

HOUSE OF LORDS

Merits of Statutory Instruments Committee

13th Report of Session 2010-11

Drawing special attention to:

Draft Post Office Network Subsidy Scheme (Amendment) Order 2010

Ordered to be printed 23 November and published 25 November 2010

London : The Stationery Office Limited
£price

HL Paper 63

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.

Thirteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.

Draft Post Office Network Subsidy Scheme (Amendment) Order 2010

Summary: This draft Order increases the annual cap which can be paid by the Secretary of State to Post Office Limited towards the cost of providing a national network of public post offices. The increase, which is from £160 million to £500 million, is to allow for the recently announced £1.34 billion of funding over the 2011/12 to 2014/15 Spending Review period. The Government has recently published the Postal Services Bill and a policy statement on the future of the Post Office. The House will therefore wish to consider this draft Order within this broader policy context.

This instrument 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 Post Office Network Subsidy Scheme Order 2007 (“the 2007 Order”) enables the payment of a subsidy by the Secretary of State to Post Office Limited (POL) towards the costs of providing a national network of public post offices. The 2007 Order also stipulates that the Secretary of State shall have regard to the following criteria in deciding whether to make a payment:
 - whether services will continue to be provided from a national network of public post offices across the United Kingdom in the absence of the making of a payment; and
 - whether services will continue to be provided from public post offices or a network of public post offices in any particular area in the United Kingdom in the absence of the making of a payment.
2. This draft Order amends the 2007 Order to increase the annual cap on subsidy which can be paid to POL under the scheme from £160 million to £500 million.
3. The Government recently announced that it would commit £1.34 billion of funding to the Post Office over the four years of the Spending Review period 2011/12 to 2014/15. The Explanatory Memorandum (EM) says that the profile of spend (conditional on necessary parliamentary and state aid approvals) is: £180 million, £410 million, £415 million and £330 million (EM paragraph 7.4). The EM goes on to say that increasing the level of subsidy that the Government can pay to the POL to £500 million allows for contingency in case of changes to the tax treatment of the subsidy (EM paragraph 7.4).
4. The Government says that funding will ensure that the Post Office network will remain at its current size of around 11,500 branches and will continue to

meet the five national access criteria, which include: 99% of the UK population will be within three miles of their nearest Post Office outlet; and 90% of the population to be within one mile of their nearest Post Office outlet (EM paragraph 7.5).

5. The House will be aware that the Government recently published the Postal Services Bill dealing mainly with the Royal Mail and the provision of the universal postal service. The Government has also published a policy statement setting out its plans to support the modernisation of the post office and the development of new revenues¹. The House will wish to consider the draft SI within this broader policy context.

OTHER INSTRUMENTS OF INTEREST

Draft Mutilations (Permitted Procedures) (England) (Amendment) Regulations 2010

6. The UK currently makes use of a derogation in EU legislation which, in order to prevent feather pecking and cannibalism, allows Member States to authorise beak trimming provided it is carried out by qualified staff on hens that are less than 10 days old and intended for laying. The derogation is implemented by the Mutilations (Permitted Procedures) (England) Regulations 2007. These draft Regulations allow this to continue after 31 December 2010 and follow advice from the Farm Animal Welfare Council (FAWC) that the practice should not be banned until an alternative means of controlling injurious pecking has been identified. The Explanatory Memorandum (EM) says that the Government is committed to reducing the number of mutilations carried out on farm animals and its long term goal is to ban routine beak trimming (EM paragraph 12.1). The policy of beak trimming will be reviewed in 2015 with a view to banning routine beak trimming of laying hens in 2016 (EM paragraph 12.1).

Copyright, Designs and Patents Act 1998 (Amendment) Regulations 2010 (SI 2010/2694)

7. This SI repeals the exemptions in the Copyright Designs and Patents Act 1988 (“the CDPA”) which allow charitable and not-for-profit organisations to play recorded or broadcast music in public without obtaining a licence for the use of the sound recording and performers’ rights in that record or broadcast. The SI also repeals the mechanism in the CDPA by which the Secretary of State can refer certain licences and licensing schemes to the Copyright Tribunal. The Explanatory Memorandum (EM) says that the Phonographic Performance Ltd² have agreed to match the voluntary exemptions that PRS for Music³ offer at present⁴; and to fund an independent complaints reviewer which will deal with matters where the

¹ ‘Securing the Post Office Network in the Digital Age’, available on the DECC website at <http://www.bis.gov.uk/policies/business-sectors/postal-services/post-office-network/future-strategy>

² PPL is a licensing body that licenses rights in sound recordings and performances on behalf of record companies and performers respectively in the UK

³ Formerly known as the Performing Rights Society

⁴ The statutory exemptions did not apply to rights of composers, lyricists and music publishers administered by PRS for Music

licensee/potential licensee is not satisfied with the way PPL has dealt with them. The voluntary exemption will not have legal effect, and the powers of the independent complaints reviewer will be limited accordingly. The Impact Assessment (IA) says that the policy objective for the changes is to achieve the correct balance between right holders and users (particularly those who provide valuable support/service to vulnerable communities, groups and individuals), as there had been concern from both right holders and users that the dividing line drawn by the exemptions was not correctly drawn (IA pages 6 and 7). The Intellectual Property Office consulted on policy options between July and October 2008, with further consultation undertaken in 2009, and the decision to repeal announced in November 2009. The EM says that the financial costs to charitable and not-for-profit music users of the repeal of the exemptions could be £18.7 million a year (EM paragraph 7.4). The Government will continue to monitor how well the measures work as part of its regular stakeholder engagement (EM paragraph 12.1).

SI 2010/2702 Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2010

8. This SI amends the definition of “relevant police force” for the purposes of enhanced criminal records certificates issued under the Police Act 1997. The amendments replace the previous requirement to send details of an application to every force in whose area the applicant had resided for the previous five years irrespective of whether any information was held in relation to the applicant by any police force. The change follows the development of the Police Cross-Referencing Database (PLX) which allows the CRB to find out in which local police areas information is held on particular individuals, thereby allowing them to carry out a targeted process, contacting only the forces where there is local police information relating to the individual.

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

Draft Mutilation (Permitted Procedures) (England) (Amendment) Regulations 2010

Draft Welfare of Farmed Animals (England) (Amendment) Regulations 2010

Draft Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2010

Other instruments subject to annulment

SI 2010/2659 Occupational, Personal and Stakeholder Pension Schemes (Disclosure of Information) (Amendment) Regulations 2010

- SI 2010/2692 Central Rating List (England) (Amendment) (No. 2) Regulations 2010
- SI 2010/2693 Plant Health (Import Inspection Fees) (England) Regulations 2010
- SI 2010/2694 Copyright, Designs and Patents Act 1988 (Amendment) Regulations 2010
- SI 2010/2702 Police Act 1997 (Criminal Records) (Amendment No. 2) Regulations 2010
- SI 2010/2715 Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) Regulations 2010
- SI 2010/2720 Fixed Penalty (Amendment) Order 2010
- SI 2010/2721 Road Safety (Financial Penalty Deposit) (Amendment) Order 2010

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 23 November 2010 Members declared the following interests:

Copyright, Designs and Patents Act 1988 (Amendment) Regulations 2010 (SI 2010/2694)

Baroness Morris of Yardley: as non-executive Director of the Performing Rights Society.

Attendance:

The meeting was attended by B. Butler-Sloss, L. Goodlad, B. Hamwee, L. Hart of Chilton, L. Lucas, L. Methuen, B. Morris of Yardley, L. Plant of Highfield and L. Scott of Foscote.