



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Thirteenth Report of Session 2007–08

Drawing special attention to:

School Finance (England) Regulations 2008 (S.I. 2008/228)

*Ordered by The House of Lords to be printed
12 March 2008*

*Ordered by The House of Commons to be printed
12 March 2008*

**HL Paper 77
HC 38-xiii**

Published on 17 March 2008
by authority of the House of Lords
and the House of Commons
London: The Stationery Office Limited
£0.00

Joint Committee on Statutory Instruments

Current membership

House of Lords

Lord Campbell of Alloway (*Conservative*)
Lord Dykes (*Liberal Democrat*)
Baroness Jones of Whitchurch (*Labour*)
Lord Gould of Brookwood (*Labour*)
Lord Kimball (*Conservative*)
Countess of Mar (*Crossbench*)
Lord Walpole (*Crossbench*)

House of Commons

David Maclean MP (*Conservative, Penrith and The Border*)
(Chairman)
Dr Roberta Blackman-Woods MP (*Labour, City of Durham*)
Mr Peter Bone MP (*Conservative, Wellingborough*)
Michael Jabez Foster MP (*Labour, Hastings and Rye*)
Mr David Kidney MP (*Labour, Stafford*)
Mr John MacDougall MP (*Labour, Central Fife*)
David Simpson MP (*Democratic Unionist, Upper Bann*)

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 74, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i. that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii. that its parent legislation says that it cannot be challenged in the courts;
- iii. that it appears to have retrospective effect without the express authority of the parent legislation;
- iv. that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
- v. that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi. that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii. that its form or meaning needs to be explained;
- viii. that its drafting appears to be defective;
- ix. or on any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are available on the Internet from www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are John Whatley (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jacqueline Cooksey (*Committee Secretary*). Advisory Counsel: Peter Davis, Peter Brooksbank and Christine Cogger (*Commons*); Allan Roberts and Peter Milledge (*Lords*).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, Delegated Legislation Office, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2830; the Committee's e-mail address is: jcsi@parliament.uk.

Contents

Report	<i>Page</i>
Instruments reported	2
1 S.I. 2008/228: reported for defective drafting	2
Instruments not reported	3
Annex	4
Appendix	6
S.I. 2008/228: memorandum from the Department for Children, Schools and Families	6

Instruments reported

At the Committee's meeting on 12 March 2008, it scrutinised a number of instruments and decided to draw the special attention of both Houses to one of them in accordance with its Standing Orders. The Instrument and the ground for reporting it is given below. The relevant Departmental memorandum is published as an appendix to this report.

1 S.I. 2008/228: reported for defective drafting

School Finance (England) Regulations 2008 (S.I. 2008/228)

1.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two respects.

1.2 Regulation 2 provides for the revocation of previous Regulations, including S.I. 2004/3131 and S.I. 2005/526. In an undated memorandum printed at the Appendix the Department for Children, Schools and Families acknowledges that it was incorrect to revoke those two instruments as they were revoked on 1 April 2006 by regulation 2 of the School Finance (England) Regulations 2006 (S.I. 2006/468). **The Committee accordingly reports regulation 2 for defective drafting in this respect, as acknowledged by the Department.**

1.3 Schedule 2 is introduced by regulations 5 and 7. It lists the classes or descriptions of planned expenditure which may be deducted from the schools budget in order for a local education authority (LEA) to determine the individual schools budget. A number of the expenditure items listed include provisos which govern whether or not the specific item may be deducted. By contrast, paragraph 29 of Schedule 2 comprises two unnumbered sub-paragraphs: the first lists certain expenditure on library services; the second provides that where an LEA deduct funding under paragraph 29, they must notify the governing body of each school not receiving funding for library services in its budget share of the amount attributable to library services for that school; and they must also allow the governing bodies of these schools to make certain determinations regarding the expenditure on library services in respect of their school. The Committee asked the Department in what way the second sub-paragraph was introduced in the main part of the Regulations.

1.4 In its memorandum the Department explains that when drafting this item it was considered clearer to turn what had been a proviso in previous regulations into a specific requirement, but the Department accepts that this is not sufficiently linked with the duty in regulation 7(1) to deduct the items proposed to be deducted. The Department states that the Regulations are likely to be amended during the year and at the latest in respect of the next financial year; it will amend the provision at that time. **The Committee reports paragraph 29 of Schedule 2 for defective drafting, acknowledged by the Department.**

Instruments not reported

The Committee has considered the instruments set out in the Annex to this Report and has determined that the special attention of both Houses does not require to be drawn to any of them.

Annex

Instruments to which the Committee does not draw the special attention of both Houses

- denotes that the written evidence submitted in connection with the instrument is printed with this Report
- denotes written evidence has been submitted but not printed

Draft instruments requiring affirmative approval

Draft S.I.	Business Protection from Misleading Marketing Regulations 2008
Draft S.I.	Consumer Protection from Unfair Trading Regulations 2008
Draft S.I.	Immigration (Registration Card) Order 2008
Draft S.I.	Land Registration (Network Access) Rules 2008
Draft S.I.	Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008
Draft S.I.	Sex Discrimination (Amendment of Legislation) Regulations 2008

Instruments subject to annulment

S.I. 2008/301	European Communities (Designation) Order 2008
S.I. 2008/373	Companies (Revision of Defective Accounts and Reports) Regulations 2008
S.I. 2008/374	Companies (Summary Financial Statement) Regulations 2008
S.I. 2008/377	Education (Budget Statements) (England) Regulations 2008
S.I. 2008/386	Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008
S.I. 2008/387	Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2008
S.I. 2008/412	Northumberland, Tyne and Wear National Health Service Trust (Transfer of Trust Property) Order 2008
S.I. 2008/413	Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2008
S.I. 2008/414	Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2008
S.I. 2008/415	Surrey Primary Care Trust (Transfer of Trust Property) Order 2008
S.I. 2008/416	Dorset Primary Care Trust (Transfer of Trust Property) Order 2008
S.I. 2008/417	Concessionary Bus Travel (Permits)(England) Regulations 2008
S.I. 2008/419	Motor Cars (Driving Instruction) (Amendment) Regulations 2008
S.I. 2008/428	Local Government (Non-Domestic Rating) (Consequential Amendments) (England) Order 2008
S.I. 2008/430	Cornwall Partnership National Health Service Trust (Transfer of Trust Property) Order 2008
S.I. 2008/431	Wildlife and Countryside Act 1981 (Variation of Schedule 5) (England) Order 2008
S.I. 2008/438	Dairy Produce Quotas (General Provisions) (Amendment) Regulations 2008
S.I. 2008/439	Dairy Produce Quotas (Amendment) Regulations 2008

- S.I. 2008/440** North Bristol National Health Service Trust (Transfer of Trust Property) Order 2008
- S.I. 2008/441** Social Security (Claims and Payments) Amendment Regulations 2008
- S.I. 2008/442** Public Rights of Way (Combined Orders) (England) Regulations 2008
- S.I. 2008/447** Meat (Official Controls Charges) (England) Regulations 2008
- S.I. 2008/463** Social Security (Local Authority Investigations and Prosecutions) Regulations 2008
- S.I. 2008/469** Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008
- S.I. 2008/505** Immigration Services Commissioner (Designated Professional Body) (Fees) Order 2008

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2008/236** Wireless Telegraphy (Exemption) (Amendment) Regulations 2008
- S.I. 2008/504** Offender Management Act 2007 (Commencement No. 2 and Transitional Provision) Order 2008

Appendix

S.I. 2008/228: memorandum from the Department for Children, Schools and Families

School Finance (England) Regulations 2008 (S.I. 2008/228)

The Committee has requested a memorandum on the following points:

(1) *Regulation 2 revokes previous instruments including S.I. 2004/3130, the Financing of Maintained Schools (England) Regulations 2004 (from the reference to which 'Regulations' appears to have been omitted), and S.I. 2004/3131, the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004 (from the reference to which '(England)' appears to have been omitted). Given regulation 2 of the Schools Finance (England) Regulations 2006 (S.I. 2006/468), why does regulation 2 of these Regulations include revocation of the latter?*

The department is grateful for notification of the point and agrees

- that the word “Regulations” is incorrectly omitted from the reference to the Financing of Maintained Schools (England) Regulations 2004/3130 and will arrange for this to be rectified in the Annual Edition of the UK Statutory Instruments and on the OPSI website;
- that it was incorrect to revoke the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004 and the LEA Budget, Schools budget and Individual Schools Budget (Amendment) (England) Regulations 2005/526 as they were revoked in the School (not Schools) Finance (England) Regulations 2006 (S.I. 2006/468). It does not propose to take any action to rectify this as it appears that the revocation has no effect.

(2) *In what way is the second part of paragraph 29 of Schedule 2 introduced in the main part of the Regulations?*

Schedule 2 to the Regulations lists the planned expenditure which may be deducted from the schools budget in order for a LEA to determine the individual schools budget. A number of the expenditure items listed include provisos which govern whether or not the specific item may be deducted. When drafting this item it was considered clearer to turn what had been a proviso in previous regulations, into a specific requirement but the department accepts that this is not sufficiently linked with the duty in regulation 7(1) to deduct the items proposed to be deducted. The Regulations are likely to be amended during the year and at the latest in respect of the next financial year and will amend the provision at that time.