

HOUSE OF LORDS

Merits of Statutory Instruments Committee

9th Report of Session 2007-08

Drawing special attention to:

**Draft Prevention of Terrorism Act 2005
(Continuance in force of sections 1 to 9)
Order 2008**

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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 Kingsmill CBE
The Lord Crisp KCB	The Lord Lucas
The Baroness Deech DBE	The Baroness Maddock
The Viscount Eccles CBE	The Baroness Thomas of Winchester
The Lord Filkin CBE (<i>Chairman</i>)	The Lord Tunnicliffe CBE
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. 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

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. 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.

Ninth 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.

Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2008

Summary: This Order extends, for a further 12 months, the current provisions for the supervision of terrorist suspects by means of control orders. There are currently 14 control orders in force. The annual report by the Independent Reviewer of the Prevention of Terrorism Act 2005, Lord Carlile of Berriew QC, is due to be published in February and we trust that it will be made available to the House in good time for the debate. To maintain the current provisions, the new Order must take effect by 11 March 2008.

This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

1. The Home Office have laid this Order under section 13(2)(c) of the Prevention of Terrorism Act 2005 (“the Act”) together with an Explanatory Memorandum (EM).
2. This Order provides for the continuation of the powers in sections 1 to 9 of the Act for a further year, from 11 March 2008 until the end of 10 March 2009. The powers are needed to ensure that a control order can continue to be made against any individual where the Secretary of State has reasonable grounds for suspecting that individual is or has been involved in terrorism-related activity and considers it necessary to impose obligations on that individual in order to protect the public from a risk of terrorism.
3. The Secretary of State reports to Parliament every quarter on the exercise of control order powers. In the latest statement (HC Deb 12 December 2007 col 38WS–40WS) it was announced that there were fourteen non-derogating control orders in force. In accordance with section 13(3) of the Act, the Secretary of State has consulted the Independent Reviewer of the Act (Lord Carlile of Berriew QC), the Intelligence Services Commissioner, and the Director-General of the Security Service; they were content with the proposal to renew the Act for a further year.
4. The annual report of the Independent Reviewer of the Act, Lord Carlile of Berriew, which will give details of how the control order system is operating, was not laid together with the Order. The EM states that it is due to be published in February. We regard it as poor practice that it was not available at the same time as the Order was laid and **we trust that the report will be made available to the House in good time for the debate.**

OTHER INSTRUMENT OF INTEREST

Draft Immigration and Nationality (Fees) (Amendment) Regulations 2008

5. In our 4th Report of this session, we drew attention to the draft Immigration and Nationality (Fees) (Amendment) Order 2007 (now made as SI 2008/166) which gave the Home Secretary new powers to charge fees for biometric identity cards and for sponsorship licences under the evolving Points-Based System for immigration. These Regulations, the draft Immigration and Nationality (Fees) (Amendment) Regulations 2008, now set the level of the fees for applications under the new points-based system. As is permitted by the Act, the fees are set on a different basis from full cost recovery and contain an element of cross-subsidy: a full explanation of the policy is set out in the Explanatory Memorandum and Impact Assessment. A recent Written Statement (HL Deb 30 January 2008 col WS38-41) gave an overview of the intended levels of all immigration and nationality fees for 2008-09: some are set out in these Regulations, others will be implemented in further instruments which we expect to be laid shortly.

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

Guaranteed Minimum Pensions Increase Order 2008
 Immigration and Nationality (Fees) (Amendment) Regulations 2008
 Social Security Benefits Up-rating Order 2008
 Social Security (Contributions) (Re-rating) Order 2008

Instruments subject to annulment

SI 2008/42 Miscellaneous Food Additives (Amendment) (England) Regulations 2008
 SI 2008/46 Consistent Financial Reporting (England) (Amendment) Regulations 2008
 SI 2008/47 Schools Forum (England) (Amendment) Regulations 2008
 SI 2008/48 Absent Voting (Transitional Provisions) (Scotland) Regulations 2008
 SI 2008/49 Manchester College (Incorporation) Order 2008
 SI 2008/50 Manchester College (Government) Regulations 2008
 SI 2008/80 Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) (Amendment) Regulations 2008

- SI 2008/81 European Communities (Lawyer's Practice and Services of Lawyers) (Amendment) Regulations 2008
- SI 2008/82 Police Authorities (Particular Functions and Transitional Provisions) Order 2008
- SI 2008/83 East Kent Hospitals National Health Service Trust (Transfer of Trust Property) Order 2008
- SI 2008/85 Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008
- SI 2008/97 Ozone Depleting Substances (Qualifications) (Amendment) Regulations 2008
- SI 2008/115 Family Proceedings Fees (Amendment) Order 2008
- SI 2008/116 Civil Proceedings Fees (Amendment) Order 2008
- SI 2008/117 Magistrates' Courts Fees (Amendment) Order 2008
- SI 2008/131 Export Control (Democratic Republic of Congo) (Amendment) Order 2008
- SI 2008/133 Social Security (Contributions) (Amendment) Regulations 2008
- SI 2008/135 British Citizenship (Designated Service) (Amendment) Order 2008

Instruments subject to annulment (Northern Ireland)

- SR 2008/22 Rules of the Supreme Court (Northern Ireland) (Amendment) 2008
- SR 2008/23 Criminal Appeal (Offenders Assisting Investigations and Prosecutions) Rules (Northern Ireland) 2008
- SR 2008/24 Family Proceedings (Amendment) Rules (Northern Ireland) 2008