



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Tenth Report
of Session 2010-11**

Drawing special attention to:

*Houses in Multiple Occupation (Specified Educational Establishments)
(England) (No. 2) Regulations 2010 (S.I. 2010/2616)*
*Protection of Vulnerable Groups (Scotland) Act 2007 (Consequential
Provisions) Order 2010 (S.I. 2010/2660)*

*Ordered by the House of Lords to be printed
8 December 2010*

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Joint Committee on Statutory Instruments

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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 8 December 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 two 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. 2010/2616: Reported for defective drafting

Houses in Multiple Occupation (Specified Educational Establishments) (England) (No. 2) Regulations 2010 (S.I. 2010/2616)

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 Regulation 2(b)(ii) provides that an education establishment is specified for the purposes of paragraph 4 of Schedule 14 to the Housing Act 2004 (buildings occupied by students) if it is listed as the relevant educational establishment in respect of a building listed in the Schedule annexed to the Universities UK/Guild HE Code of Practice for the Management of Student Housing dated 17th August 2010.

1.3 There are four annexes to that Code, and none of them contains a schedule or a list of buildings.

1.4 In a memorandum printed at Appendix 1, the Department for Communities and Local Government acknowledges that the Code does not include an annexed Schedule, but points out that the terminology follows that in other instruments (deviation from which might cause confusion) and that, as there is a list of buildings which is published at the same website as the Code and which is referred to in the Code as “the Schedule”, it does not expect readers to be confused. The Committee, which notes that all the precedents cited relate to a predecessor Code and that the earliest of them does not refer to its Schedule being annexed, is not persuaded that the Memorandum justifies the mismatch; regulation 2(b)(ii) could have dovetailed straightforwardly with the outside documentation by referring to the list of buildings accurately, for example as the list published with the Code of Practice and referred to in that Code as the Schedule.

1.5 The Committee is therefore pleased that the Department undertakes to correct the position in the next instrument of this nature (these are made frequently), and **accordingly reports regulation 2(b)(ii) for defective drafting, acknowledged to some extent by the Department.**

2 S.I. 2010/2660: Reported for defective drafting

Protection of Vulnerable Groups (Scotland) Act 2007 (Consequential Provisions) Order 2010 (S.I. 2010/2660)

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

2.2 As explained in a memorandum printed at Appendix 2 the Order was made in the Scotland Office on the basis of a request from the Scottish Government in order to reinforce the Scottish Government's Protection of Vulnerable Groups Scheme. Paragraph (1) of article 20 of the Order empowers the Independent Safeguarding Authority ("ISA") to require persons falling within section 20(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 to provide it with any information held by them which the ISA thinks may be relevant, but does not impose any direct requirement on those persons. Nonetheless, paragraph (2) provides that a person who fails, without reasonable excuse, to comply with paragraph (1) is guilty of an offence.

2.3 The Department's memorandum states that paragraph (2) is intended to make it an offence for a person to fail to provide any information requested by the ISA under paragraph (1), and accepts that the drafting could have been clearer. However, it also indicates that, as the Order as drafted "allows for the ISA to have the power to request the information from the persons covered by article 20", the Scottish Government does not consider that any defect in article 20(2) is critical to the Protection of Vulnerable Groups Scheme and thinks it unlikely to give rise to practical problems; it will keep the matter under review and consider in the light of experience whether amendment is necessary. The Memorandum adds that the Department will, in conjunction with the Scottish Government, consider the position further if difficulties are caused in practice.

2.4 The Committee points out that, if amendment is made, care should be taken to ensure that the terminology is consistent (a requirement and a request are not the same) but, more generally, finds the overall reaction surprising. If it is not considered necessary to impose a criminal sanction for failure to comply with a requirement to supply information, why should the Order have purported to impose one? Conversely, if it is considered necessary, why does the Order not need amending so that a clearly effective one exists? Under the Order as literally read, it appears to be impossible for a person to fail to comply with article 20(1). Furthermore the Committee stresses that, while the desirability of co-operation between the Department and the Scottish Government is appreciated, the views of the Scottish Government are not of primary relevance at this point; for both the content of the Order and any decision whether to amend it are direct responsibilities of the Secretary of State as maker of the Order. **The Committee accordingly reports article 20(2) for defective drafting, acknowledged to some extent by the Department.**

Instruments not reported

At its meeting on 8 December 2010 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

Instruments requiring affirmative approval

S.I. 2010/2843 Export Control (Amendment) (No. 3) Order 2010

Draft Instruments requiring affirmative approval

Draft S.I. Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2010

Draft S.I. Higher Education (Basic Amount) (England) Regulations 2010

Instruments subject to annulment

S.I. 2010/2690 European Communities (Designation) (No. 5) Order 2010

S.I. 2010/2715 Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations 2010

S.I. 2010/2760 Social Fund Maternity Grant Amendment Regulations 2010

S.I. 2010/2769 Housing (Right to Buy) (Service Charges) (Amendment) (England) Order 2010

S.I. 2010/2785 Medicines for Human Use (Prescribing by EEA Practitioners) (Amendment) (No. 2) Regulations 2010

S.I. 2010/2790 Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) (No. 2) and Civil Enforcement of Parking Contraventions Designation (No. 4) Order 2010

S.I. 2010/2798 Health Service Branded Medicines (Control of Prices and Supply of Information) Amendment Regulations 2010

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. 2010/2576 Local Loans (Procedure) (Amendment) Regulations 2010

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2010/1905 The Welfare Reform Act 2007 (Commencement No. 12) Order 2010

S.I. 2010/2470 Reserve Forces Act 1996 (Isle of Man) Order 2010

S.I. 2010/2472 Education (Inspectors of Education and Training in Wales) Order 2010

S.I. 2010/2643 Reserve Forces Act 1996 (Isle of Man) Regulations 2010

S.I. 2010/2644 Reserve Forces Appeal Tribunals (Isle of Man) Rules 2010

Appendix 1

S.I. 2010/2616: memorandum from the Department for Communities and Local Government

Houses in Multiple Occupation (Specified Educational Establishments) (England) (No. 2) Regulations 2010 (S.I. 2010/2616)

1. The Committee has requested a memorandum on the following point –

“There appears to be no schedule annexed to the code of practice referred to in regulation 2(b)(ii). Where is that schedule to be found?”

Regulation 2 of the Houses in Multiple Occupation (Specified Educational Establishments) (England) (No. 2) Regulations 2010 (“the Regulations”)

2. Regulation 2 of the Regulations specifies educational establishments for the purposes of paragraph 4 of Schedule 14 to the Housing Act 2004 (buildings occupied by students). An educational establishment is specified where it is listed as the relevant educational establishment in respect of a building:

(i) listed on or before 14th May 2010 in the second column of Schedule 1 of Appendix VII to the ANUK/UNIPOL Code of Standards for Larger Developments for Student Accommodation Managed and Controlled by Educational Establishments dated 28th August 2008; or

(ii) listed in the Schedule annexed to the Universities UK/Guild HE Code of Practice for the Management of Student Housing dated 17th August 2010.

3. The Universities UK/Guild HE Code of Practice for the Management of Student Housing (the Code), dated 17 August 2010, was approved by the Secretary of State by Order, (see the Housing (Codes of Management Practice) (Student Accommodation) (England) Order 2010 (S.I. 2010/2615)).

4. The lists of establishments who have agreed to comply with the Code and the list of buildings which are managed in accordance with the Code are referred to in regulation 2(b)(ii) as a Schedule. The Department acknowledges that the Code itself does not include a Schedule, however, the lists are kept on-line separately to the main Code and can be viewed at -

<http://www.universitiesuk.ac.uk/PolicyAndResearch/Guidance/AccommodationCodeofPractice/Pages/Members.aspx>.

5. Paragraph xxii of the introduction to the Code states:

“xxi) It is the intention that, in principle, this Code should apply to all student housing managed and controlled by a higher or further education establishment. However some of the provisions of the Code will not be applicable to certain small off-street individual properties leased by H/FEEs from private providers and these should be excluded from the list of buildings in the Schedule. (See Annex A to this Code for the full definition). ... The buildings listed in the Schedule should be those solely or principally occupied by students undertaking a full time course of further or higher education and which are managed and controlled by the education establishment providing the course.”

6. Paragraph 8.14 of the Code also refers to buildings being removed from “the Schedule” and a similar reference is made in the final bullet point at paragraph 8.15.

7. The references to “the Schedule” throughout the Code, along with the lists of establishments and buildings which can be viewed at the address above, support the Department’s view that there is unlikely to be any confusion as to what is being referred to by “the Schedule” in regulation 2(b)(ii).

8. In addition, this is a standard form of wording that has been used in the previous Regulations specifying educational establishments for the purposes of paragraph 4 of Schedule 14 (see, in particular, SIs 2010/607, 2009/2298, 2008/2346, 2007/2601 and 2006/2280). The Department considered that using alternative wording in this latest set of Regulations might cause confusion with regards to the earlier lists.

9. The Department acknowledges that the reference in regulation 2(b)(ii) to a Schedule which does not appear expressly labelled as such in the approved Code could have been explained more fully. The Department commits to correct the position in the next Specified Educational Establishments Regulations, by standardising the references to the lists of educational establishments and buildings in the current approved Codes of Practice. (The Regulations specifying educational establishments are regularly updated.)

Department for Communities and Local Government
30th November 2010

Appendix 2

S.I. 2010/2660: memorandum from the Scotland Office

<p><i>Protection of Vulnerable Groups (Scotland) Act 2007 (Consequential Provisions) Order 2010 (S.I. 2010/2660)</i></p>

The Joint Committee on Statutory Instruments (the Committee) wrote to the Scotland Office on the 24 November 2010 with the following question regarding S.I. 2010/2660:

‘Explain how a person can fail to comply with article 20(1). Why does article 20(2) not provide (compare articles 7 and 13) that a person commits an offence if he fails to comply with a requirement imposed under paragraph (1) of that article?’

This Memo addresses the points raised by the letter from the Committee.

1. While the Scotland Office have responsibility for the use of powers under the Scotland Act 1998 (in this case the power under Section 104 of the Scotland Act 1998), this Order relates to the protection of vulnerable groups, a devolved matter in relation to which the Scottish Government has primary policy responsibility in Scotland.
2. The Section 104 Order (the Order) was taken forward by the Scotland Office, following a request by the Scottish Government, to ensure that the provisions concerning the exchange of information between non-Scottish bodies and Scottish Ministers, for the purposes of the Protection of Vulnerable Groups Scheme (the PVG Scheme) in Scotland, are in place from when the PVG Scheme is commenced in Scotland from February 2011. The delay in the implementation of the PVG Scheme results from some challenges in the delivery of the IT system, this additional work has left insufficient time in the PVG Programme to complete the final stages of implementation. Given the importance of the PVG Scheme to the protection of vulnerable groups in Scotland, the Scottish Government was not prepared to accept any compromises in delivery and have rescheduled implementation of the PVG Scheme. As the intention behind the Order was to ensure that the PVG Scheme, established by the Protection of Vulnerable Groups (Scotland) Act 2007, would operate when this is commenced, we have therefore sought the views of the Scottish Government on the point raised by the Committee.
3. The Scottish Government have advised that: the intention behind article 20(2) of the Order is to make it an offence if a person fails to provide any information requested by the Independent Safeguarding Authority (ISA). It is acknowledged that the drafting of this article could have been clearer, and more in line with articles 7 and 13 of the Order. However, it is considered that the Order, as currently drafted, allows for the ISA to have the power to request the information from the persons covered by article 20 of the Order; which is the primary purpose of that article. The Scottish Government have therefore advised that they do not consider that any defect in article 20(2) is critical to

the PVG Scheme, and they think it unlikely to give rise to practical problems. However, the Scottish Government will keep the issue under review and consider whether an amendment of the provision is necessary in the light of experience.

4. Accordingly, we thank the Committee for drawing this point to our attention meantime and agree that the drafting of article 20(2) could have been clearer. If the present drafting of article 20(2) causes difficulties in practice, we shall consider further, in conjunction with the Scottish Government, whether an appropriate amendment should be brought forward.

Scotland Office

30th November 2010