

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

12th Report of Session 2017–19

Includes 4 Information Paragraphs on 6 Instruments

Ordered to be printed 5 December 2017 and published 7 December 2017

Published by the Authority of the House of Lords

Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to 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 these specified grounds:

(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;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Blackstone

Lord Haskel

Lord Sherbourne of Didsbury

Lord Faulkner of Worcester

Rt Hon. Lord Janvrin

Rt Hon. Lord Trefgarne (Chairman)

Baroness Finn

Lord Kirkwood of Kirkhope

Baroness Watkins of Tavistock

Lord Goddard of Stockport

Baroness O'Loan

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

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

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

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hseclegscrutiny@parliament.uk.

Twelfth Report

INSTRUMENTS OF INTEREST

Draft European Parliamentary Elections Act 2002 (Amendment) Regulations 2017

Draft European Parliamentary Elections (Amendment) Regulations 2017

1. The next poll for the European Parliament is expected to be held in May/June 2019, and the UK is not expected to be taking part. However, as long as the UK remains a member of the EU, we are obliged to return Members to the European Parliament and to fill any MEP vacancies that may arise. Seats in each of the nine electoral regions are allocated to parties in proportion to the number of votes they receive using the D'Hondt formula and assigned according to the order in which the candidates appear on each party's list. Under the current procedure any vacant seat is filled by the next (unelected) candidate on the list of the party of the departing MEP.¹ These Regulations propose amendments so that where the list used at the previous European Parliamentary election is exhausted, the party that holds the seat may instead nominate a person to be the new MEP. Only where the departing MEP is an independent or no nomination is received within 28 days will a by-election be held. This approach is modelled on the practice already in place in Northern Ireland for filling MEP vacancies. The Explanatory Memorandum states that this proposal is justified by the significant financial costs of holding a by-election and concerns that the turnout at such a poll could be low due to the imminence of Brexit. (UK law already provides that if a MEP vacancy occurs less than six months before the next general European Parliamentary election the seat remains vacant until that poll. That position will be maintained.)

Draft Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018

2. This Order will provide for the full publication of information relating to political donations and loans received by Northern Ireland political parties and regulated donees on or after 1 July 2017. This was agreed with all parties during consultation² and announced by the Secretary of State for Northern Ireland on 3 July 2017.³ These provisions are in line with the Political Parties, Elections and Referendums Act 2000, which requires the details of donations above certain thresholds received by political parties to be reported to the Electoral Commission, which then publishes information relating to those donations. This regulatory system was not immediately introduced to Northern Ireland because of concerns over intimidation. The subsequent Northern Ireland (Miscellaneous Provisions) Act 2014 provided for limited publication of information on donations but excluded “protected information” which is defined in section 15B as meaning information (a) which relates to a donation received before 1 January 2014, and (b) from

1 Set out in the European Parliamentary Elections Regulations 2004 ([SI 2004/293](#)).

2 Responses to Secretary of State on Donations and Loans: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/625637/Responses_to_SoS_on_Donations_Loans.pdf [accessed 29 November 2017]

3 HC Deb, 3 July 2017, [col 900](#)

which it is possible to identify the donor. Although information on individual donations received prior to 1 July 2017 will not be published, the aggregation provisions set out in the Order do take donations made before 1 July 2017 into account, for example, when calculating whether the publication threshold has been reached.

Air Navigation (Amendment) Order 2017 (SI 2017/1112)

3. The main effect of this Order is to increase significantly the fines for aircraft that fail to make two-way communication with Air Traffic Control. The current maximum fine available for the offence is £2,500, this Order changes the level of penalty to allow for unlimited fines in England and Wales, and a maximum of £5,000 in Scotland or Northern Ireland. The change aims to deter the disruptive intrusion of aircraft with their flight communication system turned off or otherwise inoperable. The Department for Transport states that there are over 100 cases each year in UK airspace, which, post 9/11, cause considerable security concerns. While a majority of these cases are resolved before aircraft enter UK airspace, they can on occasion require expensive military interceptions that could be potentially lethal. The Civil Aviation Authority wishes to have proportionate enforcement action available for the occasions where it prosecutes a particularly egregious offence. This Order also makes minor corrections and consequential changes to enable the UK to enforce the European Aviation Safety Agency Air Operations Regulations fully. In particular it introduces new offences under the section on ‘special operations’ (e.g. aerial photography, surveys, pipe line inspection, parachuting). The Order applies to UK registered aircraft wherever they may be, and to non-UK aircraft within UK airspace.

Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017 (SI 2017/1134)

Police Barred List and Police Advisory List Regulations 2017 (SI 2017/1135)

4. Currently, where a complaint or allegation of gross misconduct comes to light after an officer has left the police force, it cannot lead to disciplinary proceedings. These Regulations will allow complaints or allegations made against a person who has ceased to serve with the police to be investigated and, where appropriate, for former police officers to be held to account where they have a case to answer for gross misconduct. This instrument applies the regime to both former police constables and former special constables. These Regulations address concerns that the previous arrangements, which prevented officers under investigation from resigning or retiring until the investigation was completed, had the side effect of retaining those officers on, often lengthy, suspension at public expense. These new Regulations mean that a police officer cannot now evade responsibility by retiring and they are supported by revised barring arrangements which prevent former officers found guilty of misconduct from working for any police force or other specified law enforcement bodies. It should be noted, however, that this disciplinary regime only applies to conduct while the police officer was still serving.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft European Parliamentary Elections Act 2002
(Amendment) Regulations 2017

Draft European Parliamentary Elections (Amendment)
Regulations 2017

Draft Transparency of Donations and Loans etc. (Northern
Ireland Political Parties) Order 2018

Instruments subject to annulment

- | | |
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| SI 2017/1104 | Occupational Pensions (Revaluation) Order 2017 |
| SI 2017/1112 | Air Navigation (Amendment) Order 2017 |
| SI 2017/1117 | Misuse of Drugs (Amendment) (No. 2) (England, Wales and
Scotland) Regulations 2017 |
| SI 2017/1118 | Misuse of Drugs (Designation) (Amendment) (No. 2)
(England, Wales and Scotland) Order 2017 |
| SI 2017/1132 | Non-Domestic Rating (Renewable Energy Projects)
(Amendment) Regulations 2017 |
| SI 2017/1133 | War Pensions Committees (Amendment) Regulations 2017 |
| SI 2017/1134 | Police (Conduct, Complaints and Misconduct and Appeal
Tribunal) (Amendment) Regulations 2017 |
| SI 2017/1135 | Police Barred List and Police Advisory List Regulations 2017 |
| SI 2017/1143 | Ecodesign for Energy-Related Products (Amendment)
Regulations 2017 |

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 5 December 2017, Members declared the following interests:

Air Navigation (Amendment) Order 2017 (SI 2017/1112)

Lord Trefgarne

Chairman, Fair Oaks Airport Consultative Committee
President, British Association of Aviation Consultants

Attendance:

The meeting was attended by Baroness Blackstone, Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.