



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Twenty-third Report of Session 2014-15

Drawing special attention to:

Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283)

Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015 (Draft S.I.)

*Ordered by the House of Lords to be printed
25 February 2015*

*Ordered by the House of Commons to be printed
25 February 2015*

**HL Paper 124
HC 332-xxiii**

Published on 27 February 2015
by authority of the House of Lords
and the House of Commons
London: The Stationery Office Limited
£5.00

Joint Committee on Statutory Instruments

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Lord Lyell (*Conservative*)
Baroness Mallalieu (*Labour*)
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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 Joanna Welham (*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*).

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Instruments reported

At its meeting on 25 February 2015 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 two 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. 2014/3283: Reported for failure to comply with proper legislative practice

Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283)

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper legislative practice.

1.2 The Regulations set standards to be met by all independent schools (including academies and free schools). They refer (in paragraphs 8, 18, 19 and 30 of the Schedule) to 3 sets of National Minimum Standards which are defined in Regulation 2(1). Whether arrangements comply with, or have regard to, the National Minimum Standards is relevant in determining whether the standards set by the Regulations are met.

1.3 The Explanatory Note to the Regulations sets out, in the two paragraphs before the last, details of how each of the National Minimum Standards may be accessed electronically. But neither there nor in the Regulations themselves, or the Explanatory Memorandum to them, is any indication given about where access to a hard copy of the National Minimum Standards may be obtained.

1.4 Given a number of recent observations of the Committee (see most recently the Nineteenth Report of this Session when reporting S.I. 2014/3120) about the desirability of instruments stating where access may be gained to a hard copy of documents referred to in them, the Committee asked the Department for Education to explain why there is no indication (in the text of the Regulations or a footnote or in the Explanatory Note) where hard copies of the National Minimum Standards may be obtained and why the Explanatory Memorandum to the Regulations states that there are no matters of special interest to the Committee.

1.5 In a memorandum printed at Appendix 1 the Department, while pointing out that it stopped producing hard copies of documents in 2010 and that Government departments are increasingly making documents available free of charge on the internet rather than supplying hard copies, undertakes to make hard copies of the three National Minimum Standards available on request. It accepts that the Explanatory Note should have included information as to where hard copies of them can be obtained and apologises for failing to do so. It also states that the Department has amended its internal guidance to try to prevent this sort of omission from occurring again.

1.6 The Committee remains concerned that those without ready access to the internet should be able to gain access to documents to which legal significance is given by an instrument, particularly if the instrument is of general concern to members of the public as opposed to, say, only a small number of well-resourced commercial organisations. The

Committee regards it as very important that Departments engage with the Committee's reports and has been concerned by the fact that it has had to draw attention to omissions of the sort identified here on a number of recent occasions. While it regrets the omission in the context of these Regulations, and the fact that it was not noted by the Department in the Explanatory Memorandum to the Regulations, it is grateful for the positive response in the Department's memorandum and welcomes in particular the action it has taken to try to prevent further failures to meet the Committee's repeated concerns. **The Committee reports the Regulations for failure to comply with proper legislative practice, acknowledged by the Department.**

2 Draft S.I.: Reported for requiring elucidation

Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015 (Draft S.I.)

2.1 The Committee draws the special attention of both Houses to this draft Order on the grounds that it requires elucidation in one respect.

2.2 Article 3 of the draft Order amends the Extradition Act 2003 ("the 2003 Act") in consequence of amendments made to that Act by section 160 of the Anti-social Behaviour, Crime and Policing Act 2014. Since the amendments made by article 3 are consequential on section 160, it seemed to the Committee reasonable to expect both sets of amendments to come into force at the same time. Article 1(1) provides for the provisions of the draft Order, including article 3, to come into force at the end of the period of 21 days beginning with the day on which it is made. Accordingly, there is nothing in the draft Order to link the commencement of article 3 with the commencement of section 160. Nor is there a clear statement in the explanatory memorandum as to whether and, if so, how the commencement of the two provisions will be co-ordinated. Paragraph 7.10 states that "before bringing section 160 into force a number of consequential amendments are required to be made to the 2003 Act and that these will be made by article 3". To the extent that this gives any indication as to how the commencement of article 3 and section 160 will be co-ordinated, it tends to suggest that the amendments made by article 3 will come into force before section 160 is commenced.

2.3 Accordingly, the Committee asked the Home Office what the intended relationship was between the coming into force of article 3 and the commencement of section 160, and how that would be achieved. In a memorandum printed at Appendix 2, the Home Office explains that it intends to bring both provisions into force simultaneously, and that it will achieve this by ensuring that the commencement date specified in the commencement order for section 160 is the same date as that on which the draft Order comes into force. The Home Office goes on to state in the memorandum that it will make the relationship between the commencement of the two provisions more explicit in the version of the explanatory memorandum that is issued when the draft Order is made. **Accordingly, the Committee reports articles 1(1) and 3 as requiring the elucidation provided by the memorandum.**

Instruments not reported

At its meeting on 25 February 2015 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

* memorandum submitted in connection with the draft instrument is printed at Appendix 3

Annex

Draft Instruments requiring affirmative approval

Draft S.I.	Broadcasting Act 1996 (Renewal of Local Radio Multiplex Licences) Regulations 2015
Draft S.I.	Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) and Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment) Regulations 2015
Draft S.I.	Drug Driving (Specified Limits) (England and Wales) (Amendment) Regulations 2015
Draft S.I.	Statistics and Registration Service Act 2007 (Disclosure of Revenue Information) Regulations 2015
Draft S.I.	Energy Efficiency (Domestic Private Rented Property) Order 2015
Draft S.I.	Insolvency (Protection of Essential Supplies) Order 2015
Draft S.I.	Bank of England Act 1998 (Macro-prudential Measures) Order 2015
Draft S.I.	Bank of England Act 1998 (Macro-prudential Measures) (No. 2) Order 2015
* Draft S.I.	Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015

Instruments subject to annulment

S.I. 2014/3281	Air Navigation (Overseas Territories) (Amendment) (No. 2) Order 2014
S.I. 2014/3297	Family Court (Composition and Distribution of Business) (Amendment) Rules 2014
S.I. 2014/3299	Civil Procedure (Amendment No. 8) Rules 2014
S.I. 2014/3312	Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) (No. 2) Regulations 2014
S.I. 2015/16	Enterprise and Regulatory Reform Act 2013 (Amendment) (Gas and Electricity Appeals) Regulations 2015
S.I. 2015/19	Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) Regulations 2015

S.I. 2015/26	Insolvency Proceedings (Monetary Limits) (Amendment) Order 2015
S.I. 2015/35	Feed-in Tariffs (Amendment) Order 2015
S.I. 2015/47	Vaccine Damage Payments (Specified Disease) Order 2015
S.I. 2015/51	Construction (Design and Management) Regulations 2015
S.I. 2015/53	Old Oak and Park Royal Development Corporation (Establishment) Order 2015
S.I. 2015/57	Local Government Pension Scheme (Amendment) (Governance) Regulations 2015
S.I. 2015/59	Use of Invalid Carriages on Highways (Amendment) (England and Scotland) Regulations 2015
S.I. 2015/66	Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2015
S.I. 2015/67	Social Security (Miscellaneous Amendments) Regulations 2015
S.I. 2015/81	Federal Republic of Yugoslavia (Freezing of Funds) (Revocation) Regulations 2015
S.I. 2015/97	Export Control (Various Amendments) Order 2015
S.I. 2015/98	Noise Emission in the Environment by Equipment for use Outdoors (Amendment) Regulations 2015
S.I. 2015/109	Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2015
S.I. 2015/117	Registration of Births, Deaths and Marriages and Registration of Civil Partnerships (Fees) (Amendment) Order 2015
S.I. 2015/127	Delegation of Additional Functions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2015
S.I. 2015/142	Road Vehicles (Construction and Use) (Amendment) Regulations 2015

Instruments subject to annulment (Northern Ireland)

S.R. 2015/29	Police (Northern Ireland) Act 2000 (Designated Places of Detention: Lay Visitors) Order 2015
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Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2014/3361	Designation of Schools Having a Religious Character (Independent Schools) (England) (No. 3) Order 2014
S.I. 2014/3364	Education and Skills Act 2008 (Commencement No. 11 and Saving and Transitory Provisions) Order 2014
S.I. 2015/165	Intellectual Property Act 2014 (Commencement No. 4) Order 2015
S.I. 2015/177	Marriage (Authorised Persons) and Civil Partnership (Registration Provisions) (Amendment) Regulations 2015

Appendix 1

S.I. 2014/3073: memorandum from the Department for Education

<i>Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283)</i>
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1. The Committee has requested a memorandum on the following point:

Given recent observations of the Committee (see in particular its Sixteenth Report of last Session when reporting S.I. 2013/2232) about the desirability of instruments stating where access may be gained to a hard copy of documents referred to in them, explain why the Explanatory Note, while stating how access may be obtained electronically to the three sets of minimum standards referred to in the Regulations, does not also state where hard copies of them may be obtained and why the Explanatory Memorandum to the Regulations states that there are no matters of special interest to the Committee.

2. As the Committee is aware, the Department stopped producing hard copies of documents in 2010, and it has led the Government's drive to publish digitally by default, as reflected in the Department's Digital Strategy published in December 2012 and available at:
<https://www.gov.uk/government/publications/department-for-education-departmentaldigital-strategy>. Government Departments are increasingly making documents available free of charge on the internet rather than supplying hard copies.
3. The Department, however, will make hard copies of the three documents available on request. It accepts that the Explanatory Note should have included information as to where hard copies can be obtained from, and it apologises for this omission. The Department has amended its internal checking guidance to try to prevent this omission from occurring again.

Department for Education
10 February 2015

Appendix 2

Draft S.I.: memorandum from the Home Office

Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015 (Draft S.I.)

1. The Joint Committee on Statutory Instruments asks what the intended relationship is between the coming into force of article 3 of the Extradition Act 2003 (Amendment to Designations and Appeals) Order 2015 ('the Order') and the commencement of section 160 of the Anti-social Behaviour, Crime and Policing Act 2014 ('the Act'), and how will that be achieved.

2. The Department intends to commence section 160 of the Act (and the relevant minor and consequential amendments in Part 4 of Schedule 11 to the Act), by commencement order made under section 185 of the Act, simultaneously with the coming into force of article 3 of the Order. Given the 21 day period specified in article 1(1) of the Order, it is likely that the Order will be made before the relevant commencement order is made, even though the amendments under both instruments will come into force simultaneously. The Department will make the relationship more explicit in the final version of the Explanatory Memorandum when the Order is made.

Home Office

10 February 2015

Appendix 3

Draft S.I.: memorandum from HM Treasury

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015 (Draft S.I.)

1. The Committee has asked HM Treasury for a memorandum on the following point –

Explain how –

(a) *the new article 53E to be inserted into S.I. 2001/544 ("the Regulated Activities Order") by article 2(2); and*

(b) *the new paragraph (vi) to be inserted into article 54(1)(b) of the Regulated Activities Order by article 2(3)(a)(iii),*

are intended to interact with (respectively) the new article 53E and the new article 54(1)(b)(vi) to be inserted into the Regulated Activities Order by (respectively) sub-paragraphs (9) and (10)(b) of paragraph 4 in Part 2 of Schedule 1 to the Mortgage Credit Directive Order 2015 that was laid in draft before both Houses on 27th January 2015; and explain how effect is given to that intention in this draft Order.

2. HM Treasury is grateful for the Committee pointing out the conflict in the drafting of these two draft instruments. It is regretted that this was not identified ahead of this draft Order being laid.
3. Further to the Committee's question above, and also its questions regarding the draft Mortgage Credit Directive Order 2015, the Treasury can confirm that it will address the issue arising from the duplication of numbering in the two draft Orders through revision of the numbering in the draft Mortgage Credit Directive Order 2015. Consequently, the issue with this draft Order, which the Committee have helpfully drawn to the attention of HM Treasury will, in the event, no longer arise.
4. The Committee may wish to note that HM Treasury will review its internal procedures with a view to minimising the prospect of such a mistake arising in the future.

HM Treasury
16 February 2015