



House of Commons
Select Committee
on Statutory Instruments

**Twenty-First Report
of Session 2019–21**

Drawing special attention to:

*Income Tax (Care Leaver's Apprenticeship Bursary Payment) Regulations
(S.I. 2020/922)*

*Ordered by the House of Commons
to be printed 14 October 2020*

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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

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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 Liz Booth (Committee Operations Officer) and Luanne Middleton (Clerk). Advisory Counsel: Sarita Arthur-Crow, 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 7090; the Committee's email address is: jcsi@parliament.uk.

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Instruments reported

At the Committee's meeting on 14 October 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. 2020/922: Reported for doubtful vires

Income Tax (Care Leaver's Apprenticeship Bursary Payment) Regulations

1.1 The Committee draws the special attention of this House to these Regulations on the ground that there is doubt as to whether they are *intra vires* in one respect.

1.2 These Regulations specify conditions that must be met for a care leaver's apprenticeship bursary payment to fall within the income tax exemption. Regulation 4(1)(d) provides that the payment falls within the exemption if it is made in accordance with the "Apprenticeship care leavers' bursary policy summary" published by the Education and Skills Funding Agency on 23 June 2020 as it has effect from time to time. The Committee asked Her Majesty's Revenue and Customs to identify the vires for this sub-delegation. In a memorandum printed in the Appendix, the Department explains that the Treasury has the required power under section 254A(5)(a) of the Income Tax (Earnings and Pensions) Act 2003 and acknowledges that section 254A(5)(a) should have been cited in the preamble. The Committee accepts that this power allows the sub-delegation in regulation 4(1)(d) but notes that failure to cite a section in the preamble on which the Department relies raises doubts as to vires (see *Vibixa Ltd and Polestar Jowetts Ltd v Komori UK Ltd and another* [2006] EWCA Civ 536). **The Committee accordingly reports regulation 4(1)(d) for doubt as to whether it is *intra vires*.**

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

Instrument subject to annulment

S.I. 2020/967	Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020
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Appendix

S.I. 2020/922

Income Tax (Care Leaver's Apprenticeship Bursary Payment) Regulations 2020

1. In its letter to HM Treasury of 29 September 2020, the Select Committee requested a memorandum on the following point:

Identify the vires for the sub-delegation in regulation 4(1)(d).

2. This memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of HM Treasury.

3. By section 254A(5)(a) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1), the Treasury have a power to make provision in regulations made under section 254A framed by reference to a scheme (however described or named), or document, as it has effect from time to time.

4. HMRC considers that this power allows the sub-delegation in regulation 4(1)(d). Section 254A(5)(a) should have been cited in the preamble and HMRC apologises to the Committee for this oversight.

Her Majesty's Revenue and Customs

2 October 2020

Formal Minutes

Wednesday 14 October 2020

Jessica Morden, (*in the Chair*)

Dr James Davies John Lamont
Paul Holmes

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

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

Annex agreed to.

Resolved, That the Report be the Twenty-First Report of the Committee to the House.

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