



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Twenty-sixth Report
of Session 2007–08**

Drawing special attention to:

*Naval Medical Compassionate Fund (Amendment) Order 2008
(S.I. 2008/1488)*

*Civil Enforcement of Parking Contraventions (The Borough Council of
Dudley) Designation Order 2008 (S.I. 2008/1518)*

*Ordered by The House of Lords to be printed
16 July 2008*

*Ordered by The House of Commons to be printed
16 July 2008*

Joint Committee on Statutory Instruments

Current membership

House of Lords

Lord Brett (*Labour*)
Lord Campbell of Alloway (*Conservative*)
Lord Dykes (*Liberal Democrat*)
Baroness Jones of Whitchurch (*Labour*)
Lord Kimball (*Conservative*)
Countess of Mar (*Crossbench*)
Lord Walpole (*Crossbench*)

House of Commons

David Maclean MP (*Conservative, Penrith and The Border*)
(Chairman)
Dr Roberta Blackman-Woods MP (*Labour, City of Durham*)
Mr Peter Bone MP (*Conservative, Wellingborough*)
Michael Jabez Foster MP (*Labour, Hastings and Rye*)
Mr David Kidney MP (*Labour, Stafford*)
Mr John MacDougall MP (*Labour, Central Fife*)
David Simpson MP (*Democratic Unionist, Upper Bann*)

Powers

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. 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*).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, Delegated Legislation Office, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2830; the Committee's e-mail address is: jcsi@parliament.uk.

Contents

Report	<i>Page</i>
Instruments reported	2
1 S.I. 2008/1488: reported for not conforming to proper legislative practice and for defective drafting	2
2 S.I. 2008/1518: reported for defective drafting	3
Instruments not reported	4
Annex	5
Appendix 1	7
S.I. 2008/1488: memorandum from the Ministry of Defence	7
Appendix 2	8
S.I. 2008/1518: memorandum from the Department for Transport	8

Instruments reported

At its meeting on 16 July 2008 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to two of those considered. The Instruments and the grounds for reporting them are given below. Relevant Departmental memoranda are published as appendices to this report.

1 S.I. 2008/1488: reported for not conforming to proper legislative practice and for defective drafting

Naval Medical Compassionate Fund (Amendment) Order 2008 (S.I. 2008/1488)

1.1 The Committee draws the special attention of both Houses to this Order on the grounds that its structure does not conform to proper legislative practice, and that it and its explanatory note are defectively drafted in one respect each.

1.2 This Order amends the Standing Orders and Regulations for the Constitution and Government of the Naval Medical Compassionate Fund (“the Rules”). The Rules were approved by Order in Council in 1915 (S.R & O. 1915/769) made under section 1 of the Naval Medical Compassionate Fund Act 1915. Prior to this Order, the Rules had been amended by eight orders made between 1919 and 2005. Some of these orders were expressed as amending the 1915 Order, others simply as amending the Rules. In either case, it was only the Rules that were intended to be amended textually.

1.3 The 1915 Order consists largely of a preamble which recites that the Lords Commissioners of the Admiralty had submitted a memorial dated 18 July 1915 and quotes in full that memorial. The Memorial explains the statutory background (including a recital of the provisions of section 1 of the 1915 Act) and contains a humble submission for approval of the Rules, which are themselves set out in the memorial. The quotation is followed by what nowadays would be described as the operative provisions of the Order, which state that His Majesty approves what is contained in the memorial: that is, the Rules.

1.4 The effect of this Order is to replace all the remaining provisions of the Rules with new ones. The Committee asked the Ministry of Defence why the Order did not simply revoke and replace the 1915 Order. In a memorandum printed at Appendix 1, the Department states that it was felt that it would be helpful to retain the preamble to the 1915 Order. The Committee finds this response surprising. That preamble contains what is in effect a commentary on the legislative background and the humble submission – particulars that are not now normally expected in subordinate legislation – and the text of the Rules (the location of which is similarly unexpected). One would expect now to see the preamble confined to essential material, to see title, commencement, interpretation (if needed) and approval in the operative part and to see the matters being approved in a Schedule to the Order. Given that amending orders have on some occasions purported to amend the Rules by amending the 1915 Order itself but on others purported to amend the Rules themselves, it is at least arguable that there can be no certainty as to what the preamble to the 1915 Order now says. Furthermore the humble submission seeking approval of the original 1915 Rules is clearly unrelated to later amending Rules (a point appreciated in the first of the

previous amending orders though not subsequently), yet the survival of the preamble carries with it the survival of that particular submission.

1.5 There are also practical considerations. An audit trail of legislation made in 1915 and amended numerous times is not easy. The Committee has located only one publication aiming to set out the full text of the 1915 Order as it was before this Order was made, and that publication (a commercial one) appears inadvertently to omit the “operative provisions” referred to above.

1.6 In the Committee’s view, the correct thing to do would have been to revoke and replace the 1915 Order. That would have enabled the Rules to be set out in an instrument which conforms to modern drafting practice, with the Rules set out in a new Schedule rather than in a surviving lengthy and at least partly inapt preamble. More importantly, it would have made the Rules easily accessible to all whether by means of the printed instrument or the OPSI website. **The Committee therefore reports the structure of this Order for failure to conform to proper legislative practice.**

1.7 The Committee has two further concerns, neither of which would have arisen if a wholly new Order had been made. The Order purports to substitute new articles for articles 3 and 10 of the Rules, despite the fact that those articles have been revoked in 1991. Also, the explanatory note to the Order refers parenthetically to numbered articles where the numbers refer not to the provisions of this Order but to the provisions of the Rules as amended by this Order. The Department acknowledges these defects in drafting. **The Committee accordingly reports the Order and its explanatory note for defective drafting, acknowledged by the Department.**

2 S.I. 2008/1518: reported for defective drafting

<p><i>Civil Enforcement of Parking Contraventions (The Borough Council of Dudley) Designation Order 2008 (S.I. 2008/1518)</i></p>

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

2.2 This Order is made in exercise of powers to designate all or part of a local authority’s area as a civil enforcement area for parking contraventions and as a special enforcement area. In the Order, however, the Secretary of State designates the Borough Council of Dudley as a civil enforcement area and a special enforcement area.

2.3 In a memorandum printed at Appendix 2, the Department for Transport acknowledges that the Order was defectively drafted in that it was intended to designate the council’s area and not the council itself. A new Order revoking and replacing this one was made and laid before Parliament within 2 days of the Department receiving the Committee’s question.

2.4 **The Committee accordingly reports this Order for defective drafting, acknowledged by the Department, and commends the Department for the speed with which it has rectified the error.**

Instruments not reported

The Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to the respective Houses.

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.	Freedom of Information (Parliament and National Assembly for Wales) Order 2008
Draft S.I.	Mental Health Act 2007 (Consequential Amendments) Order 2008
Draft S.I.	Remand on Bail (Disapplication of Credit Period) Rules 2008

Instruments subject to annulment

S.I. 2008/1593	Education (Assisted Places) (Amendment) (England) Regulations 2008
S.I. 2008/1594	Education (Assisted Places) (Incidental Expenses) (Amendment) (England) Regulations 2008
S.I. 2008/1596	Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008
S.I. 2008/1597	Supply of Machinery (Safety) Regulations 2008
S.I. 2008/1598	Home Loss Payments (Prescribed Amounts) (England) Regulations 2008
S.I. 2008/1599	Social Security (Students and Miscellaneous Amendments) Regulations 2008
S.I. 2008/1639	Industrial Training Levy (Reasonable Steps) Regulations 2008
S.I. 2008/1640	Student Fees (Qualifying Courses and Persons) (England) (Amendment) Regulations 2008
S.I. 2008/1641	Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2008
S.I. 2008/1643	Education (Designated Institutions) (Amendment) (England) Order 2008
S.I. 2008/1649	Income-related Benefits (Subsidy to Authorities) Amendment (No. 3) Order 2008
S.I. 2008/1651	Armed Forces (Service Inquiries) Regulations 2008
S.I. 2008/1652	The Coroners (Amendment) Rules 2008
S.I. 2008/1653	Tribunals, Courts and Enforcement Act 2007 (Commencement No. 5 and Transitional Provisions) Order 2008
S.I. 2008/1654	Magnetic Toys (Safety) Regulations 2008
S.I. 2008/1657	National Health Service (Optical Charges and Payments) Amendment (No. 2) Regulations 2008
S.I. 2008/1659	Companies Act 1985 (Annual Return) and Companies (Principal Business Activities) (Amendment) Regulations 2008
S.I. 2008/1660	Cross-border Railway Services (Working Time) Regulations 2008
S.I. 2008/1692	Medicines for Human Use (Prescribing by EEA Practitioners) Regulations 2008

- S.I. 2008/1697** National Health Service (Charges for Drugs and Appliances) and (Travel Expenses and Remission of Charges) Amendment (No.2) Regulations 2008
- S.I. 2008/1698** Armed Forces (Entry, Search and Seizure) (Amendment) Order 2008
- S.I. 2008/1699** Courts-Martial (Amendment) Rules 2008
- S.I. 2008/1700** Primary Ophthalmic Services Amendment, Transitional and Consequential Provisions Regulations 2008
- S.I. 2008/1702** Road Vehicles (Construction and Use) (Amendment) Regulations 2008
- S.I. 2008/1712** Estate Agents (Redress Scheme) Order 2008
- S.I. 2008/1713** Estate Agents (Redress Scheme) (Penalty Charge) Regulations 2008
- S.I. 2008/1714** Regulated Covered Bonds (Amendment) Regulations 2008
- S.I. 2008/1715** Vehicles Crime (Registration of Registration Plate Suppliers) Regulations 2008
- S.I. 2008/1718** Eggs and Chicks (England) Regulations 2008
- S.I. 2008/1725** Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2008
- S.I. 2008/1731** Adjudicator to Her Majesty's Land Registry (Practice and Procedure) (Amendment) Rules 2008
- S.I. 2008/1750** Land Registration (Electronic Conveyancing) Rules 2008
- S.I. 2008/1764** Civil Enforcement of Parking Contraventions (Dudley) Designation Order 2008
- S.I. 2008/1813** Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) (No.2) Order 2008

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2008/1586** Criminal Justice and Immigration Act 2008 (Commencement No. 2 and Transitional and Saving Provisions) Order 2008
- S.I. 2008/1650** Armed Forces Act 2006 (Commencement No. 3) Order 2008
- S.I. 2008/1656** Electoral Administration Act 2006 (Commencement No.1 and Transitional Provisions) (Northern Ireland) Order 2008

Appendix 1

S.I. 2008/1488: memorandum from the Ministry of Defence

Naval Medical Compassionate Fund (Amendment) Order 2008 (S.I. 2008/1488)

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

(1) Given that this Order replaces all the provisions of the 1915 Order, why does it not simply revoke and replace that Order?

(2) In addition—

(a) why does the Order purport to substitute provisions for articles 3 and 10 of the 1915 Order, given that those provisions were revoked by S.I. 1991/994?

(b) why does the explanatory note refer to articles 1 and 2 and article 5 instead of article 2(a) and (b) and article 2(e) respectively?

(1) It is correct that the Order replaces all the provisions of the 1915 Order. The reason that it was decided not to revoke the 1915 Order in its entirety was that it was felt that it would be helpful to retain the preamble to the 1915 Order.

(2)(a) The Committee is correct to point out that articles 3 and 10 of the 1915 Order have previously been revoked by S.I. 1991/994. It is accepted that it is therefore inaccurate for the Order to purport to “substitute” new articles for provision that no longer exists, following previous revocation.

(2)(b) The references to articles 1 and 2 and article 5 in the explanatory note were references to the provision made in the 1915 Order as amended, and not that made in the Order itself. It is accepted that this approach has the potential to mislead and that the references should have been to the relevant provision made in the Order itself.

The Department has noted the Committee’s views and helpful comments and these will be taken into account when drafting future Orders.

Ministry of Defence

7 July 2008

Appendix 2

S.I. 2008/1518: memorandum from the Department for Transport

*Civil Enforcement of Parking Contraventions (The Borough Council of Dudley)
Designation Order 2008 (S.I. 2008/1518)*

By a letter dated 2nd July 2008 the Committee has asked for a memorandum on the following point:

Why does this instrument designate “The Borough Council of Dudley” (as opposed to the whole or a specified part of its area) as civil enforcement area and a special enforcement area?

The Department has considered this question and concluded that the instrument was defectively drafted in this respect. The policy intention had been to designate the whole of the area of the metropolitan district of the Borough Council of Dudley. The Department apologises for this error.

The Department has rectified this by revoking the instrument and replacing it with another instrument entitled “The Civil Enforcement of Parking Contraventions (Dudley) Designation Order 2008” (S.I. 2008/1764) in order to remove any scope for doubt as to the validity of the instrument arising out of that error. The replacement Order was made and laid on 4th July. It has the same coming into force date as the revoked instrument (7th July 2008) as The Borough Council of Dudley are proposing to commence civil enforcement of parking offences from that date. As explained in the explanatory memorandum for the new Order, it was thus regrettably necessary to breach the 21 day rule.

Department for Transport

7 July 2008