House of Commons

Select Committee on Statutory Instruments

Fifth Report of Session 2022–23

Drawing special attention to:

Customs Tariff (Preferential Trade Arrangements) (Amendment) Regulations 2022 (**S.I. 2022/613**)

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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)*

Richard Thomson MP *(Scottish National Party, Gordon)*

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

Contacts

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Contents

Instruments reported

At its meeting on 13 July 2022 the Committee scrutinised a number of instruments in accordance with Standing Orders. It was agreed that the special attention of the House of Commons should be drawn to one of those considered. The instrument and the grounds for reporting are given below. The relevant departmental memorandum is published as an appendix to this report.

1 S.I. 2022/613: Reported for failure to comply with proper legislative practice

Customs Tariff (Preferential Trade Arrangements) (Amendment) Regulations 2022

1.1 **The Committee draws the special attention of this House to these Regulations on the ground that they fail to comply with proper legislative practice in two related respects.**

1.2 These Regulations, which are subject to the negative resolution procedure, update references to preferential tariff reference documents applicable in respect of preferential trade arrangements with various countries or territories. The Regulations are made under Part 1 of the Taxation (Cross-border Trade) Act 2018 by the Treasury and the Secretary of State. The Treasury makes these regulations under section 11(1), (2) and (4), and section 11(7) states that "in considering what provision to include in the regulations, the Treasury must have regard to any recommendation made to them by the Secretary of State." Section 28 states that in exercising any function under any provision made by or under Part 1, the Treasury and the Secretary of State "must have regard to international arrangements to which Her Majesty's government in the United Kingdom is a party that are relevant to the exercise of the function." Neither section 11(7) nor section 28 is cited in the preamble and the Committee asked the Department for International Trade (on behalf of the Treasury) to explain why. In a memorandum printed as an Appendix, the Department asserts that sections 11(7) and 28 specify considerations to be taken into account when making regulations but are not pre-conditions to the exercise of the power to make those regulations and that therefore it is not necessary to cite these provisions in the preamble. The Committee reads these provisions as conditions to be fulfilled, and notes that, although there has been inconsistent practice, previous instruments (notably S.I.s 2020/1457, 2021/871 and 2021/693) did cite sections 11(7) and 28 in the preamble. **The Committee accordingly reports the preamble to these Regulations for failure to comply with proper legislative practice.**

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. Numbers	S.I. Title
S.I. 2022/628	Customs (Miscellaneous Amendments) Regulations 2022
S.I. 2022/643	Designation of Freeport Tax Sites (Plymouth and South Devon Freeport) Regulations 2022
S.I. 2022/690	Research and Development (Qualifying Bodies) (Tax) (Amendment and Further Prescribed Bodies) Order 2022
S.I. 2022/723	Registered Pension Schemes (Authorised Member Payments) Regulations 2022

Appendix: Memorandum from the Department for International Trade

S.I. 2022/613

Customs Tariff (Preferential Trade Arrangements) (Amendment) Regulations 2022

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

> *Explain why the pre-conditions in sections 11(7) and 28 of the Taxation (Cross-border Trade) Act 2018 are not recited in the preamble.*

2. This memorandum has been prepared by the Department for International Trade (DIT) on behalf of HM Treasury.

3. DIT does not consider the provisions in sections 11(7) and 28 of the Taxation (Cross-border Trade) Act 2018 ("the Act") to be pre-conditions that the Act requires before regulations can be made for the reasons set out below.

4. In DIT's view, sections 11(7) and 28 of the Act specify considerations to be taken into account when making regulations but are not pre-conditions to the exercise of the power to make those regulations. Therefore, in DIT's view it is not necessary to cite these provisions in the preamble.

5. Sections 11(7) and 28 can be contrasted with sections 9(3) and 17(8), both of which are cited as pre-conditions in the preamble. Sections 9(3) and 17(8) state that the "power to make regulations…is exercisable <u>only on</u> the recommendation of the Secretary of State". In contrast, section 11(7) does not set a pre-condition to the actual making of regulations, but rather, specifies matters to which regard must be had in considering what provision to include in regulations. Similarly, section 28 specifies matters to which regard must be had when exercising any function under Part 1 of the Act.

6. DIT notes that section 28 is often not cited in regulations made under Part 1 of the Act. A recent example is S.I. 2021/1489 which, among other things, makes amendments to six regulations made under Part 1 of the Act, including S.I. 2020/1457, which S.I. 2022/613 amends.

Department for International Trade

5 July 2022

Formal minutes

Wednesday 13 July 2022

Members present

Jessica Morden, in the Chair

Dr James Davies

Report consideration

Draft Report (Fifth 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 read and agreed to.

Annex agreed to.

A Paper was appended to the Report as an Appendix.

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

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

Adjournment

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