



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Seventeenth Report
of Session 2010-11**

Drawing special attention to:

*Flood and Water Management Act 2010 (Commencement No. 2) Order
2011 (S.I. 2011/95)*

*Finance (No. 3) Act 2010, Schedule 11 (Appointed Day) Order 2011
(S.I. 2011/132)*

*Financial Services and Markets Act 2000 (Regulated Activities)
(Amendment) Order 2011 (S.I. 2011/133)*

*Ordered by the House of Lords to be printed
9 March 2011*

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Joint Committee on Statutory Instruments

Current membership

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Lord Clinton-Davis (*Labour*)
Baroness Eccles of Moulton (*Conservative*)
Lord Kennedy (*Labour*)
Earl of Mar and Kellie (*Liberal Democrat*)
Lord Rees-Mogg (*Crossbench*)
Baroness Stern (*Crossbench*)

House of Commons

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John Hemming MP (*Liberal Democrat, Birmingham, Yardley*)
Mr Ian Liddell-Grainger MP (*Conservative, Bridgwater and West Somerset*)
Toby Perkins MP (*Labour, Chesterfield*)

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 and Peter Brooksbank (*Commons*); Allan Roberts, Nicholas Beach and Peter Milledge (*Lords*).

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Instruments reported

At its meeting on 9 March 2011 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 three 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. 2011/95: Reported for unauthorised retrospective effect

Flood and Water Management Act 2010 (Commencement No. 2) Order 2011 (S.I. 2011/95)

1.1 The Committee draws the special attention of both Houses to this Order on the ground that it purports to have retrospective effect where the parent Act confers no express authority for it to do so.

1.2 This Order, which was made on 18 January 2011 under the Flood and Water Management Act 2010, provides for certain provisions of that Act to come into force on 18 January 2011. By virtue of section 4(a) of the Interpretation Act 1978 (as read with section 23(1) of that Act), where provision is made for an enactment to come into force on a particular day it comes into force at the beginning of that day.

1.3 In a memorandum printed at Appendix 1, the Department for Environment, Food and Rural Affairs accepts that the Order should have provided that the provisions of the 2010 Act come into force on the day after the day on which the Order was made. The provisions in question were brought into force only so far as they confer powers to make regulations or orders, and those powers were not exercised on the day in question.

1.4 The Committee accordingly reports this Order for purporting to have unauthorised retrospective effect, as acknowledged by the Department.

2 S.I. 2011/132: Reported for unauthorised retrospective effect

Finance (No. 3) Act 2010, Schedule 11 (Appointed Day) Order 2011 (S.I. 2011/132)

2.1 The Committee draws the special attention of both Houses to this Order on the ground that it purports to have retrospective effect where the parent Act confers no express authority for it to do so.

2.2 This Order, which was made on 25 January 2011 under the Finance (No. 3) Act 2010, provides for certain provisions of that Act to come into force on 25 January 2011. By virtue of section 4(a) of the Interpretation Act 1978 (as read with section 23(1) of that Act), where provision is made for an enactment to come into force on a particular day it comes into force at the beginning of that day.

2.3 In a memorandum printed at Appendix 2, Her Majesty's Revenue and Customs accept that the Order wrongly purports to have retrospective effect, which was not intended.

2.4 **The Committee accordingly reports this Order for purporting to have unauthorised retrospective effect, as acknowledged by the Department.**

3 S.I. 2011/133: Reported for failure to comply with *Statutory Instrument Practice*

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2011 (S.I. 2011/133)

3.1 **The Committee draws the special attention of both Houses to this Order on the ground that it fails to comply with *Statutory Instrument Practice*.**

3.2 The sole function of this Order is to correct unintended effects of S.I. 2010/86. In a memorandum printed at Appendix 3 the Treasury acknowledges that this Order should have been made available free of charge to all known recipients of the earlier instrument, and should have borne an italic headnote to that effect, in accordance with paragraphs 3.4.11 and 3.4.14 of *Statutory Instrument Practice*. The memorandum explains the arrangements being made to rectify the position. **The Committee accordingly reports this Order for a failure to comply with *Statutory Instrument Practice*, acknowledged by the Department.**

Instruments not reported

At its meeting on 9 March 2011 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Draft Instruments requiring affirmative approval

Draft S.I.	Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2011
Draft S.I.	Civil Contingencies Act 2004 (Amendment of List of Responders) Order 2011
Draft S.I.	Code of Recommended Practice on Local Authority Publicity
Draft S.I.	Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011
Draft S.I.	Employment and Support Allowance (Work-Related Activity) Regulations 2011
Draft S.I.	Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011
Draft S.I.	Family Procedure (Modification of Enactments) Order 2011
Draft S.I.	Media Ownership (Radio and Cross-media) Order 2011
Draft S.I.	Patents County Court (Financial Limits) Order 2011
Draft S.I.	Tax Credits Up-Rating Regulations 2011
Draft S.I.	Warm Home Discount Regulations 2011

Instruments subject to annulment

S.I. 2011/192	School Teachers' Pay and Conditions (Amendment) Order 2011
S.I. 2011/205	Transport Act 2000 (Amendment of section 5(4)) Regulations 2011
S.I. 2011/207	Harwich Haven Authority (Pension Fund) Harbour Revision Order 2011
S.I. 2011/208	Armed Forces Redundancy Scheme 2006 and the Armed Forces Redundancy Etc. Schemes 2010 (Amendment) Order 2011
S.I. 2011/209	Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011
S.I. 2011/210	Health Professions Council (Registration and Fees) (Amendment) (No. 2) Rules 2010 Order of Council 2011
S.I. 2011/213	Food (Jelly Mini-Cups) (Emergency Control) (England) (Revocation) Regulations 2011

S.I. 2011/219	Apprenticeships (Specification of Apprenticeship Standards for England) Order 2011
S.I. 2011/220	Apprenticeship Sectors (Specification) Order 2011
S.I. 2011/225	Social Security (Contributions) (Amendment) Regulations 2011
S.I. 2011/227	Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2011
S.I. 2011/228	Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011
S.I. 2011/230	Police Federation (Amendment) Regulations 2011
S.I. 2011/231	Plastic Materials and Articles in Contact with Food (England) (Amendment) Regulations 2011
S.I. 2011/232	Gas (Exemptions) Order 2011
S.I. 2011/234	CRC Energy Efficiency Scheme (Amendment) Order 2011
S.I. 2011/237	Air Navigation (Overseas Territories) (Amendment) Order 2011
S.I. 2011/238	North West London Hospitals National Health Service Trust (Transfer of Trust Property) Order 2011
S.I. 2011/253	Buckinghamshire Primary Care Trust (Transfer of Trust Property) Order 2011
S.I. 2011/255	Non-Domestic Rating and Business Rate Supplements (England) (Amendment) Regulations 2011
S.I. 2011/258	Food Additives (England) (Amendment) Regulations 2011
S.I. 2011/269	National Health Service (Quality Accounts) Amendment Regulations 2011
S.I. 2011/300	Police Act 1996 (Equipment) Regulations 2011
S.I. 2011/309	Registrar of Companies (Fees) (Companies, Overseas Companies and Limited Liability Partnerships) (Amendment) Regulations 2011
S.I. 2011/313	Local Authorities (Alteration of Requisite Calculations) (England) Regulations 2011
S.I. 2011/319	Registrar of Companies (Fees) (Limited Partnerships) (Amendment) Regulations 2011
S.I. 2011/324	Registrar of Companies (Fees) (European Economic Interest Grouping) (Amendment) Regulations 2011
S.I. 2011/405	Marine and Coastal Access Act 2009 (Amendment) Regulations 2011
S.I. 2011/409	Marine Licensing (Exempted Activities) Order 2011
S.I. 2011/423	Petroleum Act 1998 (Specified Pipelines) Order 2011
S.I. 2011/426	Healthy Start Scheme and Welfare Food (Amendment) Regulations 2011

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2010/2970** Visiting Forces (Designation) Order 2010
- S.I. 2011/147** General Dental Council (Constitution of Committees) (Amendment) Rules 2011
- S.I. 2011/150** Animal Welfare (Codes of Practice for the Welfare of Gamebirds Reared for Sporting Purposes) (Appointed Day) (England) Order 2011
- S.I. 2011/236** Films Co-Production Agreements (Amendment) Order 2011
- S.I. 2011/316** Wireless Telegraphy (Mobile Communication Services on Board Ships) (Exemption) Regulations 2011
- S.I. 2011/330** Welfare Reform Act 2007 (Commencement No. 13) Order 2011
- S.I. 2011/410** Serious Organised Crime and Police Act 2005 (Commencement No. 14) Order 2011
- S.I. 2011/414** Crime and Security Act 2010 (Commencement No. 3) Order 2011

Appendix 1

S.I. 2011/95: memorandum from the Department for Environment, Food and Rural Affairs

Flood and Water Management Act 2010 (Commencement No. 2) Order 2011 (S.I. 2011/95)

1. In its letter to the Department dated 9 February 2011, the Joint Committee requested a memorandum on the following point:

This Order was made on 18 January 2011 and brings provisions of the Flood and Water Management Act 2010 into force on the same date. By virtue of section 4(a) of the Interpretation Act 1978, as read with section 23(1) of that Act, the Order purports to bring those provisions into force at the beginning of that day. Identify the provision which authorises this Order to have retrospective effect.

2. There is no provision in the Flood and Water Management Act 2010 (“the Act”) authorising the Order to have retrospective effect. The Department accepts that the Order should have provided that the provisions of the Act come into force on the day after the day on which the Order was made. The Department apologises for this error.
3. The Order commenced sections 15, 38 and 39 of the Act, only so far as those sections provide power for the Minister to make statutory instruments. The retrospective commencement of these powers has no practical implications. It does not result in any unfairness, in that it doesn’t prejudice anyone’s rights or interests, or impose liabilities or obligations on anyone (other than the Crown).

Department for Environment, Food and Rural Affairs
15 February 2011

Appendix 2

S.I. 2011/132: memorandum from HM Revenue and Customs

Finance (No. 3) Act 2010, Schedule 11 (Appointed Day) Order 2011 (S.I. 2011/132)

1. The Joint Committee has requested a memorandum to be submitted on the following point–

“This Order was made on 25 January 2011 and brings provisions of the Finance (No. 3) Act 2010 into force on the same date. By virtue of section 4(a) of the Interpretation Act 1978, as read with section 23(1) of that Act, the Order purports to bring those provisions into force at the beginning of that day. Identify the provision which authorises this Order to have retrospective effect.”

2. The Department accepts that the instrument came into force when it was made and that sections 4(a) and 23(1) of the Interpretation Act 1978 apply to what the instrument itself does (namely appointing the day on which certain provisions of Schedule 11 of the Finance (No. 3) Act 2010 (“Schedule 11”) come into force) as the Committee has described. There is no provision which authorises the instrument to have retrospective effect. The instrument, wrongly, purports to have retrospective effect for part of the day of 25th January 2011.
3. The Department apologises for the clerical error which led to the instrument appointing the same day that it was made, which was not intended.
4. Fortunately, the Department does not believe that anyone will be disadvantaged in practice by this error. The parts of Schedule 11 that are brought into force by the instrument contain only minor clarifications to the law. Although it was desirable that these clarifications should take effect as soon as possible to reduce the opportunity for confusion, there is no particular policy significance to the precise date that the amendments become effective. To further ensure that no-one is potentially disadvantaged, the Department will only rely upon the changes made by the parts of Schedule 11 brought into force by this Order with effect from the beginning of 26th January 2011.

HM Revenue & Customs
15th February 2011

Appendix 3

S.I. 2011/133: memorandum from HM Treasury

<p><i>Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2011 (S.I. 2011/133)</i></p>
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1. In its letter to HM Treasury of 9 February 2011, the Joint Committee requested a memorandum on the following point:

“Given that the sole purpose of this instrument is to correct unintended effects of S.I. 2010/86, why does it not bear a headnote stating that it is being

made available free of charge to all known purchasers of that instrument, as required by paragraph 3.4.14 of *Statutory Instrument Practice*?”

2. HM Treasury’s response is as follows.
3. HM Treasury recognises that copies of this instrument should have been made available free of charge to all known recipients of S.I 2010/86. Known purchasers of this instrument will be refunded by The Stationery Office. The Stationery Office will add the appropriate headnote to any future reprint of the instrument. HM Treasury apologises for this error.

HM Treasury

15 February 2011