



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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**Twentieth Report  
of Session 2006–07**

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**Drawing special attention to:**

*School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (S.I. 2007/1288)*

*School Governance (Parent Council) (England) Regulations 2007 (S.I. 2007/1330)*

*School Travel (Piloting of Schemes) (England) Regulations 2007 (S.I. 2007/1366)*

*Equality Act (Sexual Orientation) (Amendment No 2) Regulations (Northern Ireland) 2007 (S.R. 2007/261)*

*Ordered by The House of Lords to be printed  
20 June 2007*

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# Joint Committee on Statutory Instruments

## Current membership

### House of Lords

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Lord Dykes (*Liberal Democrat*)  
Baroness Gale (*Labour*)  
Lord Gould of Brookwood (*Labour*)  
Lord Kimball (*Conservative*)  
Countess of Mar (*Crossbench*)  
Lord Walpole (*Crossbench*)

### House of Commons

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Mr Peter Bone MP (*Conservative, Wellingborough*)  
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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 Mick Hillyard (*Commons Clerk*), Kath Kavanagh (*Lords Clerk*) and Jacqueline Cooksey (*Committee Secretary*). Advisory Counsel: Peter Davis, Peter Brooksbank and Christine Cogger (*Commons*) and Peter Milledge (*Lords*).

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## Instruments reported

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At the Committee's meeting on 20 June 2007, it scrutinised a number of instruments and decided to draw the special attention of both Houses to **four** 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. 2007/1288: reported for defective drafting

*School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (S.I. 2007/1288)*

1.1 The Committee draws the special attention to both Houses to these Regulations on the grounds that they are defectively drafted in one respect.

1.2 Regulation 8(1) requires a local education authority in specified circumstances to publish certain specified matters, including those set out in sub-paragraphs (e) and (f). Regulation 8(5) requires a local education authority to publish copies of other specified documents, on any website maintained by them *and details of the matters specified in sub-paragraphs (1)(e) and (f) above.*

1.3 In a memorandum printed at Appendix 1, the Department for Education and Skills accepts that the words "on any website maintained by them" should have appeared at the end of regulation 8(5), so that they apply to the details referred to in the italicised phrase, and undertakes to make an appropriate amendment when the Regulations are next amended. The Department adds, however, that the purpose of the wording of regulation 8(5) will be understood by local authorities, given that it is "specifically about what is to be published on a website". Although that is clearly what the Department intended regulation 8(5) to be about, in the Committee's view this is far from clear from the way it is drafted, and does not find the Department's remark convincing. **The Committee reports regulation 8(5) for defective drafting, acknowledged by the Department.**

### 2 S.I. 2007/1330: reported for defective drafting

*School Governance (Parent Council) (England) Regulations 2007 (S.I. 2007/1330)*

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

2.2 Regulation 2(2) states that any reference in the Regulations to the governing body or to the governing body of a school is a reference to the governing body of a school to which these Regulations apply. Regulation 2(1) defines "pupil" as meaning a pupil registered at a school to which these Regulations apply.

2.3 In a memorandum printed at Appendix 2, the Department for Education and Skills accepts that the expression “the governing body of a school” does not appear elsewhere in the instrument and ought not to have been included in regulation 2(2). It undertakes to amend regulation 2(2) at the next opportunity. **The Committee accordingly reports the inclusion of that phrase in regulation 2(2) for defective drafting, acknowledged by the Department.**

2.4 In response to the Committee’s question as to why there is no indication of the schools to which these Regulations apply, the Department rightly states that, as the Regulations are made under section 23A of the Education Act 2002, and as that section applies only to “qualifying schools” as defined in that section, the Regulations can only apply to such schools. Furthermore, the Explanatory Note includes a reference to section 23A and the definition of “qualifying school”.

2.5 In the Committee’s view, this does not adequately address the point. The expression “a school to which these Regulations apply” leads the reader naturally to look for an explanation of the schools to which they apply. The only such indication in the instrument itself is in regulation 1(2), which states that the Regulations apply only in relation to England, but this is of little assistance to the reader. The expression “qualifying school” should have been used instead of “school to which these Regulations apply”. **The Committee accordingly reports the use of the latter phrase in regulation 2(1) and (2) for defective drafting.**

### **3 S.I. 2007/1366: reported for defective drafting**

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| <i>School Travel (Piloting of Schemes) (England) Regulations 2007 (S.I. 2007/1366)</i> |
|--|

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

3.2 Regulation 3 requires every application to the Secretary of State for his approval of a school travel scheme to be in writing and to contain information in respect of each of the matters specified in “the Schedule”. This is clearly intended to be a reference to the Schedule to the Regulations, which specifies the information to be so included. However, regulation 2 states that, in these Regulations, “the Schedule” means Schedule 35C to the Education Act 1996.

3.3 In a memorandum printed at Appendix 3, the Department for Education and Skills accepts that regulation 3 does not work properly with the definition in regulation 2. It suggests that regulation 3 should refer to “the Schedule to these Regulations”. The Committee would observe that, in addition, the definition in regulation 2 should include the words “, except in regulation 3,”.

3.4 The Committee agrees with the Department that the intention is sufficiently clear that it is not necessary to amend the Regulations for the sole purpose of correcting this error, **but reports these Regulations for defective drafting, acknowledged by the Department.**

## 4 S.R. 2007/261: reported for defective drafting and failure to comply with *Statutory Instrument Practice*

***Equality Act (Sexual Orientation) (Amendment No 2) Regulations (Northern Ireland) 2007 (S.R. 2007/261)***

4.1 The Committee draws the special attention to both Houses to these Regulations on the grounds that they are defectively drafted in two respects and fail to comply with *Statutory Instrument Practice*.

4.2 This instrument amends the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (S.R 2006/439) which the Committee reported for defective drafting in its 6th Report of this Session.

4.3 Each of regulations 2 to 7 bears the heading “**Amendment to regulation [X] of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006**”, but the body of the text does not identify the instrument which is being amended. In a memorandum printed at Appendix 4, the Office of the First and Deputy First Minister accepts that this was an error, and **the Committee reports the Regulations for defective drafting, acknowledged by the Department.**

4.4 In paragraphs 1.6 and 1.7 of its 6th Report, the Committee drew attention to the fact that regulations 31(3) and 32(1) referred to notices being given “in the prescribed manner” and “in the prescribed form”, although no explanation was given as to the meaning of “prescribed”. The Department had stated that “prescribed” was intended to mean “prescribed by an order made by the Office of the First and Deputy First Minister”. The Committee pointed out that the Equality Act 2006, which confers the power to make those Regulations, does not expressly permit the Regulations to confer powers on the Department to legislate by order, and expressed its view that the appropriate action for the Department to take would be to amend the Regulations so that they themselves (i.e. the Regulations) specify the form and manner.

4.5 Regulation 2(2) of this instrument, which is intended to address the Committee’s remarks, simply inserts a definition of “prescribed”, which means prescribed by regulations made by the Department. In its memorandum, the Department now accepts that there is no power in the Equality Act 2006 to enable it, in these Regulations, to sub-delegate to itself power to make further regulations and that regulations 31 and 32 of the 2006 Regulations, and the amendment made by regulation 2(2) of this instrument, ought not have purported to do so. **The Committee accordingly reports regulation 2(2) for defective drafting, acknowledged by the Department.**

4.6 The Department also acknowledges that these Regulations should have borne an italic headnote stating that the instrument had been made to correct errors in the 2006 Regulations and was being issued free of charge to all known recipients of those Regulations, as required by paragraph 3.4.14 of *Statutory Instrument Practice*, although it had made arrangements for copies to be made available free of charge. **The Committee accordingly reports these Regulations for a failure to comply with *Statutory Instrument Practice*.**

4.7 The Department explains that any corrective action is now a matter for the Northern Ireland Assembly. The Committee agrees.

## 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> | Categories of Gaming Machine Regulations 2007  |
| <b>Draft S.I.</b> | Community Order (Review by Specified Courts) Order 2007                                      |
| <b>Draft S.I.</b> | Gambling (Lottery Machine Interval) Order 2007   |
| <b>Draft S.I.</b> | Gambling Act 2005 (Amendment of Schedule 6) Order 2007                                       |
| <b>Draft S.I.</b> | Gambling Act 2005 (Horserace Betting Levy) Order 2007  |
| <b>Draft S.I.</b> | Gambling Act 2005 (Horserace Totalisator Board) Order 2007                                   |
| <b>Draft S.I.</b> | Gambling Act 2005 (Operating Licence Conditions) Regulations 2007                            |
| <b>Draft S.I.</b> | Police (Northern Ireland) Act 2003 (Commencement No. 2) Order 2007                           |
| <b>Draft S.I.</b> | Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2007 |
| <b>Draft S.I.</b> | Terrorism Act 2006 (Disapplication of Section 25) Order 2007                                 |
| <b>Draft S.I.</b> | Welfare of Farmed Animals (England) Regulations 2007   |
| <b>Draft S.I.</b> | Working Time (Amendment) Regulations 2007  |

### Instruments subject to annulment

|                         |   |
|-------------------------|---|
| <b>S.I. 2006/3328</b>   | Parliamentary Commissioner Order 2006   |
| <b>S.I. 2006/3362</b>   | Legal Services Ombudsman (Jurisdiction) (Amendment) Order 2006                                      |
| <b>S.I. 2006/3374</b>   | Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2006                  |
| <b>S.I. 2007/616</b>    | General Medical Council (Constitution) (Amendment) Order 2007                                       |
| <b>S.I. 2007/789</b>    | Charities Act 2006 (Interim changes in threshold for registration of small charities) Order 2007    |
| ○ <b>S.I. 2007/1320</b> | Health Service Medicines (Information Relating to Sales of Branded Medicines etc.) Regulations 2007 |
| <b>S.I. 2007/1353</b>   | National Assembly for Wales Commission (Crown Status) (No. 2) Order 2007                            |
| <b>S.I. 2007/1446</b>   | Public Health (Ships) (Amendment) (England) Regulations 2007  |
| <b>S.I. 2007/1447</b>   | Public Health (Aircraft) (Amendment) (England) Regulations 2007                                     |
| <b>S.I. 2007/1449</b>   | Marketing of Vegetable Plant Material (England) (Amendment) Regulations 2007                        |
| <b>S.I. 2007/1488</b>   | Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007                                |
| <b>S.I. 2007/1492</b>   | Whole of Government Accounts (Designation of Bodies) Order 2007                                     |
| <b>S.I. 2007/1494</b>   | Highways (SSSI Diversion Orders) (England) Regulations 2007   |

- S.I. 2007/1495** Disability Discrimination Code of Practice (Providers of Post 16 Education) (Revocation) Order 2007
- S.I. 2007/1507** Education Act 1996 (Amendment of Section 19) (England) Regulations 2007
- S.I. 2007/1508** Goods Infringing the Olympics and Paralympics Association Rights (Customs) Regulations 2007
- S.I. 2007/1509** Control of Cash (Penalties) Regulations 2007
- S.I. 2007/1510** National Health Service (Charges for Drugs and Appliances) Amendment (No.2) Regulations 2007
- S.I. 2007/1511** Road Traffic (Permitted Parking Area and Special Parking Area) (Metropolitan Borough of North Tyneside) Order 2007
- S.I. 2007/1512** Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) (No. 3) Order 2007
- S.I. 2007/1518** Marine Works (Environmental Impact Assessment) Regulations 2007
- S.I. 2007/1524** Street Litter Control Notices (England)(Amendment) Order 2007
- S.I. 2007/1525** Home Information Pack (Revocation) Regulations 2007
- S.I. 2007/1526** Export Control (Iran) Order 2007
- S.I. 2007/1536** Home Information Pack (Redress Scheme) (Revocation) Order 2007
- S.I. 2007/1550** Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007
- S.I. 2007/1553** Commons Registration (General) (Amendment) (England) (Revocation) Regulations 2007
- S.I. 2007/1557** Local Authorities (Functions and Responsibilities) (England) (Amendment) (No.2) Regulations 2007
- S.I. 2007/1561** Local Government Pension Scheme (Amendment) (No.3) Regulations 2007
- S.I. 2007/1587** Safety of Sports Grounds (Designation) Order 2007
- S.I. 2007/1595** Railways Pensions Guarantee (Prescribed Persons) Order 2007
- S.I. 2007/1597** Sex Discrimination Code of Practice (Public Authorities) (Duty to Promote Equality, Scotland) (Appointed Day) Order 2007

#### Draft instruments subject to annulment

- Draft S.I.** Charities (Bridge House Estates) Order 2007

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

- S.I. 2007/1484** Citizenship Oath and Pledge (Welsh Language) Order 2007

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

- S.I. 2006/3255** Veterinary Surgeons and Veterinary Practitioners (Registration) (Amendment) Regulations Order of Council 2006
- S.I. 2006/3324** Wireless Telegraphy (Jersey) Order 2006
- S.I. 2006/3325** Wireless Telegraphy (Guernsey) Order 2006
- S.I. 2007/1493** Countryside and Rights of Way Act 2000 (Commencement No. 12) Order 2007

- S.I. 2007/1496** Disability Discrimination Code of Practice (Providers of Post 16 Education) (Appointed Day) Order 2007
- S.I. 2007/1549** Offshore Installations (Safety Zones) (No.3) Order 2007
- S.I. 2007/1602** Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 7 and Transitional Provisions) Order 2007

# Appendix 1

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## S.I. 2007/1288: memorandum from the Department for Education and Skills

***School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (S.I. 2007/1288)***

1. This memorandum has been prepared by The Department for Education and Skills in response to the Joint Committee's letter of 23<sup>rd</sup> May 2007 which requested a memorandum on the following points:
  - (1) *In regulation 8(5), should the words "on any website maintained by them" appear at the end? If not, what is the purpose of duplicating the effect of regulation 8(1)(e) and (f)?*
2. The Department accepts that the words "on any website maintained by them" should appear at the end of regulation 8 (5). The Department is grateful to the Committee for pointing this out and proposes to make an amendment to regulation 8 (5) to effect this change when the regulations are next amended.
3. Regulation 8 (5) is intended to make it a requirement that local authorities maintaining websites should publish complete copies of all proposals made in a competition for a new school. It is also intended to make it a requirement that the local authority publishes on the website details of when and where the first public meeting will be held as provided for in regulation 10 and a statement saying that any person may object to or comment on the proposals, including the address to which the objections or comments should be sent and the date by which they must be submitted. Given that regulation 8 (5) is specifically about what is to be published on a website, the department considers that local authorities will understand the purpose of the wording of regulation 8 (5) although the department accepts that regulation 8 (5) should be drafted in a way that makes its meaning clearer as suggested by the Committee. Consequently, during the period until the regulations are amended the Department does not consider that, in practice, the wording of regulation 8 (5) will cause confusion.
  - (2) *In regulation 9(6), is the expression "diversity among relevant schools" intended to refer to the matters in sub-paragraphs (a) to (e)? If so, what makes that clear? If not, what is intended to be covered by that phrase and why is the meaning not further clarified?*
4. Regulation 9(6) sets out prescribed matters to which the Secretary of State is to have regard in determining whether to give consent under section 8(1)(b) of the Education and Inspections Act 2006 ("EIA 2006") to the publication of proposals for the establishment of a community or community special school.

5. The expression “diversity among relevant schools” is not intended to refer to the matters in sub-paragraphs (a) to (e) of regulation 9(6) which are matters within schools. The phrase is used in section 8(3) of the EIA 2006 in relation to conditions that may be prescribed (and that power is exercised in regulation 9(2)(b)(ii)). It is not defined in the EIA 2006 but its meaning is generally understood by local authorities as referring to different categories of schools. Given that the phrase is not defined in EIA 2006, the Department considers that it would be unhelpful to seek to define it in the regulations made under the Act. The effect of regulation 9(6) is further set out in guidance issued by the Department.

## Appendix 2

### S.I. 20071330: memorandum from the Department for Education and Skills

***School Governance (Parent Council) (England) Regulations 2007 (S.I. 2007/1330)***

This memorandum has been prepared by the Department for Education and Skills in response to the Joint Committee's letter of 23<sup>rd</sup> May 2007 requesting clarification on the following point:

*Regulation 2(2) provides a meaning for any reference to "the governing body" or to "the governing body of a school".*

- (a) *What is the purpose of including the second quoted phrase, given that it does not appear in any other provision of the Regulations?*
- (b) *The meaning given is "a school to which these Regulations apply", a phrase that also appears in the definition of "pupil" in regulation 2(1). Why is there no indication of the schools to which the Regulations apply?*
1. The Department agrees that the term "the governing body of a school" defined in regulation 2(2) is not used elsewhere in the School Governance (Parent Council) Regulations 2007 ("the Regulations") but notes that the superfluous definition does not affect the operation of the Regulations. We thank you for drawing this to our attention and the Department will amend regulation 2(2) of the Regulations at the next opportunity.
  2. The Regulations are made under section 23A of the Education Act 2002. Section 23A(2) requires the governing body of any "qualifying school" to establish in accordance with regulations a body to be known as a parent council. "Qualifying school" is defined in section 23A(1). As the Act explicitly states which schools must establish a parent council, the Department is of the view that it is unnecessary to repeat that definition in the Regulations. The power in section 23A is to make regulations about the membership, proceedings and functions of the parent council and does not, in the Department's view, enable us to specify to which schools the Regulations apply.
  3. However, in order to be helpful, the Department referred to the definition of qualifying school in section 23A(1) in the Explanatory Note. This was considered to be more helpful than inserting a footnote because commercial publishers replicate Explanatory Notes but often do not publish footnotes.

## Appendix 3

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### S.I. 2007/1366: memorandum from the Department for Education and Skills

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| <i>School Travel (Piloting of Schemes) (England) Regulations 2007 (S.I. 2007/1366)</i> |
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1. This memorandum has been prepared by The Department for Education and Skills in response to the Joint Committee's letter of 23<sup>rd</sup> May 2007 which requested a memorandum on the following point:

*“ Given the definition of “the Schedule” in regulation 2 as meaning Schedule 35C to the Education Act 1996, why does regulation 3 use the same expression as a reference to the Schedule to these Regulations?”*

2. The Department accepts that the reference in regulation 3 is incorrect, in light of the definition of "the Schedule" in regulation 2 and apologises for the error. The reference in regulation 3 should be to “the Schedule to these Regulations”. However, the Department feels that the reference in regulation 3 is clear and does not propose to amend it at present, but will correct the reference if the Regulations are subsequently amended.

## Appendix 4

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### S.R. 2007/261: memorandum from the Office of the First and Deputy First Minister

***Equality Act (Sexual Orientation) (Amendment No 2) Regulations (Northern Ireland) 2007 (S.R. 2007/261)***

The Committee has requested a Memorandum from the Office of the First and Deputy First Minister in relation to a number of points arising in connection with the above Regulations.

The first question is

- “(1) Why is the only indication of the instrument which is being amended given in the headings to the Regulations and not in the body of the text?”

The Department accepts that this is in error. Regulations 2 to 7 of these Regulations should, in each case, have contained an indication of the instrument to which amendments were being made.

The second question was

- “(2) Regulations 31(3) and 32(1) of the 2006 Regulations, as read with the new definition of “prescribed”, purport to confer power on the Department to make Regulations. Identify the provision which authorises this. (See paragraph 1.7 of the Committee’s Sixth Report of Session 2006/2007)”.

The Department accepts that there is no power in the Equality Act 2006 to enable the Department, in these Regulations, to sub-delegate to itself power to make further Regulations. Regulation 31(3) could not, therefore, authorise the Department to make Regulations prescribing the manner in which notices are to be given of the holding of an investigation under Regulation 30. Equally, Regulation 32(1) cannot confer upon the Department the power to prescribe certain other notices or the manner in which they may be served. The drafting of these provisions (as read within the new definition of “prescribed”) should not have suggested otherwise.

The final question was

- “(3) Given that this instrument corrects (and in one case clarifies) provisions in an earlier instrument, has the Department (in accordance with paragraph 3.4.11 of Statutory Instrument Practice) made arrangements for copies of this Instrument to be made available free of charge to all known recipients of the early Instrument? If not, explain why not. If so, explain why this Instrument does not bear a head note to that effect (see paragraph 3.4.14 of Statutory Instrument Practice).”

The Department had made arrangements for copies of the Regulations to be made available free of charge. Unfortunately, however, it overlooked the need to include the appropriate headnote.

The Department regrets the errors referred to above. It should, however, draw the attention of the Committee to the fact that these Regulations were, under Section 82(5) of the Equality Act 2006, required to be laid in draft before and approved by resolution of the Northern Ireland Assembly. While Section 1 of and paragraph 7(3) of the Schedule to the Northern Ireland Act 2000 were in effect, the Regulations were, required to be laid before Parliament where they subject to annulment in pursuance of resolution of either House in like manner as a Statutory Instrument.

On 8 May 2007, Section 1 and the Schedule to that Act ceased to have effect and, accordingly, from that date, Regulations made by the Department under Section 82 of the Equality Act 2006 must now be laid before the Assembly. The Department would, therefore, respectfully say that any corrective action necessary as a result of the errors pointed out by the Committee is a matter for the Assembly.