House of Commons

Select Committee on Statutory Instruments

Thirty-Eighth Report of Session 2019–21

Drawing special attention to:

Customs (Tariff-Free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020 (**S.I. 2020/1434**)

Ordered by the House of Commons to be printed 14 April 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

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 7599; the Committee's email address is: jcsi@parliament.uk.

Contents

Instruments reported

At the Committee's meeting on 14 April 2021 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. 2020/1434: Reported for defective drafting

Customs (Tariff-Free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020

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

1.2 These Regulations, which are subject to the negative resolution procedure, make provision to implement arrangements between HM Government and the governments of certain British Overseas Territories for tariff-free access for goods originating in those Territories, reflecting the fact that, as of the end of the Brexit Implementation Period, Council Decision (EU) 755/2013 no longer applies. Regulation 9 modifies the application of the Regulations where goods originating from certain Territories are also subject to tariff free access under equivalent Channel Islands or Isle of Man customs legislation. The Committee did not understand the modifications in regulation 9(2) and asked HM Treasury to explain. In a memorandum printed as an Appendix, the Department explains that those modifications were included in error and undertakes to remove them at the earliest opportunity. **The Committee accordingly reports regulation 9(2) 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	Double Taxation Relief (Federal Republic of Germany) Order 2021
Draft	Double Taxation Relief (Sweden) Order 2021

Instruments subject to annulment

S.I. 2021/241	Customs Tariff (Preferential Trade Arrangements) (EU Exit) (Amendment) Regulations 2021

Appendix

S.I. 2020/1434

Customs (Tariff-Free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020

1. In its letter to the Treasury of 17th March 2021, the Committee requested a memorandum on the following point:

> *Explain which regulation the modifications in regulation 9(2) relate to.*

2. The Treasury's response to the Committee's point is as follows.

3. The Treasury regrets that the modifications in regulation 9(2) of the Customs (Tariff-free Access for Goods from British Overseas Territories) (EU Exit) Regulations 2020 (S.I. 2020/1434) were included in the Regulations in error. They relate to a version of regulation 3 that was removed from the draft Regulations at the last minute without the necessary consequential amendment to the modifications in regulation 9 also being made.

4. The Treasury apologises for this error and undertakes to amend the Regulations at the earliest opportunity to correct it.

HM Treasury

25 March 2021

Formal Minutes

Wednesday 14 April 2021

Virtual meeting

Members present:

Jessica Morden (*in the Chair*)

Dr James Davies
John Lamont
Paul Holmes
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.

Paragraph 1.1 to 1.2 agreed to.

Annex agreed to.

A paper was appended to the report as an Appendix.

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

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

[Adjourned till Wednesday 21 April at 3.40 p.m