



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**First Report
of Session 2009-10**

Drawing special attention to:

Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265)

Valuation Tribunal for England (Membership and Transitional Provisions) Regulations 2009 (S.I. 2009/2267)

Financial Transparency (EC Directive) Regulations 2009 (S.I. 2009/2331)

Business Rate Supplements (Transfers to Revenue Accounts) (England) Regulations 2009 (S.I. 2009/2543)

Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009 (S.I. 2009/2575)

Court Martial Appeal Court Rules 2009 (S.I. 2009/2657)

Highway Litter Clearance and Cleaning (Transfer of Responsibility) (England) Order 2009 (S.I. 2009/2677)

Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 (S.R. 2009/313)

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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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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 2 December 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 eight 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. 2009/2265: Reported for defective drafting

Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265)

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in several respects.

1.2 Schedules 1 to 4 of this Order set out model provisions for inclusion in draft orders which are required to accompany an application to the Infrastructure Planning Commission for development consent.

1.3 Article 1(1) in each Schedule defines “relevant planning authority” as including a National Park Authority and the Broads Authority. In a memorandum printed at Appendix 1, the Department for Communities and Local Government accepts that in each case the definition should have included the words “if the land to which the provisions of this Order or requirements apply is situated in the area of that authority.

1.4 Article 26 in Schedule 1, article 32 in Schedule 2, and article 36 in Schedule 3 each contain provisions which, in specified circumstances, will apply instead of section 8(1) of the Compulsory Purchase Act 1965. Article 21(3) in Schedule 1, article 27(3) in Schedule 2, and article 31(3) in Schedule 3 are each expressed to be “subject to section 8 of the 1965 Act, as substituted” by article 26, 32 or 36 (as the case may be). The Department acknowledges that the wording in articles 21(3), 27(3) and 31(3) is unclear as it does not state that a revised version of section 8(1) only is substituted.

1.5 The Department also acknowledges that certain wording in Schedule 4 which is intended to require that something may not occur until specified documents have been submitted is defective as it states that something may not occur until the documents “shall be” submitted.

1.6 The Department states that it will revise the wording in future versions of the model provisions, to be included in an order proposed to be made in 2010.

1.7 The Committee accordingly reports this Order for these instances of defective drafting, acknowledged by the Department.

2 S.I. 2009/2267: Reported for the unexpected use of the enabling power

Valuation Tribunal for England (Membership and Transitional Provisions) Regulations 2009 (S.I. 2009/2267)

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that in one respect they appear to make an unexpected use of the enabling power.

2.2 Regulation 5(1) provides that a person shall be disqualified for membership of the Valuation Tribunal for England (“the VTE”) in various specified circumstances. Regulation 5(3) states that a member of the VTE who is disqualified under paragraph (1) ceases to be a member of the VTE on the day on which that paragraph first applies to that member; this is expressed to be subject to paragraphs (4) and (5). Paragraphs (4) and (5) state when a person’s disqualification ceases in cases where the reason for disqualification was one related to bankruptcy.

2.3 The Committee understood the words of subsection in regulation 5(3) to mean that a person who was a member but was disqualified for reasons related to bankruptcy would automatically become a member again if the disqualification ceased by virtue of paragraph (4) or (5). In a memorandum printed at Appendix 2, the Department for Communities and Local Government confirms that the Committee had correctly understood the Department’s intention. The Department compares this instrument with the Valuation and Community Charge Tribunals Regulations 1989, but the relevant provisions of those Regulations did not contain anything comparable to regulation 5(3), for the provisions they refer to did no more than bring disqualification from membership to an end.

2.4 The Department states that the possibility that a member of the VTE would need to rely on paragraph (4) or (5) must be remote, and that if its interpretation of paragraph (3) is correct it must be doubtful whether a person who had been disqualified in such circumstances and “rehabilitated” by virtue of those paragraphs would want to be a member; an immediate resignation is perhaps the more likely outcome. If its interpretation is incorrect (that is, that the person does not automatically become a member again), it considers it doubtful that such a person would seek appointment as a member of the VTE.

2.5 It appears to the Committee from the Department’s comments that it had not envisaged the likelihood of a member who has become disqualified seeking to be a member again once his disqualification ceased. It has nevertheless legislated, not so much to enable such circumstances to happen as to cause membership to be restored as a matter of automatic consequence. **This appears to the Committee to amount to an unexpected use of the enabling power, and the Committee reports regulation 5(3) accordingly.**

