



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Tenth Report
of Session 2012-13**

Drawing special attention to:

Syria (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1755)

Iran (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1756)

Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012 (S.I. 2012/1796)

Police (Amendment No. 3) Regulations 2012 (S.I. 2012/1960)

Special Constables (Amendment) Regulations 2012 (S.I. 2012/1961)

Bluetongue (Amendment) Regulations 2012 (S.I. 2012/1977)

*Ordered by the House of Lords to be printed
7 November 2012*

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7 November 2012*

**HL Paper 60
HC 135-x**

Published on 13 November 2012
by authority of the House of Lords
and the House of Commons
London: The Stationery Office Limited
£0.00

Joint Committee on Statutory Instruments

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Lord Kennedy (*Labour*)
Earl of Mar and Kellie (*Liberal Democrat*)
Lord Rees-Mogg (*Crossbench*)
Lord Selkirk (*Conservative*)
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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 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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Instruments reported

At its meeting on 7 November 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 six of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda are published as the appendices to this report.

1 S.I. 2012/1755: Reported for defective drafting

Syria (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1755)

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

1.2 Paragraph 2 of Schedule 5 to this Order provides that a person commits an offence if one of sub-paragraphs (a) to (d) applies. Article 43(2) prescribes the penalty for an offence under paragraph 4(b) or (d) of Schedule 5 (neither of which creates an offence), but that article does not specify the penalty for an offence under paragraph 2.

1.3 In a combined memorandum printed at Appendix 1, the Foreign and Commonwealth Office states that the reference in article 43(2) to paragraph 4(b) or (d) should have been to paragraph 2(b) or (d), and that the omission on penalties in respect of paragraph 2(a) and (c) was an error.

1.4 Paragraph 2 of both Schedules 2 and 4, which respectively apply article 43 with modifications to the Sovereign Base Areas in Cyprus and to St Helena, Ascension and Tristan de Cunha, contain the same errors.

1.5 The Department confirms that these errors will be corrected when an amending instrument is made in the near future. **The Committee accordingly reports article 43(2) and paragraph 2 of Schedules 2 and 4 for defective drafting, acknowledged by the Department.**

2 S.I. 2012/1756: Reported for defective drafting

Iran (Restrictive Measures) (Overseas Territories) Order 2012 (S.I. 2012/1756)

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 Articles 27 to 31 of this Order create various offences, but article 43 provides that a person is not guilty of an offence under those articles in respect of anything done by him under the authority of “a licence granted by the Governor under paragraph (2)”. Article 32 imposes restrictions on the transfer of funds without “a licence granted by the Governor under this Article”. Article 44 makes general provision about licences granted under the Order. The expression “requests for authorisation” is used in article 33 without explanation as to its meaning, but paragraph (2)(c) of that article contains “if the export of goods is subject to authorisation, the number of the licence granted by the Governor”, which

suggests that the requests are part of the procedure to lead to a decision to grant or refuse something which is or includes a licence under article 43. Even so, the term used throughout these provisions to cover the actual permission to do something otherwise prohibited is “licence”.

2.3 Article 54 then states that a licence granted under a previous order from 2007, revoked by this Order, has effect “as if it were an authorisation granted under this Order”. In a memorandum printed at Appendix 1, the Foreign and Commonwealth Office states that the use of the term “authorisation” instead of “licence” in article 54 was chosen as a matter of drafting style: the Order refers in a number of places to “the authority of a licence”. It also states that all of the provisions of the Order which confer a power on the Governor to grant a licence provide that licences are granted “under this Order”. This latter statement is, on a literal reading, clearly incorrect in respect of articles 32(2) and 43. As to the former, the Committee considers it unacceptable to use an expression which is not explained in place of one which is precise and the subject of specific provisions. This Order provides for the grant of licences, as did the 2007 Order, and the use of the term “licence” in article 54 would have made the intention clear to the reader had the provision been needed at all. In fact, as the Department acknowledges, the intended effect of article 54 is identical to what is achieved in any event by section 17 of the Interpretation Act 1978. The Committee has observed in its ninth Report for this Session (published after this Order was made) that the effect of Interpretation Act 1978 provisions should be highlighted outside the operative text. The combination of the inclusion of article 54 in the first place and the use in it of a different term “authorisation” therefore arguably indicates a potential change in the effect from what is achieved by the 1978 Act, which does not match the Department's intention.

2.4 The Committee accordingly reports article 54 for defective drafting.

3 S.I. 2012/1796: Reported for defective drafting

Armed Forces (Enhanced Learning Credit Scheme and Further and Higher Education Commitment Scheme) Order 2012 (S.I. 2012/1796)

3.1 The Committee draws the special attention of both Houses to this order on the ground that it is defectively drafted in a number of respects.

3.2 This Order puts into statutory form two Schemes which provide for the payment of financial assistance with tuition fees to service leavers who embark on certain courses of education.

3.3 Article 10 specifies the eligibility conditions for payments to service leavers under the Further and Higher Education Commitment Scheme. The ninth condition, condition I, has the effect that the service leaver must remain resident in the United Kingdom for the period of the course for which assistance is provided. The Committee asked the Ministry of Defence three questions related to article 10 as it applies to an undergraduate course and, in particular, related to this condition: whether funding is intended to be permissible for a course with overseas exchange built in; how, when funding begins, it can be known whether the condition is met; and what is intended in respect of loss of eligibility and refund if the condition comes not to be observed. The Committee also asked how those intentions are achieved.

