



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Fourth Report  
of Session 2010-11**

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**Drawing special attention to:**

*Secretary of State for Culture, Olympics, Media and Sport Order 2010  
(S.I. 2010/1551)*

*General Pharmaceutical Council (Statutory Committees and their Advisers  
Rules) Order of Council 2010 (S.I. 2010/1616)*

*General Pharmaceutical Council (Registration Rules) Order of Council 2010  
(S.I. 2010/1617)*

*General Pharmaceutical Council (Transfer of Property, Rights and Liabilities,  
Fees and Grants) Order of Council 2010 (S.I. 2010/1618)*

*Marine Strategy Regulations 2010 (S.I. 2010/1627)*

*National Health Service Pension Scheme (Amendment) Regulations 2010  
(S.I. 2010/1634)*

*Non-Domestic Rating (Collection and Enforcement) (Local Lists) (England)  
(Amendment) (No. 2) Regulations 2010 (S.I. 2010/1656)*

*Armed Forces and Reserve Forces (Compensation Scheme) (Amendment)  
Order 2010 (S.I. 2010/1723)*

*Equality Act 2010 (Commencement No. 1) Order 2010 (S.I. 2010/1736)*

*Ordered by the House of Lords to be printed*

*27 October 2010*

*Ordered by the House of Commons to be printed*

*27 October 2010*

**HL Paper 46**

**HC 354-iv**

Published on 2 November 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

## Current membership

### House of Lords

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

### House of Commons

Mr George Mudie MP (*Labour, Leeds East*) (Chairman)  
Mr Robert Buckland MP (*Conservative, South Swindon*)  
Michael Ellis MP (*Conservative, Northampton North*)  
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](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, Nicholas Beach and Peter Milledge (*Lords*).

## Contacts

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## Instruments reported

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At its meeting on 27 October 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 nine 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. 2010/1551: Reported for defective drafting

*Secretary of State for Culture, Olympics, Media and Sport Order 2010 (S.I. 2010/1551)*

1.1 **The Committee draws the special attention of both Houses to this Order on the grounds that it is defectively drafted in one respect.**

1.2 Article 3(3) and (4) refers to instruments “made or issued”, while articles 6(4) and 9(3) refer to enactments and instruments “passed or made”. Taking “passed” to refer to enactments, the Committee asked the Department for Culture, Media and Sport why articles 6(4) and 9(3) referred to instruments only as being “made” and did not include the alternative “or issued”, as does article 3(3).

1.3 The Committee recognises that, if the intention were to apply article 6(4) only to the sub-class of instruments (as defined in article 2) that are aptly described as being “made”, the omission would be justified.

1.4 The Department’s memorandum printed at Appendix 1, however, does not suggest that the omission is required in order to restrict the application of the paragraph in that way. The memorandum simply argues that the different contexts of articles 3 and 6 justify the different expressions. The Committee does not agree: if both articles are to apply to the entire range of instruments as defined in article 2, then either “made” is apt for all, or “made” is apt only for some while “issued” is apt for others. **The Committee therefore is not persuaded that justification for the inconsistency of usage has been made out, and accordingly reports articles 3, 6 and 9 for defective drafting in that respect.**

### 2 S.I. 2010/1616: Reported for defective drafting

*General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010 (S.I. 2010/1616)*

2.1 **The Committee draws the special attention of both Houses to this Order on the ground that the rules which the Order approves are defectively drafted in one respect.**

2.2 Rule 8(3)(f) of the rules made by the General Pharmaceutical Council and approved by this Order and set out in its Schedule refers to whether a person has received a “formal caution” for a criminal offence. In response to the Committee’s question as to what was intended to be added by the word “formal”, the Department of Health, in its memorandum

printed at Appendix 2, acknowledges that the term “formal caution” has been replaced in police usage by the term “simple caution” and that the use of “formal” is an error. The memorandum also records the intention of the General Pharmaceutical Council to amend the rules at the earliest opportunity to rectify the error. **So the Committee reports rule 8(3)(f) for defective drafting, acknowledged by the Department.**

### **3 S.I. 2010/1617: Reported for defective drafting of the preamble**

*General Pharmaceutical Council (Registration Rules) Order of Council 2010 (S.I. 2010/1617)*

**3.1 The Committee draws the special attention of both Houses to this Order on the ground that the preamble to the Order is defectively drafted in one respect.**

3.2 Rule 23(7)(b) of the rules approved by this Order and set out in its Schedule confers a power to charge fees. Article 36 of the Pharmacy Order 2010, under which this rule is made, requires prior consultation. The Committee asked the Department of Health whether the consultation had been carried out and, if so, why it was not mentioned in the preamble. In a memorandum printed at Appendix 3 the Department confirms that the consultation was carried out and states that it was omitted from the preamble in error. **So the Committee reports the preamble for defective drafting, acknowledged by the Department.**

### **4 S.I. 2010/1618: Reported for requiring elucidation**

*General Pharmaceutical Council (Transfer of Property, Rights and Liabilities, Fees and Grants) Order of Council 2010 (S.I. 2010/1618)*

**4.1 The Committee draws the special attention of both Houses to this Order on the ground that it requires elucidation in one respect.**

4.2 Paragraph 3(1) and (2)(f) of Schedule 1 to this Order, as read with article 2(1), transfers intellectual property, rights and liabilities in relation to “all employment records relating to relevant staff”—a term covered by a definition embracing all individuals employed or engaged at a given time in a particular activity; but article 2(2) specifies the relevant staff being transferred by reference to names on an existing list, which suggests that only some relevant staff are to be transferred. The Committee asked the Department of Health about the apparent inconsistency and, in a memorandum printed at Appendix 4, the Department explains that in fact the definition and the list are co-extensive. **The Committee therefore reports the Order for requiring the elucidation provided in the Department’s memorandum.**

## 5 S.I. 2010/1627: Reported for defective drafting

*Marine Strategy Regulations 2010 (S.I. 2010/1627)*

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

5.2 Part 2 of Schedule 1 includes definitions of “criteria” and “regional cooperation” but those expressions appear nowhere else in the Regulations apart from the definitions themselves. In a memorandum printed at Appendix 5 the Department for Environment, Food and Rural Affairs acknowledges that the definitions are unnecessary, and **the Committee accordingly reports Part 2 of Schedule 1 for defective drafting, acknowledged by the Department.**

## 6 S.I. 2010/1634: Reported for defective drafting

*National Health Service Pension Scheme (Amendment) Regulations 2010 (S.I. 2010/1634)*

6.1 The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in a number of respects.

6.2 Regulation 3(3) inserts a provision into the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) which appears to require the Secretary of State to determine bands and rates that are “specified in the relevant table”; since the bands and rates are specified in the table, it is unclear what is left for the Secretary of State to determine, or what there is for the Secretary of State to consult on in advance (as required by a provision amended by regulation 3(4)). The Committee asked the Department of Health to explain this, and in a memorandum printed at Appendix 6 the Department suggests that the requirement imposed by the provision inserted by regulation 3(3) is “declaratory in that it provides that, in respect of each Scheme year, the Secretary of State will determine contribution rates and pay bands as required to be specified in the relevant tables”. The Committee does not consider this a genuine form of declaratory legislation, such as might properly be used to dispel a doubt, but rather a form of avoidable duplication, whereby the regulations purport to require the Secretary of State to do that which (in the light of the Committee's comments on SI 2009/381 in its 12th Report for the 2008-09 Session) has already been correctly done by the regulations. **The Committee therefore reports regulation 3 for defective drafting in respect of the inclusion of superfluous material in the provision inserted by regulation 3(3) and in respect of the retention of superfluous material in the provision amended by regulation 3(4).**

6.3 The points to which the Committee draws attention above arise also in relation to other provisions of the Regulations drafted similarly to the provisions reported.

6.4 Regulation 4 imposes a requirement to “take the advice” of the Scheme Actuary (in inserted paragraph (1B)), in contrast to a requirement to “consider” advice used elsewhere in the Regulations. The Committee asked the Department whether the expression “take the advice” was intended to imply a duty to follow any advice given, or if not why the















































