House of Commons

Select Committee on Statutory Instruments

Thirty-First Report of Session 2019–21

Drawing special attention to:

Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Extension of Time Period) (Coronavirus) Order 2020 (**S.I. 2020/1413**)

Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020 (**S.I. 2020/1495**)

Ordered by the House of Commons to be printed 27 January 2021

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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

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), Apostolos Kostoulas (Committee Operations Officer) and Luanne Middleton (Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair.

Contacts

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Contents

Instruments reported

At the Committee's meeting on 27 January 2021 it scrutinised a number of instruments. It was agreed that the special attention of the House of Commons should be drawn to two of those considered in accordance with Standing Orders. The instruments and the grounds for reporting them are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2020/1413: Reported for doubtful vires

Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Extension of Time Period) (Coronavirus) Order 2020

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

1.2 This Order, which is subject to the negative resolution procedure, extends the period for which temporary value added tax relief applies to certain supplies relating to hospitality, holiday accommodation and admission to certain attractions. The preamble refers only to the powers used for making article 2 (and not article 1) and the Committee asked HM Revenue and Customs to explain. In a memorandum printed at Appendix 1, the Department accepts that article 1 should have been referred to in the preamble. The decision of the Court of Appeal in *Vibixa Ltd and Polestar Jowetts Ltd v. Komori UK Ltd and others* [2006] EWCA Civ 536 gives preambles a particular importance and failure to cite an enabling power in the preamble to an instrument raises a doubt as to its vires. In this case the enabling powers have been cited but have been applied only to article 2 and not to article 1. **The Committee accordingly reports article 1 for doubt as to whether it is *intra vires***.

2 S.I. 2020/1495: Reported for defective drafting

Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020

2.1 **The Committee draws the special attention of this House to these Regulations on the ground that they are defectively drafted in one respect**.

2.2 These Regulations, which are subject to the negative resolution procedure, make amendments to legislation so that it operates as required at the end of the Implementation Period. Regulation 6 defines "relevant importation" and at paragraph (c) describes a time period as "ending on 30th June 2021". The Committee asked HM Revenue and Customs to confirm that the phrase should be "ending with 30th June 2021" to avoid confusion about the time of day at which the period ends (having regard to the fact that the period begins during a day). In a memorandum printed at Appendix 2, the Department accepts that the time period should have been drafted in this way. **The Committee accordingly reports regulation 6 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 was required to be reported.

Annex

Draft Instruments requiring affirmative approval

Draft S.I.	Community Infrastructure Levy (Amendment) (England) Regulations 2021
Draft S.I.	Major Sporting Events (Income Tax Exemption) Regulations 2021
Draft S.I.	Local Government Finance Act 1988 (Non-Domestic Rating Multipliers) (England) Order 2021

Instruments subject to annulment

S.I. 2020/1433	Customs (Origin of Chargeable Goods) (EU Exit) Regulations 2020
S.I. 2020/1436	Customs (Origin of Chargeable Goods: Trade Preference Scheme) (EU Exit) Regulations 2020
S.I. 2020/1437	Customs (Import Duty Variation) (EU Exit) Regulations 2020
S.I. 2020/1552	Customs (Amendment) (EU Exit) Regulations 2020

Appendix 1

S.I. 2020/1413

Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Extension of Time Period) (Coronavirus) Order 2020

1. In its letter to Her Majesty's Revenue and Customs of 13 January 2021, the Select Committee requested a memorandum on the following point:

> *"Explain why article 1 of this instrument is not mentioned in the preamble (compare S.I. 2020/728)."*

2. Her Majesty's Revenue and Customs accept that article 1 should have been mentioned in the preamble.

Her Majesty's Revenue and Customs

19 January 2021

Appendix 2

S.I. 2020/1495

Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020

1. In its letter to Her Majesty's Revenue and Customs of 13 January 2021, the Select Committee requested a memorandum on the following point:

> *Confirm that in regulation 6(c) the phrase "ending on 30th June 2021" should be "ending with 30th June 2021" to avoid confusion about the time of day at which the period ends (having regard, in particular, to the fact that the period begins during a day).*

2. Her Majesty's Revenue and Customs agree that it would have been preferable in regulation 6(c) to define the end point of the period identified by saying "ending with 30th June 2021".

Her Majesty's Revenue and Customs

19 January 2021

Formal Minutes

Wednesday 27 January 2021

Virtual Meeting

Members present:

Jessica Morden (*in the Chair*)

Dr James Davies Liz Twist

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 2.2 agreed to.

Annex agreed to.

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

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

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

[Adjourned till Wednesday 3 February at 3.40 p.m.