

# HOUSE OF LORDS

## Merits of Statutory Instruments Committee

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27th Report of Session 2007-08

Drawing special attention to:  
**Education (National Curriculum)  
(Attainment Targets and Programmes of  
Study in Art and Design in respect of the  
Third Key Stage) (England) Order 2008  
and 11 related instruments**

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Ordered to be printed 22 July and published 23 July 2008

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*London* : The Stationery Office Limited  
£price

HL Paper 164

### *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](http://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](http://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](mailto:merits@parliament.uk). The Committee's website, [www.parliament.uk](http://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-seventh Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the ground specified.

**Education (National Curriculum) (Attainment Targets and Programmes of Study in Art and Design in respect of the Third Key Stage) (England) Order 2008 (SI 2008/1752)**

**Education (National Curriculum) (Attainment Targets and Programmes of Study in Citizenship in respect of the Third and Fourth Key Stages) (England) Order 2008 (SI 2008/1753)**

**Education (National Curriculum) (Attainment Targets and Programme of Study in Design and Technology in respect of the Third Key Stage) (England) Order 2008 (SI 2008/1754)**

**Education (National Curriculum) (Attainment Targets and Programmes of Study in English in respect of the Third and Fourth Key Stages) (England) Order 2008 (SI 2008/1755)**

**Education (National Curriculum) (Attainment Targets and Programme of Study in Geography in respect of the Third Key Stage) (England) Order 2008 (SI 2008/1756)**

**Education (National Curriculum) (Attainment Targets and Programme of Study in History in respect of the Third Key Stage) (England) Order 2008 (SI 2008/1757)**

**Education (National Curriculum) (Attainment Targets and Programmes of Study in Study in Information and Communication Technology in respect of the Third and Fourth Key Stages) (England) Order 2008 (SI 2008/1758)**

**Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics in respect of the Third and Fourth Key Stages) (England) Order 2008 (SI 2008/1759)**

**Education (National Curriculum) (Attainment Targets and Programme of Study in Modern Foreign Languages in respect of the Third Key Stage) (England) Order 2008 (SI 2008/1760)**

**Education (National Curriculum) (Attainment Targets and Programme of Study in Music in respect of the Third Key Stage) (England) Order 2008 (SI 2008/1761)**

**Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education in respect of the Third and Fourth Key Stages) (England) Order 2008 (SI 2008/1762)**

**Education (National Curriculum) (Attainment Targets and Programme of Study in Science in respect of the Third Key Stage) (England) Order 2008 (SI 2008/1763)**

*Summary: These Orders bring into effect a revised set of programmes of study and Attainment Targets for each National Curriculum subject at key stage 3 and, where applicable, key stage 4. These changes will be implemented alongside other reforms which schools are taking forward, notably changes to A-Levels, piloting functional skills, and the introduction of diplomas. This is clearly a challenging agenda for schools.*

**These Orders are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. The Department for Children, Schools and Families (DCSF) have laid these 12 Orders under sections 87(3)(a) and (b) and (5) and 210(7) of the Education Act 2002. An Explanatory Memorandum (EM) and Impact Assessment (IA) common to all 12 Orders have been provided.
2. The Orders bring into effect a revised set of programmes of study and Attainment Targets for each subject of the National Curriculum in England at key stage 3 and, where applicable, key stage 4. These are the “core” subjects of English, mathematics and science; and the “foundation” subjects of design and technology, Information and Communication Technology, history, geography, modern foreign languages, art and design, music, physical education and citizenship.
3. DCSF have said that, in March 2005, the Qualifications and Curriculum Authority (QCA) was asked to undertake a review of the key stage 3 curriculum “to give schools the flexibility to meet students’ individual needs and strengths more effectively”. The revisions now being made follow the completion of that review: “there is now less prescribed content in the programmes of study for each curriculum subject. A sharpened approach to subject study has been introduced, with the emphasis on teaching the essential concepts and skills underpinning curriculum subjects, rather than coverage of detailed lists of content.”
4. QCA ran a national consultation on draft programmes of study for all subjects in the new secondary curriculum from February to April 2007, principally by means of an online survey. DCSF have explained that, in the first four weeks of the consultation, approximately 2,000 people participated by posting their comments online. In addition, in-depth interviews were held with subject specialists and school / curriculum managers; regional events for parents and local authorities were organised; and QCA wrote to schools, local education authorities, governing body organisations, organisations representing school teachers and others to give them notice of the consultation.
5. DCSF have said that consultation revealed widespread support for the principle of greater curriculum flexibility; and that head teachers and subject leaders were particularly supportive of the changes. Given that the Orders relate to attainment targets, and that in the Impact Assessment the Department point to the need to enhance pupil performance in tests and examinations as an important element in the case for reviewing the National Curriculum, we would have found it helpful if the EM had set out more extensively the way in which the changes made by the Orders are expected to

enhance performance. In particular, we would have welcomed more information about consultees' views on the link between greater curriculum flexibility and better performance against attainment targets. This is an issue which the House may look to the Government to explain more fully.

6. The Department acknowledge that the main issue raised during consultation was whether, given the scale of other reforms scheduled to impact on schools from 2008, implementation might be delayed until 2009, but say that Ministers agreed that implementation of the revised secondary curriculum should continue as planned from September 2008.
7. In the EM, DCSF give details of the programme of related training and support for the school workforce which began in September 2007 and will continue until at least June 2009. In this regard, the IA contains the calculation that the total cost of staff time to plan and prepare for the new curriculum will be in the order of £36,794,000, based on the assumption that a school will require 50 days for curriculum planners and 3 days for head teachers in extra planning time. DCSF stress that this is not a direct cash cost to Government, but that there is an opportunity cost of using teacher's time for curriculum planning rather than undertaking other activities (such as teaching).
8. We believe that the House will be interested to see that the Department have now laid these Orders to give effect to a wide-ranging overhaul of the programmes of study for the National Curriculum subjects. It seems clear that the Department, and the Qualifications and Curriculum Authority, have made considerable efforts to involve interested parties in the work of revision which was initiated more than three years ago, in March 2005.
9. We note that the consultation process highlighted concern about implementing these changes in September 2008, alongside other reforms which schools are taking forward at the same time. The Department have explained that those other reforms include the following:
  - changes to A-Levels, which DCSF say will "reduce the assessment burden and introduce greater stretch and challenge for our brightest students". These changes were announced in the 14-19 White Paper in 2004; the awarding bodies have been providing training on the new examinations since 2007;
  - piloting functional skills in English, mathematics and ICT. DCSF have told us that a pilot began in September 2007 with 12 awarding bodies and about 1,000 centres (including schools, colleges, adult community training, work-based learning and the justice system) volunteering to participate in the pilot; and that the pilot will double in size from September 2008 to include a broader range of centres and learners; and
  - the introduction of Diplomas, which DCSF have described as a new set of qualifications for learners at Key Stage 4 (and across the 14-19 phase), to mix theoretical and applied learning. From September 2008, five Diplomas will be offered in 100 local authority areas (covering Construction and the Built Environment; Information Technology; Society, Health and Development; Engineering; and Creative and Media).

10. This is clearly a challenging agenda for schools. We are sure that there is a wide consensus, in schools themselves, in local authorities and in Government, on the need to adapt and improve the education offered to students, and the reforms are all directed to this end. The changes made by the Orders to programmes of study for National Curriculum subjects fit in with this aim, and schools will no doubt make the necessary efforts to implement them in parallel with the other reforms.
11. As a Committee, we are concerned with the policy delivered through secondary legislation. We have previously expressed concern about the cumulative effect of a number of statutory instruments made in short order on the sector which they seek to regulate, for the volume might prevent the policy objectives from being achieved effectively. The laying of these Orders, as well as of other recent instruments applicable to schools, seems to illustrate our concern. In the autumn, we intend to pursue by conducting an inquiry into the cumulative impact of statutory instruments, using schools as a case study.

#### **OTHER INSTRUMENTS OF INTEREST**

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##### ***Draft Freedom of Information (Parliament and National Assembly for Wales) Order 2008***

12. Following the large number of recent requests made under the Freedom of Information Act 2000, MPs have raised concerns about the security implications for themselves and their families of releasing certain information. This Order would allow either House to refuse to disclose the residential addresses of all serving members, details of who makes deliveries to them and the nature of their security systems (if any). The Order would also set a minimum limit on the publication of members' travel plans, past or future, to the aggregated expenditure for a month. This Order would not preclude someone seeking information on other aspects of a member's expenditure. The Order was laid on 15 July and is due to be debated on 22 July in this House: we regret that this has circumvented the normal scrutiny procedures.

##### ***Education (Independent School Inspection Fees and Publication) (England) Regulations 2008 (SI 2008/1801)***

##### ***Childcare (Fees) Regulations 2008 (SI 2008/1804)***

13. The Department for Children, Schools and Families (DCSF) have laid these two sets of Regulations. SI 2008/1801 sets the fees payable for inspections of independent schools carried out by OFSTED. SI 2008/1804 sets out the fees payable by childcare providers to OFSTED: application fees for joining the early years register (EYR) and the general childcare register (GCR), and annual fees payable by registered providers. DCSF have said that the proposed fee increases are above the level of inflation, and are needed to address a large shortfall between current fees and OFSTED's costs of regulation and inspection. Under SI 2008/1801, while a new reduced tariff inspection fee is being introduced for schools which perform well, the fees for full inspections are being increased by 100% for schools with up to 45 pupils, and by 54% for schools with up to 151 pupils. There are no plans for further

increases. Under SI 2008/1804, the annual fees for the EYR are being raised by 25% for childminders and 16% for day care providers in 2008, with further increases proposed in 2009 and 2010 (albeit that, in the light of consultation, the increases planned for 2010 are below DCSF's original proposals). We note that, in tackling the same problem of a shortfall of fee income, DCSF have proposed significantly different levels of increases for different sectors regulated by OFSTED.

***Trade in Goods (Categories of Controlled Goods) Order 2008 (SI 2008/1805)***

14. The Department for Business, Enterprise and Regulatory Reform (DBERR) have laid this Order. The main change which it makes is the introduction of a three-tiered structure to trade controls, in response to recent concerns relating to specific goods and activities. As a result of this change, fully extra-territorial controls (i.e., controls applying to UK persons anywhere in the world) of certain trading activities will now apply to small arms and man-portable air defence systems (MANPADs), and cluster munitions will be subject to the strictest controls. We note that, in their First Joint Report of Session 2007-08,<sup>1</sup> the Commons Committees on Arms Export Controls have welcomed the extension of extra-territorial controls which is given effect in this Order.

**INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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**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**

Freedom of Information (Parliament and National Assembly for Wales) Order 2008

Mental Health Act 2007 (Consequential Amendments) Order 2008

Remand on Bail (Disapplication of Credit Period) Rules 2008

**Instruments subject to annulment**

SI 2008/1722 Childcare (Provision of Information About Young Children) (England) Regulations 2008

SI 2008/1723 Education (School Inspection etc.) (England) (Amendment) Regulations 2008

SI 2008/1724 Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008

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<sup>1</sup> Scrutiny of Arms Export Control (2008) (HC 254).

- SI 2008/1725 Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2008
- SI 2008/1727 Education (School Performance Information) (England) (Amendment) (No. 2) Regulations 2008
- SI 2008/1729 Childcare (Inspections) Regulations 2008
- SI 2008/1733 South Staffordshire College (Incorporation) Order 2008
- SI 2008/1734 South Staffordshire College (Government) Regulations 2008
- SI 2008/1735 Statutory Sick Pay (General) (Amendment) Regulations 2008
- SI 2008/1740 Childcare (Disqualification) (Amendment) Regulations 2008
- SI 2008/1744 Qualifications and Curriculum Authority (Additional Functions) Order 2008
- SI 2008/1747 Education (Pupil Information) (England) (Amendment) Regulations 2008
- SI 2008/1766 Education (National Curriculum) (Modern Foreign Languages) (England) Order 2008
- SI 2008/1768 Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2008
- SI 2008/1771 East Devon College, Tiverton (Dissolution) Order 2008
- SI 2008/1772 Dewsbury College (Dissolution) Order 2008
- SI 2008/1773 Rochdale Sixth Form College (Incorporation) Order 2008
- SI 2008/1778 Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2008
- SI 2008/1782 Air Navigation (Amendment) Order 2008
- SI 2008/1790 Rochdale Sixth Form College (Government) Regulations 2008
- SI 2008/1797 Trade Marks Rules 2008
- SI 2008/1799 Legal Services Act 2007 (Transitory Provision) Order 2008
- SI 2008/1800 Education (Nutritional Standards and Requirements for School Food) (England) (Amendment) Regulations 2008
- SI 2008/1801 Education (Independent School Inspection Fees and Publication) (England) Regulations 2008
- SI 2008/1802 Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment) Regulations 2008
- SI 2008/1803 Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2008
- SI 2008/1804 Childcare (Fees) Regulations 2008
- SI 2008/1805 Trade in Goods (Categories of Controlled Goods) Order 2008
- SI 2008/1807 Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008

- SI 2008/1808 Special Restrictions on Adoptions from Abroad (Cambodia) Order 2008
- SI 2008/1809 Special Restrictions on Adoptions from Abroad (Guatemala) Order 2008
- SI 2008/1810 Pension Protection Fund (Entry Rules) Amendment Regulations 2008
- SI 2008/1813 Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) (No. 2) Order 2008
- SI 2008/1819 Immigration (Notices) (Amendment) (No. 2) Regulations 2008
- SI 2008/1820 Competition Act 1998 (Public Policy Exclusion) Order 2008
- SI 2008/1824 Veterinary Surgeons' Qualifications (European Recognition) Regulations 2008
- SI 2008/1849 Army Terms of Service (Amendment etc.) Regulations 2008
- SI 2008/1863 Serious Crime Act 2007 (Appeals under Section 24) Order 2008
- HC 951 Statement of Changes in Immigration Rules
- HC 971 Statement of Changes in Immigration Rules