

HOUSE OF LORDS

Merits of Statutory Instruments Committee

11th Report of Session 2008-09

Drawing special attention to:

**Draft Cornwall (Electoral Arrangements
and Consequential Amendments) Order
2009**

**Draft Health Care and Associated
Professions (Miscellaneous Amendments
and Practitioner Psychologists) Order 2009**

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The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
 - (a) every instrument (whether or not a statutory instrument), or draft of an 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 under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (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 may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Lord James of Blackheath CBE
The Lord Crisp KCB	The Lord Lucas
The Baroness Deech DBE	The Baroness Maddock
The Viscount Eccles CBE	The Lord Rosser
The Lord Filkin CBE (<i>Chairman</i>)	The Baroness Thomas of Winchester
The Lord Hart of Chilton	

Registered interests

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Publications

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at www.parliament.uk/parliamentary_committees/merits.cfm

Contacts

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email merits@parliament.uk. The Committee's website, www.parliament.uk, has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

Statutory instruments

The Government's Office of Public Sector Information publishes statutory instruments on the internet at www.opsi.gov.uk/stat.htm, together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

Eleventh Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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 Cornwall (Electoral Arrangements and Consequential Amendments) Order 2009

Summary: Elections for the new Cornwall Council, a single-tier authority set up under a structural change order agreed by the House last year, are to take place on 4 June 2009. The Boundary Committee and the Electoral Commission have not completed the necessary electoral review of Cornwall in time to make an order implementing new arrangements for those elections. This draft Order provides for elections to Cornwall Council to take place on the basis of the Boundary Committee's draft recommended arrangements, published last December. The Government have decided on this approach in the belief that it will give the new Council democratic legitimacy as soon as possible after its inception. It would have been better if all the well-established preparatory stages had been completed before the new authority comes into being.

This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

1. The Department for Communities and Local Government (DCLG) have laid this Order to be made under sections 7, 11, 12 and 13(1) of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). An Explanatory Memorandum (EM) has been provided.
2. In February 2008, the Secretary of State for Communities and Local Government made the Cornwall (Structural Change) Order 2008 (SI 2008/491): the "Cornwall Order", using powers in the 2007 Act. The Cornwall Order provided for a single tier of local government in Cornwall with effect from 1 April 2009: from that date, there is to be a county council for the county, but no district councils.¹
3. 2009 is a year in which the ordinary elections of county councillors take place under the Local Government Act 1972; those elections are to be held on 4 June 2009, at the same time as elections for the European Parliament.
4. The 2007 Act (at Section 12(5)) requires that, as soon as practicable after the making of a structural change order, the Electoral Commission must consider whether to direct the Boundary Committee to conduct an electoral review. The Boundary Committee commenced its electoral review for Cornwall on 26 February 2008. On 15 August 2008 the Boundary Committee informed Cornwall County Council that they were minded to recommend a council size of 123 members for the new unitary Cornwall

¹ The Committee brought the Cornwall Order, and four other structural change orders, to the special attention of the House in the 7th Report of 2007-08.

Council, but that they would not be able to complete their electoral review of Cornwall in time for the Electoral Commission to make an order implementing new arrangements for the 2009 local government elections.

5. On 2 December 2008, the Boundary Committee published draft recommendations for electoral changes in Cornwall. The Electoral Commission has not taken any decisions in relation to those recommendations, and is unlikely to do so in time for arrangements to be made for the elections. Such arrangements need to be in place by, at the latest, the third week in April for elections in June.

Soundings exercise

6. Between 5 December 2008 and 30 January 2009, DCLG carried out a “soundings exercise” on the 2009 elections to the Cornwall Council, seeking views from Cornish MPs, the Boundary Committee and the Electoral Commission, and the leaders of the county and district councils in Cornwall. DCLG acknowledge that this was a short timescale in which to respond, but state that it was necessary “to complete this soundings exercise in time to bring any draft Order before the House in February 2009 in order to bring certainty about the next election to the council, councillors, electoral administrators and the public as soon as possible.”²
7. In writing to these stakeholders, DCLG sought views on the proposal to defer the election from June 2009 to October 2009, on the basis that the Electoral Commission would be able to put in place new electoral arrangements in time for an October election. However, in their response, while describing the October election as the least worst of the options, the Electoral Commission stressed the uncertainties which attached to the timetable for implementing the electoral review recommendations and warned of risk to the effective administration of the electoral process.
8. On 19 February 2009, the Minister for Local Government announced that the 2009 Cornwall Council elections should after all take place on 4 June 2009; and that a draft order would be laid before Parliament to provide for elections to the unitary council to take place on the basis of the Boundary Committee’s draft recommended arrangements, as published on 2 December 2008, for the return of 123 councillors.³ This is the purpose of the draft Order now before the House.
9. In the EM, DCLG say that there was a considerable measure of support amongst respondents to the sounding exercise for the proposal that 2009 elections to the new Cornwall Council for 123 members should take place as soon as practicable. However, the Department also explain that views diverged as to when holding such elections would in fact be practicable. Cornish MPs were strongly attracted to an election in June on the basis of finally approved electoral arrangements; if this were unworkable, they would settle for elections as soon as possible with the draft new electoral arrangements. Conversely, Cornwall County Council favoured an October election; and the Electoral Commission, and the Association of Electoral Administrators, were opposed to both a June and an October election on

² In fact, the draft Order now before the House was laid on 2 March 2009.

³ The announcement took the form of a press release issued by DCLG in the South West. See: <http://nds.coi.gov.uk/Content/Detail.asp?ReleaseID=393133&NewsAreaID=2>

revised electoral arrangements, expressing concerns about practical administration of the election.

Conclusion

10. It is clear that the decision to proceed with Cornwall Council elections in June 2009 has not been an obvious one for the Department to take. The proposal advanced by DCLG at the outset of the December 2008 sounding exercise was the postponement of these elections from June to October 2009, and this proposal was supported by the existing County Council (albeit not by other respondents). DCLG now say that, in confirming June 2009 as the date for the elections, the Minister for Local Government believed that this would give the new Cornwall Council “full democratic legitimacy as soon as possible after its inception”.
11. We question whether this objective could be more fully achieved if the elections were to take place only after the Electoral Commission had considered the Boundary Committee’s final recommendations and made an implementing order in the usual way.⁴ The Government have willed the end, namely that the new Cornwall Council should come into being in April 2009; the Government should also have willed the means to ensure that all the well-established preparatory stages were completed by that date.

B. Draft Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009

Summary: This Order makes a number of amendments to the governance arrangements for the General Dental Council, the Health Professions Council, and the Royal Pharmaceutical Society of Great Britain, as well as various consequential amendments. It also introduces, for the first time, statutory regulation of practitioner psychologists throughout the United Kingdom and statutory regulation of pharmacy technicians in Scotland. The Committee has received correspondence from a number of psychotherapists and those practising similar disciplines: while many of the concerns expressed relate to a possible future Order, some of the issues mentioned, such as potential distortion of the market as a result of only regulating part of it, might arise as a result of the current instrument. A number of those currently practising in this field argue that the “one size fits all” approach to the regulation of the health professions will cause significant damage to their profession. They are asking that the Department of Health provide stronger evidence of the need to move away from voluntary regulation and how the policy proposed will increase the protection of the public. In debate, the House may wish to explore these issues further.

This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

12. The Department of Health (DH) have laid this Order under sections 60 and 63 of the Health Act 1999, together with an Explanatory Memorandum (EM) and Impact Assessment (IA).
13. The Order makes a number of amendments to the governance arrangements for the General Dental Council, the Health Professions Council (“HPC”), and the Royal Pharmaceutical Society of Great Britain, and various

⁴ In exercise of powers conferred by sections 17 and 26 of the Local Government Act 1992.

consequential amendments, for example, relating to legislation on the protection of vulnerable children and adults. It also introduces, for the first time, statutory regulation of practitioner psychologists throughout the United Kingdom and statutory regulation of pharmacy technicians in Scotland.

14. It was one of the precepts of the Department's original consultation exercise flowing from the White Paper *"Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century"* that statutory regulation of health professionals enables the setting of standards of practice to ensure safe and effective conduct, and provides for the operation of statutory procedures to investigate and deal with cases of alleged impaired fitness to practise. DH maintains that this is particularly important where the profession concerned is offering services to the public and regulation should enhance confidence that individuals practising the profession are competent and fit to do so and that the governing body is acting impartially.

15. Article 5 of this Order introduces statutory regulation to psychologists. As was suggested in the consultation exercise, it initially relates to seven groups within the profession:

- clinical psychologists
- counselling psychologists
- educational psychologists
- forensic psychologists
- health psychologists
- occupational psychologists and
- sport and exercise psychologists

(referred to, collectively, as "practitioner psychologists"). The Order protects the use of these titles so that only those appropriately qualified and registered with the HPC will be able to use them. Those working in a purely academic capacity in any of these disciplines will not be required to register automatically: the deciding factor will be the degree of their interaction with the public.

16. These seven groups are the core of those who have been accredited as chartered psychologists, having met the standards required by either the British Psychological Society ("BPS") or the Association of Educational Psychologists. However, the BPS has expressed concerns that about 2,000 of its existing chartered psychologists who work in other or cross-cutting disciplines may not be eligible for automatic transfer to the new system run by the HPC unless they submit to further training or pay an additional fee. The BPS see this as a restraint of trade and have also stated that they feel all those who deliver such therapies should be regulated at the same time to close potential loopholes. DH has stated that this Order does not prevent chartered psychologists from continuing to practice under that title and it will be a matter for the BPS to determine whether to continue to issue charters in future and on what basis.

17. The Department added that, if there are a number of chartered psychologists who have been issued with BPS practising certificates but who are not entitled to be full members of one of the seven BPS divisions because they do not have the breadth of training required, it is difficult to justify, for reasons

of public protection, giving them an automatic right to transfer to the new register without further consideration by the HPC.

18. According to the Department, consultation on the draft legislation showed that 60% of respondents agreed with the proposal that holders of BPS practising certificates who do not meet the full range of competencies should only be eligible for registration if they meet the HPC standards for safe and effective practice. Chartered psychologists with practising certificates but who do not have the full breadth of training will need to be assessed by two assessors from their profession and a decision made about whether the person can be registered. It is up to the HPC to set their own fees for registration, including any scrutiny fee, for those wishing to be registered through the “grandparenting” route.
19. In relation to the suggestion that the whole of the profession should be regulated at the same time to prevent market distortion, DH notes these reservations but states that they do not wish to delay the benefits for the public from the regulation of practitioner psychologists, while standards of competence and training appropriate to the other types of therapist are agreed. DH’s policy intention is that this Order represents the first phase of regulation, and proposals for a second Order covering others involved in the delivery of psychological therapies will be published in due course. The Department is currently working with a number of representative bodies including the British Association for Counselling and Psychotherapy (BACP) and no decisions have been made. Any proposals to regulate psychotherapists and counsellors will be subject to further public consultation before any legislation is laid before Parliament. Under section 60 of the Health Act 1999 any Order introducing statutory regulation must be published in draft for at least three months before it can be laid in Parliament.
20. However the Committee has received a range of letters from psychotherapists and those practising similar disciplines, who might be regulated under this second phase, expressing their objections.⁵ Recurring themes in this correspondence include:
 - reputable therapists already belong to an appropriate professional associations such as the British Association for Counselling and Psychotherapy (BACP) on a voluntary basis
 - moving responsibility for regulation across to HPC will undermine the role of these professional organisations and the protection that they provide to the public
 - DH provide no evidence of existing malpractice to justify this change or that existing voluntary regulators are failing to address concerns
 - there are already laws in place to deal with financial, sexual or physical abuse

⁵ Correspondence has been received from Dr Kevin Baker, Psycho-Practitioner (letter of 2 January 2009), Tim Brown, Psychotherapist (email of 18 February 2009), Dr E A Campbell, President of the British Psychological Society (letter of 9 January 2009), Vincent Dachy, Psychoanalyst (letter of 19 February 2009), John Gloster-Smith, Business and Life Coach (letter of 7 January 2009), Alliance for Counselling and Psychotherapy (article), Jenny Nicholson, Psycho-practitioner (letter of 25 February 2009), Denis Postle, Psycho-practitioner (letter of 20 February 2009), Justin Smith, Psychotherapist (letter of 16 February 2009) and Joseph Stuart, Psychotherapist (letter). Copies can be obtained from the Committee Secretariat, or the Parliamentary Archives (020-7219 3074).

- those who are unable to practise using the seven reserved titles will be able to continue to do so under another name, e.g., business psychologist; and so the proposed system will be ineffective in protecting the public, as these individuals will continue to operate but outside of any statutory framework
 - there is a very wide range of psychotherapies (570 training bodies have been identified) that HPC will need to consider
 - the choice of therapist is very personal to the client and by “scientizing” psychology the NHS is both narrowing choice and restricting therapists’ ability to practice within the NHS
 - the client can often have mixed emotions about a therapist and this may lead to unfounded complaints; however, once a complaint is made that professional may be required to cease practising until it has been investigated. This could have consequences for other clients due to the interruption of their therapies
 - therapists are predominantly active in the private sector which is outside HPC’s previous experience and regulatory interventions may have a significant impact on the psychotherapists’ income
21. While many of the concerns expressed by the psychotherapists relate to a possible future Order, some of the issues mentioned in correspondence, such as potential distortion of the market as a result of only regulating part of it, might arise as a result of the current instrument. A number of those currently practising in this field argue that the “one size fits all” approach to the regulation of the health professions will cause significant damage to the profession. They are asking that DH provide stronger evidence of the need to move away from voluntary regulation and how the policy proposed will increase the protection of the public. **In debate the House may wish to explore these issues further.**

OTHER INSTRUMENTS OF INTEREST

Draft Categories of Gaming Machine (Amendment) Regulations 2009

22. These Regulations increase the maximum stake and prize levels for category C and some D gaming machines; in the case of category C machines doubling the stake to £1 (from 50p) and the prize to £70 (from £35), for Category D non-money prize crane grab machines increasing the maximum stake to £1 (from 30p) and the prize value to £50 (from £8); slightly lower increases are proposed for some other types of category D machine. DCMS announced that their review would be brought forward a year in order to provide economic assistance to family entertainment centres (such as seaside arcades, pubs and clubs) which were suffering in the economic downturn and they are keen to have them in place as soon as possible. The measure was subject to several short consultations but faith groups retain some concerns about the potential impact of these changes on children and whether these measures should have been brought forward before the 2010 Gambling Prevalence Survey has been conducted and the results are known.

Parole Board (Amendment) Rules (SI 2009/408)

23. Following a review, the Ministry of Justice found that, under the current Rules, only 32% of oral parole hearings were being convened on time. They also found that some chairmen were taking short cuts to meet deadlines by not cross-checking their draft decisions letters with the other members of the Board. To reflect the heavier and more complex workload now facing the Boards, the deadline for issuing decision letters has been extended from 7 to 14 days to allow proper consideration to be given. Further changes are made by the Rules, with the objective of making the system quicker and more effective. These include allowing the Board to be comprised of fewer than three members, and not requiring the Chairman to be judicially qualified (except in relation to life sentences). The Committee trusts that the new system will be monitored for fairness as well as speed of delivery.

**INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF
THE HOUSE**

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

Draft Instruments requiring affirmative approval

Categories of Gaming Machine (Amendment) Regulations 2009

European Parliamentary Elections (Amendment) (No. 2) Regulations 2009

Local Government (Structural Changes) (Miscellaneous Amendments and Other Provisions) Order 2009

Instruments subject to annulment

SI 2009/352 Exercise of Functions by Local Councillors (Written Records) Regulations 2009

SI 2009/353 Non-Domestic Rating (Unoccupied Property) (England) Regulations 2009

SI 2009/354 Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2009

SI 2009/355 Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2009

SI 2009/372 Blood Safety and Quality (Fees Amendment) Regulations 2009

SI 2009/380 Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment) (England) Regulations 2009

SI 2009/381 National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2009

SI 2009/383 Medical Devices (Fees Amendments) Regulations 2009

- SI 2009/385 Postgraduate Medical Education and Training Board (Fees) Rules Order 2009
- SI 2009/389 Medicines (Products for Human Use) (Fees) Regulations 2009
- SI 2009/394 Fostering Services (Amendment) Regulations 2009
- SI 2009/395 Independent Review of Determinations (Adoption and Fostering) Regulations 2009
- SI 2009/396 Child Support (Miscellaneous Amendments) Regulations 2009
- SI 2009/401 Town and Country Planning (Local Development) (England) (Amendment) Regulations 2009
- SI 2009/407 National Health Service (Dental Charges) Amendment Regulations 2009
- SI 2009/408 Parole Board (Amendment) Rules 2009
- SI 2009/409 National Health Service (Amendments Relating to Optical Charges and Payments) Regulations 2009
- SI 2009/410 Care Quality Commission (Additional Functions) Regulations 2009
- SI 2009/411 National Health Service (Charges for Drugs and Appliances) and (Travel Expenses and Remission of Charges) Amendment Regulations 2009
- SI 2009/438 Personal Injuries (Civilians) (Amendment) Scheme 2009
- SI 2009/439 Civil Enforcement of Parking Contraventions (Walsall) Designation Order 2009
- SI 2009/442 General Optical Council (Constitution) Order 2009
- SI 2009/443 Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009
- SI 2009/445 Quality Partnership Schemes (England) Regulations 2009
- SI 2009/449 Smoke Control Areas Exempted Fireplaces (England) Order 2009
- SI 2009/450 Tribunals, Courts and Enforcement Act 2007 (Transitional Provision) Order 2009
- SI 2009/457 Debt Relief Orders (Designation of Competent Authorities) Regulations 2009
- SI 2009/458 Immigration Services Commissioner (Designated Professional Body) (Fees) Order 2009
- SI 2009/459 Pensions Appeal Commissioners (Procedure) (Northern Ireland) (Amendment) Regulations 2009
- SI 2009/460 Police Act 1997 (Criminal Records) Regulations 2009
- SI 2009/462 Health and Social Care Act 2008 (Commencement No. 9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009

- SI 2009/463 Aquatic Animal Health (England and Wales) Regulations 2009
- SI 2009/464 Civil Enforcement of Parking Contraventions (West Berkshire) Designation Order 2009
- SI 2009/465 Insolvency Proceedings (Monetary Limits) (Amendment) Order 2009
- SI 2009/469 Driving Standards Agency Trading Fund (Maximum Borrowing etc.) Order 2009
- SI 2009/474 Register of Judgments, Orders and Fines (Amendment) Regulations 2009
- SI 2009/478 Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2009
- SI 2009/489 Gender Recognition (Application Fees) (Amendment) Order 2009
- SI 2009/580 Health and Social Care Act 2008 (Commencement No. 9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Amendment Order 2009