



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Eighteenth Report of Session 2014-15

Drawing special attention to:

*Air Navigation (Overseas Territories) (Environmental Standards)
Order 2014 (S.I. 2014/2926)*

*Ordered by the House of Lords to be printed
14 January 2015*

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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 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 14 January 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 one of those considered. The Instrument and the grounds for reporting it, is given below. The relevant Departmental memorandum is published as an appendix to this report.

1 S.I. 2014/2926: Reported for defective drafting

Air Navigation (Overseas Territories) (Environmental Standards) Order 2014 (S.I. 2014/2926)

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

1.2 Article 4 of this Order states that an aircraft of a specified description registered in a territory to which the Order applies (“the Territory”) must not fly unless it has a noise certificate issued or validated by the Governor (of the Territory). Article 5 states that an aircraft of such a description registered elsewhere than in the Territory must not fly in the Territory unless it has a noise certificate issued or validated, in accordance with a provision of an Annex to the Chicago Convention, by or on behalf of the competent authority of another Contracting State (to that Convention). Article 6 deals with the issue by the Governor, on application, of a noise certificate or of a certificate of validation of a noise certificate.

1.3 Article 3(1) defines “noise certificate” as meaning a certificate issued by the Governor in accordance with article 4 or a certificate issued or validated in accordance with article 5. In a memorandum printed in the Appendix, the Foreign and Commonwealth Office states that the definition should have included a reference to a certificate validated by the Governor in accordance with article 4.

1.4 Article 7(1) states that, subject to paragraph (2) and article 16, a noise certificate or a certificate of validation issued under this Order remains in force without limit of time. Article 7(2) states that in certain circumstances a noise certificate issued under this Order ceases to be valid for the purposes of article 4. It says nothing about a certificate of validation.

1.5 Article 14(1) states that an aircraft must not land or take-off in the Territory unless it carries every noise certificate which it is required to carry under the law of the state of registry. Article 14(2) states that, with one exception, an aircraft registered in the Territory must, when in flight, carry every noise certificate which is required by this Order to be in force in respect of that aircraft.

1.6 Article 15 requires the pilot-in-command or operator of an aircraft to produce on demand to the Governor or an authorised person every noise certificate in force in respect of that aircraft.

1.7 Article 16, which specifies what may be revoked, suspended or varied, refers four times to “any noise certificate, exemption or other document issued under this Order”. Article 17, which specifies offences, refers twice to “any noise certificate issued under this Order”.

Article 18(4), which contains a power to enter premises and require production of documents, refers to “noise certificates”.

1.8 In its memorandum, the Department states that it is intended that a certificate of validation is required as evidence that a noise certificate has been validated. It claims that there is no need for articles 7(2), 14, 15, 16, 17 and 18(4) to refer to certificates of validation as well as noise certificates, its argument being as follows. “The definition of “noise certificate” includes a certificate validated in accordance with article 5 [and should include a reference to one validated in accordance with article 4]. Thus if a noise certificate has been validated, the references to noise certificates will include a certificate of validation.”

1.9 The Committee does not accept this argument. Whether or not a noise certificate has been validated is a question of fact. A certificate which has been validated in accordance with the Order will therefore be a noise certificate as defined by article 3(1) whether or not it is actually accompanied by a certificate of validation. Nor does that definition explicitly or implicitly include a certificate of validation.

1.10 It follows that article 7 is defectively drafted, as there is nothing in paragraph (2) to qualify the statement in paragraph (1) that a certificate of validation remains in force without limitation of time. Articles 14 and 15 are also defective, in that the former does not require any certificate of validation to be carried on the aircraft and the latter does not require a certificate of validation to be produced. Article 16 is at best ambiguous, as although a certificate of validation issued under the Order would fall within “other document issued under this Order”, the question arises as to whether the words “issued under this Order” apply also to noise certificates; if not, noise certificates validated but not issued under article 4 and those issued or validated under article 5 are not covered by the article. Articles 17 and 18(4) are defective as they do not apply to certificates of validation as they do to noise certificates. Nor does article 17 apply to noise certificates issued as described in article 5, and whether they are intended to is unclear.

1.11 It appears to the Committee that the Department has attempted to compress too many concepts into too few words, resulting in at best a lack of clarity and a worst a failure to achieve the intended result. If certificates of validation are intended to be subject to the requirements of the Order there needs to be express provision to that effect. Similarly there is doubt about the relationship of noise certificates issued “under this Order” and article 5. It is therefore likely that amendment or replacement will call for significantly more attention to the structure of this Order than the Department appears to intend. If the Department takes such a course, the Committee notes in passing that it may need also to consider the relationship of provisions that cover the application for and issue of a certificate with a definition that indicates that the certificate has already been issued. **The Committee accordingly reports this Order for defective drafting, acknowledged in part by the Department.**

Instruments not reported

At its meeting on 14 January 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.

Annex

Instrument requiring affirmative approval

S.I.2014/3363 Fishing Boats (Satellite-Tracking Devices and Electronic Reporting) (England) (Amendment) Scheme 2014

Draft Instruments requiring affirmative approval

Draft S.I. Immigration (Biometric Registration) (Amendment) (No. 2) Regulations 2015

Draft S.I. Immigration (Provision of Physical Data) (Amendment) Regulations 2015

Draft S.I. Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) (England and Wales and Scotland) Order 2015

Draft S.I. Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) (England and Wales) Order 2015

Draft S.I. Proceeds of Crime Act 2002 (Investigations: Code of Practice) (England and Wales) Order 2015

Draft S.I. European Parliamentary Elections (Amendment) Regulations 2015

Instruments subject to annulment

S.I. 2014/3135 Statistics of Trade (Customs and Excise) (Amendment) Regulations 2014

S.I. 2014/3157 Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2014

S.I. 2014/3190 Road Traffic Act 1988 and Motor Vehicles (Driving Licences) (Amendment) Regulations 2014

S.I. 2014/3205 Civil Enforcement of Parking Contraventions Designation Order 2014

S.I. 2014/3216 Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014

S.I. 2014/3217 Railways (Interoperability) (Amendment) Regulations 2014

S.I. 2014/3225 Civil Aviation (Miscellaneous Revocations) Regulations 2014

S.I. 2014/3233 Heathrow and Gatwick Airports – London Noise Insulation Grants (Revocations) Scheme 2014

S.I. 2014/3243 Plant Health (Fees) (England) (Amendment) Regulations 2014

S.I. 2014/3244 Railways and Rail Vehicles (Revocations and Consequential Amendments) Order 2014

S.I. 2014/3257 High Court (Distribution of Business) Order 2014

S.I. 2014/3259	Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014
S.I. 2014/3260	Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014
S.I. 2014/3270	Social Fund Winter Fuel Payment (Amendment) Regulations 2014
S.I. 2014/3279	Police and Criminal Evidence Act 1984 (Remote Reviews of Detention) Regulations 2014
S.I. 2014/3282	Data Protection (Assessment Notices) (Designation of National Health Service Bodies) Order 2014
S.I. 2014/3284	Licensing Act 2003 (Personal licences) (Amendment) Regulations 2014

Draft Instruments subject to annulment

Draft S.I.	Ashfield (Electoral Changes) Order 2015
Draft S.I.	Doncaster (Electoral Changes) Order 2015
Draft S.I.	Erewash (Electoral Changes) Order 2015
Draft S.I.	High Peak (Electoral Changes) Order 2015
Draft S.I.	Lichfield (Electoral Changes) Order 2015
Draft S.I.	West Dorset (Electoral Changes) Order 2015

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. 2014/3214	National Savings Stock Register (Amendment) Regulations 2014
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Instruments not subject to Parliamentary proceedings not laid before Parliament

S.I. 2014/3160	Financial Services (Banking Reform) Act 2013 (Commencement No. 7) Order 2014
S.I. 2014/3212	Offshore Installations (Safety Zones) (No. 3) Order 2014
S.I. 2014/3251	Health and Social Care Act 2008 (Commencement No. 19) Order 2014

Appendix

S.I. 2014/2926: memorandum from the Foreign and Commonwealth Office

Air Navigation (Overseas Territories) (Environmental Standards) Order 2014 (S.I. 2014/2926)

1. By a letter dated 10th December 2014, the Joint Committee on Statutory Instruments requested a Memorandum on the following points:-

(1) *It appears to be implicit from article 6 that a certificate of validation is required as evidence that a noise certificate has been validated. Is this correct and, if not, what is the status of such a certificate and why is it referred to in article 7(1)?*

This is correct.

- (2) *If the assumption in (1) above is correct, should articles 7(2), 14, 15, 16, 17 and 18(4) refer to certificates of validation as well as noise certificates?*
2. The definition of ‘noise certificate’ in article 3(1) includes a certificate validated in accordance with article 5 (but see (3) below). Thus if a noise certificate has been validated, the references to noise certificate in articles 7(2), 14, 15, 16, 17 and 18(4) will include a certificate of validation.
- (3) *In any event, should the definition of “noise certificate” in article 3(1) include reference to a certificate validated by the Governor in accordance with article 4?*
3. Yes, it should; this is an error which will be corrected by an amendment Order at the earliest opportunity.

Foreign and Commonwealth Office

15 December 2014