House of Commons

Select Committee on Statutory Instruments

Fifth Report of Session 2019–21

Drawing special attention to:

Double Taxation Dispute Resolution (EU) Regulations 2020 **(S.I. 2020/51)**

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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 Assistant) and Luanne Middleton (Clerk). Advisory Counsel: Klara Banaszak, Daniel Greenberg, and Vanessa MacNair.

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Contents

Instruments reported

At the Committee's meeting on 11 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. 2020/51: Reported for requiring elucidation

Double Taxation Dispute Resolution (EU) Regulations 2020

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

1.2 These Regulations implement Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. The Committee asked Her Majesty's Revenue and Customs to explain the discrepancy (where a regulation requires more than one person to be notified) between regulations 12(4), 12(6), 19, 21(6) and 32(9) which require notification "at the same time and without delay" and regulations 13(6), 15(10), 18(2), 31(2) and 45(8) which require notification "without delay". In a memorandum printed as an Appendix, the Department explains that the policy approach is not to impose a requirement for persons to be notified "at the same time" where it is not necessary to do so to implement the Directive appropriately. The Committee accepts this explanation (but notes that article 14(3) of the Directive does not include the requirement but is implemented by regulation 32(9) which does). **The Committee reports regulation 32(9) for as requiring elucidation.**

1.3 The Committee also asked the Department to explain why regulation 16 does not refer to the process for the adoption of the Advisory Commission opinion and whether regulation 28(5) should refer to requests made under paragraph (3). The Department's memorandum explains the policy intention of each provision by reference to the Directive; the Committee finds this helpful and **accordingly reports regulations 16 and 28(5) 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 was required to be reported.

Annex

Draft instrument requiring affirmative approval

Draft S.I.	Private Security Industry (Licence Fees) Order 2020

Instruments subject to annulment

S.I. 2020/151	Taxation of Income from Land (Non-residents) (Amendment) Regulations 2020
S.I. 2020/185	Value Added Tax (Refund of Tax) Order 2020

Appendix

S.I. 2020/51

Double Taxation Dispute Resolution (EU) Regulations 2020

1. In its letter to Her Majesty's Revenue and Customs of 26 February, the Select Committee requested a memorandum on the following points:

> *(1) Where a regulation requires more than one person to be notified, explain the discrepancy between regulations 12(4), 12(6), 19, 21(6) and 32(9) which require notification "at the same time and without delay" and regulations 13(6), 15(10), 18(2), 31(2) and 45(8) which require notification "without delay".*
>
> *(2) Explain why regulation 16 does not refer to the process for the adoption of the Advisory Commission opinion (compare regulations 32(7) and (8)).*
>
> *(3) Should regulation 28(5) refer also to requests made under paragraph (3)?*

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

3. The drafting in each of these cases represents a considered policy approach in relation to the implementation of Council Directive (EU) of 10 October 2017 on tax dispute resolution mechanisms in the European Union (the "Directive").

4. Regarding **point (1)**, the reason for the difference is as follows. In the case of regulations 12(4), 12(6), 19, 21(6) and 32(9) the policy is for there to be a requirement that the persons are to be notified at the same time, whereas in relation to regulations 13(6), 15(10), 18(2), 31(2), and 45(8) the policy is for there to be no such requirement. In some cases the Directive requires persons to be notified "simultaneously" or "at the same time" and in other cases it does not impose such a requirement. The policy approach is not to impose such a requirement where it is not necessary to do so in order to implement the Directive appropriately. As the committee notes there is also a requirement that the notification is to be sent "without delay". That phrase is also used in the Directive. It applies in all of these cases, as intended, irrespective of when two or more requests must to be sent in relation to each other.

5. Regarding **point (2)**, regulation 16 does not refer to a process for the adoption of the Advisory Commission opinion because no such process is specified in the Directive in relation to cases to which regulation 16 applies (by contrast a process is so specified in the cases to which regulations 32(7) and (8) apply). The omission in the Directive may be unfortunate but if the regulations made good that omission it could cause a conflict of laws where a member State takes a different approach.

6. Regarding **point (3)**, no. Regulation 28(5) should not apply to requests made under paragraph (3) because the policy is not to require the complainant, in these circumstances, to make the requests to competent authorities in member States electronically or otherwise

in writing. Member States may have their own requirements as to the form and manner in which such requests are to be made to their own competent authorities, which may be implemented in the domestic law of those member States.

Her Majesty's Revenue and Customs

2 March 2020

Formal Minutes

Wednesday 11 March 2020

Members present:

Jessica Morden (*in the Chair*)

Dr James Davies	John Lamont
Paul Holmes	Owen Thompson

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 1.3 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.

[*Adjourned till Wednesday 18 March at 3.40 p.m.*