



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Tenth Report  
of Session 2007–08**

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**Drawing special attention to:**

*Immigration and Police (Passenger, Crew and Service Information) Order 2008 (S.I. 2008/5)*

*Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (S.I. 2008/37)*

*Ordered by The House of Lords to be printed  
20 February 2008*

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# 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

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(Chairman)  
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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](http://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](http://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

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# Contents

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<b>Report</b>	<i>Page</i>
<b>Instruments reported</b>	<b>2</b>
1 S.I. 2008/5: reported for requiring elucidation	2
2 S.I. 2008/37: reported for defective drafting	3
<b>Instruments not reported</b>	<b>3</b>
<b>Annex</b>	<b>4</b>
<b>Appendix 1</b>	<b>5</b>
S.I. 2008/5: memorandum from the Home Office	5
<b>Appendix 2</b>	<b>7</b>
S.I. 2008/37: memorandum from the Department for Business, Enterprise and Regulatory Reform	7

## CORRIGENDUM

In the Ninth report of the current Session, the end of the second sentence of paragraph 3.2 should read: “that Order.” rather than “those Regulations”.

## Instruments reported

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At the Committee's meeting on 20 February 2008, it scrutinised a number of instruments and decided to draw the special attention of both Houses to two of them in accordance with its Standing Orders. The Instruments and the grounds for reporting them are given below. Relevant Departmental memoranda are published as appendices to this report.

### 1 S.I. 2008/5: reported for requiring elucidation

*Immigration and Police (Passenger, Crew and Service Information) Order 2008 (S.I. 2008/5)*

1.1 The Committee draws the special attention of both Houses to this Order on the ground that in one respect it requires elucidation.

1.2 Schedule 2 to this Order lists the types of information that carriers must provide, if so requested, to an immigration officer in respect of a ship, aircraft or train arriving in or departing from the United Kingdom. Amongst the descriptions of information are: (ff) General Remarks; (gg) Other Service Information (OSI); (hh) System Service Information (SSI) and System Request Information (SSR). These expressions are not explained in the Order or in its Explanatory Note.

1.3 In a memorandum printed at Appendix 1, the Home Office explains what is generally meant by the terms, three of which are specific to the airline industry, and that they are self-explanatory to the carriers and unlikely to give rise to any confusion. The memorandum also states that a very wide range of information can be included under the headings and that, in some cases, a specific type of information may be included under one heading and in other cases under another. Consequently, the memorandum continues, any definition could not have been exhaustive.

1.4 The Committee is of the view that whether exhaustive definitions would have been impossible (rather than difficult) remains an open question. In addition it observes that, had impossibility been recognised when the enabling power was introduced in 1999, the duty to *specify* in an order the information that carriers would be required to provide might have been qualified by an indication that a trade term of art was sufficient as a specification without further definition. In any event, the Department now acknowledges that there is a need for Parliament to know what information may be acquired from carriers, and proposes to include a definition of these terms in a revised Code of Practice which is to be laid before Parliament later this year. The Committee, which considers specification by reference to be within the scope of the enabling power if the text referred to is sufficiently specific, invites the Department, in connection with the issue of the Code of Practice, to consider whether to amend the order to refer to relevant definitions in it. **In the meantime the Committee reports Schedule 2 to this Order on the ground that the above expressions require the elucidation provided by the Department's memorandum.**

## 2 S.I. 2008/37: reported for defective drafting

*Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (S.I. 2008/37)*

2.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

2.2 Regulation 13(4) provides that an enforcement officer commits an offence if, except in the performance of his duty, he discloses any information relating to a secret manufacturing process or a trade secret obtained pursuant to the exercise of a power of entry. The Regulations make no provision for a person who is convicted of this offence to be liable to any penalty.

2.3 In a memorandum printed at Appendix 2, the Department for Business, Enterprise and Regulatory Reform apologises for this error, and undertakes to make a corrective instrument, which will be made available free of charge, as soon as possible. **The Committee accordingly reports these Regulations for defective drafting, acknowledged by the Department.**

## Instruments not reported

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**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

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## 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

<b>Draft S.I.</b>	Child Benefit Up-rating Order 2008
<b>Draft S.I.</b>	Crown Agents Holding and Realisation Board (Prescribed Day) Order 2008
<b>Draft S.I.</b>	Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008
<b>Draft S.I.</b>	Guardian's Allowance Up-rating Order 2008
<b>Draft S.I.</b>	Guardian's Allowance Up-rating (Northern Ireland) Order 2008
<b>Draft S.I.</b>	Offender Management Act 2007 (Consequential Amendments) Order 2008
<b>Draft S.I.</b>	Rail Vehicle Accessibility (B2007 Vehicles) Exemption Order 2008
<b>Draft S.I.</b>	Tax Credits Up-rating Regulations 2008

## Instruments subject to annulment

<b>S.I. 2007/2139</b>	Scotland Act 1998 (Cross-Border Public Authorities) (Traffic Commissioner for the Scottish Traffic Area) Order 2007
<b>S.I. 2008/118</b>	London Skills and Employment Board (Establishment) Regulations 2008
<b>S.I. 2008/119</b>	London Skills and Employment Board (Specified Functions) Order 2008
<b>S.I. 2008/131</b>	Export Control (Democratic Republic of Congo) (Amendment) Order 2008
<b>S.I. 2008/133</b>	Social Security (Contributions) (Amendment) Regulations 2008
<b>S.I. 2008/135</b>	British Citizenship (Designated Service) (Amendment) Order 2008
<b>S.I. 2008/163</b>	Merchant Shipping (Liner Conferences) Act 1982 (Repeal) Regulations 2008

## Instruments subject to annulment (Northern Ireland)

<b>S.R. 2008/22</b>	Rules of the Supreme Court (Northern Ireland) (Amendment) 2008
<b>S.R. 2008/24</b>	Family Proceedings (Amendment) Rules (Northern Ireland) 2008

## Instruments not subject to Parliamentary proceedings not laid before Parliament

<b>S.I. 2007/2603</b>	Equality Act 2006 (Commencement No. 3 and Savings) Order 2007
<b>S.I. 2007/2604</b>	Equality Act 2006 (Termination of Appointments) Order 2007
<b>S.I. 2007/2754</b>	Police and Justice Act 2006 (Commencement No. 4) Order 2007
<b>S.I. 2008/100</b>	William Parker School (Designation as having a Religious Character) Order 2008
<b>S.I. 2008/139</b>	Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2008

# Appendix 1

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## S.I. 2008/5: memorandum from the Home Office

***Immigration and Police (Passenger, Crew and Service Information) Order 2008  
(S.I. 2008/5)***

1. The Committee has asked the Home Office for a memorandum on the following points:
  - (1) *Explain the meaning of the expressions “General Remarks”, “Other Service Information (OSI)”, “System Service Information (SSI)” and “System Service Request Information (SSR)”, which appear in sub-paragraphs(ff), (gg) and (hh) of paragraph 1 of Schedule 2, identify where such an explanation is to be found, and explain why none was provided in this instrument.*
2. The terms “General Remarks”, “Other Service Information (OSI)”, “System Service Information (SSI)” and “System Service Request information (SSR)” are specified in Schedule 2 to the Immigration and Police (Passenger, Crew and Service Information) Order 2008 as types of information that carriers must provide, on request, under paragraph 27B of Schedule 2 to the Immigration Act 1971 to the extent to which it is known to them. A request for such information can be placed on the owner or agent of a ship or aircraft arriving or leaving the United Kingdom or (by virtue of S.I. 1993/1813) on a person operating a train arriving or departing the United Kingdom via the Channel Tunnel or his agent.
3. Three of the four terms are specific to the airline industry. They are entries on airline databases under which information is entered as follows:
  - a. “System Service Request information (SSR)”: This information requests the airline to provide a particular facility to a passenger. SSR comments are usually in standard code. For example “PTA + ticket number” indicates that there is a pre-paid ticket advice and that the passenger needs to collect the ticket. Other examples would be a request to provide assistance, to cater for specific dietary requirements or to take action since the passenger is travelling alone.
  - b. “System Service Information (SSI)”: This could be an airline’s interpretation of another airline’s SSR or it may be details relating to a particular flight (for example, departure times, routing, terminal, aircraft type).
  - c. “Other Service Information (OSI)”: Information that is recorded within the booking as free text. It will often contain information relating to the travel agent and the passenger (eg “OSI BA CTCT 0208 978 0000”, which tells us that the travel agent is BA and provides the contact telephone for that agent).

However, some carriers will use OSI in the same way as others use SSR and General Remarks and in such cases OSI will contain special requests such as a request for extra leg room due to the height of the passenger.

4. "General Remarks" are collected by airlines, ships and train carriers. However, in the case of ships and trains the information may be recorded under a heading 'Notes'.
  - a. In the case of airlines, the comments entered are often linked to SSR. For example, were the SSR to read "PTA + ticket" the General Remarks may specify where the ticket is to be collected. This information is not exchanged with other carriers.
  - b. In the case of ships and trains, special requirements of passengers will be entered.
  
5. The Home Office did not seek to define these terms in the Immigration and Police (Passenger, Crew and Service Information) Order 2008. This was due to the fact that the terms are self-explanatory to the carriers and will not give rise to any confusion. Furthermore, a very wide range of information can be included under these headings and in some cases the terms are used to cover different information (for example, SSR and General Remarks are sometimes included under OSI instead). Consequently, any definition could not have been exhaustive. The Home Office appreciates that there is a need for Parliament to know what information may be acquired from carriers by virtue of the Order and is very grateful to the Committee for pointing out the omission of definitions in these instances. The Home Office proposes to include a definition of these terms in the revised Code of Practice which is to be laid before Parliament later this year under section 37 of the Immigration, Asylum and Nationality Act 2006. In the meantime, the carrier industry has been closely involved with the policy contained in this Order and the Home Office is satisfied that there will be no confusion over these terms in practice.

**Home Office**

4 February 2008

## Appendix 2

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### **S.I. 2008/37: memorandum from the Department for Business, Enterprise and Regulatory Reform**

<i>Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (S.I. 2008/37)</i>
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1. The Committee has asked the Department for Business, Enterprise and Regulatory Reform for a memorandum on the following point:

*“If a person commits an offence under regulation 13(4), to what penalty is he liable and where is this explained?”*

2. The Department has reviewed this point and regrets to say that the Regulations make no provision for a person who commits an offence under regulation 13(4) to be liable to any penalty.

3. This was the result of a drafting oversight. There should be a reference to regulation 13(4) in regulation 17(2), but this was overlooked when paragraphs (4) and (5) of regulation 13 were copied, in modified form, from an earlier related instrument (S.I. 2006/3289).

4. The Department apologises for this error and is grateful to the Committee for pointing it out. A corrective instrument will be laid, with copies being made available free of charge, as soon as possible.

**Department for Business, Enterprise and Regulatory Reform**

4<sup>th</sup> February 2008