment is required where the break in service is at least 30 days, what is the relevance of the 121 day period?

4.6 In the Committee's opinion, the appropriate amendment for the Department to make is simply to omit paragraphs (2) and (4).

4.7 Paragraph (5) of article 36 defines "the relevant fraction" (for the purposes of paragraph (1)). The Department acknowledges that the formula is somewhat repetitive and therefore could be confusing. (In fact, the instrument defines "a" (the numerator in the formula) and "the numerator" in different ways, each of which gives a different result.)

**4.8 The Committee accordingly reports article 36 for defective drafting, largely acknowledged by the Department.**

4.9 The Department made a further instrument (S.I. 2010/832) on 17 March, which replaces this one, remedies the errors identified above and is to be issued free of charge to purchasers of this instrument, and **the Committee commends the Department for the swift action it has taken.**

## Instruments not reported

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At its meeting on 24 March 2010 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported.

## Annex

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### Draft Instruments requiring affirmative approval

<b>Draft S.I.</b>	Al-Qaida and Taliban (Asset-Freezing) Regulations 2010
<b>Draft S.I.</b>	National Assembly for Wales (Legislative Competence) (Transport) Order 2010

### Instruments subject to annulment

<b>S.I. 2010/465</b>	Adoption Support Agencies (England) (Amendment) Regulations 2010
<b>S.I. 2010/470</b>	Social Security Revaluation of Earnings Factors Order 2010
<b>S.I. 2010/471</b>	Fire Safety (Employees' Capabilities) (England) Regulations 2010
<b>S.I. 2010/483</b>	Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) (Amendment) Regulations 2010
<b>S.I. 2010/490</b>	Conservation of Habitats and Species Regulations 2010
<b>S.I. 2010/491</b>	Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2010
<b>S.I. 2010/492</b>	National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2010
<b>S.I. 2010/496</b>	Care Quality Commission (Specified Organisations etc) Order 2010
<b>S.I. 2010/497</b>	South Downs National Park Authority (Establishment) Order 2010
<b>S.I. 2010/498</b>	Town and Country Planning (Blight Provisions) (England) Order 2010
<b>S.I. 2010/499</b>	Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010
<b>S.I. 2010/506</b>	Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights) Amendment Regulations 2010
<b>S.I. 2010/508</b>	Social Security (Claims and Information) (Amendment) Regulations 2010
<b>S.I. 2010/509</b>	Jobseeker's Allowance (Sanctions for Failure to Attend) Regulations 2010
<b>S.I. 2010/510</b>	Social Security (Miscellaneous Amendments) Regulations 2010

<b>S.I. 2010/528</b>	Local Government Pension Scheme (Amendment) Regulations 2010
<b>S.I. 2010/534</b>	Food Hygiene (England) (Amendment) Regulations 2010
<b>S.I. 2010/540</b>	Common Agricultural Policy Single Payment and Support Schemes Regulations 2010
<b>S.I. 2010/551</b>	Medicines (Products for Human Use) (Fees) Regulations 2010
<b>S.I. 2010/554</b>	Blood Safety and Quality (Fees Amendment) Regulations 2010
<b>S.I. 2010/557</b>	Medical Devices (Fees Amendment) Regulations 2010
<b>S.I. 2010/560</b>	Pension Protection Fund (Miscellaneous Amendments) Regulations 2010
<b>S.I. 2010/563</b>	Social Security (Work-focused Interviews etc.) (Equalisation of State Pension Age) Amendment Regulations 2010
<b>S.I. 2010/564</b>	Coroners (Amendment) Rules 2010
<b>S.I. 2010/567</b>	Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2010
<b>S.I. 2010/568</b>	Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2010
<b>S.I. 2010/569</b>	Town and Country Planning (London Borough of Camden) Special Development (Amendment and Revocation) Order 2010
<b>S.I. 2010/573</b>	Chief Executive of Skills Funding (Strategy for Greater Manchester) Order 2010
<b>S.I. 2010/578</b>	National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2010
<b>S.I. 2010/579</b>	Health and Safety (Fees) Regulations 2010
<b>S.I. 2010/580</b>	Veterinary Surgery (Vaccination of Badgers Against Tuberculosis) Order 2010
<b>S.I. 2010/582</b>	Child Trust Funds (Amendment) Regulations 2010
<b>S.I. 2010/584</b>	Football Spectators (Prescription) (Amendment) Order 2010
<b>S.I. 2010/587</b>	Environmental Damage (Prevention and Remediation) (Amendment) Regulations 2010
<b>S.I. 2010/590</b>	Children's Trust Board (Relevant Partners) (Exceptions) (England) Regulations 2010
<b>S.I. 2010/591</b>	Children's Trust Board (Children and Young People's Plan) (England) Regulations 2010
<b>S.I. 2010/592</b>	Excise Goods (Sales on Board Ships and Aircraft) (Amendment) Regulations 2010
<b>S.I. 2010/593</b>	Excise Goods (Holding, Movement and Duty Point) Regulations 2010

<b>S.I. 2010/594</b>	Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010
<b>S.I. 2010/596</b>	A1(M) Motorway (County of Durham) (Restriction on Use of Off-side Lanes) (Southbound) Regulations 2010
<b>S.I. 2010/598</b>	Young People's Learning Agency for England (Specified Charges) Regulations 2010
<b>S.I. 2010/599</b>	Learning and Skills Council for England (Transfer Schemes) (Permitted Transferees) Order 2010
<b>S.I. 2010/600</b>	Sentencing Council for England and Wales (Supplementary Provisions) Order 2010
<b>S.I. 2010/601</b>	Town and Country Planning (Regional Strategy) (England) Regulations 2010
<b>S.I. 2010/602</b>	Local Democracy, Economic Development and Construction Act 2009 (Consequential Amendments) (England) Order 2010
<b>S.I. 2010/603</b>	Marine Management Organisation (Prescription of Powers to Fix Fees and Charges) Order 2010
<b>S.I. 2010/604</b>	Education (School Day and School Year) (England) (Amendment) Regulations 2010
<b>S.I. 2010/605</b>	Magistrates' Courts (Foreign Travel Orders) (Amendment) Rules 2010
<b>S.I. 2010/607</b>	Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2010
<b>S.I. 2010/609</b>	Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010
<b>S.I. 2010/615</b>	Export Control (Uzbekistan) Order 2010
<b>S.I. 2010/616</b>	Crime and Disorder (Overview and Scrutiny) (Amendment) Regulations 2010
<b>S.I. 2010/620</b>	National Health Service (Travel Expenses and Remission of Charges) Amendment Regulations 2010
<b>S.I. 2010/621</b>	Civil Procedure (Amendment) Rules 2010
<b>S.I. 2010/623</b>	South Kent College, Folkestone (Dissolution) Order 2010
<b>S.I. 2010/633</b>	First-tier Tribunal (Gambling) Fees (Amendment) Order 2010
<b>S.I. 2010/634</b>	National Health Service (Miscellaneous Amendments Relating to Ophthalmic Services) Regulations 2010
<b>S.I. 2010/635</b>	National Health Service (Standing Advisory Committees) Amendment Order 2010
<b>S.I. 2010/640</b>	Communications (Television Licensing) (Amendment) Regulations 2010
<b>S.I. 2010/646</b>	Social Security (Contributions) (Amendment No. 3) Regulations 2010

<b>S.I. 2010/647</b>	Crime and Disorder (Formulation and Implementation of Strategy) (Amendment) Regulations 2010
<b>S.I. 2010/648</b>	Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2010
<b>S.I. 2010/649</b>	Gangmasters Licensing (Exclusions) Regulations 2010
<b>S.I. 2010/660</b>	Housing and Regeneration Act 2008 (Moratorium) (Prescribed Steps) Order 2010
<b>S.I. 2010/661</b>	Education (Student Loans) (Repayment) (Amendment) Regulations 2010
<b>S.I. 2010/662</b>	Housing and Regeneration Act 2008 (Penalty and Compensation Notices) Regulations 2010
<b>S.I. 2010/663</b>	Housing Management Agreements (Break Clause) (England) Regulations 2010
<b>S.I. 2010/671</b>	Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010
<b>S.I. 2010/672</b>	Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010
<b>S.I. 2010/678</b>	Feed-in Tariffs (Specified Maximum Capacity and Functions) Order 2010
<b>S.I. 2010/679</b>	Criminal Defence Service (Funding) (Amendment) Order 2010
<b>S.I. 2010/681</b>	Criminal Defence Service (Funding) (Police Station Advice and Assistance) Order 2010
<b>S.I. 2010/811</b>	Notification of Conventional Tower Cranes (Amendment) Regulations 2010
<b>S.I. 2010/832</b>	Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No. 2) Order 2010

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

<b>S.R. 2010/43</b>	Police Service of Northern Ireland Pensions (Amendment) Regulations 2010
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#### **Instruments not subject to Parliamentary proceedings laid before Parliament**

<b>S.I. 2010/595</b>	Norfolk (Coroners' Districts) Order 2010
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#### **Instruments not subject to Parliamentary proceedings not laid before Parliament**

<b>S.I. 2010/460</b>	Animal Gatherings Order 2010
<b>S.I. 2010/516</b>	Government Resources and Accounts Act 2000 (Commencement No. 2 and Transitional Provision) Order 2010

- S.I. 2010/566** Planning Act 2008 (Commencement No.5 and Saving) Order 2010
- S.I. 2010/571** National Health Service Trusts (Originating Capital) Order 2010
- S.I. 2010/574** Finance Act 2009, Section 94 (Appointed Day) Order 2010
- S.I. 2010/589** National Health Service Trusts (Trust Funds: Appointment of Trustees) (Amendment) Order 2010
- S.I. 2010/606** UK Borders Act 2007 (Commencement No. 6) Order 2010
- S.I. 2010/644** Tax Credits Act 2002 (Transitional Provisions) Order 2010
- S.I. 2010/665** Corporation Tax Act 2010 (Transitional Provision) Order 2010
- S.I. 2010/670** Finance Act 2009, Paragraph 12(2)(b) of Schedule 22 (Appointed Day) Order 2010

# Appendix 1

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## 1 Draft S.I: memorandum from the Department for Culture, Media and Sport

*Royal Parks and Other Open Spaces (Amendment) etc. Regulations 2010 (Draft S.I.)*

1. This memorandum is in response to the Committee's request dated 10 March 2010.
2. The Committee has asked:

*“(1) Are the exemptions in article 7 intended to apply only to charges payable under regulation 5 and, if so, why is this not made clear?”*

*“(2) Given that regulation 5 does not specify when a parking charge is payable, how is it intended to be established that a contravention of that regulation has occurred (see regulation 8(2))?”*

The Department's response is as follows.

3. The exemptions in regulation 7 apply only to charges payable under regulation 5. This is not expressly stated as we understand it to be clear from the structure of the Regulations. Regulation 1 deals with matters of commencement, citation and interpretation. Regulations 2, 3 and 4 amend existing legislation relating to the Royal Parks<sup>1</sup> whereas regulations 5 to 8 are stand-alone provisions which are independent of, and make no amendment to, existing Regulations. Regulation 5 provides for the introduction of parking charges in Bushy Park and Richmond Park, regulation 6 provides for an excess charge scheme in relation to those charges and regulation 7 provides for exemptions to the charges in regulation 5.
4. Therefore the Department did not consider it necessary to state that regulation 7 applies only to the charges payable under regulation 5 and thought it preferable to use fewer words where possible. It does not consider that any ambiguity arises from the references to parking charges in regulation 7, which must refer to the only charges imposed by another free-standing provision, namely regulation 5.
5. In response to the Committee's second question, regulation 5 provides that a parking charge is payable in respect of a vehicle parked in a parking place during the specified period. In the Department's view it is implicit in the wording of paragraph (1) of regulation 5 that the obligation on a driver of a vehicle to pay the parking charge is triggered by the act of parking a vehicle in a parking place in Bushy or Richmond Park and that the charge becomes due and payable at that time. The payment for the intended duration of the car's stay in the parking place must be made forthwith once the car is parked; and any additional

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<sup>1</sup> The Royal Parks and Other Open Spaces Regulations 1997 (S.I. 1997/1639), the Greenwich Park (Vehicle Parking) Regulations 2000 (S.I. 2000/934) and the Hyde Park and The Regent's Park (Vehicle Parking) Regulations 1995 (S.I. 1995/993) respectively.

payment must be made forthwith if the car remains parked after the initial paid period expires. The administrative arrangements for operation of the scheme, including the various means by which the charge can be paid, will be described in a notice exhibited by or on behalf of the Secretary of State at the relevant car park, as described in regulation 5(5).

6. In the Department's view the reference to a sum "not ... duly paid" in regulation 8(2) is a reference to a sum not paid as described above. A motorist who left a vehicle in a parking place without paying in a manner described in the Secretary of State's notice would have failed to have "duly paid" the charge. Although there would be some leeway in practice in respect of minor and reasonable delays (e.g. the time taken to read the notice and make any necessary arrangements (including driving away if the person concerned is unable or unwilling to comply with the notice)), leaving the car parked without making payment would render the motorist liable to enforcement action under the Regulations.

Department for Culture, Media and Sport  
15 March 2010

## Appendix 2

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### 2 S.I. 2010/330: memorandum from the Department for Transport

***Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010 (S.I. 2010/330)***

By a letter dated 10th March 2010 the Committee has asked for a memorandum on the following points—

- (1) *The definition of "national occupational exposure limit value" in regulation 2(1) incorporates references to two Commission Directives as amended from time to time. Why is there no mention of these in the third paragraph of the preamble?*
- (2) *Explain what it is that regulation 11(6)(b) is intended to require a person to ensure.*

#### Question 1

The two Commission Directives should have been referred to in the preamble, as the Secretary of State did consider it expedient that the relevant provisions be construed as ambulatory.

When the instrument was being prepared it was initially considered that all references in it to Council Directive 98/24/EC should be ambulatory, but eventually it was decided that there should be ambulatory references to the EU legislation only in the provisions of this instrument that concern the Annexes to the Directive, and the national

occupational exposure limit. In fact, the EU measures relating to the national occupational exposure limit are not in Directive 98/24/EC itself but in two Commission Directives implementing it: Commission Directive 91/322/EEC (originally made for the purposes of Council Directive 80/1107/EEC, superseded by Directive 98/24/EC) and Commission Directive 2006/15/EC.

In accordance with this decision:

- (a) the definition of “the Directive” in regulation 2(1) does not provide for references to the 1998 Council Directive generally to be ambulatory, but
- (b) regulation 2(2) provides that references to the Annexes to that Directive mean those Annexes as amended from time to time, and
- (c) the definition of “national occupational exposure limit value” in regulation 2(1) provides for each reference to the 1991 or 2006 Commission Directive to mean that Directive as amended from time to time.

Unfortunately however, due to an oversight the recital in the preamble (which had been drafted at the earlier stage) was not adjusted to correspond.

The Department regrets this oversight, and recognises the need to ensure that a similar error is not made again.

## **Question 2**

The word “where” should not appear at the start of regulation 11(6)(b). This provision is intended to require any person granted an exemption under regulation 11(2) to ensure that any production of a relevant chemical agent for use as an intermediate, and the first use of any such agent as an intermediate, takes place in a system of the sort described in regulation 11(6)(b).

The Department regrets the inadvertent inclusion of this extra word, and will make an amending instrument to remove it at the earliest opportunity.

Department for Transport  
15th March 2010

## Appendix 3

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### 3 S.I. 2010/333: memorandum from the Department of Health/Department for Work and Pensions

<i>Notification of Conventional Tower Cranes Regulations 2010 (S.I. 2010/333)</i>
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1. In its letter to the Department of Health/Department for Work and Pensions of 10 March 2010, the Joint Committee requested a memorandum on the following point:

*Is regulation 3(4) intended to exclude from the requirements of the Regulations any conventional tower crane not used by its manufacturer or should the words “by that person” have been included after the word “supplied”?*

The Department’s response to the Joint Committee’s point is set out below.

2. The words “by that person” should have been included after the word “supplied” in regulation 3(4). The Department is grateful to the Committee for drawing its attention to the error and apologises for this oversight. The wording was intended to ensure consistency between these Regulations and regulation 3(5) of the Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307) which is as follows:

*The requirements imposed by these Regulations on an employer shall not apply to a person in respect of lifting equipment supplied by him by way of sale, agreement for sale or hire-purchase agreement.*

When drafting this provision in regulation 3(4) the words “by him” were removed after the word “supplied” with the intention of making the provision gender neutral. It was an oversight that the words were not replaced by gender neutral wording. The Department intends to rectify the error in the Regulations as soon as possible.

Department of Health/Department for Work and Pensions  
15 March 2010

## Appendix 4

### 4 S.I. 2010/345: memorandum from the Ministry of Defence

***Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) Order 2010 (S.I. 2010/345)***

The Committee has asked the Ministry of Defence to submit a memorandum on the above instrument dealing with the following points:

- (1) *Is article 26 intended to apply only in relation to teachers' or NHS pension schemes. If not, why is this suggested by the heading and the Explanatory Note? If so, why does the article not identify more specifically the relevant provisions of the Superannuation Act 1972 and the Superannuation (Northern Ireland) Order 1972?*
- (2) *Given the circumstances in which paragraphs (1) and (3) of article 36 apply, explain the purpose and effect of paragraphs (2) and (4) of that article.*
- (3) *Explain the purpose and effect of the wording of article 36 following the formula in paragraph (5).*

We set out below our view on paragraphs (1) and (2) of your Memo. In working to answer your third point, it became clear that the formula set out in the SI is somewhat repetitive and therefore could be confusing. We therefore propose to revoke this Order and make a new one that clarifies the position. We will also make the corrections set out at paragraphs (1) and (2) below in the new Order. We will issue the new Order free of charge. We apologise for any inconvenience that this remedial action may occasion.

#### **Response to Questions (1) and (2)**

(1) Yes, article 26 is intended only to apply in relation to teachers' or NHS pension schemes that have been established under the Superannuation Act 1972 and the Superannuation (Northern Ireland) Order 1972. We thought this provided sufficient reference, but agree that greater clarification could be given, namely to state that it is in relation to such schemes established under sections 9 and 10 of the 1972 Act or articles 11 and 12 of the 1972 Order.

(2) Paragraphs (2) and (4) are intended to set out the position as clearly as possible and to avoid any doubt about when monies need to be repaid. However, on reflection, we consider that the words "Subject to paragraph (1) [or] (3)" (as the case may be) are not correct and should be deleted from paragraphs (2) and (4).

No party's position will be prejudiced by the above.

The Ministry of Defence  
16 March 2010