



House of Commons
Select Committee on
Statutory Instruments

**Second Report
of Session 2007–08**

Drawing special attention to:

*Registered Pension Schemes (Authorised Member Payments)
Regulations 2007 (S.I. 2007/3532)*

*Ordered by The House of Commons to be printed
6 February 2008*

Select Committee on Statutory Instruments

Current membership

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, available on the Internet via www.parliament.uk/scsi.

Remit

The Select Committee on Statutory Instruments (SCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. It carries out the same duties as the Joint Committee on Statutory Instruments in respect of those instruments laid before and subject to proceedings in the House of Commons only.

The role of the SCSI, whose membership is drawn from the House of Commons, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of the 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 the House. All publications of the Committee are available on the Internet from www.parliament.uk/scsi.

Committee staff

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

Contacts

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Instruments reported

At the Committee's meeting on 6 February 2008, it scrutinised a number of instruments and decided to draw the special attention of the House to one of them in accordance with its Standing Orders. The Instrument and the ground for reporting it are given below. The relevant Departmental memorandum is published as an appendix to this report.

1 S.I. 2007/3532: reported for requiring elucidation

Registered Pension Schemes (Authorised Member Payments) Regulations 2007 (S.I. 2007/3532)

1.1 The Committee draws the special attention of the House to these Regulations on the ground that in one respect they require elucidation.

1.2 Regulation 2(5) defines two terms as having the same meaning as in “the Conduct of Business sourcebook issued by the Financial Services Authority”. A footnote identifies the document as issued by the Authority under the Financial Services and Markets Act 2000. In response to the Committee's questions as to the lack of further specificity, HM Revenue and Customs, in a memorandum printed at the Appendix, identifies the publication referred to and explains that paragraph 2.8.1 of *Statutory Instrument Practice*, which calls for full details of outside publications to be provided, applies to publications “which do not form part of the general body of law”. As the publication, so it argues, is part of the general body of law, paragraph 2.8.1 does not apply to it. The Committee considers that the underlying rationale for paragraph 2.8.1, apart from reduction of the risk of unauthorised delegation, is that publications forming part of the general law can be assumed to be clearly identifiable by readers and, where they comprise subordinate law, can be linked directly or indirectly to the primary legislation on which they depend. In this case the link is broken. The Financial Services and Markets Act 2000 contains 433 sections and 22 Schedules. Neither the footnote nor the memorandum identifies the specific powers in that Act under which the sourcebook is issued, nor does the sourcebook appear to do so itself. Furthermore, the status of the sourcebook as law regulating conduct (as opposed to information) is not explained. **The Committee accordingly draws the special attention of the House to regulation 2(5) as requiring elucidation, which is largely but not fully provided in the Department's memorandum.**

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 the House does not require to be drawn to any of them.

Annex

Instruments to which the Committee does not draw the special attention of the House

- 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

Instruments requiring affirmative approval

HC 262	Local Government Finance Report (England) 2008/2009
HC 265	Police Grant Report (England and Wales) 2008/09

Draft instruments requiring affirmative approval

Draft S.I.	Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008
Draft S.I.	FCO Services Trading Fund Order 2008
Draft S.I.	Defence Support Group Trading Fund Order 2008

Instruments subject to annulment

S.I. 2007/3000	Income Tax (Benefits Received by Former Owner of Property) (Election for Inheritance Tax Treatment) Regulations 2007
S.I. 2007/3068	Income Tax (Car Benefits) (Reduction of Value of Appropriate Percentage) (Amendment) Regulations 2007
S.I. 2007/3099	Value Added Tax (Amendment) (No. 7) Regulations 2007
S.I. 2007/3103	Tax Avoidance Schemes (Information) (Amendment) (No. 2) Regulations 2007
S.I. 2007/3186	Corporation Tax (Implementation of the Mergers Directive) Regulations 2007
S.I. 2007/3278	Energy-Saving Items (Income Tax) Regulations 2007
S.I. 2007/3338	Securitisation Companies (Application of Section 83(1) of the Finance Act 2005: Accounting Standards) Regulations 2007
S.I. 2007/3339	Taxation of Securitisation Companies (Amendment) Regulations 2007
S.I. 2007/3401	Taxation of Securitisation Companies (Amendment No.2) Regulations 2007
S.I. 2007/3402	Taxation of Insurance Securitisation Companies Regulations 2007
S.I. 2007/3425	Real Estate Investment Trusts (Joint Venture Groups) Regulations 2007
S.I. 2007/3426	Scientific Research Organisations Regulations 2007
S.I. 2007/3430	Insurance Companies (Taxation of Reinsurance Business) (Corporation Tax Acts) (Amendment) Order 2007
S.I. 2007/3431	Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) (Amendment No. 2) Regulations 2007
S.I. 2007/3432	Loan Relationships and Derivative Contracts (Change of Accounting Practice) (Amendment) (No. 2) Regulations 2007
S.I. 2007/3445	Insurance Companies (Overseas Life Assurance Business) (Excluded Business) (Amendment No. 2) Regulations 2007
S.I. 2007/3448	Value Added Tax (Reduced Rate) (No. 2) Order 2007

- S.I. 2007/3449** Overseas Life Insurance Companies (Amendment No. 2) Regulations 2007
- S.I. 2007/3506** Income Tax Act 2007 (Amendment) (No. 3) Order 2007
- S.I. 2007/3507** Recovery of Foreign Taxes Regulations 2007
- S.I. 2007/3508** Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) (Amendment) Regulations 2007
- S.I. 2007/3533** Registered Pension Schemes (Meaning of Pension Commencement Lump Sum) (Amendment) Regulations 2007
- S.I. 2007/3536** Real Estate Investment Trusts (Financial Statements of Group Real Estate Investment Trusts) (Amendment) Regulations 2007
- S.I. 2007/3537** Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007
- S.I. 2007/3540** Real Estate Investment Trusts (Breach of Conditions) (Amendment) Regulations 2007
- S.I. 2008/52** Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (The London Stock Exchange) Regulations 2008

Appendix 1

S.I. 2007/3532: memorandum from Her Majesty's Revenue & Customs

*Registered Pension Schemes (Authorised Member Payments) Regulations 2007
(S.I. 2007/3532)*

1. The Select Committee has requested a memorandum to be submitted on the following points–

“Are the references to the Conduct of Business sourcebook in regulation 2(5) intended to be references to the November 2007 ‘New Conduct of Business Sourcebook’ published by the Financial Services Authority on its website, and–

- (a) if so, why is the provision not specific on the point;
- (b) if not, what is it intended to refer to;
- (c) in either case, why is no indication given of how to obtain access to the document?”

2. As regards points (a) and (b), it is understood that the sequence of events relating to Conduct of Business sourcebooks issued by the Financial Services Authority (“FSA”) is as follows.

3. On 21 June 2001, the FSA made the Conduct of Business Sourcebook Instrument 2001 (Instrument FSA/2001/8). That instrument provided (among other things) that–

“D. This instrument may be cited as the Conduct of Business Sourcebook Instrument 2001.

E. The Annex to this instrument (including its schedules) may be cited as the Conduct of Business sourcebook (or COB).”

4. On 24 May 2007, the FSA, exercising various powers in the Financial Services and Markets Act 2000, made the Conduct of Business Sourcebook Instrument 2007 (Instrument FSA/2007/33). That Instrument came into force (for present purposes) on 1 November 2007, and provides (among other things) that–

“Revocation of the Conduct of Business sourcebook (COB)

E. The provisions of the Conduct of Business sourcebook (COB) are revoked.

Making the New Conduct of Business sourcebook (COBS)

F. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument.

...

Citation

I. This instrument may be cited as the Conduct of Business Sourcebook Instrument 2007.

J. The sourcebook in the Annex to this instrument (including its schedules) may be cited as the Conduct of Business sourcebook (or COBS).”

5. The Registered Pension Schemes (Authorised Member Payments) Regulations 2007 came into force on 7 January 2008, and apply to payments made on or after that date. Against this background, and having regard to the material set out in paragraphs 3 and 4, the reference to the Conduct of Business sourcebook is to the sourcebook issued during 2007: the (only) sourcebook then in existence. On the basis of the material quoted in paragraph 4, the view is taken that the sourcebook has been correctly described as “the Conduct of Business sourcebook” and not as the “New Conduct of Business sourcebook”.

6. As regards point (c), paragraph 2.8.1 of Statutory Instrument Practice deals with the provision of full references for “external’ publications ... which do not form part of the general body of the law”. But, in this case, the Conduct of Business sourcebook falls to be regarded as “part of the general body of the law”, and the provision of a full reference is therefore not considered to be essential. In the case of any person wishing to obtain further information about the Conduct of Business sourcebook, it is considered that footnote (a) on page 2 of the Regulations is quite sufficient to prompt the thought that the website maintained by the FSA will be worth consulting. In the context of these Regulations, a person wishing to obtain further information about the Conduct of Business sourcebook may well be an insurance company interested in making a reattribution of its inherited estate – a very specialised and knowledgeable category. Those companies saw and commented on these Regulations in draft form (the draft was made available on HM Revenue & Customs’s website); and HM Revenue & Customs are confident that those companies are familiar with the FSA, with the Conduct of Business sourcebook, and with how to obtain access to that document.

HM Revenue & Customs

28 January 2008