

HOUSE OF LORDS

Merits of Statutory Instruments Committee

6th Report of Session 2010-11

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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 Methuen
The Lord Eames OM	Rt Hon. the Baroness Morris of Yardley
Rt Hon. the Lord Goodlad (<i>Chairman</i>)	The Lord Norton of Louth
The Baroness Hamwee	The Lord Plant of Highfield
The Lord Hart of Chilton	Rt Hon. the Lord Scott of Foscote
The Lord Lucas	

Registered interests

Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Declared interests for this Report are in Appendix 1.

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.

Sixth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

None.

OTHER INSTRUMENTS OF INTEREST

Nutrition and Health Claims (England) (Amendment) Regulations 2010 (SI 2010/1768)

1. Nutrition claims that can be made for foods (e.g. “low fat”, “high fibre” etc.) are standardised by Regulation EC/1924/2006 which is directly applicable in EU Member States. Permitted nutrition claims and conditions for their use are set out in an Annex to the EC Regulation, which is updated from time to time. Before now the national Regulations that provide for their enforcement in England had to be updated each time a change was made. The current Regulations not only provide for enforcement activities relating to five claims that have recently been added to the Annex, but also make an ambulatory reference, which will allow for the enforcement of any future provisions added to the Annex without further domestic legislation being necessary.

Social Security (Exemption from Claiming Retirement Pension) Regulations 2010 (SI 2010/1794)

2. These Regulations aim to simplify the benefits system by enabling customers approaching pensionable age who are already in receipt of certain DWP benefits to be awarded State Pension without having to make a further claim. Those claiming Income Support, Incapacity Benefit, Job Seeker’s Allowance, Employment and Support Allowance or Pension Credit should receive a letter two weeks before their retirement date to inform them of the change of benefit. Those on other benefits or working will still need to apply in the normal way. The simplification is likely to affect around 175,000 people per year and will result in some administrative cost savings for the DWP as well as being more convenient for the public. Short and long-term monitoring is to be conducted to assess the actual effects of the revision to the process.

Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 (SI 2010/1809)

3. The Mortgage Repossessions (Protection of Tenants etc) Act 2010 filled a gap in the legal protection available to tenants of dwelling houses whose landlords have not obtained the agreement of their mortgagee before renting the property out (defined as “unauthorised tenants”). Prior to the Act the tenant could be evicted at short notice and would have had no rights in court. The Act does not prevent the repossession but delays it, allowing tenants the right to request that repossession be deferred for up to two months so that they can find an alternative place to live. In order to make these new rights effective, the tenant must have notice that a mortgagee intends to take possession of the property on a given date. These Regulations set out the information to be included in a Notice of Execution of Possession

Order and require 14 days to elapse before the possession order can be executed. The form includes an explanation of the steps that mortgagees and tenants should take, reflecting the legislative change. The Committee is pleased to note that the Department is also preparing guidance and hopes that it will be widely distributed to all those organisations that tenants might contact for help. It is a vital part of making this protection effective that the guidance explains clearly who qualifies for the postponement and what they need to do to obtain it.

Social Security (Housing Costs) (Standard Interest Rate) Amendment Regulations 2010 (SI 2010/1811)

4. Claimants in receipt of income-based benefits such as Employment Support or Jobseeker's Allowances may be entitled to help towards their housing costs; in particular help to cover eligible interest on loans taken out to purchase a home or to make specified home improvements. This instrument amends the Standard Interest Rate (SIR) used to calculate the amount of interest payable on qualifying loans. It replaces the current fixed SIR of 6.08% with a fluctuating rate based on the average interest rate for mortgages on dwellings published by the Bank of England (3.66% in May 2010). The initial SIR starting rate will be published in August 2010 and will be subject to change when the Bank of England published average rate differs from the standard rate by 0.5% or more. The Merits Committee has been very critical of the way previous changes to the Support for Mortgage Interest scheme have been made, calling the DWP Minister in twice to explain their basis for judging that the legislation was likely to deliver the intended effect.¹ Our 16th Report of Session 2009-10 (HL Paper 110) was particularly critical of SI 2010/796 which maintained the Standard Interest Rate for these purposes at 6.08%, which by then appeared to us to be paying well in excess of the amounts needed to meet the actual interest on qualifying loans. The current instrument responds to those criticisms, and sets the rate at an average market rate established by a published source, which is a more transparent approach. We thank the Department for the coherent explanation of how the new policy was formulated and how it is to be monitored set out in the Explanatory Memorandum.

Statement of Changes in Immigration Rules (HC 96)

5. Tier 2 of the Points-Based System ("PBS") caters for skilled workers with a job offer, and includes the following four categories: Tier 2 (General); Tier 2 (Intra-Company Transfer); Tier 2 (Ministers of Religion) and Tier 2 (Sportspersons). This Statement entitles the Secretary of State to limit the number of Certificates of Sponsorship available to be assigned to Sponsors in any one period, and to limit the number of Certificates of Sponsorship assigned to any specific Sponsor in any one period. An applicant must have a Certificate of Sponsorship before a valid application for entry clearance or leave to remain as a Tier 2 Migrant can be made. The Explanatory Memorandum (EM) says that the Government has commenced a consultation on how, in the longer term, limits on the number of non-EU economic migrants might be determined and implemented; but in the meantime, interim limits are being applied to Tier 1 and Tier 2 whilst the

¹ See the reports on SI 2008/3195 in our 5th Report of Session 2008-09, HL Paper 27 and SI 2009/3257 in our 5th Report of Session 2009-10, HL Paper 32

outcome of the consultation is considered (EM paragraph 7.4). The interim limits for Tier 1 were addressed in an earlier Statement of Changes in Immigration Rules (HC 59) which the Committee drew to the special attention of the House. The Committee's report on that Statement provides more context on the Government's proposals for the interim migration limits (4th Report of this Session, HL Paper 17). This Statement has been laid on an urgent basis, following two court judgements concerning the extent to which requirements under the PBS should be set out in the Immigration Rules rather than in UK Border Agency guidance. The Committee notes that this Statement takes the same approach for Tier 2 as the earlier Statement took for Tier 1; while the Statement provides for there to be limits, the actual limits themselves will be left to PBS Guidance.

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.

Instruments subject to annulment

- SI 2010/1614 General Pharmaceutical Council (Appeals Committee Rules) Order of Council 2010
- SI 2010/1615 General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010
- SI 2010/1616 General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010
- SI 2010/1617 General Pharmaceutical Council (Registration Rules) Order of Council 2010
- SI 2010/1768 Nutrition and Health Claims (England) (Amendment) Regulations 2010
- SI 2010/1794 Social Security (Exemption from Claiming Retirement Pension) Regulations 2010
- SI 2010/1806 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) (Amendment) Order 2010
- SI 2010/1809 Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010
- SI 2010/1811 Social Security (Housing Costs) (Standard Interest Rate) Amendment Regulations 2010
- SI 2010/1813 Revenue and Customs (Complaints and Misconduct) Regulations 2010
- SI 2010/1825 Transfer of State Pensions and Benefits (Amendment) Regulations 2010
- SI 2010/1848 Criminal Defence Service (General) (No. 2) (Amendment) Regulations 2010
- HC 96 Statement of Changes in Immigration Rules

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from The Stationery Office.

For the meeting on 27 July 2010 Members declared the following interests:

Nutrition and Health Claims (England) (Amendment) Regulations 2010 (SI 2010/1768)

Lord Lucas: lay member of Pre and Probiotics Information Panel, Danone UK.

Attendance:

The meeting was attended by B. Butler-Sloss, L. Goodlad, L. Lucas, L. Methuen, L. Norton of Louth, L. Plant of Highfield and L. Scott of Foscoate.