House of Commons

Select Committee on Statutory Instruments

Fourth Report of Session 2002-03

Drawing special attention to:

Draft International Fund for Agricultural Development (Sixth Replenishment) Order 2003

Ordered by The House of Commons to be printed 4th November 2003

HC 126-iv
Published on 12th November 2003
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Select Committee on Statutory Instruments

The Select Committee on Statutory Instruments (SCSI) is appointed to consider all statutory instruments laid only before the House of Commons.

The Committee is empowered to draw the special attention of the House to an instrument on any one of a number of grounds specified in the Standing Order under which it works; or on any other ground which does not impinge upon the merits of the instrument or the policy behind it.

Current membership

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The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151, available on the Internet via www.parliament.uk.

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Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Jane Lauder (Committee Secretary) and Brian Dye (Committee Assistant).

Contacts

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Instruments reported

The Committee has considered the following instrument, and has determined that the special attention of the House should be drawn to it on the ground specified.

1 Draft International Fund for Agricultural Development (Sixth Replenishment) Order 2003: no power to make the Order

Draft International Fund for Agricultural Development (Sixth Replenishment) Order 2003

1.1 The Committee draws the special attention of the House to this instrument on the ground that there is, as yet, no power to make the Order.

1.2 The purpose of the draft Order is to enable the Secretary of State, on behalf of the Government, to make payment of a further contribution to the International Fund for Agricultural Development of a sum not exceeding £19,707,000, and to redeem non-interest-bearing and non-negotiable notes issued by him in payment of the further contribution.

1.3 Section 11 of the International Development Act 2002 (which repeals and re-enacts similar provisions in the Overseas Development and Co-operation Act 1980) provides that, where the Government becomes bound to make a payment to a multilateral development bank, the Secretary of State may make the payment if it is approved by an order made by him with the approval of the Treasury. No such order can be made unless a draft of it has been laid before and approved by the House of Commons. Thus, the Secretary of State's power to make the order in terms of the draft will only arise when: (a) the Government becomes bound to make the payment to the Fund, and (b) the draft order is approved by the House. The voluntary memorandum submitted by the Department for International Development and printed in the Appendix explains that no obligation to make the payment will arise until an Instrument of Contribution is deposited by the Government. The draft Order has been laid at this time in order to secure the approval of the House before the deposit of an Instrument of Contribution, and to authorise the making of the order in terms of the draft which would justify making the payment. Paragraph 9 of the memorandum contains an undertaking by the Secretary of State that no order will be made in terms of the draft until the Government is bound to make the payment on the deposit of an Instrument of Contribution.

1.4 The Committee has resolved to follow its usual practice[1] of reporting such draft Orders on the basis that, although there is, as yet, no power to make the Order, there is no technical reason for the House not to approve the draft Order: it should merely be aware that it is acting, as on occasions in the past, on a Ministerial undertaking. The Committee reports the draft Order accordingly.

[1] First and Second Reports of the Select Committee on Statutory Instruments (Session 2002-03), and the earlier Reports of the Committee mentioned in the footnote at page 4 of the First Report.

Instruments not reported

The Committee has considered the instruments set out in the Annex to this Report, and has determined that the special attention of the House does not require to be drawn to any of them.

Annex

Instruments to which the Committee does not draw the special attention of the House

- ● *denotes that the written evidence submitted in connection with the instrument is printed with this Report.*
- ○ *denotes written evidence has been submitted but not printed*

Draft instruments requiring affirmative approval

○ Stamp Duty Land Tax (Amendment of Schedule 5 to the Finance Act 2003) Regulations 2003

Instruments requiring affirmative approval

○ **S.I. 2003/2760** Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2003

Instruments subject to annulment

S.I. 2003/2172 Finance Act 1995, Section 127(12) (Designated Transactions) Regulations 2003

S.I. 2003/2173 Finance Act 2003, Schedule 26, Paragraph 3(3) (Designated Transactions) Regulations 2003

S.I. 2003/2247 Gaming Duty (Amendment) Regulations 2003

S.I. 2003/2263 Home Energy Efficiency Scheme (England) (Amendment) (No. 2) Regulations 2003

S.I. 2003/2313 Landfill Tax (Amendment) (No. 2) Regulations 2003

S.I. 2003/2318 Value Added Tax (Amendment) (No. 5) Regulations 2003

S.I. 2003/2339 Taxation of Benefits under Government Pilot Schemes (Return to Work Credit and Employment Retention and Advancement Schemes) Order 2003

S.I. 2003/2494 Income Tax (Employments) (Amendment) Regulations 2003

S.I. 2003/2495 Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003

S.I. 2003/2503 Bingo Duty Regulations 2003

S.I. 2003/2631 General Betting Duty (Amendment) Regulations 2003

S.I. 2003/2633 Climate Change Levy (General) (Amendment) (No. 2) Regulations 2003

Appendix 1

Draft International Fund for Agricultural Development (Sixth Replenishment) Order 2003: memorandum from the Department for International Development

Draft International Fund for Agricultural Development (Sixth Replenishment) Order 2003

Introduction

1. This Order is laid pursuant to Section 11 of the International Development Act 2002. Section 11 of the International Development Act 2002 (which repeals and re-enacts similar provisions in the Overseas Development and Co-operation Act 1980) provides that where the Government of the United Kingdom is at the time the section comes into force, or at a later time becomes, bound to make a relevant payment to a multilateral development bank, the Secretary of State may make the relevant payment (and other associated payments specified in section 11(3)). However he may only make the payment if it is approved for the purposes of the section by order made by him with the approval of the Treasury after a draft of the Order has been laid before and approved by the House of Commons. Under section 11(2), "multilateral development bank" is defined as an international financial institution having as one of its objects economic development, either generally or in any region of the world. The International Fund for Agricultural Development is one such institution.

Policy Objective

2. The Department for International Development (DFID) is responsible for leading the United Kingdom's contribution to promoting development and the reduction of poverty. The overall objective of DFID is the elimination of world poverty. This objective was set out in the 1997 White Paper "Eliminating World Poverty: A Challenge for the 21st Century", and reaffirmed in the 2000 White Paper "Eliminating World Poverty: Making Globalisation Work for the Poor". DFID delivers its international development funds through a combination of bilateral programmes, and contributions to various international financial institutions, such as the International Fund for Agricultural Development.

3. IFAD, a specialized agency of the United Nations, was established as an international financial institution in 1977 as one of the major outcomes of the 1974 World Food Conference. IFAD was created to mobilize resources on concessional terms for programmes that alleviate rural poverty and improve nutrition. Unlike other international financial institutions, which have a broad range of objectives, the Fund has a very specific mandate which is to 'enable the rural poor to overcome their poverty'. This it aspires to achieve through three strategic objectives: strengthening the capacity of the rural poor and their organisations; improving equitable access to productive natural resources and technology; and increasing access to financial services and markets.

4. In line with the Fund's special focus on the alleviation of rural poverty in developing countries, the bulk of its resources are made available to low-income countries on highly concessional terms, repayable over 40 years, including a grace period of ten years and a

0.75% service charge per annum. IFAD's annual commitment level is approximately USD 450 million. IFAD’s loan and grant commitments come from three sources: contributions from members, loan reflows and investment income. Respective shares from these sources during the IFAD V period (2001-2003) are projected to be 43%, 48% and 9%.

5. The Fund began operations with initial contributions of USD 899 million in 1977, and has since had five Replenishments of its resources, this being the sixth. About two thirds of contributions have been provided by the industrialized Member States, and one third by the developing member states. Copies of the Resolution have been placed in the House of Commons Library.

6. The United Kingdom has contributed a total of over £83 million to the initial funding and subsequent five replenishments as follows:

Initial Contribution	£18,000,000
1st Replenishment:	£12,901,127
2nd Replenishment:	£9,226,517
3rd Replenishment:	£11,305,433
4th Replenishment:	£13,586,773
5th Replenishment:	£18,531,000
Total	**£83,550,850**

Purpose of the Order

7. The purpose of the present Order, the draft of which is now laid before the House of Commons, is to enable Her Majesty’s Government:

(i) to make a further contribution to the Fund of a sum not exceeding £19,707,000. This is the equivalent to US$ 30,000,000 converted to sterling on the basis of the average month-end exchange rate of the IMF over a six month period ending 30 September 2002. The United Kingdom contribution will become effective following the deposit with the Bank of an appropriate Instrument of Contribution. In accordance with the Resolution, the United Kingdom’s payments will be made in five instalments, in the form of non-negotiable, non-interest-bearing promissory notes expressed in pounds sterling encashable on demand. These payments will be made in five instalments, the first instalment of £2,103,674 shall be paid in 2005, the second of £3,931,000 in 2006, the third of £8,169,000 in 2007, and the fourth of £5,503,326 in 2008.

(ii) to redeem non-interest-bearing and non-negotiable notes or other obligations issued by the Government in payment of the contribution.

The Need for a Section 11 Order

8. In connection with the payment envisaged in Article 2(a) of the Order, no obligation will arise until an Instrument of Contribution is deposited by the United Kingdom. The deposit of such an Instrument binds the United Kingdom to make the payment foreseen in Article 2(a). The payment envisaged in Article 2(b) of the Order is linked to the payment envisaged in Article 2(a) of the Order and would occur only on the basis that Article 2(a) had become effective and payment had been made under it.

9. This raises a technical issue regarding the use of the order-making power in the 2002 Act, one which the Select Committee on Statutory Instruments has addressed already in relation to contributions to the African Development Bank (S.I. 2002 No. 2404) and to the Caribbean Development Bank (S.I. 2002 No. 2405) as well as the last replenishment to the IFAD (S.I. 2003 No 2157). The Committee has also addressed the issue previous to that under similar provisions in the 1980 Act. As the Department set out in its previous Explanatory Memoranda to the Committee in relation to payments made under the 2002 Act, the issue arises from the fact that the section applies (and therefore, it would appear, the power to make the order arises) where the Government is bound to make the payment. The Government will be bound when the Instrument of Contribution is deposited.

10. The seeking of Parliamentary approval of the draft of the Order however does not appear to be ruled out, and therefore the approach the Committee has taken in the past (such a procedure was considered in the context of the draft Inter-American Development Bank (Seventh General Increase) Order 1989 by the Select Committee on Statutory Instruments in its Sixth Report (HC 48-vi 1988-89)) has been that there was no technical reason for the House not to approve the draft Order but that it should merely be aware that it is acting, as on occasions in the past, on a ministerial undertaking that no order will be made until the Government is bound. Accordingly the Secretary of State gives his undertaking that no order will be made in terms of the draft until, on deposition of an Instrument of Contribution, the Government is bound to make the payment.

11. The purpose of the presentation of the draft Order is therefore, as under the 1980 Act, in order to secure the approval of the House of Commons before the deposit of an Instrument of Contribution-.

12. The powers under the IDA are slightly different from those under the 1980 Act, in that the order is expressly the means by which approval is given to the making of a payment by the Secretary of State; whereas under the former powers the order made provision for the making of the payment itself. The new provisions therefore render more clearly the purposes of the order as a pre-requisite for the act of payment. Nevertheless, as under the 1980 Act, the strict legal position appears to be that only when the obligation to pay has come into existence does the Secretary of State have power to make an order in terms of the draft.

13. The Department respectfully submits that there need be no departure from the Committee's established approach to the exercise of the powers under section 11 of the IDA and its predecessor, section 4 of the 1980 Act.

European Convention on Human Rights

14. The Secretary of State is satisfied that this Order is compatible with the rights contained in the ECHR.

Devolved Administrations

15. The draft Order does not relate to devolved matters.

October 2003