



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Thirty-fourth Report of Session 2010-12

Drawing special attention to:

*Belarus (Restrictive Measures) (Overseas Territories) Order 2011
(S.I. 2011/2440)*

*Ordered by the House of Lords to be printed
30 November 2011*

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Joint Committee on Statutory Instruments

Current membership

House of Lords

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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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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.

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*), Jane White (*Lords Clerk*) and Jennifer Steele (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons*); Allan Roberts, Nicholas Beach and Peter Milledge (*Lords*).

Contacts

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Instruments reported

At its meeting on 30 November 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 one of those considered. The Instrument and the ground for reporting it is given below. The relevant Departmental memorandum is published as an appendix to this report.

1 S.I. 2011/2440: Reported for defective drafting

Belarus (Restrictive Measures) (Overseas Territories) Order (S.I. 2011/2440)

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

1.2 In a memorandum printed at the Appendix, the Foreign and Commonwealth Office acknowledges that article 2(1) wrongly includes a definition of the “Council Regulations” when that expression is not used elsewhere in the Order, and that a reference in article 21(3) to article 17(2) should instead have been a reference to article 17(3). The Department undertakes to amend the provisions concerned at the next appropriate opportunity.

1.3 The Committee accordingly reports articles 2(1) and 21(3) for defective drafting, acknowledged by the Department.

Instruments not reported

At its meeting on 30 November 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

Instruments requiring affirmative approval

S.I. 2011/2775 Financial Restrictions (Iran) Order 2011

Draft Instruments requiring affirmative approval

Draft S.I. Electricity and Gas (Carbon Emissions and Community Energy Saving) (Amendment) Order 2011

Draft S.I. Jobseeker's Allowance (Jobseeking and Work for Your Benefit) (Amendment and Revocation) Regulations 2012

Draft S.I. Local Policing Bodies (Consequential Amendments) Regulations 2011

Draft S.I. Open-Ended Investment Companies (Amendment) Regulations 2011

Instruments subject to annulment

S.I. 2011/2439 Scotland Act 1998 (Agency Arrangements) (Specification) Order 2011

S.I. 2011/2616 Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2011

S.I. 2011/2667 Merchant Shipping (Flag State Directive) Regulations 2011

S.I. 2011/2675 Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) (No. 2) Regulations 2011

S.I. 2011/2677 Ecodesign for Energy-Related Products (Amendment) Regulations 2011

S.I. 2011/2678 Immigration (Procedure for Marriage) Regulations 2011

S.I. 2011/2679 Immigration (Procedure for Formation of Civil Partnerships) Regulations 2011

S.I. 2011/2681 Animal By-Products (Enforcement) and Transmissible Spongiform Encephalopathies (England) (Amendment) Regulations 2011

S.I. 2011/2705 Rail Vehicle Accessibility (Middleton Railway Drewry Car) and (Cairngorm Funicular Railway) Exemption (Amendment) Order 2011

Draft instruments subject to annulment

Draft S.I. Broxbourne (Electoral Changes) Order 2012

Draft S.I. Royal Parks and Other Open Spaces (Amendment) Regulations 2012

Draft S.I. Rushmoor (Electoral Changes) Order 2012

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2011/2575 Designation of Schools Having a Religious Character (England) Order 2011

Appendix

S.I. 2011/2440: memorandum from the Foreign and Commonwealth Office

<i>Belarus (Restrictive Measures) (Overseas Territories) Order 2011 (S.I. 2011/2440)</i>
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The Committee considered the above instrument at its meeting on 9 November 2011 and asked for a memorandum on the following points:

- (1) In article 2(1), why is the expression “Council Regulations” defined, when that expression does not appear elsewhere in the Order?
- (2) In article 21(3), is the reference to article 17(2) correct, or should it be a reference to article 17(1), to article 17(3), or to article 17 generally?

In response to (1), the Foreign and Commonwealth Office acknowledges that the expression “Council Regulations” has been defined but is not used elsewhere in the Order. It is therefore immaterial to the interpretation of the Order and is technically redundant.

In response to (2), the reference in article 21(3) to article 17(2) was an oversight and should have been a reference to article 17(3). The cross reference in article 21(3) was overlooked following editorial changes to the draft Order which entailed switching the order of paragraphs (2) and (3) of article 17. We accept that we should have referred to Article 17(3) in Article 21(3).

We are grateful to the Committee for their comments and we regret these errors. The Foreign and Commonwealth Office will amend these points at the next, appropriate opportunity.

Foreign and Commonwealth Office
15 November 2011