

HOUSE OF LORDS

Merits of Statutory Instruments Committee

23rd Report of Session 2007-08

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The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Baroness Kingsmill CBE
The Lord Crisp KCB	The Lord Lucas
The Baroness Deech DBE	The Baroness Maddock
The Viscount Eccles CBE	The Lord Rosser
The Lord Filkin CBE (<i>Chairman</i>)	The Baroness Thomas of Winchester
The Lord James of Blackheath CBE	

Registered interests

Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Publications

The Committee's Reports are published by the Stationery Office by Order of the House. All of the Committee's publications are also at:
www.parliament.uk/parliamentary_committees/merits.cfm

Contacts

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; facsimile 020-7219 2571; email merits@parliament.uk. The Committee's website, www.parliament.uk, has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

Twenty-third Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

None.

INSTRUMENTS OF INTEREST

Draft European Parliament (Number of MEPs and Distribution between Electoral Regions) (United Kingdom and Gibraltar) Order 2008

1. This Order implements a number of consequential amendments following the Luxembourg Treaty of 2005, which provided for the accession of Bulgaria and Romania to the European Union. The Order reduces the United Kingdom's total allocation of MEP seats from 78 to 72 and amends section 1(3) of the European Parliamentary Elections Act 2002 which specifies how the seats allocated to the UK are distributed across the electoral regions. These amendments will apply to the European elections due to be held in 2009.

Draft Parliamentary Constituencies and Assembly Electoral Regions (Wales) (Amendment) Order 2008

2. The Order gives effect, without modification, to the report of the Boundary Commission for Wales dated 31 January 2008 (HC 588) which recommended that there be an alteration in the boundary between Neath County Constituency and Brecon and Radnorshire County Constituency; and a corresponding alteration in the boundary between the South West Wales Assembly electoral region and the Mid and West Wales Assembly electoral region. The changes will come into effect at the next general election.

Draft Immigration (Biometric Registration) Regulations 2008

Draft Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008

3. These instruments are made under the biometric registration provisions of the UK Borders Act 2007 to enable the Secretary of State to issue identity cards for foreign nationals subject to immigration control. Rollout of the card to all foreign nationals is being undertaken on an incremental basis. These first Regulations impose the requirement to apply for the card only on those who apply for leave to remain in specified marriage, partner and student categories under the Immigration Rules, and on dependants applying at the same time as the principal applicant. These groups were selected on the basis of evidence that these categories are susceptible to abuse by those who seek to breach the UK's immigration laws. Where an application for leave to remain is successful, the applicant will be issued with an identity card

embedded with a chip that contains an electronic record of the person's photograph and fingerprints, and other biographical information.

4. Where a person fails to comply with a requirement made under these Regulations, the Secretary of State may impose a sanction which may include a refusal to issue the biometric immigration document, disregarding or refusing the person's application for leave to remain, curtailment of existing leave and the imposition of a civil penalty notice. These sanctions are set out in the Civil Penalty Code of Practice which will be brought into effect by the Order.
5. The Committee notes that this extension of the scheme follows very rapidly on the pilot scheme in Croydon that was set up by the Immigration (Biometric Registration) (Pilot) Regulations 2008 (SI 2008/1183) and which only came into effect on 26 April. The House may wish to enquire why the scheme is being extended nationally before a formal evaluation has been published on lessons learned from the pilot.

Draft Mental Capacity Act 2005 Code of Practice supplement on the Deprivation of Liberty Safeguards

6. The series of instruments to implement the changes made to the Mental Capacity Act 2005 by the Mental Health Act 2007 continues with this supplement to the Code of Practice mentioned in our 20th Report. It provides, in a well-presented format, information and guidance on how the deprivation of liberty safeguards will work in practice. The Code forms a key part of the Government's response to the European Court of Human Rights Judgment in the *Bournewood* case¹ which found a need to improve the safeguards for those individuals who lack the capacity to consent to the arrangements made for their care or treatment to ensure that they are not arbitrarily detained. Although it is the intention that the relevant person as well as his or her representatives will be kept informed at all stages of the process, the Code does not always make this explicit and the Department have undertaken to address this in subsequent guidance. The new deprivation of liberty safeguards are due to come into effect in April 2009.

Whole of Government Accounts (Designation of Bodies) Order 2008 (SI 2008/1440)

7. HM Treasury have laid this Order, which identifies the bodies to be included in the consolidated Whole of Government Accounts (WGA) for the year ending 31 March 2008. The Government Resources and Accounts Act 2000 requires HM Treasury to prepare a WGA which can include any body which either exercises functions of a public nature or which is entirely or substantially funded from public money. WGA will therefore include all bodies within central government, local government, public broadcast authority, public corporation and health sectors during the period covered by the accounts. The Committee noted that the Schedule to the Order does not include Northern Rock plc. We have been advised by HM Treasury that, while no formal decision has yet been taken in the matter, any decision to include the company's accounts in the WGA for the financial year 2009-10, the year for which WGA will be published for the first time, will be

¹ (2004) 40 ECHR 761

dependent on whether the company is still in public ownership and will be made nearer the time.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft Instruments requiring affirmative approval

European Parliament (Number of MEPs and Distribution between Electoral Regions) (United Kingdom and Gibraltar) Order 2008

Immigration (Biometric Registration) Regulations 2008

Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008

London Waste and Recycling Board Order 2008

Parliamentary Constituencies and Assembly Electoral Regions (Wales) (Amendment) Order 2008

Representation of the People (Amendment) Regulations 2008

Instruments subject to annulment

SI 2008/1420 Television Multiplex Services (Reservation of Digital Capacity) Order 2008

SI 2008/1421 Multiplex Licence (Broadcasting of Programmes in Gaelic) Order 2008

SI 2008/1435 Motor Vehicles (Driving Licences) (Amendment) (No. 4) Regulations 2008

SI 2008/1437 Local Authorities Targets (Well-Being of Young Children) (Amendment) Regulations 2008

SI 2008/1440 Whole of Government Accounts (Designation of Bodies) Order 2008

SI 2008/1443 Motor Vehicles (Approval) (Fees) (Amendment) Regulations 2008

SI 2008/1444 Road Vehicles (Registration and Licensing) (Amendment) (No. 2) Regulations 2008

SI 2008/1458 Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) (Amendment) Regulations 2008

SI 2008/1459 Public Service Vehicles Accessibility (Amendment) Regulations 2008

SI 2008/1460 Goods Vehicles (Plating and Testing) (Amendment) Regulations 2008

- SI 2008/1461 Motor Vehicles (Tests) (Amendment) (No. 2) Regulations 2008
- SI 2008/1462 Motor Cycles Etc. (Single Vehicle Approval) (Fees) (Amendment) Regulations 2008
- SI 2008/1465 Community Bus (Amendment) Regulations 2008
- SI 2008/1467 Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements of Applicants) (Amendment) Regulations 2008
- SI 2008/1468 Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008
- SI 2008/1469 Financial Services and Markets Act 2000 (Amendment of Section 323) Regulations 2008
- SI 2008/1470 Public Service Vehicles (Registration of Local Services) (Amendment) (England and Wales) Regulations 2008
- SI 2008/1472 Dee Estuary Cockle Fishery Order 2008
- SI 2008/1473 Public Service Vehicles (Operators' Licences) (Fees) (Amendment) Regulations 2008
- SI 2008/1474 Goods Vehicles (Licensing of Operators) (Fees) (Amendment) Regulations 2008
- SI 2008/1497 Protection of Children and Vulnerable Adults and Care Standards Tribunal (Children's and Adults' Barred Lists) (Transitional Provisions) Regulations 2008
- SI 2008/1513 Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2008
- SI 2008/1518 Civil Enforcement of Parking Contraventions (The Borough Council of Dudley) Designation Order 2008
- SI 2008/1576 Goods Vehicles (Authorisation of International Journeys) (Fees) (Amendment) Regulations 2008
- SI 2008/1577 Road Transport (International Passenger Services) (Amendment) Regulations 2008
- SI 2008/1578 International Carriage of Dangerous Goods by Road (Fees) (Amendment) Regulations 2008
- SI 2008/1580 International Transport of Goods under Cover of TIR Carnets (Fees) (Amendment) Regulations 2008
- SI 2008/1581 Passenger and Goods Vehicles (Recording Equipment) (Approval of Fitters and Workshops) (Fees) (Amendment) Regulations 2008
- Draft Deprivation of Liberty Safeguards Supplement to the Mental Capacity Act 2005 Code of Practice
- Draft Social and Environment Guidance to the Water Services Regulation Authority

Instruments subject to annulment (Northern Ireland)

- SR 2008/242 Police Powers for Designated Staff (Complaints and Misconduct) (Northern Ireland) Regulations 2008
- SR 2008/243 Police Powers for Designated Staff (Code of Ethics) (Northern Ireland) Order 2008