

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

16th Report of Session 2012-13

Includes Information Paragraphs on 2 Instruments

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Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (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 (2).
- (2) 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.
- (3) 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.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

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

Registered interests

Information about interests of Committee Members can be found in the Appendix.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

Information and Contacts

If you have a query about the Committee or its work, including concerns or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email seclegscrutiny@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Sixteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this Report.

INSTRUMENTS OF INTEREST

Customs (Inspections by Her Majesty's Inspectors of Constabulary and the Scottish Inspectors) Regulations 2012 (SI 2012/2840)

1. The Borders, Citizenship and Immigration Act 2009 transferred certain customs functions to officials of the Home Secretary, initially UK Border Agency officials and latterly Border Force. These functions include searches for illegal goods and the arrest of persons for customs criminal offences such as drugs trafficking or cigarette smuggling. Any person who is arrested for a customs criminal offence must be taken to either a police custody facility or customs custody premises to have their legal rights explained. The UN Optional Protocol to the Convention Against Torture requires each State Party to establish regular, functionally independent inspection of all places of detention. These Regulations require HM Inspectorate of Constabulary, along with HM Inspectorate of Prisons and the Scottish Inspectors, to inspect the treatment and conditions under which people are detained in Border Force customs custody and the Border Force's efficiency in detainee handling measured against published inspection criteria. The policy intention behind the Regulations is unexceptional but the Committee was concerned by the wording of regulation 6, which allows Her Majesty's Inspectors of Constabulary to delegate their functions under these Regulations to "another public authority", which is defined in 6(3) as "any person certain of whose functions are functions which are public in nature". The Home Office states that the policy intention under these Regulations is flexibility to enable an inspector from another appropriate inspectorate to conduct such inspections. However the nature of this definition means that the function could be delegated to any public official whose function is unrelated to the inspections process, for example, the Forestry Commissioners; and we are concerned that this definition is broader than the stated policy intention and could be open to future abuse.

Plant Health (England) (Amendment) Order 2012 (SI 2012/2922)

2. On 29 October 2012, the Forestry Commission laid the Plant Health (Forestry) (Amendment) Order 2012 (SI 2012/2707: "the October Order"), which introduced emergency measures against the fungal disease *Chalara fraxinea*, also called *Chalara* dieback of ash. The Order came into force on the same day. On 28 November, the Grand Committee of the House will debate a motion to take note of the October Order.

3. On 22 November, the Department for Environment, Food and Rural Affairs (Defra) laid the Plant Health (England) (Amendment) Order 2012 (SI 2012/2922: “the November Order”), which comes into force on 14 December 2012. The November Order also introduces measures against *Chalara fraxinea*, in line with the provisions of the October Order.
4. The Explanatory Note to the latest Order states that the competent authority for the measures in the October Order is the Forestry Commissioners, while the November Order enables the Secretary of State to act as competent authority for England in relation to certain specific emergency measures against *Chalara fraxinea*. We understand that a key purpose of the November Order, in referring to plants rather than trees (as in the October Order), is to provide certainty that the measures relate to amenity trees (for example, for gardens) as well as trees for forestry. The Order also amends existing licensing arrangements to permit trials and scientific work on certain harmful plant pests that are regulated only by domestic (that is, non-EU) measures.
5. In the Explanatory Memorandum to the November Order, Defra refers to a Forestry Commission estimate, putting the annual impact of these measures on business, charities or voluntary bodies at £250,000. We have been told by the Department that an updated estimate of the financial impact should be published in December, and is likely to be higher.

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 2012/2747 Transfer of Functions (Sea Fisheries) Order 2012
- SI 2012/2752 European Communities (Designation) (No. 2) Order 2012
- SI 2012/2788 Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012
- SI 2012/2789 National Health Service Bodies (Summarised Accounts) Order 2012
- SI 2012/2811 Police Pensions (Amendment No. 2) Regulations 2012
- SI 2012/2813 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Children Act 1989) (Children Remanded to Youth Detention Accommodation) Regulations 2012
- SI 2012/2822 Recovery of Costs (Remand to Youth Detention Accommodation) (England and Wales) Regulations 2012
- SI 2012/2824 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential and Saving Provisions) Regulations 2012
- SI 2012/2840 Customs (Inspections by Her Majesty's Inspectors of Constabulary and the Scottish Inspectors) Regulations 2012
- SI 2012/2862 Oil Stocking Order 2012
- SI 2012/2922 Plant Health (England) (Amendment) Order 2012

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 business taken at the meeting on 27 November 2012 Members declared no interests.

Attendance:

The meeting was attended by Lord Bichard, Lord Eames, Baroness Eaton, Lord Goodlad, Lord Hart of Chilton, Lord Methuen, Lord Norton of Louth, Lord Plant of Highfield and Lord Scott of Foscote.