



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Sixteenth Report of Session 2012-13

Drawing special attention to:

Community Radio (Guernsey) Order 2012 (S.I. 2012/2690)
Council Tax Reduction Schemes (Prescribed Requirements) (England)
Regulations 2012 (S.I. 2012/2885)
Council Tax Reduction Schemes (Default Scheme) (England)
Regulations 2012 (S.I. 2012/2886)

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Joint Committee on Statutory Instruments

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Lord Kennedy (*Labour*)
Lord Lyell (*Conservative*)
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 Charlotte Littleboy (*Commons Clerk*), Jane White (*Lords Clerk*) and Liz Booth (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons*); Allan Roberts, Nicholas Beach and Peter Milledge (*Lords*).

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Contents

Report	<i>Page</i>
Instruments reported	2
1 S.I. 2012/2690: Reported for doubtful <i>vires</i>	2
2 S.I. 2012/2885 and 2886: Reported for defective drafting	3
Instruments not reported	5
Annex	5
Appendix 1	8
S.I. 2012/2690: memorandum from the Department for Culture, Media and Sport	8
Appendix 2	9
S.I. 2012/2885 and 2886: memorandum from the Department for Communities and Local Government	9

Instruments reported

At its meeting on 23 January 2013 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. 2012/2690: Reported for doubtful *vires*

Community Radio (Guernsey) Order 2012 (S.I. 2012/2690)

1.1 The Committee draws the special attention of both Houses to this Order on the ground that there appears to be a doubt whether it is *intra vires*.

1.2 This Order in Council, which was made on 7 November 2012, purports to be made under section 262(1), (3) and (4) of the Communications Act 2003. As at that date, section 262 conferred power on the Secretary of State to make orders but conferred no power for an Order in Council to be made.

1.3 On 7 November 2012 the Communications (Bailiwick of Guernsey) (Amendment) Order 2012 was made; it amended the Communications (Bailiwick of Guernsey) Order 2003 with the effect that section 262 applied to Guernsey with further modifications (it already applied with one modification by virtue of the 2003 Order). In particular, the further modified section provided for Orders in Council to be made rather than for the Secretary of State to make orders. That amendment Order came into force on 5 December 2012.

1.4 In a memorandum printed at Appendix 1, the Department for Culture, Media and Sport acknowledges that the power to make this Order in Council did not exist until 5 December 2012, and states that it will arrange to revoke this Order and re-make it at a future Privy Council meeting.

1.5 The Department also refers to a requirement for the affirmative resolution procedure to apply to orders under section 262. The Committee would like to make clear that this requirement would not in any event have applied in respect of an order relating to Guernsey because paragraph 50 of Schedule 2 to the 2003 Order already omitted this requirement from that section as it applied to Guernsey.

1.6 The Committee accordingly reports this Order for doubtful *vires*, acknowledged by the Department.

2 S.I. 2012/2885 and 2886: Reported for defective drafting

Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (S.I. 2012/2885)

Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (S.I. 2012/2886)

2.1 The Committee draws the special attention of both Houses to these instruments on the ground that they are defectively drafted in several respects.

2.2 S.I. 2012/2885 (referred to in this report as “the Regulations”) prescribes requirements which must or must not be included in a council tax reduction scheme under section 13A of the Local Government Finance Act 1982. S.I. 2012/2886 sets out in the Schedule to the Regulations a scheme (referred to in this report as “the Scheme”) which will apply by default where a billing authority does not make a scheme of its own by 31 January 2013.

2.3 Paragraph 2(1) of the Scheme includes a definition of “applicable amount”. Sub-paragraph (b) of the definition refers to the amount calculated in accordance with (i) paragraph 26 and Schedule 3; or (ii) paragraph 28, as the case may be. In a memorandum printed at Appendix 2, the Department for Communities and Local Government acknowledges that this sub-paragraph should have included as a further option the amount calculated in accordance with paragraph 27 and Schedule 3, and undertakes to amend the Scheme. **The Committee accordingly reports paragraph 2(1) of the Scheme for defective drafting, acknowledged by the Department.**

2.4 Regulation 3 of the Regulations, and paragraph 3(2) of the Scheme, define what is meant by a “pensioner” and a “person who is not a pensioner”. The Department confirms that the two definitions were intended to be mutually exclusive and acknowledges that in each case the word “and” should have been used in one place instead of “or” to achieve that intended effect. The Department undertakes to make the necessary amendments. **The Committee accordingly reports regulation 3 of the Regulations and paragraph 3(2) of the Scheme for defective drafting, acknowledged by the Department.**

2.5 Paragraph 6(2) of Schedule 1 to the Regulations, and paragraphs 25(2) and 26(2) of the Scheme, each define “additional spouse” (in the context of a polygamous marriage) as “a spouse by the party to the marriage who is additional to the party to the marriage”. The Committee found this definition impossible to understand and asked the Department to explain it. The Department explains what it is intended to mean and opines that the intended meaning is clear, but it does not address the fact that the words used do not themselves make anything clear. The Department states that the definition has been taken from a precedent, regulation 12 of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216), and it is not aware of the definition having caused any difficulty. The Department further states that it did not wish to depart from the wording of a provision which is familiar to those working in the area of council tax.

2.6 The Committee is surprised at the Department's observations. The original text of regulation 12 of S.I. 2006/216 provides a definition (in paragraph (6)) which reads, so far as is relevant, that ““additional spouse” means a spouse of either party to the marriage who is

additional to the other party to the marriage” - a definition that appears to the Committee to be conceptually and linguistically clear. In the current version that appears on the Lexis website regulation 12(6) is indicated as revoked and regulation 12(5) is indicated as using the definition that the Department seeks to justify, but the Committee's check of the provisions that the website editors use to support their conclusion has not led to the conclusion that any such changes have been made. The Committee therefore wonders whether the Department and others working in the area of council tax may, through over-reliance on a commercial source, be operating on a false assumption as to what the current text of the precedent is. Even if the Committee's check turns out to be inaccurate, the expression “a spouse by the party to the marriage” is meaningless on its own, let alone combined with “who is additional to the party to the marriage”. **The Committee accordingly reports paragraph 6(2) of Schedule 1 to the Regulations, and paragraphs 25(2) and 26(2) of the Scheme, for defective drafting.**

2.7 Paragraph 73(1) of the Scheme defines “academic year” as the period of twelve months beginning on 1 January, 1 April, 1 July or 1 September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively. The Committee asked the Department to identify the start and end dates of the winter, the spring, the summer and the autumn.

2.8 The Department explains that it intends winter to mean the period December to February, spring the period March to May, summer the period June to August and autumn the period September to November. It asserts that the intention is achieved because those are the dictionary definitions of the seasons. The Committee does not know what dictionaries are available to the Department, but it notes the following definitions of winter:

- The fourth and coldest season of the year, between autumn and spring; in the northern hemisphere frequently regarded as comprising December, January and February, or (*astronomy*) reckoned from the winter solstice to the vernal equinox. (*Shorter Oxford English Dictionary, 5th Edition*)
- The coldest season of the year, between autumn and spring [with similar wording in relation to astronomy]. (*Collins English Dictionary, 6th Edition*)
- The cold season of the year, being approximately from December to February in the northern hemisphere; in the astronomical year, the period of time between the winter solstice and the vernal equinox. (*The Chambers Dictionary, 12th Edition*)

2.9 The other seasons are defined in similarly imprecise terms.

2.10 The Committee accordingly does not accept the Department's assertion, considers that the definition of “academic year” lacks the necessary precision, and **accordingly reports paragraph 73(1) of the Scheme for defective drafting.**

2.11 Finally, the Department acknowledges that paragraph 9(1) of Schedule 8 to the Regulations, and paragraph 115(1) of the Scheme should each have been expressed as being subject to sub-paragraphs (3) and (9) and not (3), (6) and (7). **The Committee accordingly reports paragraph 9(1) of Schedule 8 to the Regulations, and paragraph 115(1) of the Scheme for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 23 January 2013 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 Instrument requiring affirmative approval

Draft S.I.	Environmental Permitting (England and Wales) (Amendment) Regulations 2013
Draft S.I.	Criminal Justice Act 2003 (Conditional Cautions: Code of Practice) Order 2013
Draft S.I.	Climate Change Levy (Combined Heat and Power Stations) (Amendment) Regulations 2013
Draft S.I.	Scotland Act 2012 (Consequential Provisions) Order 2013
Draft S.I.	Companies Act 2006 (Amendment of Part 25) Regulations 2013
Draft S.I.	Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) (Amendment) (England) Order 2013
Draft S.I.	Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013
Draft S.I.	Health and Social Care Act 2012 (Consequential Amendments) Order 2013
Draft S.I.	Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013

Instruments subject to annulment

S.I. 2012/3019	Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2012
S.I. 2012/3020	Aircraft Operators (Accounts and Records) (Amendment) Regulations 2012
S.I. 2012/3063	Civil Partnership (Registration Abroad and Certificates) (Amendment) Order 2012
S.I. 2012/3080	Cowes Harbour Revision Order 2012
S.I. 2012/3081	National Health Service (Quality Accounts) Amendment Regulations 2012
S.I. 2012/3083	Pension Protection Fund (Miscellaneous Amendments) (No. 2) Regulations 2012
S.I. 2012/3084	London Thames Gateway Development Corporation (Transfer of Property, Rights and Liabilities) (Greater London Authority) (No. 2) Order 2012

- S.I. 2012/3085** Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (England) (Amendment) Regulations 2012
- S.I. 2012/3086** Council Tax (Administration and Enforcement) (Amendment) (No. 2) (England) Regulations 2012
- S.I. 2012/3087** Council Tax (Demand Notices) (England) (Amendment) Regulations 2012
- S.I. 2012/3091** Legal Services Act 2007 (Alteration of Limit) Order 2012
- S.I. 2012/3092** Legal Services Act 2007 (Legal Complaints) (Parties) Order 2012
- S.I. 2012/3094** NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012
- S.I. 2012/3096** Employment and Support Allowance (Amendment) Regulations 2012
- S.I. 2012/3098** Civil Legal Aid (Procedure) Regulations 2012
- S.I. 2012/3099** Milton Keynes (Urban Area and Planning Functions) (Revocation) Order 2012
- S.I. 2012/3109** Town and Country Planning (Development Management Procedure) (England) (Amendment No. 3) Order 2012
- S.I. 2012/3112** Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England and Wales) Order 2012
- S.I. 2012/3122** Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012
- S.I. 2012/3123** Public Lending Right Scheme 1982 (Commencement of Variation) (No. 2) Order 2012
- S.I. 2012/3125** Greater London Authority (Consolidated Council Tax Requirement Procedure) (No. 2) Regulations 2012
- S.I. 2012/3128** Local Justice Areas (No. 3) Order 2012
- S.I. 2012/3129** Port of Ipswich Harbour Revision Order 2012
- S.I. 2012/3134** Children (Secure Accommodation) (Amendment) (England) Regulations 2012
- S.I. 2012/3135** Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2012

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. 2012/3069 Syria (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2012/3090 Welfare Reform Act 2012 (Commencement No. 6 and Savings Provisions) Order 2012

S.I. 2012/3138 Wireless Telegraphy (Limitation on Number of Licences) Order 2012

Appendix 1

S.I. 2012/2690: memorandum from the Department for Culture, Media and Sport

<i>Community Radio (Guernsey) Order 2012 (S.I. 2012/2690)</i>

The Joint Committee on Statutory Instruments wrote to the Department on 12 December 2012 and requested a memorandum on the following point:

The Communications (Bailiwick of Guernsey) (Amendment) Order 2012 (S.I. 2012/2688) came into force on 5 December 2012. What authorised the making of this Order on 7 November?

1. The Communications (Bailiwick of Guernsey) (Amendment) Order 2012 (the “amending Order in Council”) made changes to two sections of the Communications Act 2003 as it has effect in the Bailiwick of Guernsey, by amending the Communications (Bailiwick of Guernsey) Order 2003 (S.I. 2003/3195).
2. DCMS recognises that the amending Order in Council did not come into force until 5th December 2012, the same date on which the Community Radio (Guernsey) Order 2012 came into force. DCMS also recognises that the requirements around the affirmative resolution procedure and the use of an Order as opposed to an Order in Council did not cease to have effect until that date. The Community Radio (Guernsey) Order 2012 ought not to have been made as an Order in Council, or without using the affirmative resolution procedure, until the amending Order in Council came into force.
3. DCMS is grateful to the Committee for bringing this to our attention, and apologises for the error. DCMS acknowledges that the making of the Community Radio (Guernsey) Order 2012 was ultra vires and accordingly will arrange to revoke the Community Radio (Guernsey) Order 2012 and re-make it at a future Privy Council meeting.

Department for Culture, Media and Sport
14 December 2012

Appendix 2

S.I. 2012/2885 and 2886: memorandum from the Department for Communities and Local Government

Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (S.I. 2012/2885)

Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (S.I. 2012/2886)

1. The Committee has requested a memorandum on the following points:
 - (1) *In establishing what counts as the “applicable amount” as defined in paragraph 2(1) of the scheme set out in the Schedule to S.I. 2012/2886 (“the default scheme”)—*
 - (a) *why does the definition contain no reference to paragraph 27 and Schedule 3 in combination;*
 - (b) *why is paragraph 28 expressed as an alternative to paragraph 26 and Schedule 3 in combination rather than something that qualifies that combination; and*
 - (c) *why is paragraph 27 itself (unlike paragraph 26) not expressed to be subject to paragraph 28?*
 - (2) *In paragraph 3(2) of the default scheme, and also in regulation 3 of S.I. 2012/2885 (“the Regulations”), should sub-paragraph (a)(ii) read “he is not, and, if he has a partner, his partner is not”? (The Committee assumes that the definitions of a “person who is a pensioner” and a “person who is not a pensioner” are intended to be mutually exclusive.)*
 - (3) *Explain the meaning of the definition of “additional spouse” in paragraph 6(2) of Schedule 1 to the Regulations and paragraphs 25(2) and 26(2) of the default scheme.*
 - (4) *Identify the intended start and end dates of “the winter, the spring, the summer and the autumn” respectively in the definition of “academic year” in paragraph 73(1) of the default scheme and explain how the intention is achieved.*
 - (5) *Should paragraph 9(1) of Schedule 8 to the Regulations, and paragraph 115(1) of the default scheme, be expressed to be subject to sub-paragraphs (3) and (9) rather than sub-paragraphs (3), (6) and (7)?*

2. On point 1(a) we agree that the definition of “applicable amount” in paragraph 2(1) of the default scheme should include a reference to paragraph 27 and Schedule 3 in combination and will make that amendment.
3. On point 1(b), paragraph 28 is a further alternative to paragraph 26.
4. On point 1(c), paragraph 27 applies where an applicant who is not a pensioner is a member of a polygamous marriage and does not have an award of universal credit (alone or jointly with a party to the marriage) and paragraph 28 applies where an applicant who is not a pensioner has an award of universal credit (alone or jointly with a party to the marriage). In the case of polygamous marriages and universal credit, the parties to the first marriage receive a joint award and subsequent parties claim for universal credit as a single person. We do not think paragraph 27 needs to be subject to paragraph 28.
5. On point 2, the Committee is right that the definitions of a “person who is a pensioner” and a “person who is not a pensioner” are intended to be mutually exclusive (regulation 3 of the Regulations and paragraph 3 of the default scheme) and that (2)(a)(ii) should read “he is not, and if he has a partner, his partner is not”. We will amend (2)(a)(ii) to clarify the definition.
6. On point 3, polygamous marriage is defined in the interpretation provision of the Regulations and the default scheme by reference to regulation 5 and paragraph 5 respectively. Regulation 5/paragraph 5 refers to “either party to the marriage [having] any spouse additional to the other party”. Schedule 2 to the Regulations and the default scheme provides for personal allowances for those in a polygamous marriage and refers to the allowance payable to the applicant and the other party to the marriage and to the allowance payable to each additional spouse. Regulation 6(2) of the Regulations and paragraphs 25(2) and 26(2) of the default scheme explain what is meant by “additional spouse”; when read with regulation 5/paragraph 5 the Department believes it is clear to whom the definition of “additional spouse” is intended to refer. Taking the example of a person (“P”) with more than one spouse, P and the first spouse constitute the parties to the “marriage”. The second spouse is a spouse “by” P and is “additional to” the spouse who is the party to the marriage. The definition of “additional spouse” has been taken from regulation 12 of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216) (“the Pensioner Regulations”) and we are not aware of it causing any difficulties. We did not wish to depart from the wording of a provision which is familiar to those working in this area.
7. On point 4, by “the winter” we intend the period December to February; by “the spring” we intend the period March to May; by “the summer” we intend the period June to August and by “the autumn” we intend the period September to November. That intention is achieved because those are the dictionary definitions of the seasons. In relation to students beginning a course in August

or September, we acknowledge that the reference to September is not necessary. The definition of “academic year” has been taken from regulation 43(1) of the Council Tax Benefit Regulations 2006 (S.I. 2006/215) (“the CTB Regulations”) and are not aware that it has caused any difficulties. We will amend to omit that reference to September.

8. On point 5, the Committee is right that paragraph 9(1) of Schedule 8 to the Regulations, and paragraph 115(1) of the default scheme should have been expressed as being subject to sub-paragraphs (3) and (9). Paragraph 9(1)/paragraph 115(1) replicate the effect of regulation 74(1) of the CTB Regulations and regulation 59(1) of the Pensioner Regulations. We do not believe that the cross-references will cause any difficulty in practice but will amend them.

Department for Communities and Local Government
18 December 2012