



House of Commons

Select Committee on Statutory Instruments

First Report of Session 2022–23

Drawing special attention to:

Residential Property Developer Tax (Allocation of Allowance) Regulations 2022 (S.I. 2022/266)

Economic Crime (Anti-Money Laundering) Levy Regulations 2022 (S.I. 2022/269)

Customs (Import and Export Declarations) (Amendment) Regulations 2022 (S.I. 2022/271)

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Select Committee on Statutory Instruments

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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

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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 Sue Beeby (Committee Operations Officer), Liz Booth (Committee Operations Officer), Apostolos Kostoulas (Committee Operations Officer) and Hannah Stone (Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair.

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Instruments reported

At the Committee's meeting on 18 May 2022, it scrutinised a number of instruments. It was agreed that the special attention of the House of Commons should be drawn to three of those considered in accordance with Standing Orders. The instruments and the grounds for reporting are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2022/266: Reported for requiring elucidation

Residential Property Developer Tax (Allocation of Allowance) Regulations 2022

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, which are subject to the negative resolution procedure, make provision that enables the allowance for the Residential Property Developer Tax to be administered in relation to groups of companies and joint ventures. Regulation 12(a) sets a time limit by reference to the date on which an allowance allocation statement, a notional allowance statement or an amendment to such a statement is made. The Committee asked Her Majesty's Revenue and Customs to explain whether, for the purposes of that regulation, a statement or notice of amendment is made on the date on which it is signed or on the date on which it is received by HMRC. In a memorandum printed at Appendix 1, the Department explains that it is made on the date on which it is received by HMRC and all the other requirements set out in paragraph 15 of Schedule 18 to the Finance Act 1998 are met. **The Committee accordingly reports regulation 12(a) for requiring elucidation, provided by the Department's memorandum.**

2 S.I. 2022/269: Reported for defective drafting and for unusual or unexpected use of enabling powers

Economic Crime (Anti-Money Laundering) Levy Regulations 2022

2.1 The Committee draws the special attention of this House to these Regulations on the grounds that they are defectively drafted in one respect and that they make unusual or unexpected use of the enabling power in one respect.

2.2 These Regulations, which are subject to the negative resolution procedure, make provision in relation to the assessment, payment, collection and recovery of the new economic crime (anti-money laundering) levy.

2.3 There are three "appropriate collection authorities", however, a right to amend the levy return is only provided when the appropriate collection authority is either the Financial Conduct Authority or HMRC. The Committee asked Her Majesty's Treasury to explain why a levy return may not be amended when the levy return is submitted to the Gambling Commission. In a memorandum printed at Appendix 2, the Department explains that a provision was not included in the instrument in order to fit in with current administrative practices where the Gambling Commission can upon request amend information in the

system, but a person cannot do so directly. This differs from the processes for the Financial Conduct Authority and HMRC, where a person can amend information directly. As the Department states that in all cases an amendment can be made to the return and it is only the administrative mechanism by which an amendment is made that differs, the instrument should have also included a right to have information amended where a return is submitted to the Gambling Commission. The inclusion of a right to amend within a 12-month period for returns made to two collection authorities and not for the third leads to a clear inference that no such right exists (or, if it exists, as to when it can be exercised). **The Committee accordingly reports Part 4 for defective drafting.**

2.4 Regulation 10 provides that where a person has notified the Gambling Commission of their liability to pay the levy, the Gambling Commission may include that information in a register and make the information contained in that register available to members of the public. The Committee asked the Department to explain which power is relied on in relation to this provision. In its memorandum, the Department asserts that the power to include incidental, consequential, supplementary, transitional or transitory provision is sufficient (section 64(1)(b) of the Finance Act 2022). The Committee disagrees. The Gambling Commission may by virtue of regulation 9(2) of the Regulations specify what information must be provided to it. It is inconceivable that Parliament intended to enable provision for the publication of mandatory returns made by an industry to a collection authority to be included as a mere afterthought under cover of a power to make incidental, consequential or supplementary provision where the enabling power is to make provision about the assessment, payment, collection and recovery of a levy (section 58 of the Act). The specificity of the restrictions contained in section 62 of the Act on the disclosure of information obtained in connection with collection authority functions, which reflect modern legislative presumptions of commercial and other confidentiality, strengthen the point. **The Committee accordingly reports regulation 10 for making unusual or unexpected use of the enabling power.**

3 S.I. 2022/271: Reported for defective drafting

Customs (Import and Export Declarations) (Amendment) Regulations 2022

3.1 **The Committee draws the special attention of this House to these Regulations on the ground that they are defectively drafted in one respect.**

3.2 These Regulations, which are subject to the negative resolution procedure, amend two instruments to allow export declarations to be made orally or by conduct where certain goods are being exported to support victims of the humanitarian crisis in Ukraine. The italic heading states that the instrument comes into force at 4.20 p.m. on 10 March 2022 whilst regulation 1 provides that it comes into force “immediately after being laid”. The Committee asked Her Majesty’s Revenue and Customs to explain the discrepancy. In a memorandum printed at Appendix 3, the Department explains that the italic heading should have stipulated that the instrument comes into force immediately after being laid and that the Department will arrange for the heading to be corrected using the correction slip procedure. The Committee agrees that this change can properly be made by correction slip (this being inert material). **The Committee accordingly reports the italic heading for defective drafting, acknowledged by the Department.**

Instruments not reported

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

Annex

Instruments subject to annulment

S.I. Numbers	S.I. Title
S.I. 2022/275	Finance Act 2021 (Modification of Section 26) (Coronavirus) Regulations 2022
S.I. 2022/286	Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022
S.I. 2022/365	Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2022
S.I. 2022/376	Customs (Additional Duty) (Russia and Belarus) Regulations 2022
S.I. 2022/392	Registered Pension Schemes (Miscellaneous Amendments) Regulations 2022
S.I. 2022/464	Securitisation Companies and Qualifying Transformer Vehicles (Exemption from Stamp Duties) Regulations 2022
S.I. 2022/465	Taxation of Securitisation Companies (Amendment) Regulations 2022
S.I. 2022/474	International Tax Compliance (Amendment) Regulations 2022

Appendix 1: Memorandum from Her Majesty's Revenue and Customs

S.I. 2022/266

Residential Property Developer Tax (Allocation of Allowance) Regulations 2022

1. The Committee has asked Her Majesty's Revenue and Customs for a memorandum on the following points:

(1) Explain whether regulation 11(2)(b)(ii) ought to have set a deadline of 12 months after the latest of the dates in regulation 10(2)(b)(ii) to (iv).

(2) Given that an allowance allocation statement, a notional allowance statement and a notice amending such a statement must be “made in writing to HMRC”, explain whether the date on which such a statement or amendment “is made” for the purposes of regulation 12(a) is the date on which it is signed or the date on which it is received by HMRC.

Point 1: regulation 11(2)(b)(ii)

2. Regulation 11(2)(b)(ii) correctly sets out the time limits that apply to amending a notional allowance statement. All of the time limits stipulated in regulation 11(2)(b) relate to a point in time when a company tax return for an accounting period can be said to be finalised and no further amendments can be made to it, in accordance with the framework set out in Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters). The intention of regulation 11(2)(b) is to create consistency with the point at which finality of a tax position is achieved for all the scenarios covered by regulation 10(2)(b)(i) to (iv).

3. Regulation 11(2)(b)(ii) should not set a deadline of 12 months after the latest of the dates referred to in regulation 10(2)(b)(ii) to (iv) as that would create a deadline of 13 months after the tax position has been finalised in cases where an enquiring has ended, an assessment has been made by HMRC or a taxpayers appeal against an assessment has been finally determined. In the circumstances 30 days after the occurrence of these events is considered to be reasonable.

Point 2: regulation 12(a)

4. Schedule 18 to the Finance Act 1998 sets out the rules relating to company tax returns, paragraph 15 makes provisions relating to amendments to returns which must be “made” within a specified period. An amendment is not validly “made” unless it is received by HMRC within that time limit and the requirements in paragraph 15 are met. Regulation 12 overrides the time limit in paragraph 15 for making an amendment.

5. For the purposes of regulation 12(a), the date on which an allowance allocation statement, a notional allowance statement or an amendment to those statements is made, is the date on which it is received by HMRC and all the other requirements relating to the statement or amendment have been met. Until all the requirements are met (including the requirement that the statement or amendment be in writing) the statement or amendment has not been effectively made.

Her Majesty's Revenue and Customs

3 May 2022

Appendix 2: Memorandum from Her Majesty's Treasury

S.I. 2022/269

Economic Crime (Anti-Money Laundering) Levy Regulations 2022

1. The Committee has asked HM Treasury for a memorandum on the following points:

(1) Explain why an economic crime (anti-money laundering) levy return may be amended when the appropriate collection authority is either the Financial Conduct Authority or HMRC but not the Gambling Commission.

(2) Explain which power is relied on in relation to regulation 10.

2. Our responses are as follows:

3. On question (1): The provisions regarding returns and collecting levy amounts are designed to fit in with each appropriate collection authority's existing administrative systems.

4. This is because those who need to submit returns to a collection authority will very likely be familiar with those systems. Further, the use of existing systems has advantages in terms of costs and ease of set-up, as well as the advantages of familiarity for officials and users.

5. The Gambling Commission's existing process will enable a person to register, self-assess and input their Gross Gambling Yield to pay for their licence fee and other data and for their levy banding to be identified and payment to be made. At this point the online self-assessment process is closed. If that person later identifies that an amendment needs to be made, the person will need to contact the Gambling Commission – so that the Gambling Commission can amend the information in the system as the online process would by then be closed. This is a different process to the person making a change to the levy return and does not require a legislative provision in the same way.

6. The process is slightly different to those for the FCA and HMRC. The FCA and HMRC both allow those persons who need to submit returns to amend their return directly. The Regulations therefore provide expressly for this. It was concluded that the difference in approach for each appropriate collection authority would not be unfair to those submitting returns. In all cases an amendment can be made to the return, for example to correct an error. It is only the administrative mechanism by which an amendment is made that differs.

7. On question (2): regulation 10 is made using the power in section 64(1)(b) of the Finance Act 2022:

Regulations under this Part ... may include incidental, consequential, supplementary, transitional or transitory provision.

8. The use of a public register supplements the process of notifying the Gambling Commission of liability to pay the levy (so supplements regulation 9(1)(a)):

Where a person is liable to pay the levy, it must notify the Gambling Commission of that liability... on or before 30th September after the end of the financial year for which the liability arises.

Her Majesty's Treasury

4 May 2022

Appendix 3: Memorandum from Her Majesty's Revenue and Customs

S.I. 2022/271

Customs (Import and Export Declarations) (Amendment) Regulations 2022

1. The Committee has asked Her Majesty's Revenue and Customs for a memorandum on the following point:

Explain the discrepancy between the time stipulated for this instrument to come into force and regulation 1 providing that the instrument comes into force “immediately after being laid”.

2. The discrepancy is an error and we apologise for this oversight. The italic heading should have stipulated that the instrument comes into force immediately after being laid. Despite the inconsistency between the italic heading and regulation 1, the legal effect is that the Regulations came into force immediately after being laid in accordance with regulation 1.

3. As the non-substantive italic heading is inconsistent with regulation 1, we are arranging with the SI Registrar for the italic heading to be corrected using the correction slip procedure.

Her Majesty's Revenue and Customs

29 April 2022

Formal Minutes

Wednesday 18 May 2022

Members present

Jessica Morden, in the Chair

Dr James Davies

Liz Twist

Report consideration

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 3.2 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 3.

Resolved, That the Report be the First Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House

Adjournment

Adjourned to a day and time to be fixed by the Chair.