

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

20th Report of Session 2012-13

Includes 5 Information Paragraphs on 7 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.

Twentieth 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

Draft Control of Donations and Regulation of Loans etc. (Extension of the Prescribed Period) (Northern Ireland) Order 2013

1. Across the UK, political parties and other recipients must report to the Electoral Commission donation and loans received over specified thresholds. However, to protect against the risk of donor intimidation, the Electoral Commission is currently under a statutory obligation not to publish or disclose details of donations and loans to Northern Ireland recipients. The Northern Ireland Office (NIO) conducted a full public consultation in 2010 putting forward a number of options for reform. The consultation revealed widespread public support for full transparency in the future but there was some opposition to the disclosure of past donations (that is those received between 1 November 2007 and the end of the prescribed period) because those who had made donations in the past did so in the belief that their details would not be released. Following further consideration, the NIO has concluded that the only certain way of making the existing system more transparent, while preserving the anonymity of past donations, is to enact primary legislation. Pending the introduction of that legislation donor identities should continue to be protected and this Order therefore extends the prescribed confidentiality period until the provisions of the forthcoming Bill take effect.

Education (Independent School Standards) (England) (Amendment) Regulations 2012 (SI 2012/2962)

2. The Department for Education (DfE) has laid these Regulations. In amending Regulations from 2010,¹ they introduce a standard about the quality of education for pupils under compulsory school age; introduce standards on the spiritual, moral, social and cultural development of pupils; simplify the standards relating to school premises and introduce a premises-related health and safety standard; allow information to be provided to parents and others electronically; and make some other minor and technical changes.
3. As regards the second of these changes, DfE states that they reflect commitments made in the Government's revised "*Prevent strategy*",² which noted that, while there was no significant evidence to suggest that children

¹ The Education (Independent School Standards) (England) Regulations 2010 (SI 2010/1997)

² <http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/> See paragraph 10.20.

were being radicalised in schools, concerns had been raised about the robustness of the regulatory regime for independent schools. DfE carried out consultation on the changes from April to June 2012, and received 40 responses.³ The Department states that, while most respondents were supportive of changes to encourage community cohesion and address extremism in schools, concerns were raised over how proposed wording on the spiritual, moral, social and cultural development of pupils would be interpreted and how this would impact on inspection and enforcement of the standards. In response, the Department has revised some of the provisions in the Regulations.

4. The Parliamentary Under-Secretary of State for Schools wrote to us in November to explain why the Department intended to bring these Regulations into force on 1 January 2013, which would be a departure from its commitment to bring schools-related instruments into force on 1 September of any year, and to give schools at least one term's notice before the date of bringing new requirements into effect. While he stated that many of the changes in the Regulations were deregulatory, he acknowledged that the changes to the standards on spiritual, moral, social and cultural development might require about 100 schools to adjust their curriculum; but he said that the Government considered it necessary to introduce the changes at the earliest opportunity because of the exceptional nature of the concerns raised in the "*Prevent* strategy".

Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012 (SI 2012/2964)

Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 (SI 2012/2965)

5. In the Explanatory Memorandum (EM) to these instruments, the Department for Communities and Local Government (DCLG) states that, in the Government's view, local authorities should decide, given local circumstances, the level of council tax that should be applied to empty homes, and that such discretion has not in the past been available to them. In the Local Government Finance Act 2012 ("the 2012 Act"), an amendment was made to earlier legislation on discounts for empty homes⁴ to allow for this. These instruments serve this policy objective.
6. The Council Tax (Prescribed Classes of Dwelling) (Amendment) (England) Regulations 2012 ("the Prescribed Classes Regulations") specify the two types of empty property for which, from April 2013, billing authorities in England will be able to decide what level of council tax to charge the owners. These are unoccupied and substantially unfurnished homes ("Class C"), and unoccupied and substantially unfurnished homes undergoing, or having undergone, major repair work or structural alteration ("Class D").⁵
7. Another amendment to earlier legislation made by the 2012 Act allows a billing authority, from April 2013, to charge an "empty homes premium" (up to 150% of council tax) on properties that have been unoccupied and

³ See: <http://education.gov.uk/schools/leadership/typesofschools/independent/b009053/registration>

⁴ Section 11A of the Local Government Finance Act 1992

⁵ The Classes used in the Regulations are as defined in the Council Tax (Prescribed Classes of Dwelling) (England) Regulations 2003 (SI 2003/3011).

substantially unfurnished for two years on that day. The Prescribed Classes Regulations set out exemptions from that premium. These relate to a dwelling which would otherwise be the sole or main residence of a member of the armed forces, who is absent from the property as a result of such service; and a dwelling which forms part of a single property which is being treated by a resident of that property as part of the main dwelling.

8. The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012 makes related changes.
9. In the EM, DCLG states that it carried out consultation over eight weeks from October to December 2011 on the range of proposed reforms to council tax, including those contained in these instruments; and that it completed further consultation, over six weeks from September to November 2012, on the specific circumstances in which dwellings should not be liable to the empty homes premium. In finalising the proposals, DCLG has responded to concerns voiced, in particular by not taking forward an initial proposal that the exemptions from the empty homes premium should also include dwellings which are genuinely on the market for sale or letting.

Equality Act 2010 (Amendment) Regulations 2012 (SI 2012/2992)

10. The EU Gender Directive⁶ prohibits discrimination on the basis of sex in the provision of goods and services. The Directive includes a requirement that the use of sex as a factor in the calculation of premiums and benefits for insurance and related financial services shall not result in differences in individuals' premiums and benefits; but it also includes an exemption, allowing proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. All EU Member States have made some use of this exemption. The UK applied it to all forms of insurance, by including an exemption in the Equality Act 2010 ("the 2010 Act"), reflecting the Directive exemption. In March 2011, however, the European Court of Justice (ECJ) ruled that the exemption was contrary to the objective of equal treatment between men and women, and that the exemption would cease to be valid from 21 December 2012.
11. In the Explanatory Memorandum to these Regulations, HM Treasury states that they amend the 2010 Act to reflect the ECJ ruling, and that the Government's intention to proceed in this way was signalled in a Written Statement made on 30 June 2011 by the then Financial Secretary to the Treasury.⁷ That Statement set out the Government's view that the ruling applies only to new contracts entered into on or after 21 December 2012 and that any contracts with gender-sensitive pricing of premiums or benefits concluded ahead of 21 December 2012 can continue unchanged after that date. The Statement also said that the Government would consult on a draft statutory instrument in autumn 2011, and that the instrument would be made in early 2012. In the EM, HMT states that consultation took place between December 2011 and March 2012. HMT published the Government response to consultation in July 2012; the Regulations were laid at the end of November.

⁶ Directive 2004/113/EC of 13 December 2004

⁷ HC Hansard, 30 June 2011 : Column 53WS

Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012 (SI 2012/3028)

Freedom of Information (Definition of Historical Records) (Transitional and Saving Provisions) Order 2012 (SI 2012/3029)

12. In October 2007 the previous Government appointed an independent review team to look at the operation of the 30-year rule on the disclosure of official documents, and to make recommendations for its possible reform. Section 45 of the Constitutional Reform and Governance Act 2010 provides for its replacement with a 20-year rule and also enables the change to be managed over a ten year transitional period. These provisions, once fully commenced, will affect an estimated 4.4 million paper records in Central Government, of which 75% are potentially eligible for transfer to the National Archive. They also affect over 1,000 local record transferring bodies (for example, magistrates and coroners courts, NHS organisations, and local prisons) transferring to 116 local authority places of deposit.
13. To ensure a managed approach, the transfer will be phased: a Commencement Order⁸ and the **Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012** implement the first stage which will apply to records which are ordinarily transferred to The National Archives and approximately 70 specialist places of deposit, such as the Imperial War Museum. A Schedule to the Transitional Order will result in two years' of selected records being transferred in each of the 10 years of transition. Measures for records ordinarily transferred to local authority archives across England and Wales will follow later (possibly in 2015).
14. Section 46 of and Schedule 7 to the Constitutional Reform and Governance Act 2010 also introduce a parallel reduction to 20 years in the maximum duration of certain exemptions from the Freedom of Information Act 2000. Examples include exemptions for investigations and proceedings conducted by public authorities (section 30), court records (section 32), formulation and development of government policy (section 35) and legal professional privilege (section 42). In the same way as for public records, the Commencement Order and the **Freedom of Information (Definition of Historical Records) (Transitional and Saving Provisions) Order 2012** introduce this parallel change over a 10 year transitional period from 1 January 2013. By contrast with the approach to public records, this change is not phased and will affect all public authorities equally. The move to a 20-year rule does not impact what kind of records are selected for permanent preservation, it only makes them available earlier, and sensitive information may remain closed for longer periods in line with existing exemptions under the Freedom of Information Act.

⁸ the Constitutional Reform and Governance Act (Commencement No. 7) Order 2012 (SI 2012/3001) *not subject to parliamentary procedure*

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 subject to affirmative approval

Control of Donations and Regulation of Loans etc.
(Extension of the Prescribed Period) (Northern Ireland)
Order 2013

National Health Service (Clinical Commissioning Groups
– Disapplication of Responsibility) Regulations 2012

Instruments subject to annulment

- SI 2012/2962 Education (Independent School Standards) (England)
(Amendment) Regulations 2012
- SI 2012/2964 Council Tax (Prescribed Classes of Dwellings) (England)
(Amendment) Regulations 2012
- SI 2012/2965 Council Tax (Exempt Dwellings) (England) (Amendment)
Order 2012
- SI 2012/2976 Civil Partnership Act 2004 (Overseas Partnerships) Order
2012
- SI 2012/2988 Firefighters' Pension Scheme (England) (Amendment)
(No. 2) Order 2012
- SI 2012/2991 School and Early Years Finance (England) Regulations
2012
- SI 2012/2992 Equality Act 2010 (Amendment) Regulations 2012
- SI 2012/2996 National Health Service Commissioning Board and
Clinical Commissioning Groups (Responsibilities and
Standing Rules) Regulations 2012
- SI 2012/3005 Ecodesign for Energy-Related Products and Energy
Information (Amendment) Regulations 2012
- SI 2012/3007 Employment Rights (Increase of Limits) Order 2012
- SI 2012/3016 Police Act 1997 (Criminal Records) (Amendment No. 4)
Regulations 2012
- SI 2012/3019 Financial Services and Markets Act 2000 (Disclosure of
Confidential Information) (Amendment) Regulations 2012
- SI 2012/3020 Aircraft Operators (Accounts and Records) (Amendment)
Regulations 2012
- SI 2012/3025 Nursing and Midwifery Council (Midwives) Rules Order
of Council 2012
- SI 2012/3026 Nursing and Midwifery Council (Fees) (Amendment)
Rules Order of Council 2012
- SI 2012/3027 Common Agricultural Policy Single Payment and Support
Schemes (Amendment) Regulations 2012

- SI 2012/3028 Public Records (Transfer to the Public Record Office)
(Transitional and Saving Provisions) Order 2012
- SI 2012/3029 Freedom of Information (Definition of Historical Records)
(Transitional and Saving Provisions) 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 18 December 2012 Members declared no interests.

Attendance:

The meeting on 18 December was attended by Lord Bichard, Lord Eames, Baroness Eaton, Lord Goodlad, Lord Hart of Chilton, Lord Methuen, Lord Plant of Highfield, Lord Norton of Louth and Lord Scott of Foscote.