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Legislation of the United Kingdom: subordinate legislation

INTRODUCTION

Subordinate or secondary legislation comprises the mass of legislation that is not an Act of Parliament. There are two different types of secondary legislation: delegated legislation and prerogative legislation. Delegated legislation is authorised by Parliament in an act which delegates the power to make laws on defined subjects to named authorities. Prerogative legislation is made by the Crown with its inherent law-making right not dependent on Parliament. Certain other bodies have inherent law-making powers - law courts can make their own rules and local authorities within their competence can make by-laws. Even if prerogative legislation is not authorised by Parliament, it is, nevertheless, subordinate to it as Parliament as the supreme law maker could at any time abrogate any prerogative legislation or reduce or abolish the prerogative by which it was made. The constitutional struggle of the 17th century is largely the history of the reduction of the royal prerogative.

In order to reduce pressure on parliamentary time, Acts of Parliament often give government ministers or other authorities the power to regulate administrative details by means of 'delegated' legislation. This mostly takes the form of Orders in Council, Regulations and Rules known as Statutory Instruments (SIs). These are as much the law of the land as are Acts of Parliament.

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1. STATUTORY RULES & ORDER AND STATUTORY INSTRUMENTS

Subordinate legislation made by the executive on the authority of Acts of Parliament dates from the 16th century but did not become common until the 19th century. The system was regularised in the 1890s. Annual editions of what was then known as Statutory Rules and Orders (SR&Os) date from 1890. A numbered series was launched in 1894 following the *Rules Publication Act 1893*. With some redefinition, these became Statutory Instruments (SIs) from 1948 following the *Statutory Instruments Act 1946*.

Three collected editions of instruments exist, published in 1896 (covering pre-1890 instruments), 1903 and 1948. These include all instruments in force at the relevant time as amended at that date. No official compilations have been published in print since then, but *Halsbury's Statutory Instruments* is kept up to date and offers instruments as amended. However this collection is selective and excludes Scotland.

Annual and collected editions of SR&Os and SIs exclude temporary and local instruments. Temporary instruments (those spent or revoked before the cumulative volumes are issued) and some local instruments are individually published and should be held by the British Library in this form, although early holdings are poor. Local instruments are also listed though not printed in the annual volumes. The Library's collection of local instruments is supplemented by a microfiche set covering 1922 to 1980 which includes local unpublished instruments. Unpublished SIs later than this are not held at the British Library and must be obtained from the National Archives. Photocopies of unprinted local Statutory Instruments from 1922-2006 can be ordered from the National Archives by using the General Enquiries online contact form <http://apps.nationalarchives.gov.uk/contact/> and stating that you would like a copy of a local statutory instrument held in repository reference TS37. Requests for post-2006 local non-print SIs should be emailed to localsis@nationalarchives.gsi.gov.uk. Early instruments may be found in the 1896 revision, the London Gazette or occasionally as parliamentary papers but many before 1890 were unpublished.

Statutory Rules and Orders and Statutory Instruments are cited by using the abbreviations SR&O or SI as appropriate followed by the calendar year and a forward slash (/) and the instrument number, e.g. SI 1985/1234. As this can be ambiguous when the instrument number could be mistaken for the year, it is preferable to substitute 'No.' (for number) for the slash, e.g. SI 1985 No. 1234. This corresponds to the usage in the headings of the instruments themselves.

2. OTHER INSTRUMENTS OF SECONDARY LEGISLATION

In addition to SR&Os and SIs, there is a plethora of other instruments of secondary legislation on specialised topics. These are described here in some detail because they are difficult to find or identify and because the British Library has a rich collection seldom found elsewhere.

Wartime Emergency Legislation. These are mostly issued as SR&Os but either as a separate series (World War I) or as a separate sequence in parallel volumes of SR&Os (World War II). In either case instruments are not indexed with the rest of the SR&Os and the texts of instruments still in force were omitted from the *Statutory Rules and Orders and Statutory Instruments Revised, 1948*.

Provisional Orders, Special Procedure Orders, etc. Provisional orders are orders which are confirmed by Acts of Parliament. Texts of the orders appear as schedules to the Confirmation Acts and can be found in the sessional/annual volumes of Public General Acts until 1868 and Local and Personal Acts since 1869, where they were identified as 'Public acts of a local character' until 1963. Special procedure orders are orders made under the provisions of the *Statutory Order (Special Procedure) Act 1945* and have largely replaced provisional orders for England and Wales. These are issued as local SIs but for 1946-1954 inclusive they were also reissued in *Local and Personal Acts* and a table of them has continued to be included in the index there. Provisional orders for Scotland continue to be issued under the *Private Legislation Procedure (Scotland) Act 1936* as amended by the *Scotland Act 1998*. The 1936 Act does not now apply when

public authorities or persons desire to obtain parliamentary powers within the competence of the Scottish Parliament. Both Provisional Orders and Special Procedure Orders, including those confirmed by public acts, were indexed in the *Index to Local and Personal Acts, 1801-1947* but they are not included in the *Supplementary Index ... 1948-1966*.

Special Orders for Electricity and Gas. Until 1918, electricity, gas and water undertakings (whether private or local authority) were regulated by Provisional Orders, and water continued to be. However, under the *Electricity (Supply) Act 1919* and the *Gas Regulation Act 1920*, electricity and gas were regulated by Special Orders requiring approval by parliamentary resolution. In addition, the distribution of electricity was regulated by Schemes under the *Electricity (Supply) Act 1926*. The system ended with nationalisation. Gas Orders were issued as local SR&Os but Electricity Orders were issued in a series of their own.

Both were also issued briefly as Command Papers. Electricity and Gas Orders and Water Provisional Orders are indexed in the *Index to Local and Personal Acts, 1801-1947*.

Light Railway Orders. These are orders made under the *Light Railways Act 1896* and largely replaced the private bill procedure for setting up railways. Light Railway Orders were issued as Command Papers to 1921 and as local SR&Os and SIs since then. As Command Papers they are indexed in the Sessional Papers' indexes under the heading *Railways - Accounts and Papers - Light Railway Orders*. All to 1947 are included in the *Index to Local and Personal Acts, 1801-1947* and there is a complete list of orders to 1976 on the open shelves.

Wages Orders. These are orders made by Wages Councils, formerly Trade Boards, enforcing their decisions with respect to minimum wages in certain industries and on related matters until their abolition in 1993. Since before World War I, orders have been twice issued as SR&Os or SIs and twice not! Individual orders were gazetted (i.e. listed in the *London Gazette*) and the entries under 'Trade Boards' (to 1945) and 'Wages Councils' (1946-1993) in the 'State Intelligence' section of its quarterly indexes provide an index of sorts to the orders, especially for the non-SR&O and SI periods. Orders issued as SR&Os or SIs are fully indexed in the annual volumes of these.

Queen's Regulations (QRs), etc. Separate King's/Queen's Regulations are issued for each of the armed services. New editions used to be issued at irregular intervals with frequent amendments in between. Current editions are issued in loose-leaf format and kept up to date by supplements. Earlier editions are most easily traced through the printed catalogue under the heading **ENGLAND. [Departments of State, etc]. Army - Regulations and Orders. - I. General Regulations** and the corresponding headings for the Royal Navy and the RAF. King's/Queen's Regulations are themselves supplemented by many other regulations and orders. Historic orders can be traced most easily through the printed catalogue under the heading **ENGLAND. [Departments of State, etc]. Army - Regulations and Orders. - II ...**

War Pension Warrants/Orders. These are instruments regulating disability pensions for servicemen injured in war and war widows. They are distinct from warrants for service pensions. (i.e. servicemen's retirement pensions). Until 1977 different instruments were used for the three services: Orders in Council for the Navy and Marines, Royal Warrants for the Army and Orders of His/Her Majesty for the RAF. Until 1964 there were separate instruments in each case for World War I and for World War II and after. All were separately issued (holdings incomplete) and Army Warrants and RAF Orders were also issued as parliamentary papers. In 1963 and 1964 only, all were also published in the annual volumes of SIs. Since 1978, all have been replaced by a single order issued regularly as an SI.

Prerogative instruments. The Crown retains the power to legislate in all matters not restricted by Parliament. In addition, Parliament may delegate the power of specific subordinate legislation to the Crown (usually the 'Crown in Council') in cases where it has withdrawn the general power of original law-making or where it is not minded to delegate such power to a minister or public authority. A wide variety of instruments are used to exercise the Crown's right of legislation, whether delegated or original - Orders in Council, Letters Patent, Royal Instructions, Orders of His/Her Majesty, Royal Warrants, Royal Commissions, Royal Charters, Royal Proclamations, etc. Many instruments are unpublished. Delegated instruments (usually Orders in Council) are usually SIs and published as such. Other instruments, though not SIs, may be included in the annual volumes of these as a kind of appendix. Still others may be issued as parliamentary papers, printed in the *London Gazette* or reprinted in the *British and Foreign State Papers*, all of which are indexed. Some may be issued separately but many are unpublished in any form and are available only as original documents at the National Archives, where enrolled copies should be among the chancery records. More recent Orders in Council may be available directly from the Privy Council Office.

3. BY-LAWS AND ORDERS OF GOVERNMENT DEPARTMENTS

By-Laws are the local laws issued by boroughs and other local and public authorities such as railway companies. Although local authorities have inherent law-making powers within their competence, all by-laws are exercised under statutory authority. 'Publication' is a necessary requirement for the validity of bylaws, but the term is used in a special sense and means that a copy of the bylaw must be made available for inspection by the public, usually at the council offices, during normal working hours. This availability for inspection must be advertised in the local press and often in the *London Gazette* as well. In the normal sense they are unpublished and the British Library generally does not have any. A set of local authority by-laws can be found at the National Archives in the records of the Department for Communities and Local Government and its predecessors, which have had to approve them. Copies should also be available from the local authority concerned or its successor but often are not. By-laws of other public authorities should be available from the authority concerned or its supervising government department.

Orders issued under the seal of a government department, which are therefore called 'Sealed Orders', are listed in the *London Gazette* but are not generally published there. Like by-laws, sealed orders are unpublished and to be found at the National Archives in the records of the issuing department.

4. QUASI LEGISLATION

This is becoming increasingly important and consists of two different types of material. The first comprises codes of practice or guidance notes. These are not legal documents in themselves though some are embodied in legal instruments such as schedules to Acts of Parliament. Infringing their provisions may not of itself be a crime but is usually *prima facie* evidence that a criminal offence has been committed. A good example of this type of instrument is the *Highway Code*. You cannot be prosecuted for failing to comply with

this but, in doing so, you would be liable to prosecution for driving without due care and attention.

The second category are regulations which apply not to the population as a whole but to officials dealing with them, such as the 'Judge's Rules' which used to regulate police interrogation of suspects or the *Immigration Rules*.

5. DRAFT AND MODEL ORDERS

Instruments of subordinate legislation go through a draft stage, though drafts are not always published. Even the statutory requirement to lay an order before Parliament in draft does not guarantee publication. Nevertheless many draft orders are published and held by the Library. In other cases where whole classes of instruments are the same and individual instruments vary only in the place or organisation to which they apply, model orders have been produced for the whole class rather than individual drafts. Some draft instruments need specific forms of parliamentary approval and have been issued as parliamentary papers. In such cases Parliament can approve or reject the draft but cannot amend it, so the draft text is definitive.

Currently, draft statutory instruments and impact assessments are often issued as appendices to consultation papers and can be found with other departmental and agency publications on www.gov.uk.

6. ELECTRONIC VERSIONS

Statutory instruments are now widely available in electronic form in both free and priced sources. Fee-based sources available in the Social Sciences Reading Room are:

- Lexis Library - includes UK Parliament SIs in force from 1786 and Scottish Parliament SIs from 1999. Historical versions of the most frequently searched for statutory instruments that came into force after 1998 are available. SIs made by the Westminster Parliament that relate to Scotland only are not included.
- Westlaw UK - includes UK SIs in force and historic versions from 1948 and Scottish Parliament SIs in force and historic versions from 1999. Selecting Prospective Law will allow you to retrieve the SI with any prospective amendments applied to date.

Both of these sources are password protected. Please ask enquiry desk staff to log you on.

Unconsolidated (as passed) versions of SIs and draft SIs for all jurisdictions (UK, Wales, Scotland and Northern Ireland) are available free of charge on the Legislation.gov website at www.legislation.gov.uk. A complete set of UK statutory instruments is available from 1987; coverage from 1948-1986 is selective. Please browse the site for details on date coverage of Scottish, Welsh and Northern Irish subordinate legislation. Revised versions of **some** secondary legislation is also held on legislation.gov.uk, but the vast majority is held only in the form in which it was passed. Unpublished local and temporary instruments are excluded.

7. LOCATIONS

A full set of the annual *Statutory Rules and Orders and Statutory Instruments* is available on the open shelves in the Social Sciences Reading Room, as is a set of *Halsbury's Statutory Instruments*. The remaining instruments are held off-site and need 48 hours notice to be ordered up. The following list is broadly in the same order as the descriptions above:

<i>Statutory Instruments</i> [Annual vols.], 1890(SR&Os 1894-1947, SIs 1948 to date, classified 1890-1960, numerical 1961 to date)	BS.Ref.22
[individual] 1934-	BS.24b/1*
[individual], recent issues	BS.Ref.22
-[local], 1922-80 (negative microfilm with gaps, arranged numerically except 1943-49 in classified order)	SPR.Mic.E.349
<i>Statutory Rules and Orders Other Than Those of a Local Personal and Temporary Character Issued Prior to 1890 and Now in Force.</i> London, [1896], 8 vols.	BS.24b/4(1)
<i>Statutory Rules And Orders ... in Force on December 31, 1903.</i> London, [1904], 13 vols.	BS.24b/4(2)
<i>Statutory Rules And Orders And Statutory Instruments Revised to December 31, 1948.</i> 3rd ed. London, [1949-52], 25 vols.	BS.24b/4(3)
<i>Halsbury's Statutory Instruments</i> , London, Butterworths 1986-, 22 vols. and loose-leaf updates	OPL.344.4203
<i>Manual of Emergency Legislation</i> [1914-20], 15 vols.	BS.24c/1.-6
<i>Emergency Powers (Defence)</i> , 1940-45. Continued as: <i>Emergency Laws and Supplies and Services</i> , 1946-51. These constitute Vol. II (1940-49) or Vol. III (1950-51) of annual volumes of SR&Os or SIs	BS.Ref.22
<i>Defence Regulations</i> 1st-23rd eds., 1939-57. 27 vols.	BS.44/78
<i>Trading with the Enemy: Legislation in Force in the United Kingdom</i> 1st-5th editions, 1942-49 in 1 vol.	BS.41/161
<i>The Defence (Finance) Regulations</i> , 1939, 1st-5th editions, 1940-42 in 1 vol.	BS.44/85
<i>Electricity (Supply) Acts, ... special orders made by the Electricity Commissions and confirmed by the Minister of Transport, etc</i>	
-1919-41 Min. of Transport, 16 vols	BS.43/76
-1941 (June-July) Min. of War Transport	BS. 43/76
-1941-42 Bd. of Trade, 6 parts	BS.41/178
-1943-45 apparently none published	

-1946-47 Min. of Fuel and Power, 1 bundle	BS.69/14
<i>Electricity (Supply) Act, 1926. Electricity Supply Schemes 1928-47. 2 vols. and 1 bundle</i>	BS.43/77
Wages Orders	
-1909-21 published as SR&Os	BS.Ref.22
-1922-45 published separately, 8 vols. & 1 bundle	BS.23/7
-1946-75 published as SR&Os and SIs	BS.Ref.22
-1976-93 published separately, boxed loose	BS.66/2
(N.B. This last set actually dates from 1951 and overlaps with the previous set; it includes draft orders (on green paper) interfiled with confirmed orders)	
<i>Queen's Regulations for the Army, 1975</i>	BS.45/191
<i>Queen's Regulations for the Navy</i>	BS.1/147
<i>Queen's Regulations for the RAF, 5th ed., 1999</i>	BS.35e/7
(in each case the edition is now in loose-leaf form to facilitate amendment. We do not interfile amendments but bundle them after the main volume.)	
<i>Army Orders</i>	BS.45/203
<i>Allowance Regulations</i>	BS.45/204
<i>Army Pensions Warrants [retirement pensions]</i>	BS.45/172
<i>Naval, Military and Air Forces, etc (Disablement and Death) Service Pension Orders, 1978</i> Issued together with any amendment orders as SIs	BS.Ref.22
<i>Pay Warrants</i>	BS.45/103
<i>Regulations, etc for the Reserves</i>	BS.45/198
<i>Regulations for the Ulster Defence Regiment</i>	BS.88/69
<i>War Office Instructions (to 1916, then Army Council Instructions, 1916-64; later Defence Council Instructions (Army)). Restricted</i>	Not held (set to 1947 in APAC)
<i>Manual of Air Force Law, Pts I & II</i>	BS.35f/14
<i>Manual of Military Law, Pts I, II & civilian suppl.</i>	BS.45/180
<i>Manual of Naval Law (BR 11). Vols. 1 & 2</i>	BS.88/217
<i>Orders in Council (separate), ca. 1950-85; includes a few other prerogative instruments</i>	BS.32/3
<i>Orders in Council (as delegated legislation) are SIs</i>	BS.Ref.22
<i>Orders in Council, Letters (mostly on colonial Patent and a few other matters). In annual prerogative</i>	BS.Ref.22

instruments vols. of SIs	
<i>Tudor Royal Proclamations</i> , 3 vols.	OPL 344.42032
<i>Stuart Royal Proclamations</i> , (2 vols. to 1646)	OPL 344.42032
<i>Royal Proclamations</i> . Published in <i>London Gazette</i>	OGE.70
<i>Royal Proclamations</i> (separate) see Printed Catalogue vol.95, pp.201-304	
<i>Royal Charters</i>	
Most unpublished; a few issued as Command Papers (e.g. BBC) or in <i>British & Foreign State Papers</i> (e.g. Hudson's Bay Co.)	BS.Ref.1
Also check the catalogue under the name of the institution chartered.	BS.14/161
A few government orders do not fit easily into any category. Some are listed here in alphabetical order. The list is not exhaustive.	
<i>Air Navigation: the Orders and Regulations</i> , 1976 loose-leaf (Civil Aviation Authority)	BS.73/105
<i>Canons of the Church of England</i> . London, SPCK 1969	X.100/7375
<i>Church Assembly Measures</i> , 1920-71.	
Continued as <i>General Synod Measures</i> , 1972- .	
In <i>Public General Acts</i> , 1926- ; for 1920-25, see draft measures as Command Papers	BS.Ref.3 (PGA) BS.Ref.1 (PPs)
<i>Civil Aviation and Air Navigation Orders</i>	BS.73/27
Most orders are SIs	BS.Ref.22
<i>Colonial Regulations</i> , 1862-1940	
-published in <i>Colonial Office List</i>	BS.7/124
-published separately 1928	BS.7/58
<i>Factory and Workshop Orders</i> , 1901-33, 9 vols.	BS.18/24
<i>Highway Code</i> , 1931-	BS.43/105
<i>Immigration Rules</i> , 1972. Issued as parliamentary papers	BS.Ref.1
<i>Judge's Rules</i> [on police interrogation of suspects] 1964 (Home Office circular no.31/1964)	BS.18/135
Local Government Board <i>Statutory Rules and Orders</i> , 1891-97, 1 vol.	BS.17/4
<i>Merchant Shipping Notices Consolidated</i> , 1987 and annual supplements	BS.41/376
<i>Orders under the Science and Technology Act</i>	BS.10/238
<i>Prison Regulations</i> are generally issued as SIs	BS.Ref.22
<i>The Taxes Acts</i> ,	
-1970-94	BS.22/54

-1995-1999/2000	BS.22/93
Multivol. Annual. Includes subordinate legislation	
Draft and Model Instruments	
<i>Draft SR&Os and SIs</i> , 1915 to date, 43 vols. to 1981 then bundled	BS.24b/8
<i>Draft SIs</i> , 1957-76 (typescript copies), 22 vols.	BS.24/77
<i>Draft Church Assembly and General Synod Measures</i> , 1920- Published as parliamentary papers	BS.Ref.1
<i>Draft SR&Os and SIs on Education</i> , 19182 vols and 1 bundle to 1972	BS.24b/5
<i>Model Forms of Provisional Orders and Regulations for Electric Lighting</i> [pre World War I], 4 vols. at three shelfmarks	BS.41/8 & 127 & 390
<i>Draft Special Orders for Electricity Supply</i> , 1919-47	
	BS.43/76, BS.41/178 & BS.69./14
Bound with approved orders	
<i>Draft Special Orders for Gas</i> , 1921-47, 18 vols.	BS.24b/6
<i>Draft SR&Os and SIs on National Health Insurance</i> ca.1911-48., 9 vols. and 1 bundle	BS.24b/9
<i>Draft of the Highway Code</i> , 1931	BS.43/104
<i>Draft Light Railway Orders</i> , 1897-1921 issued as Command Papers	BS.Ref.1
<i>Draft SR&Os and SIs on London Traffic</i> , 1925-48, 4 vols., 1 bundle	BS.24b/7
<i>Local Government Board Model Bylaws</i> , 1877-1917	BS.17/32
<i>Ministry of Health Model Bylaws</i> , 1920-49 (and a few to 1963)	BS.17/32
<i>Provisional Orders Relating to Piers and Harbours</i> , 1953. Includes model clauses and schedules	BS.43/90(41)
<i>Draft Wages Orders</i> , 1951-93	BS.66/2
Interfiled with confirmed orders	
Indexes	
<i>Index to Local and Personal Acts</i> 1801-1947, Supplement 1948-1966	OPL Index
<i>Index of Government Order in Force</i> , 1891	
-most recent edition	OPL Index
-previous editions	BS.24b/2
<i>SI Effects</i> , 1952-65. Annual	BS.24b/13

- Numerical Table, SR&O and SI 1952-65. Annual (This and SI Effects were superseded by Table of Government Orders)* BS.24b/14
- Table of Government Orders, 1966- Annual*
- most recent edition OPL Index
 - previous editions Contains a chronological list of all instruments printed in the SR&O and SI Rev, and subsequent annual vols., with effects BS.24b/15
- List of Statutory Publications, Jan. 1941- Dec. 2006. Monthly,*
- with annual cumulations (Statutory Instruments, 1948-1999, SR&Os 1941-47)
- recent annual and subsequent monthly issues OPL.344.4203
 - previous issues BS.24b/10
- Daily List [of Government Publications] -recent issues* OPL.942.0043
- Index to Orders in Council, Proclamations, etc ... published in the London Gazette ... [1830-1883]* OG.E.70 (in Quick Ref Section in Reading Room)
- London, Council of Law Reporting, 1885
- Light Railway Orders / compiled by C.R. Clinker. 1977.*
- An alphabetical list of all orders to 1976 with dates of confirmation. Instructions for finding individual orders are pasted inside the front cover OPL.344.4203
- Bibliography of Royal Proclamations of the Tudor and Stuart Sovereigns* 2 vols. (Biblioteca Lindensiana; 5 & 6) OPL.344.42032
- Handlist of Proclamations 1714-1910* (Biblioteca Lindensiana; 8) OPL.344.42032
- General Index ... to the British and Foreign State Papers, 1373 (-1968), 6 vols.* OPL.341.026