



House of Commons
Select Committee on
Statutory Instruments

**Fourth Report of
Session 2021–22**

Drawing special attention to:

*Recognised Auction Platforms and Greenhouse Gas Emissions Trading
Scheme Auctioning (Amendment) Regulations 2021 (S.I. 2021/513)*

*Ordered by the House of Commons
to be printed 16 June 2021*

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*)

[Richard Thomson MP](#) (*Scottish National Party, Gordon*)

[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), 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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Instruments reported

At the Committee's meeting on 16 June 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. 2021/513: Reported for defective drafting

Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021

1.1 **The Committee draws the special attention of this 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, amend the Recognised Auction Platforms Regulations 2011 (2011/2699) and the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (2021/484). The substituted wording inserted by regulation 9 includes a definition for “EU emissions allowance”. As that term does not exist within the Regulations, the Committee asked HM Treasury to explain. In a memorandum printed as an Appendix, the Department accepts that the defined term should have been “EU allowance”. The Department adds that it is considering with the Statutory Instrument Registrar whether the error can be addressed by a correction slip: in accordance with the principles set out in its First Special Report of Session 2017–19 (*Transparency and Accountability in Subordinate Legislation*), the Committee is clear that errors of this kind in subordinate legislation should not be corrected by correction slip; if the Department does not think the error is sufficiently significant to be amended by further legislation, it should be left in its present form for readers to draw their own conclusions. **The Committee accordingly reports regulation 9 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

Instruments subject to annulment

S.I. 2021/478¹ Customs (Miscellaneous Amendments) Regulations 2021

¹ The Committee asked for a memorandum in relation to this instrument and a satisfactory response was received.

Appendix

S.I. 2021/513

Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021

1. In its letter to HM Treasury of 26 May 2021, the Committee requested a memorandum on the following point:

In relation to regulation 9, explain why “EU emissions allowance” is defined in regulation 12(5) when the term does not appear in that regulation.

2. The defined term should have been “EU allowance”, not “EU emissions allowance”: the former is used in the definition of “relevant December futures contract” in substituted regulation 12(5).

3. HM Treasury is considering with the Statutory Instrument Registrar whether the error can be addressed by a correction slip. If not, it will be corrected at the next available opportunity. In the meantime, HM Treasury does not consider that there is any scope for confusion as to what is intended.

4. HM Treasury is grateful to the Committee for drawing the matter to its attention.

HM Treasury

28 May 2021

Formal Minutes

Wednesday 16 June 2021

Virtual Meeting

Members present:

Jessica Morden (*in the Chair*)

Dr James Davies John Lamont
Paul Holmes Richard Thomson

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 1.2 agreed to.

Annex agreed to.

A Paper was appended to the Report as an Appendix.

Resolved, That the Report be the Fourth Report of the Committee to the House.

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

[Adjourned till Wednesday 23 June at 3.40 p.m.]