

# HOUSE OF LORDS

## Merits of Statutory Instruments Committee

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9th Report of Session 2004-05

Drawing special attention to:

**Draft Anti-terrorism, Crime and Security Act  
2001 (Continuance in force of sections 21 to 23)  
Order 2005**

**Draft Gangmasters (Licensing Authority)  
Regulations 2005**

Explanatory information:

**Social Security (Claims and Payments and  
Payments on account, Overpayments and  
Recovery) Amendment Regulations 2005**

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### *The Select Committee on the Merits of Statutory Instruments*

The Merits of Statutory Instruments Committee was appointed by the House of Lords on 17 December 2003 with the terms of reference “to consider every instrument which is laid before each House of Parliament and upon which proceedings may be or might have been taken in either House of Parliament, in pursuance of an Act of Parliament, being:

- (i) a statutory instrument, or a draft of a statutory instrument;
- (ii) a scheme, or an amendment of a scheme, or a draft thereof, requiring approval by statutory instrument; or
- (iii) any other instrument (whether or not in draft), where the proceedings in pursuance of an Act of Parliament are proceedings by way of an affirmative or negative resolution;

but excluding any Order in Council or draft Order in Council made or proposed to be made under paragraph 1 of the Schedule to the Northern Ireland Act 2000 and any remedial order or draft remedial order under Schedule 2 to the Human Rights Act 1998 and any draft order proposed to be made under section 1 of the Regulatory Reform Act 2001, or any subordinate provisions order made or proposed to be made under that Act;

with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds:

- (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
- (b) that it is inappropriate in view of the changed circumstances since the passage of the parent Act;
- (c) that it inappropriately implements European Union legislation;
- (d) that it imperfectly achieves its policy objectives.”

### *Current Membership*

The Members of the Merits of Statutory Instruments Committee are:

Lord Addington	Lord McKenzie of Luton
Lord Armstrong of Ilminster	Lord Methuen
Lord Boston of Faversham	Earl of Northesk
Viscount Colville of Culross	Baroness Royall of Blaisdon
Lord Hunt of Kings Heath (Chairman)	Viscount Ullswater
Lord Jopling	

### *Publications*

The Committee’s reports are published by The Stationery Office by Order of the House. All publications of the Committee are on the internet at

[http://www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

### *General Information*

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[http://www.parliament.uk/about\\_lords/about\\_lords.cfm](http://www.parliament.uk/about_lords/about_lords.cfm)

### *Contacts for the Merits of Statutory Instruments Committee*

If you have any queries regarding the Committee and its work, please contact the Clerk to the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London, SW1A 0PW.

The telephone number is 020 7219 3233/8821. The fax number is 020 7219 2571.

The Committee’s email address is [merits@parliament.uk](mailto:merits@parliament.uk)

# Ninth Report

## **INSTRUMENTS REPORTED**

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**The Committee has considered the following instruments, and has determined that the special attention of the House should be drawn to them on the grounds specified.**

### **A. Draft Anti-terrorism, Crime and Security Act 2001 (Continuance in force of sections 21 to 23) Order 2005**

1. Sections 21 to 23 of the Anti-terrorism, Crime and Security Act 2001 (“the Act”) permit the detention of a suspected international terrorist without trial where that person’s presence in the United Kingdom is believed to be a risk to national security. This instrument would extend these powers for a further nine months beyond the date of 13 March 2005 when the current provisions would otherwise expire.
2. On 16 December 2004, the House of Lords Judicial Committee found section 23 of the Act to be incompatible with the European Convention on Human Rights, specifically Article 5 on the right to liberty and Article 14 on freedom from discrimination. The House of Lords expressly accepted that the Act remains a valid, enforceable enactment in spite of this declaration of incompatibility. However sections 21 to 23 of the Act are due to expire on 13 March 2005 in accordance with section 29(1) of the Act and SI 2004/751 Anti-terrorism, Crime and Security Act 2001 (Continuance in force of sections 21 to 23) Order 2004.
3. On 26 January 2005, the Home Secretary made a statement to the House of Commons (HC Hansard, cols 305-23) (repeated in the House of Lords by the Baroness Scotland of Asthal (HL Hansard, cols 1266-82)) in which he accepted the Law Lords’ declaration and acknowledged that a change to the legislation is required. He explained his intention to replace these measures with a new system of either deportation or control orders. But the Home Secretary also took the view that there is a current and real threat to national security and for that reason these powers would need to be renewed for a limited time to allow the new arrangements to be put in place.

**We draw this Order to the special attention of the House on the grounds that it gives rise to issues of public policy likely to be of interest to the House, and that it is politically and legally important.**

### **B. Draft Gangmasters (Licensing Authority) Regulations 2005**

4. The Department for Environment, Food and Rural Affairs (DEFRA) has laid these Regulations under sections 1(5) and 25(2) of the Gangmasters (Licensing) Act 2004 (“the 2004 Act”). DEFRA has provided an Explanatory Memorandum (EM) and a Regulatory Impact Assessment (RIA) to accompany the Regulations.
5. At paragraph 2.1, the EM states that the Regulations set up the Gangmasters Licensing Authority (“the Authority”) which will license gangmasters operating in areas covered by the 2004 Act. It explains that the Regulations require the Authority to have a Board to direct its affairs, and that they deal

in particular with membership of the Board; tenure of office of Board members; proceedings of the Board; establishment of committees and liaison groups; the employment of staff by the Authority; and the production of accounts and reports. Further, the EM states that the Regulations also specify the principles to which the Authority must have regard when determining the criteria for assessing the fitness of any person to be the holder of a licence (or engaged by the holder of a licence and named or otherwise specified in a licence) and the licence conditions.

6. In describing the policy background, the EM states at paragraph 7.1 that “the Government supported Jim Sheridan’s Private Member’s Gangmasters (Licensing) Bill, introduced into Parliament in 2003 and intended to curb the exploitative activities of gangmasters operating in certain areas. While some gangmasters operating in this area run reputable businesses it is clear that many operate illegally and exploit their workforce. The Bill attracted cross party support and received Royal Assent on 8 July 2004.”
7. These Regulations are the first to be made under the 2004 Act. At paragraph 4.2, the EM lists several additional statutory instruments which are expected to be made under that Act.
8. DEFRA carried out consultation on the draft Regulations between July and October 2004. Section 21 of the RIA gives an overview. Paragraph 21.1 explains that 16 responses were received, and that the main areas of concern related to the size and composition of the Board of the Authority, and the need for mandatory liaison groups. In summary, it states that “some [respondents] advocated a small Board whose members were all selected by open competition; the worker interests saw merit in a tripartite approach with each third representing a different sector, while other respondents supported the large Board with close stakeholder involvement model. These two issues were reconsidered in the light of the comments received and ... it was decided to retain the large representative Board option but to give the Board the power to establish Liaison groups rather than making them mandatory.”
9. As provided in Regulation 4, the Board will have a chairman, up to 19 representative members and nine ex-officio members, giving a total membership of 29, (as opposed to 23 under the original proposals).
10. The RIA (at paragraph 7.1) identifies as benefits in a large, representative Board: strong stakeholder representation and involvement; local and central Government involvement; good links with enforcement agencies; and strong stakeholder and political support. DEFRA considers that these outweigh the disadvantages identified (at paragraph 8.1), that “a Board comprising some 28 members representing different stakeholders might find it difficult to reach decisions by consensus” (it explains that for this reason the Regulations provide for decisions to be taken by a majority vote), and that “this is not the cheapest option but ... the cost is not significant in the context of overall licence fee levels”.
11. DEFRA has placed on its website a very full summary of consultation responses.<sup>1</sup> This bears out the statement in the RIA, referred to above, that a main area of concern was the size and structure of the Board, with several

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<sup>1</sup> “Summary of the comments received on the Gangmasters (Licensing Authority) Regulations Consultation Document and the reasons for accepting or rejecting them” (January 2005). See:

[www.defra.gov.uk/corporate/consult/gangmaster-reg/responses-summary.pdf](http://www.defra.gov.uk/corporate/consult/gangmaster-reg/responses-summary.pdf)

respondents voicing doubt that so large a Board would be able to operate effectively,<sup>2</sup> while others supported a structure based on sectoral representation.<sup>3</sup> While DEFRA has decided to put arrangements in place which may not satisfy those respondents (albeit that they are supported by others), the RIA (in section 20) refers to an undertaking by Ministers that the composition and working of the Board will be reviewed after the Board has been in operation for 3 years.

12. We would expect that the House will take a close interest in the approach that DEFRA is following in implementing the intentions behind the 2004 Act and, in the case of these Regulations, in its decisions on key aspects of the structure and operation of the Board of the Authority. We recognise that, in determining the size of the Board, DEFRA has stressed the importance of strong stakeholder representation, even if this has led to the creation of a very large body.

**These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

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<sup>2</sup> See for example para 6.2 of the summary document.

<sup>3</sup> See for example para 6.7 of the summary document.

## **INSTRUMENTS NOT REPORTED**

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**The Committee has considered the instruments set out in Appendix 1 and has determined that the special attention of the House need not be drawn to them.**

13. Further information was sought by the Committee from the Department for Works and Pensions in connection with SI 2005/34 Social Security (Claims and Payments and Payments on account, Overpayments and Recovery Amendment Regulations 2005, and a summary of which is printed at Appendix 2 to this Report.

**APPENDIX 1: INSTRUMENTS TO WHICH THE COMMITTEE DOES NOT DRAW THE SPECIAL ATTENTION OF THE HOUSE**

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**Draft Instruments requiring affirmative approval**

Asylum (Designated States) Order 2005  
Scotland Act 1998 (Modifications of Schedule 5) (No. 2) Order 2005  
Adults with Incapacity (Scotland) Act 2000 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2005  
Education (Additional Support for Learning) (Scotland) Act 2004 (Consequential Modifications) Order 2005  
Northern Ireland Arms Decommissioning Act 1997 (Amnesty Period) Order 2005  
Data Protection (Subject Access Modification) (Social Work) (Amendment) Order 2005  
Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2005

**Instruments subject to annulment**

SI 2004/3390 Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2004  
SI 2005/34 Social Security (Claims and Payments and Payments on account, Overpayments and Recovery) Amendment Regulations 2005  
SI 2005/58 Education (School Attendance Targets) (England) Regulations 2005  
SI 2005/72 Occupational Pension Schemes (Winding Up, Deficiency on Winding Up and Transfer Values) (Amendment) Regulations 2005  
SI 2005/74 Merchant Shipping (Prevention of Pollution) (Drilling Rigs and Other Platforms) Order 2005  
SI 2005/117 Fees for Assessment of Active Substances (Third Stage Review) Regulations 2005  
SI 2005/147 Registration of Political Parties (Prohibited Words and Expressions) (Amendment) Order 2005

## APPENDIX 2: EXPLANATORY INFORMATION (SI 2005/34)

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### **SI 2005/34 Social Security (Claims and Payments and Payments on account, Overpayments and Recovery) Amendment Regulations 2005.**

At the Committee's request the Department for Works and Pensions (DWP) has provided additional information about these Regulations, covering measures to address fraud, clarification of the consultation process and assurances that the State Pension tele-claims Centres will have sufficient resources.

#### *Security measures included in the revised tele-claims process*

It is intended that security questions will replace the signature as a mechanism for authenticating tele-claims. The Department considers that the following measures will mitigate the potential for fraudulent activity:

- tele-claim conversations will be recorded and retained in line with the Department's data retention policy for written claims. The recorded information could be revisited to verify a claim or used as evidence in overpayment or fraudulent cases;
- initially claimants who want to claim additional amounts for adults, Adult Dependency Increase (ADI), will be advised to submit a written claim. ADI claims require a greater degree of evidence from claimants to determine entitlement which increases the risk of error and inaccuracy;
- claimants will be asked a series of random security and validation questions to authenticate their identity before allowing the tele-claim to proceed;
- tele-claim advisers will navigate through the claim via a series of scripts thereby reducing opportunities for error;
- when the claim is determined, the claimant is automatically sent an award notice which shows the detailed information used to determine the claim. It also advises them to check that these details were those provided in the telephone conversation and are correct; and
- the tele-claim process will be subject to rigorous testing with a phased implementation prior to full national roll-out. It is intended that a model office environment will be stimulated to enable tele-claim operators to test the revised claims process. This will provide a crucial role in providing assurance during the transition from the model office environment to live running.

While the possibility of someone impersonating a claimant or using a dead person's details to secure benefit exists presently within the paper based claim process, the proposed tele-claim process is felt to be more secure.

- In the current paper based process on receipt of a claim for State Pension a check is made to ensure that the claim form has been completed fully and that the claim form has been signed.
- Where another person telephones The Pension Service to make a claim on behalf of someone else the tele-claim adviser must ensure that this is with the claimant's consent. If the claimant is not available the tele-claim process could not continue and the caller would be asked to call back later when the claimant was available.
- If the claimant is unable to act for himself or herself, a Local Service visit would be arranged with both the claimant and the prospective appointee as happens now. If appointee action is appropriate either a paper claim form, requiring a signature,

could be completed at the visit or, if preferred, the appointee could then complete the tele-claim process.

### *Consultation*

The Department undertook independent research, between October 2003 and February 2004, with pensioners and pensioner representative groups to test their preferences on a variety of service delivery options, including attitudes to the telephone service and different methods of contact. Most pensioners were happy to make a claim without signing a claim form provided they were given the opportunity to review and correct claim details if necessary and received a final copy of for their records. These concerns have been addressed in the processes outlined above.

Account was taken of a number of sources of feedback including:

- social research;
- qualitative and quantitative research. Eight hundred and eighty-one pensioners were randomly sampled for the quantitative survey with quotas for pensioners with ill health or disability and low income pensioners. The qualitative work sampled a range of pensioners of varying mobility, age and income. Overall there were 21 group discussions and 20 depth interviews. Six group discussions were undertaken with ethnic minorities to investigate the views of three different ethnic minority groups; and
- the 2003 DWP Customer Survey results.

Additionally, the proposals were presented to the Partnership Against Poverty (PAP) group for England and Wales in July 2004 and the group for Scotland in September. PAP group membership includes organisations such as Age Concern, Citizens Advice Bureau, Royal National Institute for the Blind, Royal National Institute for Deaf people, Help the Aged and local council groups. PAP members received advance notice of the presentation and had the opportunity to attend to express any reservations or raise any queries. A positive response was received from the presentations.

### *Staffing*

The initial plans have necessarily been based on estimates of average staffing requirements, forecast workloads and estimated timings for the new processes. Now that the site announcements have been made, the DWP are in the process of refining their implementation plans.

The intention is to phase in the new tele-claims process in three 'lead' sites to allow it to be tested and refined before full roll-out to all Pension Centres. The new processes will be introduced in one Pension Centre initially and once the lead site is stable two other Pension Centres will be rolled out simultaneously. Other Pension Centres will be rolled-out on an individual basis, once the DWP is satisfied that the changes have been fully integrated and are running smoothly. They anticipate that full national roll out will be completed by October 2006.

**APPENDIX 3: DECLARATION OF INTERESTS**

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**Lord Addington**

*Adviser, Maybeck Communications Ltd (33 St. James's Square, London SW1) (no personal clients and no remuneration received to date)*

*Chairman, Purcell & Company*

*Vice President, British Dyslexia Association*

*Vice President, Lakenham Hewitt Rugby Club*

*Vice President, Lonsdale Club*

*Vice President, UK Sports Association*

*Patron, Adult Dyslexia Association*

*Patron, Carousel*

**Lord Armstrong of Ilminster**

*Chairman, Board of Governors, Royal Northern College of Music*

*Chancellor, University of Hull*

*Chairman, Leeds Castle Foundation*

*Chairman, Hestercombe Gardens Trust*

*Trustee, RVW Trust*

*Trustee, Derek Hill Foundation*

**Lord Boston of Faversham**

*Two properties let as holiday cottages*

*Trustee, Leeds Castle Foundation, Leeds Castle, Maidstone, Kent (a charity)*

*President, The Faversham Society (a local amenity society; a charity)*

*Chairman, The Sheppey Group (formed to safeguard areas of Kent and Essex from proposals for a third London airport; has not been active for some twenty-or-so years)*

*Fellow, Royal Society of Arts*

**Viscount Colville of Culross**

*Assistant Surveillance Commissioner under Regulation of Investigatory Powers Act 2000*

**Lord Hunt of Kings Heath**

*Senior Policy Adviser, Kings Fund*

*Adviser, University Hospital Birmingham NHS Trust*

*Adviser to Beechcroft Wansbroughs Solicitors and Brightwater Regulatory*

*Consulting Limited (trading as Beechcroft Wansbroughs Consulting)*

*Adviser, Beechcroft Wansbroughs Solicitors*

*Adviser, Harrogate Management Centre*

*Adviser, KPMG (Accountants)*

*Adviser, Long Term Conditions Alliance*

*Columnist, Health Services Journal*

*Regular speaking engagements on variety of subjects in relation to the NHS and healthcare issues*

*Associate, Cumberlege Connections*

*Chair, Birmingham and Solihull NHS Strategic Partnering Board*

*Chair, National Patient Safety Agency*

*Parliamentary Supporter of the Patients Association*

*Patron, Birmingham Centre for Arts Therapies*

*Patron, Comprehensive Future*

*Senior Associate Fellow – Warwick University Business School*

*Patron, Rethink*

*Patron, Family Planning Association*

*Co-operative Party*

*Cyclist Touring Club*

*Socialist Education Association*

*Socialist Health Association*

*St. Mary's Hospice, Birmingham*

*UK Public Health Association*

*Unison (trade union)*  
*Warwickshire County Cricket Club*

**Lord Jopling**

*Owner of rented houses in North Yorkshire*  
*Part owner of agricultural land in North Yorkshire*  
*Partner in farming business in North Yorkshire*  
*Member of the Court, York University*  
*President Emeritus, Auto Cycle Union*  
*President, Despatch Association*

**Lord McKenzie of Luton**

*Freehold, 3 Sandwell Close, Luton LU2 7TN*  
*Leasehold, 55 South Block, County Hall, London*  
*Member, Luton Borough Council*  
*Member of Corporation of Luton VI Form College*  
*Governor, Ashcroft High School, Luton*  
*Governor, Wigmore Primary School, Luton*  
*Governor, Chapel Street Nursery School, Luton*  
*Court Member, University of Luton*  
*Committee Member, Mary Seacole Housing Association*  
*Trustee, Noah Enterprise*

**Lord Methuen**

*Chairman of Trustees of the Lady Margaret Hungerford Charity (which has almshouses and schoolroom in Corsham, Wiltshire)*

**Earl of Northesk**

*A number of tenanted properties in West Sussex and the Isle of Man*

**Baroness Royall of Blaisdon,**

*Trustee of IPPR (The Institute for Public Policy Research)*  
*Trustee, Fondation Generation Europe*  
*Director, European Movement*  
*Consultant, Generation Europe*  
*Trustee, National Botanic Garden of Wales*

**Viscount Ullswater**

*Regular part-time consultancy to Newmarket Countryside Race Day*  
*Director, Lowther Park Farms Ltd, Cumbria*  
*Cottage in Norfolk rented out as holiday home*  
*Elected Councillor of Docking Ward of King's Lynn & West Norfolk Borough Council*  
*Trustee of small landowning trusts in Cumbria and Devon*  
*Life Member, Supporters of Nuclear Energy (SONE)*