



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**First Report
of Session 2010-11**

Drawing special attention to:

Census (England) Regulations 2010 (S.I. 2010/532)

*Policing of Aerodromes (Belfast International Airport) Order 2010
(S.I. 2010/575)*

*Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel
Oil) (England) Regulations 2010 (S.I. 2010/639)*

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Joint Committee on Statutory Instruments

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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 on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jennifer Steele (*Committee Assistant*). Advisory Counsel: Peter Davis, Peter Brooksbank, Christine Cogger and Daniel Greenberg (*Commons*); Allan Roberts, Peter Milledge and Nicholas Beach (*Lords*).

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Instruments reported

At its meeting on 14 July 2010 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 three of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda are published as appendices to this report.

1 S.I. 2010/532: Reported for requiring elucidation

Census (England) Regulations 2010 (S.I. 2010/532)

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that in one repeated respect they call for elucidation.

1.2 Schedules 3 and 4 to these Regulations include the form of the questionnaire which will be required to be completed by individuals in England for the purpose of the 2011 census. The questionnaire includes a space numbered 17, which reads “This question is intentionally left blank → Go to 18”. The inclusion of pointless provisions in legislation is contrary to proper legislative practice, so the Committee asked the Office for National Statistics why the forms include a question which is deliberately left blank.

1.3 In a memorandum printed at Appendix 1, the Department explains that the questionnaires to be used in Wales (the power to make regulations about the census there is now exercisable by the Welsh Ministers) include a question 17 about Welsh language ability. The questionnaires from England and those from Wales will be scanned and the data coded and captured together. Because of this, the questionnaires are in the same format and accordingly the English questionnaire contains a question numbered 17 which is left blank.

1.4 The Committee accordingly reports Schedules 3 and 4 on the ground that the inclusion of question 17 calls for the elucidation provided in the Department’s memorandum.

2 S.I. 2010/575: Reported for doubtful *vires*

Policing of Aerodromes (Belfast International Airport) Order 2010 (S.I. 2010/575)

2.1 The Committee draws the special attention of both Houses to this Order on the ground that there appears to be a doubt whether it is *intra vires*.

2.2 Section 80 of the Policing and Crime Act 2009 gives effect to Schedule 6 to that Act, which amends Part 3 of the Aviation Security Act 1982. The amendments introduce new arrangements in relation to the policing of relevant aerodromes. The inserted section 25AA(2) permits the Secretary of State by order to provide that a specified aerodrome is not a relevant aerodrome for the purposes of Part 3. Section 116 of the 2009 Act provides

that section 80 is to come into force on such day as the Secretary of State may by order appoint, and that different dates may be appointed for different purposes or different areas.

2.3 This Order purports to be made under section 25AA(2) of the 1982 Act and to provide that Belfast International Airport is not a relevant aerodrome for the purposes of Part 3 of that Act. At the time this Order was made, however, no commencement order had been made bringing section 80 into force in relation to Northern Ireland. At first glance, therefore, it appears that the power to make this Order did not exist at the time it was made.

2.4 The Department for Transport states in the Explanatory Memorandum to the Order that reliance is placed on section 13 of the Interpretation Act 1978. That section provides that, where an Act (or a provision of an Act) which does not come into force immediately on its passing confers power to make subordinate legislation then, unless the contrary intention appears, the power may be exercised, and any instrument made under it may be made so as to come into force, at any time after the passing of the Act so far as may be necessary or expedient for the purpose of bringing the Act or any provision of the Act into force or giving full effect to the Act or any such provision at or after the time when it comes into force.

2.5 The Department accepts that this Order is not necessary to give full effect to the 2009 Act when it comes into force, but suggests that it the Order is expedient for the purposes of giving full effect to the relevant provisions of that Act. That argument is based, not on whether those provisions would work properly, but on whether those provisions would otherwise have an effect which was not desirable in policy terms.

2.6 In the case of *Usher v Barlow* ([1952] Ch. 255), the Court of Appeal considered section 37 of the Interpretation Act 1889 (the predecessor of section 13 of the 1978 Act) in the context of rules made under the Registered Designs Act 1949. The 1949 Act provided for it to come into force on 1 January 1950, and the Designs Rules were made on 16 December 1949 (after the act received Royal Assent) and came into force on 2 January 1950. The general power to make rules under the 1949 Act was conferred by section 36, but one particular rule – rule 26, made under section 36 as read with section 1(4), which was the subject of the Court’s consideration – introduced an exclusion from registration under the Act of certain types of design which would otherwise have been registrable.

2.7 Sir Raymond Evershed MR, in his judgment, expressed concerns (repeated by Morris LJ) as to whether section 37 of the Interpretation Act 1889 could have saved rule 26, which in effect derogated from the rules that the 1949 Act would have otherwise applied, had it not been part of a wider instrument. Jenkins LJ, who did not express equivalent difficulties, he made it clear that he was dealing with a case where the Act in question itself fixed the date on which it was to come into force.

2.8 The Department, in a memorandum printed at Appendix [], seeks to argue that the exemption of Belfast International Airport should be treated as valid because it is expedient for the purpose of enabling a whole body of requirements to operate effectively. This, in the Committee’s view, is to misunderstand what Evershed MR was saying. In that case, the general body of rules to which was referring was the Designs Rules 1949, whereas in this case the general body of rules is that set out in the 1982 Act as amended. There is nothing

in the judgments of Evershed MR or Morris LJ to suggest that they would have accepted the validity of rule 26 if it had been the only rule in the relevant instrument.

2.9 Furthermore, this case is not one of the type identified by Jenkins LJ where there was no option of making a commencement order to bring the rule-making power into force earlier than the operative provisions. Extracts from the judgments of Evershed MR and Jenkins LJ are Annexed to Appendix 2

2.10 The Department also argues that the facts could be compared with those in a previous case on section 37, but in the Committee's view that case primarily related to what could be done under transitional provisions and so do not bear on the *vires* for the present Order.

2.11 It would have clearly been possible to have made a commencement order to bring section 80 of the 2009 Act into force for the purpose of conferring power in advance to make orders under section 25AA(2) of the 1982 Act. That was not done. The present Order appears neither necessary nor expedient for the purpose of giving full effect to the amendments when they come into force: it derogates from the effect of those amendments. **Accordingly, the Committee reports this Order for being of doubtful *vires*.**

3 S.I. 2010/639: Reported defective drafting

Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (S.I. 2010/639)

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

3.2 In a memorandum printed at Appendix [], the Department for Environment, Food and Rural Affairs acknowledges that these Regulations are defectively drafted in three separate respects, two of which affect the application of provisions creating criminal offences. An amending instrument (S.I. 2010/1091) to correct these errors was made promptly and in time to come into force at the same time as these Regulations.

3.3 The Committee accordingly reports these Regulations for defective drafting, acknowledged by the Department, and commends the Department for the prompt action which it has taken to rectify the defects.

Instruments not reported

At its meeting on 14 July 2010 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

S.I. 2010/1600 Fishing Boats (Electronic Transmission of Fishing Activities Data) (England) (Scheme) 2010

Draft Instruments requiring affirmative approval

Draft S.I. Armed Forces Act (Continuation) Order 2010

Draft S.I. Child Trust Funds (Amendment No. 3) Regulations 2010

Draft S.I. Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service) Order 2010

Draft S.I. Control of Donations and Regulation of Loans etc. (Extension of the Prescribed Period) (Northern Ireland) Order 2010

Draft S.I. Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010

Draft S.I. Health and Social Care Act 2008 (Consequential Amendments No. 3) Order 2010

Draft S.I. Misuse of Drugs Act 1971 (Amendment No. 2) Order 2010

Draft S.I. National Minimum Wage Regulations 1999 (Amendment) Regulations 2010

Draft S.I. Political Parties, Elections and Referendums (Civil Sanctions) Order 2010

Draft S.I. Scottish Parliament (Constituencies and Regions) Order 2010

Draft S.I. Terrorism Act 2006 (Disapplication of Section 25) Order 2010

Instruments subject to annulment

S.I. 2010/743 National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 2010

S.I. 2010/761 European Communities (Designation) Order 2010

S.I. 2010/770 Air Navigation (Amendment) Order 2010

S.I. 2010/775 M20 Motorway (Junctions 4 to 7) (Variable Speed Limits) Regulations 2010

S.I. 2010/783 Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products (Amendment) Regulations 2010

- S.I. 2010/796** Social Security (Claims and Payments) Amendment Regulations 2010
- S.I. 2010/801** Transmissible Spongiform Encephalopathies (England) Regulations 2010
- S.I. 2010/804** Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) (Amendment) Regulations 2010
- S.I. 2010/807** Health and Social Care Act 2008 (Commencement No. 16, Transitory and Transitional Provisions) Order 2010
- S.I. 2010/817** Police Act 1997 (Criminal Records) (Amendment) Regulations 2010
- S.I. 2010/825** Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010
- S.I. 2010/826** Social Security Benefits Up-rating Regulations 2010
- S.I. 2010/828** Banking Act 2009 (Inter-Bank Payment Systems) (Disclosure and Publication of Specified Information) Regulations 2010
- S.I. 2010/831** Audiovisual Media Services (Product Placement) Regulations 2010
- S.I. 2010/833** Social Security (Industrial Injuries) (Dependency) (Permitted Earnings Limits) Order 2010
- S.I. 2010/840** Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010
- S.I. 2010/856** School Support Staff Negotiating Body (Excluded Persons) Regulations 2010
- S.I. 2010/865** Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2010
- S.I. 2010/870** Social Security (Claims and Payments) Amendment (No. 2) Regulations 2010
- S.I. 2010/875** Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010
- S.I. 2010/891** Immigration Services Commissioner (Designated Professional Body) (Fees) Order 2010
- S.I. 2010/892** Passenger and Goods Vehicles (Community Recording Equipment Regulation) Regulations 2010
- S.I. 2010/895** Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2010
- S.I. 2010/896** Natural Mineral Water, Spring Water and Bottled Drinking Water (England) (Amendment) (No. 2) Regulations 2010
- S.I. 2010/897** Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) (Amendment) Regulations 2010
- S.I. 2010/898** Local Authorities (Petitions) (England) Order 2010
- S.I. 2010/899** Police Pensions (Descriptions of Service) Order 2010
- S.I. 2010/902** Aviation Security Regulations 2010
- S.I. 2010/903** Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order (Amendment) Order 2010

- S.I. 2010/905** Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2010
- S.I. 2010/908** Assured Tenancies (Amendment) (England) Order 2010
- S.I. 2010/909** European Parliamentary (United Kingdom Representatives) Pensions (Amendment) Order 2010
- S.I. 2010/912** Management of Offenders etc. (Scotland) Act 2005 (Disclosure of Information) Order 2010
- S.I. 2010/913** Hearing Aid Council (Transfer of Property, Rights and Liabilities) Order 2010
- S.I. 2010/914** National Health Service (Pharmaceutical Services and Local Pharmaceutical Services) (Amendment) Regulations 2010
- S.I. 2010/915** National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010
- S.I. 2010/916** Workmen's Compensation (Supplementation) (Amendment) Scheme 2010
- S.I. 2010/918** Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations 2010
- S.I. 2010/926** Recovery of Social Security Contributions Due in Other Member States Regulations 2010
- S.I. 2010/937** Freedom of Information (Additional Public Authorities) Order 2010
- S.I. 2010/939** Freedom of Information (Removal of References to Public Authorities) Order 2010
- S.I. 2010/951** Special Restrictions on Adoptions from Abroad (Nepal) Order 2010
- S.I. 2010/959** Care Planning, Placement and Case Review (England) Regulations 2010
- S.I. 2010/960** Education (Student Support) (College of Europe) Regulations 2010
- S.I. 2010/964** Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2010
- S.I. 2010/970** Crime and Disorder Act 1998 (Responsible Authorities) Order 2010
- S.I. 2010/983** Beef and Veal Labelling Regulations 2010
- S.I. 2010/984** Biodiesel Duty (Biodiesel Produced From Waste Cooking Oil) (Relief) Regulations 2010
- S.I. 2010/988** Crossrail (Devolution of Functions) Order 2010
- S.I. 2010/990** Teachers' Pensions Regulations 2010
- S.I. 2010/991** Water Supply Regulations 2010
- S.I. 2010/992** Goods Infringing Intellectual Property Rights (Customs) (Amendment) (No. 2) Regulations 2010
- S.I. 2010/996** Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010

- S.I. 2010/1000** National Health Service (Direct Payments) Regulations 2010
- S.I. 2010/1001** Air Quality Standards Regulations 2010
- S.I. 2010/1002** Education (Independent Educational Provision in England) (Inspection Fees) (Amendment) Regulations 2010
- S.I. 2010/1003** Motor Vehicles (Off Road Events) (Amendment) (England) Regulations 2010
- S.I. 2010/1004** Identification and Traceability of Explosives Regulations 2010
- S.I. 2010/1005** Motor Vehicle (Competitions and Trials) (Amendment) (England) Regulations 2010
- S.I. 2010/1006** School Information (England) (Amendment) Regulations 2010
- S.I. 2010/1010** Consumer Credit (EU Directive) Regulations 2010
- S.I. 2010/1011** Consumer Credit (Total Charge for Credit) Regulations 2010
- S.I. 2010/1012** Consumer Credit (Advertisements) Regulations 2010
- S.I. 2010/1013** Consumer Credit (Disclosure of Information) Regulations 2010
- S.I. 2010/1014** Consumer Credit (Agreements) Regulations 2010
- S.I. 2010/1023** Chief Executive of Skills Funding (Strategy for Birmingham City Region) Order 2010
- S.I. 2010/1035** Guardian's Allowance Up-rating Regulations 2010
- S.I. 2010/1051** Whole of Government Accounts (Designation of Bodies) Order 2010
- S.I. 2010/1061** Safeguarding Vulnerable Groups Act 2006 (Appropriate Officer and Schedule 7 Prescribed Persons) Regulations 2010
- S.I. 2010/1062** Public Guardian (Fees, etc.) (Amendment) Regulations 2010
- S.I. 2010/1063** Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2010
- S.I. 2010/1064** Family Proceedings (Amendment) (No. 2) Rules 2010
- S.I. 2010/1065** Family Proceedings Courts (Children Act 1989) (Amendment) (No. 2) Rules 2010
- S.I. 2010/1067** Crime and Disorder Act 1998 (Intervention Orders) (Amendment) Order 2010
- S.I. 2010/1070** Police Authority and Metropolitan Police Authority (Amendment) Regulations 2010
- S.I. 2010/1071** Education (Short Stay Schools) (Closure) (England) Regulations 2010
- S.I. 2010/1072** Appointments Commission (Amendment) Regulations 2010
- S.I. 2010/1073** Safeguarding Vulnerable Groups Act 2006 (Supervisory Authorities and Devolution Alignment) Order 2010
- S.I. 2010/1074** Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2010
- S.I. 2010/1075** Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010

- S.I. 2010/1085** Dairy (Specific Market Support Measure) Regulations 2010
- S.I. 2010/1088** Transnational Information and Consultation of Employees (Amendment) Regulations 2010
- S.I. 2010/1090** Beef and Pig Carcase Classification (England) Regulations 2010
- S.I. 2010/1091** Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2010
- S.I. 2010/1092** Road Vehicles (Registration and Licensing) (Amendment) (No. 2) Regulations 2010
- S.I. 2010/1094** End-of-Life Vehicles (Amendment) Regulations 2010
- S.I. 2010/1095** End-of-Life Vehicles (Producer Responsibility) (Amendment) Regulations 2010
- S.I. 2010/1096** Ordnance Survey Trading Fund (Maximum Borrowing) Order 2010
- S.I. 2010/1102** Flood Risk (Cross Border Areas) Regulations 2010
- S.I. 2010/1108** Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Codes E and F) Order 2010
- S.I. 2010/1109** Community Legal Service (Funding) (Amendment No. 2) Order 2010
- S.I. 2010/1110** Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Miscellaneous Amendments) Regulations 2010
- S.I. 2010/1111** Vehicles Regulations (Amendment) Order 2010
- S.I. 2010/1114** Motor Cycles Etc. and Tractors Etc. (EC Type Approval) (Amendment) Regulations 2010
- S.I. 2010/1115** Motor Vehicles (Third Party Risks) (Amendment) Regulations 2010
- S.I. 2010/1116** Isles of Scilly (Children Act 1989) Order 2010
- S.I. 2010/1117** Motor Vehicles (Electronic Communication of Certificates of Insurance) Order 2010
- S.I. 2010/1136** Medicines for Human Use (Miscellaneous Amendments) Order 2010
- S.I. 2010/1140** Control of Artificial Optical Radiation at Work Regulations 2010
- S.I. 2010/1143** Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2010
- S.I. 2010/1144** Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2010
- S.I. 2010/1150** Cosmetic Products (Safety) (Amendment) Regulations 2010
- S.I. 2010/1155** Waste Electrical and Electronic Equipment (Amendment) Regulations 2010
- S.I. 2010/1156** Education (Educational Provision for Improving Behaviour) Regulations 2010
- S.I. 2010/1161** Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2010
- S.I. 2010/1172** Local Education Authorities and Children's Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010
- S.I. 2010/1173** Children's Centres (Inspections) Regulations 2010

- S.I. 2010/1176** Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010
- S.I. 2010/1180** Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009 (Amendment) Regulations 2010
- S.I. 2010/1181** Criminal Defence Service (Funding) (Amendment No. 2) Order 2010
- S.I. 2010/1195** Seeds (National Lists of Varieties) (Amendment) Regulations 2010
- S.I. 2010/1203** Motor Vehicles (Driving Licences) (Amendment) Regulations 2010
- S.I. 2010/1205** Parental Orders (Prescribed Particulars and Forms of Entry) Regulations 2010
- S.I. 2010/1220** Town and Country Planning (Compensation) (No. 2) (England) Regulations 2010
- S.I. 2010/1226** Civil Aviation (Working Time) (Amendment) Regulations 2010
- S.I. 2010/1228** Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010
- S.I. 2010/1358** Criminal Defence Service (Funding) (Amendment No. 3) Order 2010
- S.I. 2010/1455** Home Information Pack (Suspension) Order 2010
- S.I. 2010/1456** Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2010
- S.I. 2010/1707** Safeguarding Vulnerable Groups Act 2006 (Appropriate Officer and Schedule 7 Prescribed Persons) (Revocation) Regulations 2010
- S.I. 2010/1710** Safeguarding Vulnerable Groups Act 2006 (Supervisory Authorities and Devolution Alignment) (Amendment) Order 2010

Instruments subject to annulment (Northern Ireland)

- S.R. 2010/107** Police and Criminal Evidence (1989 Order) (Codes of Practice) (Temporary Modification to Code A) Order (Northern Ireland) 2010
- S.R. 2010/116** Judgment Enforcement (Amendment) Rules (Northern Ireland) 2010
- S.R. 2010/143** Identification and Traceability of Explosives Regulations (Northern Ireland) 2010
- S.R. 2010/146** Legal Aid in Criminal Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2010

Instruments not subject to Parliamentary proceedings laid before Parliament

- S.I. 2010/763** International Criminal Court Act 2001 (Overseas Territories) (Amendment) Order 2010
- S.I. 2010/767** Uzbekistan (Restrictive Measures) (Overseas Territories) (Revocation) Order 2010
- S.I. 2010/1078** Parliamentary Elections (Welsh Forms) (Amendment) Order 2010

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2010/698** Electricity (Standards of Performance) Regulations 2010
- S.I. 2010/764** Police Act 1997 (Criminal Records) (Isle of Man) Order 2010

- S.I. 2010/765** Police Act 1997 (Criminal Records) (Jersey) Order 2010
- S.I. 2010/779** Health Act 2009 (Commencement No. 2) Order 2010
- S.I. 2010/798** Hertfordshire Primary Care Trust (Establishment) and East and North Hertfordshire Primary Care Trust and West Hertfordshire Primary Care Trust (Dissolution) Order 2010
- S.I. 2010/812** Northern Ireland Act 2009 (Commencement No. 2) Order 2009
- S.I. 2010/815** Finance Act 2009, Schedule 50 (Record-Keeping) (Appointed Day) Order 2010
- S.I. 2010/816** Coroners and Justice Act 2009 (Commencement No. 4 and Transitional and Saving Provisions) Order 2010
- S.I. 2010/830** Parliamentary Elections (Returning Officers' Charges) Order 2010
- S.I. 2010/838** Bedfordshire and Luton Mental Health and Social Care Partnership National Health Service Trust (Dissolution) Order 2010
- S.I. 2010/841** Rules of the Air (Amendment) Regulations 2010
- S.I. 2010/862** Housing and Regeneration Act 2008 (Commencement No. 7 and Transitional and Saving Provisions) Order 2010
- S.I. 2010/867** Finance Act 2009, Schedule 51 (Time Limits for Assessments, Claims, etc.) (Appointed Days and Transitional Provisions) Order 2010
- S.I. 2010/869** Parliamentary Elections (Returning Officers' Charges) (Northern Ireland) Order 2010
- S.I. 2010/881** Local Democracy, Economic Development and Construction Act 2009 (Commencement No. 3) Order 2010
- S.I. 2010/883** Constitutional Reform Act 2005 (Commencement No.12) Order 2010
- S.I. 2010/907** Marine and Coastal Access Act 2009 (Commencement No.3) Order 2010
- S.I. 2010/923** Capital Gains Tax (Annual Exempt Amount) Order 2010
- S.I. 2010/969** Political Parties and Elections Act 2009 (Commencement No. 3 and Saving Provision) Order 2010
- S.I. 2010/975** Water Act 2003 (Commencement No. 10) Order 2010
- S.I. 2010/999** Policing and Crime Act 2009 (Commencement No. 5) Order 2010
- S.I. 2010/1033** Parliamentary Standards Act 2009 (Commencement No. 3) Order 2010
- S.I. 2010/1068** Health Act 2009 (Commencement No. 3) Order 2010
- S.I. 2010/1087** Police Act 1997 (Criminal Records and Registration) (Jersey) Regulations 2010
- S.I. 2010/1093** Education and Skills Act 2008 (Commencement No. 6) Order 2010
- S.I. 2010/1101** Safeguarding Vulnerable Groups Act 2006 (Commencement No. 6, Transitional Provisions and Savings (Amendment)) and (Commencement No. 7) Order 2010
- S.I. 2010/1118** Legal Services Act 2007 (Commencement No. 7) Order 2010
- S.I. 2010/1151** Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No. 3 and Transitional and Transitory Provisions) and (Commencement No. 2 (Amendment)) Order 2010

- S.I. 2010/1174** Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2010
- S.I. 2010/1182** Medical Profession (Miscellaneous Amendments) Order 2008 (Commencement No. 3) Order of Council 2010
- S.I. 2010/1183** Criminal Justice Act 2003 (Commencement No. 24 and Transitional Provisions) Order 2010
- S.I. 2010/1702** Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No. 3 (Amendment)) Order 2010

Appendix 1

S.I. 2010/532: memorandum from the Office for National Statistics

<i>Census (England) Regulations 2010 (S.I. 2010/532)</i>
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1. This Memorandum has been prepared by the Office for National Statistics (ONS) and contains information for the Joint Committee on Statutory Instruments.
2. By letter dated 24 March 2010, the Committee requested ONS to submit a memorandum on the following point in relation to the above Regulations -

Given that, unlike the regulations on the Census in 2000 (S.I. 200/1473 and 3351, forms in which included – for England – an empty question where the similarly numbered question for Wales related to familiarity with the Welsh language), these Regulations apply to England only, why does each form relating to an individual in Schedules 3 and 4 still retain a question (17) deliberately left blank?

3. As with the previous Regulations referred to by the Committee, the 2011 Census, undertaken by ONS, covers England and Wales. However, since 2006, the power under section 3 of the Census Act 1920, to make Regulations in Wales is now exercisable by the Welsh Ministers and Regulations for the Census in Wales are being prepared by the Welsh Assembly Government, to be laid before the National Assembly for Wales. These Regulations for Wales will set out the questionnaires to be used in Wales, which will differ slightly from those to be used in England as once again there will be a question included in Wales only on the Welsh language.
4. Therefore, although Schedules 3 and 4 to the Census (England) Regulations 2010, only set out the questionnaires to be used in England, it should be noted that in questionnaires to be used in Wales, question 17 asks about Welsh language ability, in the same way as has been the case in previous censuses. Because questionnaires from England and Wales will be scanned and the data coded and captured together, the layout of the England and the Wales questionnaires has to be the same format and this is why question 17 on the questionnaires to be used in England remains blank.

Office for National Statistics
29 March 2010

Appendix 2

S.I. 2010/575: memorandum from the Department for Transport

Policing of Aerodromes (Belfast International Airport) Order 2010 (S.I. 2010/575)

By a letter dated 24th March 2010 the Committee has asked for a memorandum on the following point:

How is reliance on section 13 of the Interpretation Act 1978 reconciled with the paragraphs in the judgments of Evershed M.R. and Morris L.J in Usher v Barlow ([1952] Ch. 255) in which they appeared to have concerns about the availability of the predecessor of section 13 for cases where a statutory instrument merely made an exception to a general rule that would otherwise apply?

The Explanatory Memorandum in relation to the Policing of Aerodromes (Belfast International Airport) Order 2010 (“the Belfast Order”) did not refer to Usher v Barlow (“Usher”), but the Department did consider the case. The following paragraphs set out why the Department considers the use of section 13 of the Interpretation Act 1978 (“the 1978 Act”) in the present case can be distinguished from the concerns expressed by Evershed M.R. and Morris L.J in Usher in relation to section 37 of the Interpretation Act 1889 (“the 1889 Act”), the predecessor of section 13.

First, the present case seems to fall closer to those cases with which Evershed MR and Morris LJ were content than those with which they expressed concern. Evershed M.R. expressed difficulty in treating as valid under section 37 of the 1889 Act a rule made under section 1(4) of the Registered Designs Act 1949 (“the 1949 Act”) solely relating to an exclusion under that subsection. However, he went on to hold the rule in question valid. He did so because the rule was part of a larger body of rules which in his view were clearly justifiable as “expedient”, if not “necessary”, to enable the 1949 Act to work effectively. He did not think it would be right to “*pick out one rule*” from a large body of rules because it might fail to satisfy the requirements of section 37 of the 1889 Act. He was satisfied that “*in its context as part of a general body of rules providing the machinery for the effective operation of the new Act, this rule can be fairly said to satisfy the conditions of validity.*”

The Department considers his reasons for finding that the rule under examination in Usher was valid can be read across to the instant case. It would not be right to treat the exemption of Belfast International Airport (“BIA”) as invalid when, as explained below, the making of that exemption is expedient for the purpose of enabling a whole body of requirements concerning aerodrome policing to operate effectively.

Secondly, the Department believes that Usher can be distinguished on its facts. In Usher, the effect of rule 26 of the Designs Rules 1949 (“the 1949 Rules”) was that wall plaques could not, as a matter of law, be registered under the 1949 Act. Under earlier legislation (the Patents and Designs Acts, 1907-1919) wall plaques were capable of being registered (albeit that it appears that the Comptroller of the Patents Office would not register such plaques). The 1949 Act did not change the legal position in this regard. Rule 26 of the 1949 Rules, however, did change the legal position as compared to the position under the Patents and Designs Acts, 1907-1919. When the rule was looked at in isolation, it may not have appeared necessary or expedient to enable the new Act to operate effectively. Without rule 26, the law would have remained, in so far as is relevant, the same. If rule 26 had not been included in the 1949 Rules, its absence might reasonably be thought not to have created a vacuum, caused confusion as to which law is applicable or given rise to unwanted legal effects.

By contrast, the purpose of excluding BIA from the category of “relevant aerodromes” by means of the Belfast Order is to maintain the *status quo* with regard to the policing of that airport, in other words to ensure that it can continue to be policed by a private constabulary under the provisions of Article 19 of the Airports (Northern Ireland) Order 1994. BIA did not fall within the policing of aerodromes scheme in the pre-amendment Aviation Security Act 1982 (“the 1982 Act”), because it was not a “designated aerodrome”. Nor was it intended in policy terms that BIA should be brought within the amended scheme under the changes made by the Policing and Crime Act 2009 (“the 2009 Act”).

Indeed, a failure to remove BIA from the category of “relevant aerodromes” in the amended 1982 Act would give rise to both unwanted legal effects and a potential risk to the policing and security of the airport. BIA would face the requirement to enter into a police services agreement with the Police Service of Northern Ireland when – uniquely in the UK - it already has a dedicated local constabulary, and under section 26 of the amended 1982 Act this local constabulary would be deprived of its existing powers. Such consequences would be contrary to policy and to the effective operation of the 2009 Act.

The facts of the present case may be compared with another case on section 37, R v Minister of Town and Country Planning (Ex p. Montagu Burton Ltd and Ors) ([1951] 1 KB 1). The judgments of Tucker LJ and Asquith LJ were cited with approval by Jenkins LJ in Usher. In that case the court upheld the validity of a provision that allowed applications made under the Town and Country Planning Act 1944 to be continued under the Town and Country Planning Act 1947. Tucker LJ held that section 37 applied “so that the necessary machinery will function as soon as the new Act comes into operation and things shall not come to a standstill by reason of the repeal of the existing Act”.

In summary, the Department considers this situation different from that considered by Evershed M.R. and Morris L.J in Usher for the reasons stated, and that the use of section 13 of the 1978 Act is appropriate in the instant case.

Department for Transport
30th March 2010

ANNEX

EXTRACTS FROM COURT OF APPEAL JUDGMENTS IN USHER V BARLOW ([1952] Ch 255)

EVERSHED MR: My difficulty in the present case has been caused by the fact that the rule-making power in s 1(4) of the Registered Designs Act, 1949, clearly contemplates that from time to time, as the Board of Trade may think proper, provision may be made, while the Act is in operation, for excluding from registration certain types of design, and I have not found it easy to persuade myself that in order to enable the Act effectively to operate, it was requisite to exclude from registration a type of design which for many years had apparently been within the ambit of the previous legislation, but which the registrar had in practice not accepted for registration. I should, therefore, for myself have felt difficulty in treating as valid a rule made by virtue of s 1(4), and solely relating to an exclusion under that sub-section. If such a rule were validated by the language of s 37 of the Interpretation Act, 1889, it would appear to me difficult to give any sensible effect to the words "for the purpose of bringing the Act into operation". In the present case, however, the rule in question is part of a larger body of rules made under the general powers of s 36 of the Registered Designs Act, 1949, and clearly justifiable as "expedient", if not "necessary", so as to give the new Act a working machinery when it came into operation. That being so, I do not think it would be right to pick out one rule because, taken in isolation, that rule might be said to fail to satisfy the requirements of s 37 of the Interpretation Act, 1889. I have been satisfied on the whole that in its context, as part of a general body of rules providing the machinery for the effective operation of the new Act, this rule can fairly be said to satisfy the conditions of validity.

JENKINS LJ: It seems to me that s 37, on its true construction in accordance with the natural meaning of the language used, is apt to authorise the making of rules such as those here concerned between the passing and the coming into operation of the relevant Act. ...The section extends to a comprehensive enumeration of matters: "Orders in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws." Clearly many of these matters are matters requiring to be dealt with under the Act when in operation, in order that it may operate effectively, rather than matters without which the Act cannot come into operation at all. Further, the vital words of the section are

"so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof."

If the section had been confined to matters without which the Act could not come into operation at all, the words “or expedient” would, so far as I can see, have been not only otiose, but wholly inappropriate. A matter without which an Act cannot come into operation at all is necessary for the purpose of bringing it into operation, and cannot be anything less than that. A matter which is merely expedient for the purpose of bringing an Act into operation is by definition not necessary for that purpose. It is a matter without which the Act can come into operation, but with which the Act will come into operation more conveniently or effectively.

The view which I have formed is, I think, reinforced by the application to s 37 of the definition of “commencement” contained in s 36(1). So applied it makes s 37 read:

“... necessary or expedient for the purpose of bringing the Act into operation at the date or the time at which the Act comes into operation,”

which must, I think, mean “at the date fixed or prescribed as the time at which the Act comes into operation”. In relation to Acts which themselves fix the date on which they are to come into operation (such as the Registered Designs Act, 1949) as distinct from Acts in which such date is left to be fixed by some rule-making authority, this becomes a wholly idle provision if the section is regarded as limited to that which is necessary (in the strict sense) to being about the coming into operation of the Act, meaning thereby simply the bringing of the Act as such into force. In cases like the present, nothing could be said to be “necessary” or even “expedient” for that limited purpose beyond passively awaiting the arrival of the date fixed by the Act itself. The truth is, I think, that “operation” is used in the section in two different senses, namely, the sense in which it appears in the definition of “commencement” and in the sense of “effective operation,” and I think that in the phrase “bringing into operation” it is used in the latter sense. On this view s 37 should be construed as extending to whatever is necessary or expedient for the purpose of bringing the Act into effective operation at the date fixed or prescribed as the time at which the Act comes into operation.

It would obviously be in the highest degree inconvenient in the present case if the making of rules under s 1(4) of the Act of 1949, prescribing the designs to be excluded from registration under the Act, had to await the coming into operation of the Act, as this would inevitably involve a period of confusion and uncertainty, even to the point of bringing the machinery of registration to a standstill. I should add that I am satisfied that the rules must be assumed to have been made after the passing of the Registered Designs Act, 1949, which, as will have been observed, took place on the same day, that is, 16 December 1949. Accordingly, in the view I take the doubt raised as to the validity of the rules is ill-founded.

Appendix 3

S.I. 2010/639: memorandum from the Department for Environment, Food and Rural Affairs

<p><i>Water Resources (Control Of Pollution) (Silage, Slurry And Agricultural Fuel Oil) (England) Regulations 2010 (S.I. 2010/639)</i></p>
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1. The Committee requested a memorandum on the following points –
 - (1) Given the definition of “silage”, why is the phrase “or a crop being made into silage” included in the definition of “silage effluent” in regulation 2(1)?
 - (2) In regulation 3, why is paragraph 1(b) expressed to be subject to paragraph (4), given that the latter does not qualify the former?
 - (3) Regulation 10(1) makes contravention of regulation 7(1) an offence. Explain how it is possible to contravene that provision directly, and why no sanction appears to be specified in the event of a failure to comply with a notice under it.

2. The Department acknowledges that the questions raised by the Committee identify errors in the instrument. The second and third errors affect the application of the offence provisions, and therefore the Department has made a further instrument to correct all the errors, which will come into force on 6 April 2010, the same date as S.I. 2010/639. Whilst the further instrument will break the 21 day rule, the Department considers that the need to have effective offence provisions so that farmers can clearly understand their obligations justifies this approach.

30 March 2010

Department for Environment, Food and Rural Affairs