

HOUSE OF LORDS

Merits of Statutory Instruments Committee

7th Report of Session 2009-10

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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 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.

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.

Seventh Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

None

OTHER INSTRUMENTS OF INTEREST

Accounts and Audit (Amendment No. 2) (England) Regulations 2009 (SI 2009/3322)

1. The Prime Minister announced in December 2009, as part of the *Putting the Front Lines First* White Paper, a series of new policy measures relating to the transparency of public sector pay. The current Regulations make provision for the disclosure of the remuneration of senior employees in all the “relevant bodies” required by the Audit Commission Act 1998 to produce accounts: this includes local authorities other than probation and health service bodies. The Regulations will require disclosure in the statement of annual accounts of detailed remuneration information for senior police officers and employees earning over £50,000 in senior positions (as defined in the Regulations). Employees receiving over £150,000 per year will, in addition, be named. Detailed remuneration includes information on salary, fees, allowances, bonuses, expenses, ex-gratia payments, and pension contributions. These provisions will be in addition to the existing requirement to enumerate all employees receiving more than £50,000 in £10,000 bands, which these Regulations will amend to £5,000 bands. The Committee note that regulations 2(2)&(3) overrides, with effect from 1 April 2010, any contractual confidentiality agreements about a relevant individual’s remuneration.

Draft Data Protection (Monetary Penalties) Order 2010

Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 (SI 2010/31)

2. Following the significant losses of personal data in 2007 a number of public requests were made to introduce a criminal offence for reckless or repeated security breaches of personal data. Following discussion with the Information Commissioner it has been decided to bring in a civil financial penalty using powers in section 144 of the Criminal Justice and Immigration Act 2008. Taken together, these instruments create a framework for the Information Commissioner to serve a monetary penalty notice on a data controller if he is satisfied there has been both a serious contravention of the data protection principles and that the contravention was of a kind likely to cause substantial damage or distress. Such contraventions must be either deliberate or something which the data controller knew would occur (or ought to have known) and of a kind likely to cause substantial damage or substantial distress, but in respect of which he failed to take reasonable steps to prevent.

Both instruments will come into force together on 6 April 2010. The maximum penalty is set at £500,000.

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

Draft Code of Audit Practice: Local NHS bodies March 2010

Draft Code of Audit Practice 2010: Local government bodies March 2010

Draft Data Protection (Monetary Penalties) Order 2010

Draft Occupational Pension Schemes (Levy Ceiling) Order 2010

Draft Pension Protection Fund (Pension Compensation Cap) Order 2010

Draft Rail Vehicle Accessibility (London Underground Metropolitan Line S8 Vehicles) Exemption Order 2010

Draft Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2010

Instrument subject to annulment

SI 2009/3322 Accounts and Audit (Amendment No. 2) (England) Regulations 2009

SI 2010/1 Occupational Pension Schemes (Levy Ceiling - Earnings Percentage Increase) Order 2010

SI 2010/29 Overhead Lines (Exempt Installations) (Consequential Provisions) Order 2010

SI 2010/31 Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010

SI 2010/32 Trade Marks (International Registration) (Amendment) Order 2010

SI 2010/33 Patents and Patents and Trade Marks (Fees) (Amendment) Rules 2010

SI 2010/39 Common Agricultural Policy Single Payment and Support Schemes (Appeals) Regulations 2010

SI 2010/40 First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2010

SI 2010/41 Tribunals, Courts and Enforcement Act 2007 (Miscellaneous Provisions) Order 2010

- SI 2010/42 First-tier Tribunal (Gambling) Fees Order 2010
- SI 2010/43 Tribunal Procedure (Amendment) Rules 2010
- SI 2010/44 Tribunal Procedure (Amendment No. 2) Rules 2010
- SI 2010/47 Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications) Amendment Order 2010
- SI 2010/49 Care Quality Commission (Registration) Amendment Regulations 2010

Instruments subject to annulment (Northern Ireland)

- SR 2009/429 Prison and Young Offenders Centre (Amendment) Rules (Northern Ireland) 2009