



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Eighth Report of Session 2012-13

Drawing special attention to:

*Immigration (European Economic Area) (Amendment) Regulations
2012 (S.I. 2012/1547)*

*Ordered by the House of Lords to be printed
24 October 2012*

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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 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*).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2026; the Committee's email address is: jcsi@parliament.uk.

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Instruments reported

At its meeting on 24 October 2012 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 grounds for reporting it are given below. The relevant Departmental memorandum is published as the appendix to this report.

1 S.I. 2012/:1547 Reported for failure to comply with proper drafting practice

Immigration (European Economic Area) (Amendment) Regulations 2012 (S.I. 2012/1547)

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper drafting practice in two sets of related respects.

1.2 Regulation 3 and Schedule 1 amend the Immigration (European Economic Area) Regulations 2006. Several of the amendments involve the insertion of new provisions which include “will” or “will not be”, whereas the provisions being amended use expressions such as “must”, “shall”, “is”, “is not to be” or “shall not be”.

1.3 In a memorandum printed at Appendix 1, the Home Office and the UK Border Agency explain that they sought to minimise the use of the legislative “shall” in accordance with current Office of Parliamentary Counsel practice. They acknowledge, however, that in the case of the amendment to regulation 12 made by paragraph 5(c) of Schedule 1, new regulation 15A(8) inserted by paragraph 9 of Schedule 1, new regulation 15B(2) inserted by paragraph 10 of Schedule 1, and paragraph 6(4) of Schedule 4, as substituted by paragraph 25 of Schedule 1, it would have been better to have used words compatible with the existing wording of the amended Regulations.

1.4 The Department defends its use of “will” in other inserted provisions on the ground that the provisions in question provide for the consequences of a future event. The Committee agrees that the use of “will” in these particular circumstances was one of the optional drafting mechanisms available.

1.5 In addition paragraphs 5(c), 6(b) and 8(c) of Schedule 1 amend provisions of the 2006 Regulations that previously contained complete express indications of prioritisation among apparently conflicting propositions, with the result that prioritisation now appears to be incomplete. In response to the Committee's question on the point, the Department explains that in each case there is no conflict among the provisions in question. Except in relation to paragraph 6(b), the Committee is not persuaded by the explanation.

1.6 Regulation 12 of the 2006 Regulations contains, in paragraphs (1) to (4), a number of obligations binding on entry clearance officers to issue EEA family permits in connection with admission to the United Kingdom. The obligations are either unqualified or qualified purely by conditions in the paragraph themselves. Then existing paragraph (5) states that an EEA family permit “shall not be issued” if certain conditions are met. As that clashes with paragraphs (1) to (4), it is correctly introduced by the word 'But', thus making it

sufficiently clear on the surface that paragraph (5) has priority. New paragraph (6), introduced by paragraph 5(c) of Schedule 1, serves a purpose exactly parallel to that served by paragraph (5), but is not introduced by anything that provides the same clarity. The fact that, as the Department correctly states in its memorandum, there is no conflict between it and paragraph (5) does not cover the conflict with paragraphs (1) to (4). Had it been linked with paragraph (5) any conflict could straightforwardly have been resolved.

1.7 Regulation 15(2) of the 2006 Regulations states that rights of permanent residence under regulation 15 shall be lost “only” through absence for more than two consecutive years. New regulation 15(3), introduced by paragraph 8(c) of Schedule 1, then provides another ground for loss of that right. It is the survival of the word “only” in regulation 15(2) that creates a conflict. Again, that is not addressed in the Department's memorandum.

1.8 In its memorandum the Department apologises for the undefended uses of “will”, and states that it proposes to avoid the practice in future instruments but that it does not consider the operation of relevant provisions is affected. It can be deduced that the Department does not propose to amend the 2006 Regulations purely to deal with that point. The Committee accepts that reaction as reasonable, and considers that the same could be applied to the apparent absence of prioritisation provisions with which it takes issue.

1.9 The Committee accordingly reports paragraphs 5(c), 8(c) 9, 10 and 25 of Schedule 1 for failure to comply with proper drafting practice, acknowledged in part by the Department.

Instruments not reported

At its meeting on 24 October 2012 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.	Child Support Management of Payments and Arrears (Amendment) Regulations 2012
Draft S.I.	Police and Crime Commissioner Elections (Welsh Forms) Order 2012
Draft S.I.	Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012
Draft S.I.	District Electoral Areas Commissioner (Northern Ireland) Order 2012
Draft S.I.	Contracting Out (Local Authorities Social Services Functions) (England) (Amendment) Order 2012
Draft S.I.	Legal Services Act 2007 (The Law Society) (Modification of Functions) (Amendment) Order 2012
Draft S.I.	Public Bodies (Abolition of the Disability Living Allowance Advisory Board) Order 2013

Instruments subject to annulment

S.I. 2012/1754	Copyright and Performances (Application to Other Countries) (Amendment) Order 2012
S.I. 2012/1759	European Communities (Designation) Order 2012
S.I. 2012/1772	Local Government Officers (Political Restrictions) (Amendment) (England) Regulations 2012
S.I. 2012/1803	Whole of Government Accounts (Designation of Bodies) Order 2012
S.I. 2012/1804	Costs in Criminal Cases (General) (Amendment) Regulations 2012
S.I. 2012/1805	Costs in the Court Martial Appeal Court Regulations 2012
S.I. 2012/1807	Protection of Wrecks (Designation) (England) (No. 2) Order 2012
S.I. 2012/1809	Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012
S.I. 2012/1811	Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012

S.I. 2012/1813	Employers' Duties (Implementation) (Amendment) Regulations 2012
S.I. 2012/1814	Social Fund Maternity Grant Amendment Regulations 2012
S.I. 2012/1815	Product Safety (Revocation) Regulations 2012
S.I. 2012/1816	Indication of Prices (Beds) (Revocation) Order 2012
S.I. 2012/1817	Occupational and Personal Pension Schemes (Prescribed Bodies) Regulations 2012
S.I. 2012/1818	Further Education Loans Regulations 2012
S.I. 2012/1821	Housing (Right to Manage) (England) Regulations 2012
S.I. 2012/1825	Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012
S.I. 2012/1829	Academies (Land Transfer Schemes) Regulations 2012
S.I. 2012/1833	Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2012
S.I. 2012/1844	Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) (Amendment) Regulations 2012
S.I. 2012/1849	Nitrate Pollution Prevention (Amendment) Regulations 2012
S.I. 2012/1851	Gambling (Licence Fees) (Miscellaneous Amendments) Regulations 2012
S.I. 2012/1919	Education (Information About Individual Pupils) (England) (Amendment) Regulations 2012
S.I. 2012/1926	National Curriculum (Exceptions for First, Second, Third and Fourth Key Stages) (England) Regulations 2012
S.I. 2012/1927	Conservation of Habitats and Species (Amendment) Regulations 2012
S.I. 2012/1928	Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012
S.I. 2012/1943	School Premises (England) Regulations 2012
S.I. 2012/1955	Allocation and Transfer of Proceedings (Amendment) (No. 2) Order 2012

S.I. 2012/1984	Caernarfon Harbour Trust (Constitution) Harbour Revision Order 2012
S.I. 2012/1989	Local Government Pension Scheme (Miscellaneous) Regulations 2012
S.I. 2012/2015	Undertakings for Collective Investment in Transferable Securities (Amendment) Regulation 2012
S.I. 2012/2017	Financial Services and Markets Act 2000 (Gibraltar) (Amendment) Order 2012
S.I. 2012/2018	Magistrates' Courts (Sexual Offences Act 2003) (Miscellaneous Amendments) Rules 2012
S.I. 2012/2030	Neighbourhood Planning (Prescribed Dates) Regulations 2012
S.I. 2012/2046	Family Procedure (Amendment No. 3) Rules 2012
S.I. 2012/2089	Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
S.I. 2012/2111	Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012
S.I. 2012/2134	M25 Motorway (Junctions 7 to 16) (Variable Speed Limits) Regulations 2012
S.I. 2012/2140	Home Energy Efficiency Scheme (England) (Amendment) Regulations 2012
S.I. 2012/2165	Further Education Teachers' Continuing Professional Development and Registration (England) (Revocation) Regulations 2012
S.I. 2012/2166	Further Education Teachers' Qualifications (England) (Amendment) Regulations 2012
S.I. 2012/2167	London Legacy Development Corporation (Planning Functions) Order 2012
S.I. 2012/2168	Childcare (Fees) (Amendment) Regulations 2012
S.I. 2012/2267	Merchant Shipping (Compulsory Insurance of Shipowners for Maritime Claims) Regulations 2012
S.I. 2012/2271	Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012
S.I. 2012/2272	Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012

- S.I. 2012/2276** Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2012
- S.I. 2012/2277** Removal and Disposal of Vehicles (Amendment) (England) Regulations 2012
- S.I. 2012/2278** Protection of Freedoms Act 2012 (Consequential Amendments) Order 2012
- S.I. 2012/2279** Protection of Freedoms Act 2012 (Relevant Official Records) Order 2012

Instruments subject to annulment (Northern Ireland)

- S.R. 2012/319** Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 2012
- S.R. 2012/320** Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order (Northern Ireland) 2012
- S.R. 2012/322** Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order (Northern Ireland) 2012
- S.R. 2012/323** Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2012

Draft Instruments subject to annulment

- Draft S.I.** Slough (Electoral Changes) Order 2012

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2012/1806** South London Healthcare National Health Service Trust (Appointment of Trust Special Administrator) Order 2012
- S.I. 2012/1824** South London Healthcare National Health Service Trust (Extension of Time for Trust Special Administrator to Provide a Draft Report) Order 2012
- S.I. 2012/1954** Civil Courts (Amendment) (No. 2) Order 2012
- S.I. 2012/1969** Land Registration Fee Order 2012
- S.I. 2012/2184** Equality Act 2010 (Commencement No. 10) Order 2012
- S.I. 2012/2197** Education and Skills Act 2008 (Commencement No. 8) Order 2012
- S.I. 2012/2231** Safeguarding Vulnerable Groups Act 2006 (Commencement No. 8 and Saving) Order 2012

S.I. 2012/2234 Protection of Freedoms Act 2012 (Commencement No. 3) Order 2012

S.I. 2012/2235 Policing and Crime Act 2009 (Commencement No. 8) Order 2012

Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2012/1752 Consular Fees (Amendment) Order 2012

S.I. 2012/1753 Copyright (Repeal of the Copyright Act 2911) (Jersey) Order 2012

S.I. 2012/1760 Local Authorities (Armorial Bearings) Order 2012

S.I. 2012/1762 Police Act 1997 (Criminal Records) (Guernsey) (Amendment) Order 2012

S.I. 2012/1763 Immigration (Jersey) Order 2012

S.I. 2012/1810 Coroners and Justice Act 2009 (Commencement No. 9) Order 2012

S.I. 2012/1826 Juror's Allowances (Amendment) Regulations 2012

S.I. 2012/1831 Health and Social Care Act 2012 (Commencement No. 2 and Transitional, Savings and Transitory Provisions) Order 2012

S.I. 2012/1837 Royal Wolverhampton Hospitals National Health Service Trust (Establishment) Amendment Order 2012

S.I. 2012/1841 Energy Act 2010 (Commencement) Order 2012

S.I. 2012/1887 Nationality, Immigration and Asylum Act 2002 (Commencement No. 14) Order 2012

S.I. 2012/1956 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 1) Order 2012

S.I. 2012/1963 Police and Crime Commissioner Elections (Designation of Local Authorities) Order 2012

S.I. 2012/1965 Police and Crime Commissioner Elections (Designation of Police Area Returning Officers) Order 2012

S.I. 2012/1966 Counter-Terrorism Act 2008 (Commencement No. 7) Order 2012

S.I. 2012/2000 Flood and Water Management Act 2010 (Commencement No. 7) Order 2012

S.I. 2012/2029 Localism Act 2011 (Commencement No. 7 and Transitional, Savings and Transitory Provisions) Order 2012

S.I. 2012/2075 Protection of Freedoms Act 2012 (Commencement No. 2) Order 2012

