

HOUSE OF LORDS

Merits of Statutory Instruments Committee

2nd Report of Session 2010-11

Drawing special attention to:

Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2010

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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 Lord Methuen
The Lord Eames OM	Rt Hon. the Baroness Morris of Yardley
Rt Hon. the Lord Goodlad (<i>Chairman</i>)	The Lord Norton of Louth
The Baroness Hamwee	The Lord Rosser
The Lord Hart of Chilton	Rt Hon. the Lord Scott of Foscote
The Lord Lucas	

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.

Second Report

INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2010 (SI 2010/1507)

Summary: Previous regulations inspired a number of debates in both Houses to draw attention to the impact of a change in policy by the Valuation Office which had resulted in a number of firms, particularly those businesses operating in ports areas, unexpectedly being given large back-dated rates bills. These Regulations allow affected firms to seek a payment moratorium for those bills until 31 March 2011. The instrument has been brought in with immediate effect. Parliament will nonetheless wish to be reassured that the beneficial effects on industry will not result in financial loss to the local authorities who collect the rates. The Government has announced that it will use the moratorium period to try and find a workable and cost-effective solution to the problem.

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

1. The Department for Communities and Local Government (DCLG) has laid this instrument under the Local Government Finance Act 1988, along with an Explanatory Memorandum (EM) and Impact Assessment (IA).
2. These Regulations amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058), which govern the practicalities of billing for rates for locally listed properties. Under those Regulations, when a rating list is altered by a valuation officer, any backdated liability is payable straightaway. An amendment to those provisions by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 (SI 2009/204) (“the 2009 Regulations”) allowed backdated liability imposed by the Valuation Office Agency’s review in 2008 to be discharged in instalments over a period of up to eight years.¹ The new Regulations further amend the 1989 Regulations to allow ratepayers the ability to agree with the billing authority an immediate moratorium on payment of the instalments of backdated liability until 31st March 2011, although the total period of the agreement may not extend longer than eight years in total.
3. The 2009 Regulations inspired a number of debates in both Houses, notably a motion of regret by Earl Attlee that was carried in this House.² Speakers in that debate drew attention to the impact of the Valuation Office’s change in policy on individual firms; particularly a number operating in ports areas

¹ This Committee drew the 2009 Regulations to the attention of the House in its 8th Report of Session 2008-09 (HL Paper 44)

² HL Deb, 18 March 2009, cols 291-306: carried by 77 votes to 69

which were unexpectedly given large back-dated bills. Due to normal accounting procedures there were concerns that such liabilities might make an affected firm's balance sheet appear insolvent.

4. The EM accompanying these Regulations could have explained more clearly how the moratorium will work and what its broader impact will be, but DCLG did provide a Business Information Letter to known policy contacts in billing authorities, and some known ratepayers affected by this issue, on 27 May.³ From supplementary material we understand that it will be up to the ratepayer to request a moratorium arrangement and note that the local authority should, but is not obliged to, fulfil that request. The arrangement does not cancel the debt but defers its payment which in the current economic climate may be seen as advantageous. It does not affect the firm's ongoing duty to pay its rates for the current year.
5. There is no impact on billing authority finance. Local authorities are responsible for the collection of business rates which are then paid into the national pool and redistributed as part of the Local Government Settlement. In introducing the freeze, the Government has taken this into account, and is ready to fund the cost.
6. We note that the Government has announced that it will use the moratorium period to explore options to offer permanent relief to businesses facing certain backdated rates liabilities, subject to finding a workable and cost-effective solution, although they are not as yet able to state what form this review will take.

OTHER INSTRUMENTS OF INTEREST

Crime and Disorder Act 1998 (Intervention Orders) (Amendment) Order 2010 (SI 2010/1067)

7. This Order corrects a defect in the Crime and Disorder Act 1998 (Intervention Orders) Order 2006 ("the 2006 Order"). Section 1G of the Crime and Disorder Act 1998 ("the 1998 Act") enables authorities applying for an anti-social behaviour order ("ASBO") under Section 1 of the 1998 Act to apply for an Intervention Order ("IO"), when the subject of the ASBO's behaviour is the result of drug misuse. An IO specifies particular requirements that the person must comply with to prevent a repeat of the behaviour that led to the initial anti-social behaviour. The 2006 Order prescribed appropriate activities that the individual could be ordered to undertake; this Order amends the defective definition of these appropriate activities in the main Order. The Home Office have supplied some further information in response to the Committee's enquiries about the impact of the defect (see Appendix 1). Although the Impact Assessment for the Drugs Bill (attached to the Explanatory Memorandum (EM)) had estimated that there may be 100 IOs a year (paragraph 2.5), the Home Office has not been able to identify any areas that have used the power. The EM says (paragraph 12.1) that the provision will be reviewed and monitored as part of general anti-social behaviour tools and powers reviews. Although the impact of the

³ DCLG Business Rates Information Letter, 7/2010:

<http://www.communities.gov.uk/publications/localgovernment/bril72010>

defect may be small, given the apparent lack of use of the power the House may wish to satisfy itself that any review will adequately assess the effectiveness of this policy generally.

Rail Passengers' Rights and Obligations Regulations 2010 (SI 2010/1504)

8. This instrument sets out further provisions for the application of EC Regulation 1371/2007 in the UK, which relates to the compensation due to passengers when rail travel is disrupted or problems occur. In particular it makes the Office of the Rail Regulator responsible for enforcement of the scheme and Passenger Focus/London Travel Watch the conduit for complaints about alleged infringements. We note that this instrument has been made 6 months after the Regulation came into effect, although the Department reassure us that no one has been disadvantaged by this. The application of this EC Regulation to the UK has been problematic. The Committee drew the attention of the House to a previous instrument, SI 2009/2970, which deferred the decision on whether to adopt certain non-core provisions of the Regulations because the Department had insufficient information.⁴ The Committee was concerned because this deferred potential benefits to passengers. We were assured that a definitive decision would be made “as early as practicable in 2010”, and we remind the Department of that undertaking.

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 Armed Forces Act (Continuation) Order 2010

Instruments subject to annulment

SI 2010/1006 School Information (England) (Amendment) Regulations 2010

SI 2010/1067 Crime and Disorder Act 1998 (Intervention Orders) (Amendment) Order 2010

SI 2010/1075 Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010

SI 2010/1485 Safety of Sports Grounds (Designation) Order 2010

SI 2010/1504 Rail Passengers' Rights and Obligations Regulations 2010

SI 2010/1511 Seed Potatoes (England) (Amendment) Regulations 2010

SI 2010/1513 Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010

⁴ See our 2nd, 4th and 6th reports of Session 2009-10

- SI 2010/1514 Civil Enforcement of Parking Contraventions Designation (No. 3) Order 2010
- SI 2010/1531 Dartford-Thurrock Crossing (Amendment) Regulations 2010
- SI 2010/1532 Electoral Law (Polling Station Scheme) (Northern Ireland) Regulations 2010
- SI 2010/1536 Local Justice Areas Order 2010
- SI 2010/1554 Pyrotechnic Articles (Safety) Regulations 2010

**APPENDIX 1: CRIME AND DISORDER ACT 1998 (INTERVENTION ORDERS)
(AMENDMENT) ORDER 2010 (SI 2010/1067): GOVERNMENT RESPONSE**

Information from the Home Office

The number of Intervention Orders is not routinely collected by central government; however as part of a survey of all Community Safety Partnerships on their use of anti-social behaviour tools and powers during 2009/10, they were asked how many Intervention Orders had been issued in their area since October 2008. Around 85% of CSPs responded and they reported that Intervention Orders had not been used.

Q1. *Why has it taken since 2006 to correct the error?*

A1. We regret that it has taken so long to correct this fairly minor error but do not believe that the delay has misled or disadvantaged any individual.

Q2. *What is the effect of the doubtful vires? Does it mean that IOs have been issued when there is no proper power to prescribe appropriate activities?*

A2. In our view any Intervention Order that was correctly issued before the coming into force of our SI 2010/1067 will remain valid unless and until any competent court orders otherwise. Furthermore, it is our view that the relevant authority and appropriately qualified person will consult the Home Office's guidance for the operation of Intervention Orders:

(http://webarchive.nationalarchives.gov.uk/20100405140447/http://asb.homeoffice.gov.uk/uploadedFiles/Members_site/Documents_and_images/Drugs/InterventionOrdersGuidance0089.doc).

This guidance further directs the appropriate person to consult the "Models of care for treatment of adult drug misusers: Update 2006" albeit described as "Models of care for treatment of adult drug users" which is published by the National Treatment Agency". However, the guidance also provides a weblink to where the Models of Care and further information can be found.

Q3. *How many individuals are affected?*

A3. As set out above we do not believe any individuals have been affected. A survey of Community Safety Partnerships reported that Interventions Orders have not been used since 2008. In addition over the last year we have contacted a number of Community Safety Partnerships to identify areas that use the range of tools and powers to tackle anti-social behaviour with a view to share best practice. Despite trying to identify areas that may have used this power, we have been unable to find one.

Q4. *What is the specific affect on the individuals?*

A4. We do not believe that individuals would have been affected by the doubtful vires, given that the relevant authority and appropriately qualified would have regard for the Home Office's guidance.

Q5. *Have you sought to assess the cumulative effect of the error on the IO cohort as a whole over the last four years?*

A5. We have not attempted to assess this error as we believe the numbers of individuals which could be affected is very low, if any, and if the Intervention Order has been used, the relevant authority, appropriately qualified person, and competent court would have consulted the "Models of care for treatment of adult drug misusers: Update 2006", despite the name referred to as "Models of care for the treatment of adult drug users".

APPENDIX 2: INTERESTS AND ATTENDANCE

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For the meeting on 22 June 2010 Members declared no interests on any of the instruments of interest.

Attendance:

The meeting was attended by Baroness Butler-Sloss, Lord Goodlad, Lord Hart of Chilton, Lord Lucas and Lord Norton of Louth.