

IMPACT OF THE GENERAL ELECTION ON THE MAKING OF STATUTORY INSTRUMENTS

1. Purpose

- 1.1 This Circular sets out the consequences for the making of Statutory Instruments following the calling of the General Election. It brings together a range of standing guidance which features within *Statutory Instrument Practice* or has previously been issued by the Cabinet Office.

2. Background

- 2.1 During a General Election period the Government retains its responsibility to govern and Ministers remain in charge of their departments. Essential business must be carried on. However, it is customary for Ministers to keep to a minimum decisions which would initiate new action of a continuing or long-term character. Decisions on matters of policy on which a new Government might be expected to want the opportunity to take a different view from the present Government should be postponed until after the Election provided such postponement would not be detrimental to the national interest or wasteful of public money.

3. Consequences of the dissolution of Parliament

3.1 *Laying of instruments and drafts*

- 3.1.1 After the dissolution of a Parliament, and until the meeting of its successor, there is no Parliament in existence and no document can be laid before either House.
- 3.1.2 Parliament will be prorogued either on the conclusion of business on Thursday 7 April or Friday 8 April and during prorogation, instruments will continue to be accepted for laying. For practical purposes this means that if Parliament is prorogued, instruments may be laid between 11am and 5.00pm on Friday 8 April. Parliament is due to be dissolved on Monday 11 April. Whilst instruments can be laid up until Parliament is dissolved, the timing of dissolution on 11 April is uncertain and departments should therefore liaise with the Votes and Proceedings Office in the House of Commons and the Printed Papers Office in the House of Lords if they have any intention of laying an instrument on that day.

3.1.3 The new Parliament is due to meet on Wednesday 11 May and between that day and the State Opening on 17 May, instruments may be laid between 11.00am and the rise of the House, which is expected to be around 3.00pm, on each day.

3.1.4 Where a document has been laid before dissolution takes place, the question whether it must be re-laid when the new Parliament meets depends upon the provisions of the relevant Act or Acts and upon the practice or Standing Orders of the two Houses.

3.1.5 The following need not be re-laid:

- a) Drafts requiring approval (class (i) of Table B of *Statutory Instrument Practice*, page 9) and instruments requiring approval before coming into force (class (ii)); these are exempted from relaying by the practice of each House.
- b) Instruments requiring approval within a specified period to remain in force (class (iii)): in all known cases time during which Parliament is dissolved is excluded from the specified period by the enabling Act and, as a corollary, relaying is not required. (If there were no such exclusion the instrument would have to be re-laid.)
- c) Negative drafts (class (iv)) and negative instruments (class (v)): by section 7(1) of the Statutory Instruments Act 1946 time during which Parliament is dissolved is excluded from the 40-day period prescribed by sections 5 and 6, the corollary being (as in b) above) that relaying is not required.
- d) Special procedure orders: these are exempted from relaying by the practice of the House of Lords and by virtue of Private Business Standing Order No 247 of the House of Commons, and proceedings begun in the last Parliament may be resumed in the new Parliament. Time during which Parliament is dissolved is excluded from the petitioning period of 21 days (see Private Business Standing Orders, House of Lords No 201A, House of Commons No 247) and from the resolution period of 21 days (see Statutory Orders (Special Procedure) Act 1945, section 4(1)).

Instruments and drafts of the above categories should if possible be laid before a dissolution takes place, so as to avoid delay in the completion of the parliamentary procedure.

3.1.6 The following must be re-laid, for the full period prescribed by the enabling Act, when the new Parliament meets:

- a) drafts required to be laid for a stated period without being subject to resolution (e.g. under the National Savings Bank Act 1971, section 26(4));
- b) schemes laid under the Mining Industry Act 1920, section 18(3).

3.2 *Date of laying: the italic heading*

- 3.2.1 A statutory instrument should (unless exempt) be printed as soon as possible after it has been registered (see *Statutory Instrument Practice* paragraph 3.4.1). If the printing takes place when Parliament is dissolved, the normal italic heading '*Laid before Parliament*' should be replaced by '*To be laid before Parliament*' when it is not necessary to specify a date. If the instrument will come into force before it can be laid before the new Parliament (see paragraph 3.4.2 below) this heading should be printed below the '*Coming into force*' heading.

3.3 *Letter to TSO*

- 3.3.1 If an instrument or draft is required to be laid and is sent for printing whilst Parliament is dissolved, the letter to TSO (*Statutory Instrument Practice* Forms and Precedents, FP13) should be amended as follows:

Paragraph 5.6 should read:

"To be laid before [Parliament or the House of Commons]".

3.4 *Notification to the Speakers of the House of Lords and House of Commons*

- 3.4.1 As a result of the coming into force of the relevant provisions within the Constitutional Reform Act 2005 the position of Lord Chancellor as Speaker of the House of Lords has changed. References to "the Lord Chancellor" within the Statutory Instruments Act 1946 and the Laying of Documents Before Parliament (Interpretation) Act 1948 have been amended to "the Speaker of the House of Lords". In practical terms though and until the House of Lords finalises the arrangements and appoints a new Speaker, the Lord Chancellor will remain as the Speaker.
- 3.4.2 Where an instrument cannot be laid because Parliament is dissolved, and it is essential to bring it into force before the new Parliament has met, the Speaker of the House of Lords and the Speaker of the House of Commons must be notified in accordance with the procedures which apply when any instrument is laid after it has come into force (see *Statutory Instrument Practice* paragraphs 4.3.6 - 4.3.8). The Speaker of the House of Lords remains in office notwithstanding dissolution, and the notification to him should be sent on the day the instrument comes into force. The Speaker of the House of Commons, however, vacates his office upon dissolution, and such notification cannot be sent until the new House of Commons has assembled and elected a Speaker.

4. Enquiries

- 4.1 Any enquiries regarding the content of this circular should be addressed to:

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