



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Seventeenth Report
of Session 2007–08**

Drawing special attention to:

Medical Devices (Fees Amendments) Regulations 2008 (S.I. 2008/530)

Police Act 1997 (Criminal Records)(Disclosure) Regulations (Northern Ireland) 2008 (S.I. 2008/542)

Rent Officers (Housing Benefit Functions) Amendment Order 2008 (S.I. 2008/587)

Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2008 (S.I. 2008/635)

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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 74, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i. that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii. that its parent legislation says that it cannot be challenged in the courts;
- iii. that it appears to have retrospective effect without the express authority of the parent legislation;
- iv. that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
- v. that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi. that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii. that its form or meaning needs to be explained;
- viii. that its drafting appears to be defective;
- ix. or on any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are available on the Internet from www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jacqueline Cooksey (*Committee Secretary*). Advisory Counsel: Peter Davis, Peter Brooksbank and Christine Cogger (*Commons*); Allan Roberts and Peter Milledge (*Lords*).

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Instruments reported

The Committee scrutinised a number of instruments at its meeting on 30 April 2008 and in accordance with its Standing Orders agreed to draw the special attention of both Houses to four of them. The Instruments and the grounds for reporting them are given below. Relevant Departmental memoranda are published as appendices to this report.

1 S.I. 2008/530: reported for defective drafting

Medical Devices (Fees Amendments) Regulations 2008 (S.I. 2008/530)

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.

1.2 In a memorandum printed at Appendix 1, the Department for Health confirms that regulation 2(3)(d), which reduces a fee from £1,650 to £1,173, should instead have increased it to £1,743, and undertakes to make an amending instrument to come into force in May.

1.3 The Committee accordingly reports regulation 2(3)(d) for defective drafting, acknowledged by the Department.

2 S.I. 2008/542: reported for defective drafting

Police Act 1997 (Criminal Records)(Disclosure) Regulations (Northern Ireland) 2008 (S.I. 2008/542)

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two connected respects.

2.2 Regulation 2(1) defines “the Secretary of State” as meaning the Secretary of State for Northern Ireland, although the expression does not appear elsewhere in the body of the instrument.

2.3 Regulation 2(2) specifies methods by which any requirement in the regulations for notification or representations to be in writing may be satisfied. Nowhere do the Regulations require notifications or representations to be in writing.

2.4 In a memorandum printed at Appendix 2, the Northern Ireland Office agrees that the definition in regulation 2(1) and regulation 2(2) are otiose and should not have been included, and indicates that it will take the opportunity to rectify the position in regulations planned to be made during 2008. The Committee accordingly reports regulation 2 for defective drafting, acknowledged by the Department.

3 S.I. 2008/587: reported for defective drafting

Rent Officers (Housing Benefit Functions) Amendment Order 2008 (S.I. 2008/587)

3.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in two connected respects.**

3.2 Paragraphs (2) and (4) of article 2 of this Order, which came into force on 7 April 2008, amend respectively articles 4 and 13 of the Rent Officers (Housing Benefit Functions) Amendment Order 2007. Those articles, which came into force on 20 March 2008, amend provisions of two other orders made in 1997.

3.3 In a memorandum printed at Appendix 3, the Department for Work and Pensions acknowledges that, since articles 4 and 13 of the 2007 Order had already come into force by the time this Order was made, the Order should have amended the 1997 Orders as amended rather than the 2007 Order. (In fact, this Order was made on 10 March, ten days before article 4 and 13 of the 2007 Order came into force, but the significant issue is that the amendments made by those provisions had taken effect before the amendments made by this Order came into force.) The Department further states that it will correct the error at the earliest possible opportunity. **The Committee accordingly reports article 2(2) and (4) of this Order for defective drafting, acknowledged by the Department.**

4 S.I. 2008/635: reported for defective drafting

Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2008 (S.I. 2008/635)

4.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

4.2 This Order, which came into force on 1 April 2008, makes provision as to disclosure by the parties in proceedings before a court-martial or a Standing Civilian Court. Article 20(1) states that the rules of common law which were effective immediately before 1 January 2008 and which relate to the disclosure of material by the prosecutor do not apply as regards things falling to be done after that time in relation to the alleged offence.

4.3 In a memorandum printed at Appendix 4, the Ministry of Defence states that the date in article 20(1) should have been 1 April 2008, and **the Committee accordingly reports article 20(1) for defective drafting, acknowledged by the Department.**

4.4 The Department states that it is content to take immediate steps to amend article 20, but asks the Committee to agree that it would be appropriate for the necessary correction not to be made until the Order is replaced or amended for the purposes of the introduction of the Armed Forces Act 2006, which intended to come into force on 1 January 2009. The Department has considered whether there was any change to the common law rules on prosecution disclosure between 1 January and 1 April, and does not consider that there has been any change during that period.

4.5 In the Committee's view it would be unsatisfactory for the Order to remain unamended until 2009. The applicable common law rules cannot be regarded as fixed in the same way as statute and accordingly, while the Department may well be correct that there was no change in the relevant common law rules in the first three months of this year, the possibility that there has been a change of which it is unaware cannot be ruled out. The Order relates to criminal proceedings, and should not be left with a defect of this nature for longer than is necessary. An amending instrument (issued free of charge to known purchasers of this Order) would be quick, easy and inexpensive to make, and **the Committee accordingly urges the Department to make it without delay.**

Instruments not reported

The Committee has considered the instruments set out in the Annex to this Report and has determined that the special attention of both Houses does not require to be drawn to any of them.

Annex

Instruments to which the Committee does not draw the special attention of both Houses

- *denotes that the written evidence submitted in connection with the instrument is printed with this Report*
- *denotes written evidence has been submitted but not printed*

Draft instruments requiring affirmative approval

Draft S.I.	Building Societies (Financial Assistance) Order 2008
Draft S.I.	Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008
Draft S.I.	Cash Ratio Deposits (Value Bands and Ratios) Order 2008
Draft S.I.	Compensation (Claims Management Services) (Amendment) Regulations 2008
Draft S.I.	Local Authorities (Alcohol Disorder Zones) Regulations 2008
Draft S.I.	Mutilations (Permitted Procedures) (England) (Amendment) Regulations 2008
Draft S.I.	Nursing and Midwifery (Amendment) Order 2008
Draft S.I.	Parliamentary Constituencies (Northern Ireland) Order 2008
Draft S.I.	Welsh Ministers (Transfer of Functions) Order 2008

Instruments subject to annulment

S.I. 2008/218	Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2008
S.I. 2008/570	Supply of Information (Register of Deaths) (England and Wales) Order 2008
○ S.I. 2008/572	Home Information Pack (Amendment) Regulations 2008
S.I. 2008/609	Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008
S.I. 2008/698	Social Security (Miscellaneous Amendments) Regulations 2008
S.I. 2008/700	Supply of Information (Register of Deaths) (Northern Ireland) Order 2008
S.I. 2008/702	Plant Health (Fees) (Forestry) (Amendment) Regulations 2008
S.I. 2008/714	Insolvency Proceedings (Fees) (Amendment) Order 2008
S.I. 2008/719	Companies (Reduction of Capital) (Creditor Protection) Regulations 2008
S.I. 2008/721	Workmen's Compensation (Supplementation) (Amendment) Scheme 2008
S.I. 2008/724	Greater London Authority (Limitation of Salaries) (Amendment) Order 2008
S.I. 2008/726	Social Security Pensions (Low Earnings Threshold) Order 2008
S.I. 2008/728	European Grouping of Territorial Cooperation (Amendment) Regulations 2008
S.I. 2008/729	Companies (Authorised Minimum) Regulations 2008
S.I. 2008/730	Social Security Revaluation of Earnings Factors Order 2008
S.I. 2008/731	Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2008
S.I. 2008/732	Measuring Instruments (EEC Requirements) (Fees) (Amendment) Regulations 2008

- S.I. 2008/733** Financial Services and Markets Act 2000 (Consequential Amendments) Order 2008
- S.I. 2008/734** National Savings Bank (Amendment) Regulations 2008
- S.I. 2008/735** Abortion (Amendment) Regulations 2008
- S.I. 2008/736** Health and Safety (Fees) Regulations 2008
- S.I. 2008/737** Insolvency (Amendment) Rules 2008
- S.I. 2008/738** Non-automatic Weighing Instruments (Amendment) Regulations 2008
- S.I. 2008/739** Companies (Tables A to F) (Amendment) Regulations 2008
- S.I. 2008/744** Local Authorities (Functions and Responsibilities) (England) (Amendment No. 2) Regulations 2008
- S.I. 2008/759** Social Security (Jobcentre Plus Interviews for Partners) Amendment Regulations 2008
- S.I. 2008/760** Asylum Support (Amendment) Regulations 2008
- S.I. 2008/786** Immigration (Disposal of Property) Regulations 2008
- S.I. 2008/913** Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) (Amendment) Regulations 2008

Instruments subject to annulment (Northern Ireland)

- S.R. 2008/118** Insolvency (Amendment) Rules (Northern Ireland) 2008

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2008/679** Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2008

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2008/337** Local Government and Public Involvement in Health Act 2007 (Commencement No. 3, Transitional and Saving Provisions and Commencement No. 2 (Amendment)) Order 2008
- S.I. 2008/676** Consular Fees Order 2008
- S.I. 2008/686** Wireless Telegraphy (Licence Award) Regulations 2008
- S.I. 2008/687** Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2008
- S.I. 2008/688** Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008
- S.I. 2008/689** Wireless Telegraphy (Register) (Amendment) Regulations 2008
- S.I. 2008/696** Gas (Standards of Performance) (Amendment) Regulations 2008
- S.I. 2008/727** National Health Service Trusts (Originating Capital) Order 2008
- S.I. 2008/745** Mental Health Act 2007 (Commencement No. 4) Order 2008
- S.I. 2008/749** Tribunals, Courts and Enforcement Act 2007 (Commencement No. 3) Order 2008
- S.I. 2008/753** Hydrocarbon Oil, Biofuels and Other Fuel Substitutes (Determination of Composition of a Substance and Miscellaneous Amendments) Regulations 2008
- S.I. 2008/755** Serious Crime Act 2007 (Commencement No. 2 and Transitional and Transitory Provisions and Savings) Order 2008

- **S.I. 2008/757** Traffic Management Act 2004 (Commencement No. 5 and Transitional Provisions) (England) (Amendment) Order 2008
- S.I. 2008/790** Police and Justice Act 2006 (Commencement No. 8) Order 2008
- S.I. 2008/791** Violent Crime Reduction Act 2006 (Commencement No. 5) Order 2008
- S.I. 2008/792** Statistics and Registration Service Act 2007 (Delegation of Functions) (Economic Statistics) Order 2008

Appendix 1

S.I. 2008/530: memorandum from the Department of Health

<i>Medical Devices (Fees Amendments) Regulations 2008 (S.I. 2008/530)</i>

1. In its letter to the Department of 26th March 2008, the Joint Committee requested a memorandum on the following points:

Given paragraph 2.1 of the Explanatory Memorandum, which refers to some fees as being increased in overall effect by 6% and other fees being frozen, is the reduction in regulation in 2(3)(d) from £1,650 to £1,173 deliberate? If not, what is the correct figure?

2. The reduction in regulation 2(3)(d) from £1,650 to £1,173 is not deliberate. The figure in regulation 2(3)(d) should have been increased from £1,650 to £1,743 which is the figure upon which the Department consulted. The Department apologises for the error and is grateful to the Joint Committee for drawing its attention to it. The error has arisen because at a late stage of the drafting process a change to the text of the regulation was made and unintentionally the figure of £1,173 replaced the figure of £1,743 which had been there before the change. Although a final check of the Regulations was carried out the error went unnoticed.
3. The Department will amend the provision in a new Statutory Instrument to come into force in May. That instrument will be provided free of charge to anyone who can show that they have purchased the Medical Devices (Fees Amendments) Regulations 2008 (S.I. 2008/530).

Department of Health

27th March 2008

Appendix 2

S.I. 2008/542: memorandum from the Northern Ireland Office

*Police Act 1997 (Criminal Records)(Disclosure) Regulations (Northern Ireland) 2008
(S.I. 2008/542)*

1. The Committee has asked the Northern Ireland Office for a memorandum on the following points:

(1) What is the purpose of the definition of “the Secretary of State” in Regulation 2(1)?

(2) What provisions in the Regulations are affected by Regulation 2(2)?

2. No provision in the Regulations is affected by either the definition of “the Secretary of State” in regulation 2(1), or by regulation 2(2), which the Department acknowledges serve no purpose. Both provisions are acknowledged to be otiose, and neither should have been included.

3. Further Regulations are planned for 2008, and the Department will take the opportunity to remove the definition of “the Secretary of State” in regulation 2(1), and regulation 2(2), at that point, in order to avoid any confusion their presence may cause the reader.

4. The Department is grateful to the Committee for drawing these defects to its attention.

Northern Ireland Office

1st April 2008

Appendix 3

S.I. 2008/587: memorandum from the Department for Work and Pensions

<i>Rent Officers (Housing Benefit Functions) Amendment Order 2008 (S.I. 2008/587)</i>
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1. In its letter to the Department of 26 March 2008, the Joint Committee requested a memorandum on the following point:

Given that articles 4 and 13 of the Rent Officers (Housing Benefit Functions) Order 2007 came into force on 20 March 2008, why does this instrument (which does not come into force until 7 April) amend those articles and not the instruments which they amended?

2. The Department's response to the Committee's point is outlined below.
3. The Department acknowledges that, since articles 4 and 13 of the Rent Officers (Housing Benefit Functions) Order 2007, which amended the Rent Officers (Housing Benefit Functions) Order 1997 ("the principal Order"), had already come into force by the time this Order was made, this Order should have amended the principal Order itself, rather than the 2007 Order. The Department will correct the error at the earliest possible opportunity.

Department for Work and Pensions

27 March 2008

Appendix 4

S.I. 2008/635: memorandum from the Ministry of Defence

Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2008 (S.I. 2008/635)

The Committee has asked the Ministry of Defence to submit a memorandum on the above mentioned Instrument dealing with the following points:

- (1) *In article 20(1)(a), is the intended date “1st January 2008” or “1st April 2008”?*
- (2) *Irrespective of the answer to (1), what is the intended effect of article 20 on a duty to disclose which arose under common law before the intended date but had not been performed by that date, and why is that not made express in the article?*
- (3) *Given that the relevant enabling power (section 78(2)(a) of the Criminal Procedure and Investigations Act 1996) provides for the Order to apply provisions in Part 1 of the Act with modifications to forces proceedings, and the equivalent (section 21) applies only to displace common law rules of disclosure which arise after an event (e.g. a not guilty plea), why is there not a similar limitation on the application of article 20?*

Q1. *In article 20(1)(a), is the intended date “1st January 2008” or “1st April 2008”?*

1. In article 20(1)(a) the date specified should have been “1st April 2008” rather than “1st January 2008”. The latter had been the date on which the order had originally been intended to come into force and regrettably was not altered when the date of coming into force was altered before the instrument was made.

2. The Ministry of Defence acknowledges this error and is of course content to take immediate steps to amend article 20. However, the Committee is requested to consider two points in deciding whether immediate action is required. First, the date in article 20(1)(a) serves only to identify the common law rules which are to be disapplied. The Ministry of Defence has considered whether there was any change in those rules between 1st January 2008 and 1st April 2008. The Ministry does not consider that there was any change in those rules during that period. While recognising that it would have been clearer to refer to the rules effective immediately before 1st April 2008, the Ministry does not think that the error has any substantive legal effect.

3. Secondly, the Order is in any event either to be revoked and replaced or to be amended at the end of 2008. The Order applies to proceedings under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. These Acts will be repealed when the Armed Forces Act 2006 comes into force, and the intended date for this is 1st January 2009. The necessary statutory instrument will therefore be made before the commencement of the 2006 Act.

4. In the light of the points made in paragraphs 2 and 3 above, it is requested that the Committee agree that it would be appropriate for the necessary correction to article 20(1)(a) to be made when the Order is replaced or amended for the purposes of the introduction of the 2006 Act.

Q2. *Irrespective of the answer to Q1, what is the intended effect of article 20 on a duty to disclose which arose under common law before the intended date but had not been performed by that date, and why is that not made express in the article?*

5. Under its article 2 the Order, including article 20, applies where a charge is preferred by a service prosecuting authority against a person after 1st April 2008. No duty of disclosure arose under the common law rules before a charge was preferred. The Ministry of Defence is accordingly of the view that no common law duty to disclose can have arisen before 1st April 2008 in a case to which article 20 applies, The Order therefore contains no provision relating to such a duty.

Q3. *Given that the relevant enabling power (section 78(2)(a) of the Criminal Procedure and Investigations Act 1996) provides for the Order to apply provisions of Part 1 of the Act with modifications to forces proceedings, and the equivalent (section 21) applies only to displace common law rules of disclosure which arise after an event (eg. a not guilty plea), why is there not a similar limitation on the application of article 20.*

6. The Ministry of Defence considers that:

- article 2 of the Order sets out the events in which the common law duty to disclose is displaced (As mentioned in paragraph 4 above, article 2 applies to the whole Order, including article 20).
- Part 1 of the Criminal Procedure and Investigations Act 1996, and accordingly the disapplication by its section 21 of the common law rules on disclosure, takes effect by reference to specified events which vary in accordance with different types of civilian criminal proceeding. For this reason section 1 of the 1996 Act sets out relevant events for the application of the Part, and section 21 sets out appropriate, related events for the purposes of the application of that section in different proceedings.
- The position in relation to proceedings under armed forces legislation is much simpler. None of the variables specified in section 1 of the 1996 Act applies to them. In consequence the key event relevant to the application of all the provisions of the Order, including article 20, is the preferring of the charge by a service prosecuting authority, as provided for in article 2 of the Order. This provides the necessary limitation on the application of article 20.

Ministry of Defence

1 April 2008