House of Commons

Select Committee on Statutory Instruments

Eleventh Report of Session 2022–23

Drawing special attention to:

Customs (Tariff and Miscellaneous Amendments) Regulations 2022 **(S.I. 2022/1301)**

Customs (Tariff and Miscellaneous Amendments) Regulations 2022 **(S.I. 2022/1286)**

Ordered by the House of Commons to be printed 1 February 2023

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Select Committee on Statutory Instruments

Current membership

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

Peter Grant MP (*Scottish National Party, Glenrothes*)

Paul Holmes MP *(Conservative, Eastleigh)*

Gareth Johnson MP (*Conservative, Dartford*)

Damien Moore MP (*Conservative, Southport*)

Maggie Throup MP (*Conservative, Erewash*)

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) and Hannah Stone (Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Justin Leslie, 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 3296; the Committee's email address is: jcsi@parliament.uk.

Contents

Instruments reported

At its meeting on 1 February 2023 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 two of those considered. The instruments and the grounds for reporting are given below. The relevant departmental memorandum is published as an appendix to this report.

1 S.I. 2022/1286 and S.I. 2022/1301: Reported for requiring elucidation

Customs (Tariff and Miscellaneous Amendments) Regulations 2022

Customs (Tariff and Miscellaneous Amendments) 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 amendments to subordinate legislation previously made under the Taxation (Cross-border Trade) Act 2018. S.I. 2022/1301 replaced an instrument of the same name numbered 2022/1286 which was withdrawn due to an error – the instrument incorrectly stated in the inoperative italic date information that it was laid before Parliament when it should only have been laid before the House of Commons. The Committee noticed that on a search for S.I. 2022/1286 there is now a gap on the National Archives website and asked HM Treasury to explain whether any steps have been taken to explain to users of that website why S.I. 2022/1286 is not published. In a memorandum printed at Appendix 1, the Department explains that it will notify users by asking the National Archives to re-issue S.I. 2022/1301 with an italic headnote explaining that it was published in place of S.I. 2022/1286. The Committee is grateful for this undertaking and the transparency of this approach. **The Committee accordingly reports these Regulations 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 requiring affirmative approval

S.I. Number	S.I. Title
S.I. 2022/1407	Local Government Finance Act 1988 (Non-Domestic Rating Multipliers) (England) Order 2022

Draft instruments requiring affirmative approval

S.I. Number	S.I. Title
Draft	International Fund for Agricultural Development (Twelfth Replenishment) Order 2023

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2022/1165*	Insurance Contracts (Tax) (Change in Accounting Standards) Regulations 2022
S.I. 2023/19	Value Added Tax (Refund of Tax) Order 2023
S.I. 2023/38	International Tax Enforcement (Disclosable Arrangements) Regulations 2023

* The Committee asked for a memorandum on this instrument and a satisfactory response was received. The Memorandum is printed at Appendix 2.

Appendix 1: Memorandum from HM Treasury

S.I. 2022/1286

Customs (Tariff and Miscellaneous Amendments) Regulations 2022

S.I. 2022/1301

Customs (Tariff and Miscellaneous Amendments) Regulations 2022

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

> Explain whether any steps have been taken to explain to users of the National Archives website why S.I. 2022/1286 is not published.

2) HM Treasury understands from discussions with the National Archives that it is undesirable but not unusual for an instrument to have an S.I. number allocated to it that then needs to be discarded for process reasons and a new S.I. number allocated to that instrument. This appears to users as a jump in the numbering sequence where there is no published S.I. for a given number; there are typically 30–50 instances of this per year.

3) In this instance, S.I. 2022/1286 was removed from legislation.gov.uk once it had been established that the instrument should only have been laid before the House of Commons, not before both Houses. The Regulations were subsequently re-registered as S.I. 2022/1301.

4) HM Treasury will notify users by asking the National Archives to re-issue S.I. 2022/1301 with an italic headnote explaining that it was published in place of S.I. 2022/1286. HM Treasury is grateful to the Committee for bringing this point to its attention.

HM Treasury

24 January 2023

Appendix 2: Memorandum from HM Revenue and Customs

S.I. 2022/1165

Insurance Contracts (Tax) (Change in Accounting Standards) Regulations 2023

1) The Committee has asked HM Revenue and Customs for a memorandum on the following point:

> Confirm whether the phrase "accounting profit or loss" in regulation 4(3) is intended to have the same meaning as in section 114 of the Finance Act 2012 (and if not, explain what the intended meaning is).

2) We confirm the phrase "accounting profit or loss" is intended to have the same meaning as in section 114 of the Finance Act 2012 ("FA 2012").

3) Our view is that this intended meaning is clear from regulation 4(4)(a). Regulation 4(4)(a) requires that the method of apportionment adopted by the company be consistent with the method adopted for the purposes of section 115 of FA 2012. Section 115 sets out a method for allocating the "accounting profit or loss", which is defined in section 114 of FA 2012, between the two businesses attributable to an insurance company by virtue of section 66 of FA 2012.

His Majesty's Revenue and Customs

17 January 2023

Formal minutes

Wednesday 1 February 2023

Members present

Jessica Morden, in the Chair

Peter Grant

Gareth Johnson

Maggie Throup

Liz Twist

Report consideration

Draft Report (Eleventh 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.

Papers were appended to the Report as Appendices 1 to 2.

Resolved, That the Report be the Eleventh 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.