

HOUSE OF LORDS

Merits of Statutory Instruments Committee

43rd Report of Session 2010-12

**Marriage and Civil
Partnerships (Approved
Premises) (Amendment)
Regulations 2011**

Plus information paragraphs on 4 other Instruments

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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

Rt Hon. Baroness Butler-Sloss GBE
 Lord Eames OM
 Rt Hon. Lord Goodlad (*Chairman*)
 Baroness Hamwee
 Lord Hart of Chilton
 Lord Lucas

Lord Methuen
 Rt Hon. Baroness Morris of Yardley
 Lord Norton of Louth
 Lord Plant of Highfield
 Rt Hon. Lord Scott of Foscote

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 2.

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/hlmeritpublications

Contacts

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, 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 National Archives publishes statutory instruments on the internet on behalf of the Government at www.legislation.gov.uk/ukxi, together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

Forty-third Report

INSTRUMENT 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 grounds specified.

Marriage and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011 (SI 2011/2661)

Date laid: 8 November
Parliamentary Procedure: negative

The Equality Act 2010 (“the 2010 Act”) removed the prohibition on religious premises being approved for the registration of civil partnerships. These Regulations establish the procedure for such approvals. The Government’s Explanatory Memorandum says that the provision in the 2010 Act is entirely permissive and religious organisations will not be obliged to host civil partnership registrations if they do not wish to do so. The mechanism for introducing this change is to amend the approved premises scheme. The public consultation on the Regulations suggested that the principle of the proposal is contentious. The Committee has been made aware of an opinion prepared by Mark Hill QC on the Regulations and we have made this available on the Committee’s website¹. The Committee has also received submissions from the ‘Evangelical Alliance’, ‘The Christian Institute’ and ‘CARE’ raising a number of concerns about the instrument, in particular whether it will achieve its intended purpose. These too are published on the website².

This instrument is drawn 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.

1. The Equality Act 2010 (“the 2010 Act”) amended the Civil Partnership Act 2004 to remove the prohibition on religious premises being approved for the registration of civil partnerships. The framework for the approval of premises for marriages and civil partnership registrations is set out in the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (“the 2005 Regulations”). These Regulations amend the 2005 Regulations and establish the procedure for religious premises to be approved for civil partnership registrations (but not civil marriages).
2. The Explanatory Memorandum (“EM”) says that the provision in the 2010 Act is entirely permissive and religious organisations will not be obliged to

¹ www.parliament.uk/hlmeritpublications

² *ibid*

host civil partnership registrations if they do not wish to do so (EM paragraph 7.2).

3. The Government ran a public consultation on the proposal which closed on 23 June 2011 and received 1,617 responses (EM paragraph 8.1). The EM says the majority of the responses were objecting to the introduction of this proposal on principle rather than focussing on the detail of the consultation which was the practical arrangements to put in place the changes to the approved premises scheme (EM paragraph 8.2).
4. The Committee has been made aware of an opinion prepared by Mark Hill QC on the Regulations and this has been made available on the Committee's website. The Committee has also received submissions from the 'Evangelical Alliance', 'The Christian Institute' and 'CARE' which raise a number of concerns about the instrument, in particular whether it will achieve its intended purpose. These too are available on the website³. The concerns raised by 'Evangelical Alliance' include:
 - Many independent churches operate in buildings they do not own, and officials for such a denomination may try to register all its premises, leaving evangelical ministers in a very difficult position; and
 - If a church itself is registered but the minister or congregation refuses to host a particular civil partnership, they are vulnerable to legal action by the couple concerned.

The concerns raised by 'The Christian Institute' include:

- That the Regulations do not offer sufficient legal protection to churches that do not wish to host civil partnerships;
 - Combined with the public sector equality duty, the Regulations raise the prospect of churches being refused the right to register marriages at all, if they will not also register civil partnerships; and
 - The complexities of the different types of church structure are not properly accounted for in the Regulations.
5. 'CARE' argue that the Regulations do not achieve the stated purpose of advancing religious liberty by enabling places of worship that do wish to host civil partnerships to do so, whilst not obliging any place of worship that does not wish to host civil partnerships to do so.

OTHER INSTRUMENTS OF INTEREST

Statement of Changes in Immigration Rules (HC 1622)

6. The purpose of the changes in this Statement of Changes in Immigration Rules ("the Statement") is to reduce from 21 to 18 years the minimum age at which a person may be granted entry clearance or leave as the spouse, civil partner, fiancé(e), proposed civil partner, unmarried or same-sex partner of a sponsor, and the minimum age at which a person may sponsor such an application. It will also delete references to a minimum age of 18 for entry clearance or leave as the spouse, civil partner, fiancé(e), proposed civil

³ www.parliament.uk/hlmeritspublications

partner, unmarried or same-sex partner of a HM Forces sponsor, and the minimum age at which a member of HM Forces may sponsor such an application. The Statement was accompanied by a Written Statement from Lord Henley, Minister of State at the Home Office⁴. The changes are being made to give effect to the Supreme Court judgement in *R (on the application of Quila and another) (FC) v Secretary of State for the Home Department* and *R (on the application of Bibi and another) (FC) v Secretary of State for the Home Department* [2011] UKSC 45 given on 12 October 2011.

Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 (SI 2011/2649)

7. These Regulations make provision for penalties and enforcement of certain restrictive measures specified in the following EU Regulations: Council Regulation (EC) 881/2002 (“the Al-Qaida Regulation”) as amended by Council Regulation (EU) No 754/2011 (“the amending Al-Qaida Regulation”) and Council Regulation (EU) No 753/2011 (“the Taliban Regulation”). The Al-Qaida and Taliban Regulations implement the elements falling within the competence of the EU in relation to the restrictive measures contained in the United Nations Security Council Regulations 1888 (2011) and 1889 (2011), which in turn modify the Al-Qaida and Taliban sanctions regime first established by the United Nations Security Council Resolution 1267 (1999) on 15 October 1999. These two EU Regulations contain a number of measures which include: prohibitions on technical advice, assistance or training related to military activities to any person, body or group listed in Annex 1 of the Al-Qaida Regulation; and prohibitions on technical assistance related to the goods and technology listed in the Common Military List of the European Union to any person, group, undertaking or entry listed in Annex 1 of the Taliban Regulation. A notice to exporters explaining the purpose and effect of the Al-Qaida Regulation and the Taliban Regulation will be published on the website of the Department for Business, Innovation and Skills.

Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) (No. 2) Regulations 2011 (SI 2011/2675)

8. Following a review and extensive consultation in 2010, the Department for Transport has revised the format and conditions for issuing the “Blue Badge” issued to enable disabled people with mobility difficulties to park in reserved spaces. The format is to be revised to include security features and a passport-style photograph to reduce the incidence of fraud. The fee is to be raised to £10 to reflect the cost of production. Around 36% of badge holders are “eligible without further assessment” because, for example, they are in receipt of the Higher Rate Mobility Component of Disability Living Allowance or are registered blind. For cases where eligibility is not obvious, regulation 4(2)(f) now introduces a more objective test through the use of an independent mobility assessment with the aim of introducing a more consistent standard of assessment. The most significant change made by these Regulations is in respect of the local authority’s ability to withdraw a badge for misuse – previously this could only be done where three relevant convictions has been obtained, this is now reduced to one such conviction.

⁴ HL Deb 7 November 2011 Col WS 7-8

Badges may also be withdrawn where a badge holder has attempted to transfer the badge to another person by gift or sale.

***Proscribed Organisations (Name Changes) Order 2011
(SI 2011/2688)***

9. This instrument exercises the power to specify another name for organisations that are already proscribed in Schedule 2 to the Terrorism Act 2000 under the names “Al Ghurabaa” and “The Saved Sect”. The alternative name is “Muslims Against Crusades”. The Order was laid before Parliament on 10 November and came into force on 11 November. The Explanatory Memorandum (EM) says that any delay between the laying of the instrument and its coming into force would alert the organisation to its impending proscription, and is likely in this case to result in pre-emptive action by its members designed to circumvent the provisions of the Terrorism Act 2000 and/or the criminal law (EM paragraph 3.1). The EM says that it is a criminal offence to belong to a proscribed organisation or to encourage support for a proscribed organisation, to arrange a meeting in support of a proscribed organisation, or to wear clothing or to carry articles in public which arouse reasonable suspicion that an individual is a member or supporter of the proscribed organisation (EM paragraph 7.3). The EM also says that proscription means that the financial assets of the organisation become terrorist property and can be subject to freezing and seizure (EM paragraph 7.3).

**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

HC 1622	Statement of Changes in Immigration Rules
SI 2011/2632	Road Transport Operator Regulations 2011
SI 2011/2633	Goods Vehicles (Community Licenses) Regulations 2011
SI 2011/2634	Public Service Vehicles (Community Licenses) Regulations 2011
SI 2011/2645	Mental Capacity Act 2005 (Appropriate Body) (England) Amendment Regulations 2011
SI 2011/2649	Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011
SI 2011/2667	Merchant Shipping (Flag State Directive) Regulations 2011
SI 2011/2669	Safety of Sports Grounds (Designation) (No. 4) Order 2011
SI 2011/2675	Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) (No. 2) Regulations 2011
SI 2011/2677	Ecodesign for Energy-Related Products (Amendment) Regulations 2011
SI 2011/2678	Immigration (Procedure for Marriage) Regulations 2011
SI 2011/2679	Immigration (Procedure for Formation of Civil Partnerships) Regulations 2011
SI 2011/2681	Animal By-Products (Enforcement) and Transmissible Spongiform Encephalopathies (England) (Amendment) Regulations 2011
SI 2011/2682	Immigration (Certificate of Entitlement to right of Abode in the United Kingdom) (Amendment) Regulations 2011
SI 2011/2688	Proscribed Organisations (Name Changes) Order 2011
SI 2011/2699	Recognised Auction Platforms Regulations 2011
SI 2011/2700	Social Security (Contributions) (Amendment No. 5) Regulations 2011
SI 2011/2701	Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2011

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 Parliamentary Archives.

For the meeting on 22 November 2011 Members declared the following interest:

Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) (No. 2) Regulations 2011 (SI 2011/2675)

Lord Plant of Highfield: whose wife is the holder of a Disabled Persons "Blue Badge".

Attendance:

The meeting was attended by Baroness Butler-Sloss, Lord Eames, Lord Goodlad, Baroness Hamwee, Lord Methuen, Lord Norton of Louth and Lord Plant of Highfield.