House of Commons

Select Committee on Statutory Instruments

Fourth Report of Session 2019–21

Drawing special attention to:

International Tax Enforcement (Disclosable Arrangements) Regulations 2020
(S.I. 2020/25)

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Select Committee on Statutory Instruments

Current membership

Jessica Morden MP *(Labour, Newport East) (Chair)*

Dr James Davies MP *(Conservative, Vale of Clwyd)*

Paul Holmes MP *(Conservative, Eastleigh)*

John Lamont MP *(Conservative, Berwickshire, Roxburgh and Selkirk)*

Sir Robert Syms MP *(Conservative, Poole)*

Owen Thompson MP *(Scottish National Party, Midlothian)*

Liz Twist MP *(Labour, Blaydon)*

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 https://www.parliament.uk/business/publications/commons/standing-orders-public11/.

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 in print 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 Liz Booth (Committee Assistant) and Luanne Middleton (Clerk). Advisory Counsel: Klara Banaszak, Daniel Greenberg, and Vanessa MacNair.

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 2026; the Committee’s email address is: jcsi@parliament.uk.

Contents

Instruments reported

At the Committee's meeting on 4 March 2020 it scrutinised a number of instruments. It was agreed that the special attention of the House of Commons should be drawn to one of those considered in accordance with Standing Orders. The instrument and the grounds for reporting it are given below. The relevant departmental memorandum is published as an appendix to this report.

1 S.I. 2020/25: Reported for requiring elucidation

International Tax Enforcement (Disclosable Arrangements) Regulations 2020

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

1.2 These Regulations implement EU Council Directive 2018/822 and require taxpayers and their advisers to provide details of certain types of cross-border arrangements to Her Majesty's Revenue and Customs. The Committee asked HMRC to explain (for the purposes of regulation 10(b)) how an intermediary or relevant taxpayer demonstrates that he "does not have knowledge, possession or control of any other reportable information." In a memorandum printed in the Appendix, the Department gives examples of how an intermediary or relevant taxpayer might demonstrate a lack of knowledge, possession or control of reportable information and sets out matters that an officer of Revenue and Customs might consider is assessing whether the intermediary or relevant taxpayer has demonstrated that they do not have such knowledge, possession or control. The Department indicates that examples will be set out in guidance which will be published before the regulations come in to force on 1 July 2020. **The Committee accordingly reports regulation 10(b) for requiring elucidation, provided by the Department's memorandum.**

Instruments not reported

The Committee has considered the instruments set out in the Annex to this Report, none of which were required to be reported.

Annex

Instruments subject to annulment

S.I. 2020/88	Income Tax (Pay As You Earn) (Amendment) Regulations 2020
S.I. 2020/118	Land Registry Trading Fund (Revocation) Order 2020

Appendix

S.I. 2020/25

International Tax Enforcement (Disclosable Arrangements) Regulations 2020

1. In its letter to HM Revenue and Customs dated 12 February 2020, the Select Committee requested a memorandum on the following point.

> *For the purposes of regulation 10(b), explain how an intermediary or relevant taxpayer demonstrates that he "does not have knowledge, possession or control of any other reportable information."*

2. This memorandum has been prepared by Her Majesty's Revenue and Customs in response.

3. Regulations 3(2) and 4(3) provide exceptions to the requirement for intermediaries and relevant taxpayers to make a return setting out reportable information in certain circumstances. Broadly, the exceptions are intended to avoid duplicate reporting in cases where a single intermediary or relevant taxpayer is required to file information about the same arrangement in more than one jurisdiction, or where more than one person (intermediary or relevant taxpayer) is required to file information about the same arrangement in one or more jurisdictions.

4. In order to benefit from either exception, an intermediary or relevant taxpayer must have evidence that the reportable information they would otherwise be required to report under the Regulations has been filed or returned. Regulation 10 makes provision as to the nature of the evidence that an intermediary or relevant taxpayer must have.

5. Regulation 10(b) in particular provides that the evidence must include *"such other information which demonstrates to the satisfaction of an officer of Revenue and Customs that the intermediary or relevant taxpayer, as the case may be, does not have knowledge, possession or control of any other reportable information."* How an intermediary or relevant taxpayer will demonstrate this will depend on the particular circumstances of each case and examples will be set out in guidance which will be published before the Regulations come into force on 1 July 2020.

6. For example, in a case where a single intermediary or relevant taxpayer has reporting obligations in more than one jurisdiction, they might demonstrate that they do not have knowledge, possession or control of any reportable information that has not already been filed or returned by producing—

a) their records relating to the arrangement showing the reportable information within their knowledge, possession and control, and

b) a copy of the report they filed or returned in the other jurisdiction.

7. In assessing whether the intermediary or relevant taxpayer has demonstrated that they do not have knowledge, possession or control of any other reportable information, the officer of Revenue and Customs might consider—

a) whether the report filed or returned in the other jurisdiction does in fact include all the reportable information shown in the records produced,

b) whether the records produced appear to be complete,

c) whether it is credible that the intermediary or relevant taxpayer was not in possession of other reportable information having regard to their role in the arrangement, and

d) whether HMRC have any extraneous information (for example information filed by other intermediaries or relevant taxpayers about the same arrangement) showing the report made in the other jurisdiction was incomplete.

8. In a case where an intermediary or relevant taxpayer is of the view that they benefit from the exception because another person has filed or returned the reportable information that they are required to report, they might demonstrate that they do not have knowledge, possession or control of any other reportable information by producing—

a) their records relating to the arrangement showing the reportable information within their knowledge, possession and control, and

b) information relating to the report made by the other person, which satisfied the intermediary or relevant taxpayer that they did not have any additional information to report.

9. In assessing whether the intermediary or relevant taxpayer has demonstrated that they do not have knowledge, possession or control of any other reportable information, the officer of Revenue and Customs might consider—

a) whether the information produced is sufficient to show that the person said to have filed or returned the reportable information has in fact done so,

b) whether the records produced appear to be complete,

c) whether, having regard to their respective roles in the arrangement, it is credible that the intermediary or relevant taxpayer is not in possession of additional reportable information that is not available to the person said to have filed or returned the reportable information, and

d) whether there is anything amongst the information produced, or information otherwise available to HMRC, that suggests that the return made by the other person is incomplete.

Her Majesty's Revenue and Customs

18 February 2020

Formal Minutes

Wednesday 4 March 2020

Members present:

Jessica Morden (in the Chair)

Dr James Davies
Paul Holmes
John Lamont
Owen Thompson
Liz Twist

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.2 agreed to.

Annex agreed to

A Paper was appended to the Report as an Appendix.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 11 March at 3.40 p.m.