

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

21st Report of Session 2012-13

Includes 8 Information Paragraphs on 9 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 Appendix 2.

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.

Twenty-First 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

Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (SI 2012/3030)

Draft Renewable Transport Fuel Obligations (Amendment) Order 2013

1. These two instruments extend the scope of the Renewable Transport Fuel Obligation which requires fossil fuel suppliers to produce evidence showing that a percentage of fuels for road transport supplied in the UK come from renewable sources and are sustainable, or that a substitute amount of money is paid. All fuel suppliers who supply at least 450,000 litres of fuel a year are obligated. This includes suppliers of biofuels as well as suppliers of fossil fuel. These instruments extend the obligation to include fuels for non-road machinery (including agricultural tractors and canal boats) and further clarify the definition of relevant gas oils. They also amend the civil penalty regime imposed on those who fail to meet the obligation, to make it enforceable as a civil debt, and set the interest rate at 5% above the base rate.

Draft Environmental Permitting (England and Wales) (Amendment) Regulations 2013

2. In the Explanatory Memorandum, the Department for Environment, Food and Rural Affairs (Defra) states that the primary purpose of the instrument is to amend Regulations from 2010¹ so as to transpose the recast EU industrial emissions Directive.² The latter recasts seven current Directives into a single one about regulating emissions from various industrial activities, ranging from power generation to intensive pig-farming, and waste incineration to dry-cleaning. Defra states that much of the material in the component Directives is substantively unchanged, but that some requirements are tightened or clarified.
3. The Department explains that, after a two-year review launched in 2005, the European Commission proposed the industrial emissions Directive in December 2007 for adoption through co-decision; the Directive was adopted in November 2010. Defra states that, as a result of UK input to negotiations and to the 2005-07 review, the Directive includes only relatively small

¹ The Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675)

² Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast)

additions to the range of industrial installations covered, and it reflects UK practice in respect of risk-based inspections and site-monitoring.

4. Consultation on the draft Regulations ran from March to June 2012. In the EM, Defra states that responses were received from 89 organisations; of these, 31 were from individual or groupings of local authorities in England and Wales. The responses largely endorsed the proposals for transposing the Directive, and the proposals to remove otiose industrial activity descriptions. In addition, the Department had proposed a registration procedure, rather than full permitting, for activities using solvents. Defra states that there was virtually no support for this proposal, and that the Regulations therefore omit it.

Draft Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) (Amendment) Regulations 2013

5. We have provided information to the House on a number of statutory instruments relating to the “Green Deal”.³ In our 5th Report of this session (HL Paper 22), we drew to the attention of the House the draft Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (“the Framework Regulations”), which created an authorisation regime to regulate the conduct of key players in the installation of energy efficiency improvements under Green Deal plans. In our 14th Report (HL Paper 63), we provided information about the draft Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2012, which brought forward the commencement date for a power for the Secretary of State to require information about Green Deal plans to be included in Energy Performance Certificates (EPCs).
6. In the Explanatory Memorandum (EM) to the latest amending Regulations, the Department for Energy and Climate Change (DECC) states that the instrument is being made to require Green Deal providers to update the Green Deal information held on an EPC (or Recommendation Report in Scotland) for a property in certain circumstances; and that it was not possible to do this when the Framework Regulations were first made (for reasons set out in the EM).
7. In referring in the EM to the legislative context, DECC states that, since the inception of the Green Deal programme, it has sought to amend existing regulation where appropriate, rather than make new legislation. The primary legislation for the Green Deal was contained in the Energy Act 2011. DECC itemises the subsequent secondary legislation, and says that this has established the legal framework to underpin the policy, and provided the basis for the industry to bring the Green Deal energy efficiency market into operation. The Department says that it wishes to ensure that the underpinning legislation remains flexible and responsive; it therefore anticipates amending the framework from time to time, in light of experience and feedback from stakeholders.

³ Under a Green Deal plan, energy efficiency measures are to be installed in a property and paid for wholly or partly in instalments which are collected through electricity bills for the property.

Draft Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2012

8. In line with changes set out in Part 5 of the Health and Social Care Act 2012 a number of public health duties will be transferred to Local Authorities from April 2013. In general the Government's intention is to permit Local Authorities the flexibility to shape services to meet local needs according to the priorities set by its Local Healthwatch. However there will be certain circumstances where a greater degree of uniformity is required otherwise national efforts will be undermined, for example sexual health services, screening programmes or the National Child Measurement Programme. These Regulations identify these functions as mandatory and it is estimated that they will absorb 28% of the allocated budget. The Department states that this set aside of specified functions aims to balance local and national needs while maximising the public health benefit. The Regulations also ensure that the current charging position remains the same for health services, only allowing Local Authorities to charge for corporate services and certain training activities. In addition they transfer the power of entry from LINKs to Healthwatch staff so that they can inspect the services that they are commissioning.

Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (SI 2012/3032)

9. The Department for Business, Innovation and Skills (BIS) has laid these Regulations which implement the recast "RoHS Directive",⁴ and revoke and replace Regulations from 2008.⁵ They restrict the use of hazardous substances including some heavy metals and certain flame retardants in a defined number of categories of electrical and electronic equipment (EEE), requiring compliant products to be CE marked. They place obligations on economic operators to meet certain requirements and provide the Secretary of State with powers for the enforcement of those obligations.
10. We received further information from BIS in relation to aspects of the Regulations, namely the enforcement provisions, and the exclusion from the scope of the Regulations of equipment sent into space. We are publishing the information in Appendix 1.

Regional Strategy for the East of England (Revocation) Order 2012 (SI 2012/3046)

11. On 11 December 2012, when this Order was laid, the Secretary of State for Communities and Local Government made a Written Statement about it.⁶ He described the abolition of the Regional Strategy for the East of England as a major milestone for localism. In the Explanatory Memorandum (EM), the Department for Communities and Local Government (DCLG) states that the Order revokes the Regional Strategy for the East of England, and that it completes the process to remove the regional planning tier in the East

⁴ Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

⁵ The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (SI 2008/37).

⁶ HC Hansard, 11 December 2012 : Column 21WS

of England region, which was commenced by the Localism Act 2011. DCLG explains that the abolition of regional strategies makes the local plan the keystone of the planning system.

12. In the EM, DCLG refers to a Post-Adoption Statement summarising how environmental considerations have been integrated into the Plan to Revoke, and states that the document will become available on the Department's website. As the Secretary of State's Written Statement made clear, the Post-Adoption Statement can now be seen at:

<https://www.gov.uk/government/consultations/strategic-environmental-assessment-of-revoking-the-east-of-england-regional-strategy>

Excise Duties (Road Fuel Gas) (Reliefs) Regulations 2012 (SI 2012/3056)

13. These Regulations have been laid by HM Revenue and Customs (HMRC). In the accompanying Explanatory Memorandum (EM), HMRC summarises recent decisions on fuel duty. HMRC states that, in November 2011, the Chancellor of the Exchequer announced a decision to defer the 1 January 2012 increase in fuel duty to 1 August 2012, and that in June 2012 he announced a further deferral of the increase until 1 January 2013. Most recently, on 5 December 2012, in the Autumn Statement, the Chancellor announced that in practice the increase in duty provided for by section 20 of the Finance Act 2011 ("the 2011 Act") would not take place. Future increases, over the Parliament, would be implemented on 1 September each year instead of in April, including on 1 September 2013.
14. In the EM, HMRC states that the purpose of these Regulations is to negate, temporarily, the effect of the increases in duty on road fuel gas provided for by section 20 of the 2011 Act, until legislation to be introduced by the Finance Bill 2013 to amend the rate of duty comes into effect. HMRC says that, in practice, this will mean that a person will not be liable to pay the increase in duty provided for by section 20 of the 2011 Act.

Family Procedure (Amendment) (No.5) Rules 2012 (SI 2012/3061)

15. The Family Justice Review, published in February 2012, highlighted problems associated with the duration of cases in the family courts, with care and supervision applications at that time taking an average of 55 weeks to be concluded. The Review raised concern that expert evidence was being commissioned too frequently, even when it added little to the court's understanding of the case, and that this was contributing to delay. These Rules implement provisions to meet the Review's recommendations that:
- legislation should reinforce that when commissioning an expert's report regard must be had to the impact of delay on the welfare of the child;
 - the court should seek material from an expert witness only when that information is not available from parties already involved and only where necessary to resolve the case;
 - Judges should direct the process of agreeing and instructing expert witnesses as a fundamental part of their responsibility for case management. Judges should set out in the order giving permission for the commissioning of the expert witness the questions on which the expert witness should focus.

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

Environmental Permitting (England and Wales)
(Amendment) Regulations 2013

Green Deal Framework (Disclosure, Acknowledgement,
Redress etc.) (Amendment) Regulations 2013

Local Authorities (Public Health Functions and Entry to
Premises by Local Healthwatch Representatives)
Regulations 2012

Renewable Transport Fuel Obligations (Amendment)
Order 2013

Instruments subject to annulment

SI 2012/3030 Motor Fuel (Road Vehicle and Mobile Machinery)
Greenhouse Gas Emissions Reporting Regulations 2012

SI 2012/3032 Restriction of the Use of Certain Hazardous Substances in
Electrical and Electronic Equipment Regulations 2012

SI 2012/3033 Plant Health (England) (Amendment) (No. 2) Order 2012

SI 2012/3035 Seed Marketing (Amendment) Regulations 2012

SI 2012/3046 Regional Strategy for the East of England (Revocation)
Order 2012

SI 2012/3050 Animals (Scientific Procedures) Act 1986 (Fees) Order
2012

SI 2012/3056 Excise Duties (Road Fuel Gas) (Reliefs) Regulations 2012

SI 2012/3057 Police Pensions (Amendment No. 3) Regulations 2012

SI 2012/3058 Police (Amendment No. 5) Regulations 2012

SI 2012/3059 Education (Student Support) (European University
Institute) Regulations 2010 (Amendment) Regulations
2012

SI 2012/3061 Family Procedure (Amendment) (No.5) Rules 2012

SI 2012/3062 European Administrative Co-Operation (Taxation)
Regulations 2012

SI 2012/3080 Cowes Harbour Revision Order 2012

SI 2012/3081 National Health Service (Quality Accounts) Amendment
Regulations 2012

SI 2012/3083 Pension Protection Fund (Miscellaneous Amendments)
(No. 2) Regulations 2012

SI 2012/3089 Criminal Procedure (Amendment) Rules 2012

Instruments subject to annulment (Northern Ireland)

SR 2012/429 Allocation of Housing and Homelessness (Eligibility)
(Amendment) Regulations (Northern Ireland) 2012

APPENDIX 1: RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2012 (SI 2012/3032)

Supplementary information from the Department for Business, Innovation and Skills

Q1: Given the provisions in Regulations 37 (“Offences”), 39 (“Penalties”), 40 (“Remediation orders”) and 41 (“Recovery of expenses of enforcement”), could enforcement expenses still be recovered in any case where a remediation order had been made?

A1: The answer is that, if someone is convicted under regulation 37(1)(a), (2)(a) and (3)(a) or under Schedule 3, paragraph 9, a court could impose an expenses recovery order under regulation 41(2) and impose this alongside a remediation order under regulation 40. But, if a remediation order is imposed, regulation 40(4) has the effect that the person subject to the order cannot, in the period specified in the order, be guilty of an offence in respect of the same matter and so they could not be subject to any further order under regulation 41 in respect of that matter.

Q2: In Schedule 1, Part 2 of the Regulations, equipment designed to be sent into space is included among the equipment to which the Regulations do not apply: is such equipment covered by other legislation?

A2: We believe there are two areas of legislation that potentially apply to items sent into space.

1. The Outer Space Act

The Outer Space Act 1986 (the Act) is the legal basis for the regulation of activities in outer space carried out by organisations or individuals established in the United Kingdom or one of its Overseas Territories (OTs) or Crown Dependencies (CDs). The Act confers licensing and other powers on the Secretary of State for Business, Innovation and Skills acting through the UK Space Agency. This was introduced in 1986 to manage the UK’s obligations under various UN Space Treaties and Principles.

In essence, these international agreements make the UK government responsible for ensuring that space activities carried out by UK individuals or organisations:

- do not jeopardise public health or the safety of persons or property; and
- are consistent with the international obligations of the UK.

The agreements also mean that the UK government must:

- maintain and make available a register of space objects launched by UK organisations or individuals;
- accept liability for 3rd party damage; and
- seek to ensure that the activity will not impair national security.

“The most likely impact for items of EEE sent into space would therefore be in safety and items falling back to earth that did not burn up in the atmosphere on re-entry.

2. Export control

This can be through export control licensing for equipment for items such as satellite motors etc. An example is restrictions on radioactive materials.

APPENDIX 2: 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 8 January 2013 Members declared no interests.

Attendance:

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