

HOUSE OF LORDS

Merits of Statutory Instruments Committee

3rd Report of Session 2009-10

Ordered to be printed 8 December and published 10 December 2009

London : The Stationery Office Limited
£price

HL Paper 14

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 Morris of Yardley
The Baroness Deech DBE	The Lord Norton of Louth
The Lord Hart of Chilton	The Lord Rosser (<i>Chairman</i>)
The Lord James of Blackheath CBE	The Lord Scott of Foscote
The Lord Lucas	The Baroness Thomas of Winchester
The Lord Methuen	

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.

Declared interests for this Report are in Appendix 2.

Publications

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet 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; fax 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.

Statutory instruments

The Government's Office of Public Sector Information publishes statutory instruments on the internet at www.opsi.gov.uk/stat.htm, together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

Third Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

None.

INSTRUMENTS OF INTEREST

Draft Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2009

1. In response to public concern over the current difference in the ‘starting point’ sentence of 30 years for murder using a firearm and 15 years for murder using a knife, on 16 June 2009 the Justice Secretary announced a review of Schedule 21 to the Criminal Justice Act 2003. Schedule 21 governs how courts assess the seriousness of cases of murder setting out the starting points that the court should normally adopt for different types of cases when determining the minimum sentence. Following that review, this Order proposes a new starting point of 25 years for adults aged over 18 who murder using a knife or other weapon that they took to the scene with the intention of either (a) committing an offence or (b) having it available to use as a weapon. It should be noted that an intended offence need not be a violent offence; and also that the deliberate taking of the weapon to the scene is a key factor – the new starting point sentence would not apply to someone who killed using a weapon found at the scene. The starting point for sentences for those aged under 18 committing murder remains unchanged at 12 years.

Draft Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2009

2. The business rates bills for next year (before other reliefs such as empty property relief) will depend upon three key factors:
 - new rateable values assessed independently by the Valuation Office,
 - the new multiplier set by the Government (40.7p), and
 - the transitional arrangements scheme.

The Chargeable Amounts regulations and related impact assessment are concerned only with the last of these factors and act as a cap to phase in gradually increases and decreases in business rates. The Committee found the original Explanatory Memorandum assumed too great a knowledge of the system and sought from the Department clearer background information on what these Regulations achieve. The information is published at Appendix 1 to this report (see in particular paragraphs vi & vii).

Prison and Young Offender Institution (Amendment) Rules 2009 (SI 2009/3081)

3. This instrument makes a number of changes to the way prisons are managed. In particular it removes references to the prison needing to appoint a medical officer and restates the April 2006 requirement for all public sector prisons to ensure that prisoners have the same access to medical treatment as those in the community by commissioning health services from NHS Primary Care Trusts. Following a decision of the European Court of Human Rights¹ the rule adds provision for confidential medical communications between a prisoner or inmate and a registered medical practitioner who previously treated them for a life threatening condition. This instrument also includes what has been regarded as good practice specifically into the Prison Rules by providing that communications between an inmate and his legal adviser or a confidential access organisation cannot be intercepted without reasonable cause to believe that the communication is being made with the intention of furthering a criminal purpose. Other amendments also clarify Rules 38 and 39 of the Prison Rules (Rules 16 and 17 of the Young Offender Institution Rules) to make plain that a legal adviser may transmit legally privileged material on a visit and without it being viewed by staff. The instrument also reduces the period that an inmate's unclaimed property will be stored from 3 years to 1 year after the person has left the prison or institution.

INSTRUMENTS NOT REPORTED

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

- Draft Community Radio (Amendment) Order 2010
- Draft Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2009
- Draft Local Government (Wales) Measure 2009 (Consequential Modifications) Order 2009
- Draft Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2009

Instruments subject to annulment

- SI 2009/3051 Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2009
- SI 2009/3062 Medicines (Exemptions and Miscellaneous Amendments) Order 2009
- SI 2009/3063 Medicines for Human Use (Miscellaneous Amendments) (No. 2) Regulations 2009
- SI 2009/3064 Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009
- SI 2009/3071 Medicines (Pharmacies) (Applications for Registration and Fees) Amendment No. 2 Regulations 2009
- SI 2009/3075 Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009
- SI 2009/3081 Provision of Services (Insolvency Practitioners) Regulations 2009
- SI 2009/3082 Prison and Young Offender Institution (Amendment) Rules 2009
- SI 2009/3100 Utilities Contracts (Amendment) Regulations 2009

**APPENDIX 1: DRAFT NON-DOMESTIC RATING (CHARGEABLE AMOUNTS)
(ENGLAND) REGULATIONS 2009: GOVERNMENT RESPONSE**

**Further information from the Department for Communities and Local
Government**

Revaluation 2010

Background to the rates bill

- i. Non-domestic rates are a tax on occupiers or, for empty property, owners of non-domestic property. The full bill is a product of the rateable value for the property and the relevant multiplier for the year. The multipliers for the current year (2009/10) are 48.1p (0.481) for qualifying small business and 48.5p (0.485) for all other ratepayers. Ratepayers may also benefit from various reliefs but primarily:
 - o small business rate relief which provides up to 50% relief to small business with rateable value below certain thresholds;
 - o relief for charities and community amateur sports clubs which is 80% and can be increased to 100% by the local authority;
 - o discretionary relief of up to 100% awarded by the local authority to other non-profit making organisations;
 - o rural rate relief which provides up to 50% relief to certain businesses in rural settlements; and
 - o for 2009/10 relief from empty property rates for properties up to £15,000 rateable value.

The revaluation

- ii. Rateable values are, broadly speaking, based upon the rental value of the property and are assessed independently by the Valuation Office Agency. All rateable values are reassessed every 5 years at a general revaluation. The next revaluation will take effect from 1 April 2010 based upon values at 1 April 2008.
- iii. Draft rateable values were published by the Valuation Office Agency at the end of September and summary valuations were sent to ratepayers during October. Ratepayers should contact the VOA if they have any questions or concerns regarding their valuations.

Effect of the revaluation

- iv. 60% of ratepayers will see reductions at the revaluation. The table below show the effects of the revaluation before changes in bills are modified by the transitional arrangements. The main winners are the Midlands and industry. The main losers are inner London and, to a lesser extent, the South West. Below this level there are winners and losers throughout.

Sector effect of the 2010 revaluation (% change in bills 2010/11 before inflation and other reliefs)										
	Total		Offices		Retail		Industry		Others	
	Before transition	After transition	Before transition	After transition	Before transition	After transition	Before transition	After transition	Before transition	After transition
East Midlands	-10%	-4%	-18%	-7%	-8%	-3%	-16%	-6%	-2%	-1%
West Midlands	-7%	-3%	-8%	-3%	-4%	-1%	-13%	-5%	-1%	-1%
South East	-5%	-2%	-13%	-4%	0%	1%	-12%	-4%	0%	0%
East of England	-3%	-1%	-7%	-2%	1%	1%	-9%	-3%	2%	0%
North West	-2%	-1%	-3%	-1%	-1%	0%	-9%	-3%	2%	0%
North East	-1%	0%	-6%	-2%	-1%	0%	-7%	-2%	6%	3%
Yorkshire & Humber	-1%	0%	-1%	0%	1%	1%	-9%	-4%	3%	1%
South West	3%	1%	-3%	-1%	5%	3%	-3%	-2%	7%	3%
Central List	3%	2%	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
London	10%	3%	19%	5%	4%	1%	0%	0%	4%	2%
Total	0%	0%	5%	1%	1%	1%	-9%	-3%	2%	1%

The central list contains network properties such as the electricity and water supply networks

The provisional multipliers

- v. The revaluation does not raise any extra revenue. Instead, a formula resets the multiplier to reflect the overall change in rateable value to ensure no more is raised in revenue from the revaluation. This calculates the 2010/11 small business multiplier to 40.7p – the lowest level for 17 years. The national multiplier for 2010/11 (which includes a supplement to pay for small business rate relief) is 41.4p.

Transitional arrangements scheme

- vi. The Government will introduce a transitional relief scheme which protects ratepayers from large increases for up to 5 years. This is funded by limiting reductions in bills. Statute prevents the Exchequer supporting the scheme.
- vii. The adopted scheme is:

Transitional Arrangements 2010 revaluation (before inflation)						
		2010/11	2011/12	2012/13	2013/14	2014/15
	upward cap (small properties)	5%	7.5%	10%	15%	15%
	upward cap (large properties)	12.5%	17.5%	20%	25%	25%
	downward cap (small properties)	20%	30%	35%	55%	55%
	downward cap (large properties)	4.6%	6.7%	7%	13%	13%
<p>Note: there are year on year caps on increases. For instance, the maximum increase for small properties over 5 years would be 64%. But a small property with an increase of 7% would reach their full bill in year 2.</p>						

- viii. Therefore, as explained above, business rates bills for next year (before other reliefs such as empty property relief) will depend upon 3 key factors:

- new rateable values assessed independently by the Valuation Office,
 - the new multiplier set by the Government (40.7p), and
 - the transitional arrangements scheme.
- ix. The Chargeable Amounts regulations and related impact assessment are concerned only with the last of these 3 factors – the transitional arrangements scheme. Therefore, whilst the options in the IA are set against the “do nothing” scenario, this does not mean do nothing to rate bills in comparison to 2009/10. The “do nothing” base case scenario is proceeding with the revaluation and new multiplier but without the transitional arrangements.

December 2009

APPENDIX 2: INTERESTS

Committee 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.

For the meeting on 8 December 2009 a Member declared an interest on the following instruments of interest:

Draft Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2009

Prison and Young Offender Institution (Amendment) Rules 2009 (SI 2009/3082)

Lord Rosser: as a Magistrate.