



House of Commons

Select Committee on Statutory Instruments

First Report of Session 2023–24

Drawing special attention to:

Trade Remedies (Dumping and Subsidisation) (Amendment) (No. 2) (S.I. 2023/955)

Customs (Northern Ireland) (EU Exit) (Amendment) Regulations 2023) (S.I. 2023/958)

Report, together with formal minutes relating to the report

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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

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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), Ines Nizigama (Committee Operations Officer), Michael O’Leary (Committee Operations Manager), and Jonathan Whiffing (Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Rupert Grist, Justin Leslie, Vanessa MacNair and Hannah Stewart.

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 4838; the Committee’s email address is: jcsi@parliament.uk.

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Instruments reported

At its meeting on 15 November 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 memoranda are published as appendices to this report.

S.I. 2023/955: Reported for defective drafting and requiring elucidation

Trade Remedies (Dumping and Subsidisation) (Amendment) (No. 2)

1.1 The Committee draws the special attention of this House to these Regulations on the grounds that they are defectively drafted in one respect and require elucidation in two respects.

1.2 These Regulations, which are subject to the negative resolution procedure, amend the process for reviewing, granting and implementing exemptions to anti-dumping and countervailing measures, as set out in the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450).

1.3 Regulation 46G(5) of the 2019 Regulations allows the Secretary of State to reinstate suspended duties where that is recommended by the Trade Remedies Authority following an exemption review. Regulation 4(1)(b) of this instrument purports to substitute text that does not appear in regulation 46G(5). The Committee was concerned that the apparent error could arguably be resolved in two ways, leading to reinstatement of the suspended duties on different days. It asked the Department for Business and Trade to clarify its intention. In a memorandum printed at Appendix 1, the Department acknowledges the error (unintended repetition of “the day”), identifies the phrase it had intended to replace, and undertakes to correct the error by correction slip at the first available opportunity. The Committee welcomes the undertaking but disagrees that administrative rectification is suitable here. While the Committee accepts that a court may well construe regulation 4(1)(b) in line with the Department’s memorandum, the choice of construction will substantively affect the operation of regulation 96G(5) and remains a matter for the court (as noted in the Committee’s First Special Report of Session 2017–19, [Transparency and Accountability in Subordinate Legislation](#)). **The Committee accordingly reports regulation 4(1)(b) for defective drafting, acknowledged by the Department.**

1.4 Regulation 4(2) provides that regulation 96G(5) (as amended by regulation 4(1)) will apply only to exemption review applications made after this instrument comes into force. The Committee asked the Department to explain what impact regulation 4(2) would have on any pre-existing applications not determined by that date. In its memorandum, the Department notes that there are four such applications and explains that regulation 4(2) will not apply to them and that, as a consequence, duties suspended during the exemption review will not be recoverable. **The Committee accordingly reports regulation 4(2) for requiring elucidation, provided by the Department’s memorandum.**

1.5 Regulation 5(b) inserts new provisions into regulation 96H of the 2019 Regulations that allow duties collected from a review applicant while the review is in progress to be reimbursed if their application succeeds and an exemption is granted. The exemption may be backdated to the date of the application, and the reimbursement may include all amounts paid on and after that date. The new provisions only apply where duties are not suspended while a review is in progress. The Committee asked the Department to explain whether it is intended that the Secretary of State should have a similar discretion to provide for reimbursement where duties have been suspended. In its memorandum, the Department confirms that this is not the intention and asserts that no duties will have been paid in such cases. While this is clearly true during the period between the suspension and the subsequent exemption, the Committee remains unclear whether there is a period between the application and suspension dates when duties will have been paid. If there is, it suggests a discrepancy between the two classes of applicant, with those for whom duties were suspended being treated less favourably. It is unclear whether this accurately reflects the policy intent. **The Committee accordingly reports regulation 5(b) for requiring elucidation.**

S.I. 2023/958: Reported for defective drafting

Customs (Northern Ireland) (EU Exit) (Amendment) Regulations 2023

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.**

2.2 These Regulations, which are subject to the negative resolution procedure, amend several customs instruments to ease the flow of trade within the UK, as provided for by the Windsor Framework. The Committee asked His Majesty's Treasury to confirm that regulation 3(b) cites the wrong date for Decision No 1/2023 of the Joint Committee established under the EU Withdrawal Agreement. In a memorandum printed at Appendix 2, the Department acknowledges the error but notes that it does not intend to correct it because the Decision number and title are sufficient to identify the correct document. The Committee disagrees with the Department's proposed approach in this case. As the Committee has noted previously, the Windsor Framework is a suite of closely interrelated documents and so it is important that there is clarity about what is being referred to. **The Committee accordingly reports regulation 3(b) 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 were required to be reported.

Annex

Instruments subject to annulment

S.I. Number	S.I. Title
S.I. 2023/954	Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) (Amendment) Regulations 2023
S.I. 2023/983	Tonnage Tax (Training Requirement) (Amendment etc.) Regulations 2023
S.I. 2023/994	Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2023
S.I. 2023/1006	Value Added Tax (Drugs and Medicines) Order 2023

Appendix 1: Memorandum from the Department for Business and Trade

S.I. 2023/955

Trade Remedies (Dumping and Subsidisation) (Amendment) (No. 2)

1. The Committee has asked the Department for Business and Trade for a memorandum on the following point(s):

(1) In relation to regulation 4(1)(b), confirm that the text to be substituted does not appear in regulation 96G(5)(a) and what the correct substitution should be.

(2) Explain—

(a) whether any applications have been made (and not determined) under regulation 96E(2)(a) before this instrument comes into force; and

(b) if so, what the impact of regulation 4(2) will be on those applications.

(3) In relation to regulation 5(b), inserted paragraphs (6) and (7), explain whether it is intended that the Secretary of State should have a discretion to provide that an applicant is entitled to a repayment, similar to that conferred by paragraph (7), where the application of a UK trade remedies measure was suspended in accordance with regulation 96F(3) and the Secretary of State subsequently accepts a recommendation by the TRA under regulation 96H(1), and if so, how effect is given to that intention.

2. In connection with question (1), we note “after the day that the public notice is made” should be substituted with “on which the application of the UK trade remedies measure to the relevant review applicant’s goods was suspended; and”. We see there has been a minor typo, in which ‘the day’ is repeated twice. We thank the Committee for bringing this to our attention and will correct this at the first available opportunity. We intend to do this through a correction slip to the original instrument.

3. In connection with question (2):

a. Yes, 4 applications have been made and not determined under regulation 96E(2)(a) before this instrument comes into force. The details of these applications are as follows:

i. Case CE0042- An application initiated on the 20 September 2023 by the Trade Remedies Authority. Anti dumping duties have been suspended whilst the investigation is ongoing. Further details of this live investigation can be found [here](#).

ii. Case CE0040 - An application initiated on the 14 August 2023 by the TRA. Again, anti dumping duties have been suspended. Further details can be found [here](#).

iii. Case CE0032- An application initiated on 22 February 2023 by the TRA. Anti dumping duties have been suspended. Further details can be found [here](#).

iv. Case CE0028 – An application initiated on 18 October 2022 by the TRA. Anti dumping duties have been suspended. Further details can be found [here](#).

b. The intention is that regulation 4(2) will not have an impact on these applications, and that regulation 4(2) will apply only to applications made after this instrument comes into force. This means that the duties which have been suspended in connection with the circumvention review initiated on 20 September 2023 will not be recoverable.

4. Where the duties are suspended, an applicant will not be entitled to a repayment. This is because the duties have been suspended, with the effect that the applicant will not have been paying duties during the course of the investigation, and so there are no duties to be reimbursed. Specifically, in the context of the question, where duties have been suspended, and the Secretary of State accepts the TRA's recommendation to apply an exemption, no duties will have been paid by the applicant, and the applicant will be exempt from future duties in accordance with the exemption.

Department for Business and Trade

26 October 2023

Appendix 2: Memorandum from His Majesty’s Revenue and Customs

S.I. 2023/958

Customs (Northern Ireland) (Eu Exit) (Amendment) Regulations 2023

1. The Committee has asked HM Treasury for a memorandum on the following point:
 1. “Confirm whether the reference in regulation 3(b) to 17th December 2020 (the date of Joint Committee Decision No 4/2020) should be to 24th March 2023 (the date of Joint Committee Decision No 1/2023).”
2. This memorandum has been prepared by His Majesty’s Revenue and Customs on behalf of HM Treasury.
3. We are grateful to the Committee for pointing out this error. The correct Decision is apparent from the Decision number and title so HMRC do not think the error will mislead users of the legislation.

His Majesty’s Revenue and Customs

31 October 2023

Formal Minutes

Wednesday 15 November 2023

Members present

Jessica Morden, in the Chair

Peter Grant

Damien Moore

Report consideration

Draft Report (*First 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 2.2 read and agreed to.

Annex agreed to.

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

Resolved, That the Report be the First 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.