



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Nineteenth Report of Session 2013-14

Drawing special attention to:

Brendon Commons Council Establishment Order 2013 (S.I. 2013/2959)

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (S.I. 2013/3134)

Civil Legal Aid (Merits Criteria) (Amendment) (No. 3) Regulations 2013 (S.I. 2013/3195)

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Joint Committee on Statutory Instruments

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Lord Kennedy (*Labour*)
Lord Lyell (*Conservative*)
Baroness Mallalieu (*Labour*)
Lord Selkirk (*Conservative*)
Baroness Stern (*Crossbench*)
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House of Commons

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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 Simon Patrick (*Acting Commons Clerk*), Jane White (*Lords Clerk*) and Liz Booth (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Philip Davies and Daniel Greenberg (*Commons*); Nicholas Beach, Peter Milledge and John Crane (*Lords*).

Contacts

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Instruments reported

At its meeting on 29 January 2014 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. 2013/2959: Reported for defective drafting

Brendon Commons Council Establishment Order 2013 (S.I. 2013/2959)

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

1.2 This Order establishes a commons council for areas in Devon known as Brendon Common, and includes provisions as to the Council's membership and the election or appointment of members.

1.3 Article 3 establishes the Council on the appointed day (defined in article 2 as 1 April 2014). Article 4(1) states the number of members the Council is to have, and by whom, save when co-opted, they are to be elected or appointed. Article 4(2) states that the elections and appointments are first to be held and made before the appointed day, and article 4(5) states that Schedule 1 (election and appointment of members) has effect.

1.4 Paragraph 11(b) of Schedule 1 requires the returning officer, at the first meeting of the Council, to declare the candidate or candidates in an unopposed election to be duly elected unopposed or, where there are more nominations than vacancies, to cause an election to be held at the meeting by ballot of those present and entitled to vote.

1.5 The Committee asked the Department for Environment, Food and Rural Affairs why the occasion at which the functions of the returning officer under paragraph 11 fall to be performed is referred to as the first meeting of the Council, given that article 4(2) requires those functions to be discharged before the Council is established.

1.6 In a memorandum printed at Appendix 1, the Department accepts that it was incorrect to describe the occasion in question as the first meeting of the Council, and that terminology such as "a meeting held for the purpose ..." would have been appropriate. The Department undertakes to endeavour to clarify the position. **The Committee accordingly reports paragraph 11 of Schedule 1 for defective drafting, acknowledged by the Department.**

2 S.I. 2013/3134: Reported for defective drafting

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (S.I. 2013/3134)

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.

2.2 These Regulations implement most of the UK's obligations under the EU Consumer Rights Directive (2001/83/EU). Regulation 11 prescribes information that must be provided in respect of certain contracts for carrying out repair or maintenance work. Paragraph (5) of regulation 11 states "For the right to cancel where this regulation applies, see in particular – (a) regulation 28(1)(e) and (2) (cases where cancellation excluded: visit requested for urgent work); (b) regulation 36 (form of consumer's request, and consequences)."

2.3 Regulation 11(5) appeared to the Committee to have no possible legal effect, although being presented as an operative part of regulation 11. The Committee reported in its First Special Report of the current Session that it will continue to draw the special attention of Parliament to instances where it considers there has been a blurring of material that should be included in operative provisions of legislation with those that should not.

2.4 The Committee asked the Department for Business, Innovation and Skills what, in terms of legal effect, regulation 11(5) is intended to add to the remainder of the Regulations and, if no additional legal effect is intended, why the provision is included as if it were an operative provision and why, given the Committee's First Special Report, the Explanatory Memorandum to the Regulations indicates that there are no matters of special interest to the Committee.

2.5 In a memorandum printed at Appendix 2, the Department gives a comprehensive explanation of its reasons for including regulation 11(5), which it accepts is not intended to have any "strict" legal effect and is not "strictly" necessary. It was included to help clarify that the reader will also need to consider the effect of other parts of the Regulations. The Department does however recognise that it would have been preferable to mention the matter in the section of the Explanatory Memorandum dealing with issues of special interest to the Committee. The Committee observes that, even had the inclusion of regulation 11(5) been justifiable, the words "in particular" in regulation 11(5) serve to reduce that provision's usefulness as a guide to the other provisions which should be considered.

2.6 The Committee sees no reason to make an exception in this particular case from the general principles expressed in its First Special Report: that Departments should distinguish provisions that need to be included in legislation from those that do not properly belong there. Information similar to that contained in regulation 11(5) could easily have been included as a footnote to regulation 11 or in the Explanatory Note to the instrument. This would have avoided any blurring of the dividing line between what is and what is not an operative legislative provision. **The Committee accordingly reports regulation 11(5) for defective drafting.**

