



House of Commons
Select Committee on
Statutory Instruments

**Fourth Report
of Session 2017–19**

Drawing special attention to:

*Taxation (International and Other Provisions) Act 2010 Transfer Pricing
Guidelines Designation Order 2018 (S.I. 2018/266)*

*Ordered by the House of Commons
to be printed 18 April 2018*

Select Committee on Statutory Instruments

Current membership

[Derek Twigg MP](#) (*Labour, Halton*) (Chair)

[Dan Carden MP](#) (*Labour, Liverpool, Walton*)

[Vicky Foxcroft MP](#) (*Labour, Lewisham, Deptford*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Lee Rowley MP](#) (*Conservative, North East Derbyshire*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

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 www.parliament.uk/scsi.

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 Mike Winter (Commons Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Peter Brooksbank, Philip Davies and Vanessa MacNair.

Contacts

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Instruments reported

At the Committee's meeting on 18 April 2018 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 ground for reporting it is given below. The relevant Departmental memorandum is published as an appendix to this report.

1 S.I. 2018/266: Reported for failure to comply with proper legislative practice

Taxation (International and Other Provisions) Act 2010 Transfer Pricing Guidelines Designation Order 2018

1.1 **The Committee draws the special attention to the House of Commons to this Order on the ground that it fails to comply with proper legislative practice in one respect.**

1.2 This instrument updates the definition of transfer pricing guidelines in the United Kingdom's legislation by designating the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 10 July 2017 in place of the existing version. The Committee asked HM Revenue and Customs to explain why an address where a hard copy of the new version of the OECD guidelines can be consulted free of charge is not given.

1.3 In a memorandum printed as an Appendix, the Department explains that as the guidelines apply to transfers of assets between companies in multi-national groups of companies, it is likely that those affected by the legislation will have ready access to the internet. However, the Department undertakes to arrange for a copy to be purchased and made available for inspection free of charge upon request. The Committee is grateful for this undertaking given the importance the Committee attaches to the accessibility of documents referred to in legislation. The Committee agrees with the Department that reference to the availability of such a hard copy could properly be made by an amendment to the Explanatory Note by correction slip. **The Committee accordingly reports this Order for failure to comply with proper legislative practice, 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

Instrument requiring affirmative approval

S.I. 2018/442 Landfill Tax (Disposals of Material) Order 2018

Draft instruments requiring affirmative approval

Draft S.I. Finance Act 2003, Part 3 (Amendment) Order 2018

Draft S.I. Land Registry Trading Fund (Extension and Amendment) Order 2018

Draft S.I. Scottish Rates of Income Tax (Consequential Amendments) Order 2018

Draft S.I. Double Taxation Relief (Base Erosion and Profit Shifting) Order 2018

Instruments subject to annulment

S.I. 2018/75 Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2018

S.I. 2018/109 Venture Capital Trust (Exchange of Shares and Securities) (Amendment) Regulations 2018

S.I. 2018/118 Climate Change Levy (General) (Amendment) Regulations 2018

S.I. 2018/143 Taxation of Securitisation Companies (Amendment) Regulations 2018

S.I. 2018/150 Registered Pension Schemes (Relief at Source) (Amendment) Regulations 2018

S.I. 2018/217 Research and Development (Qualifying Bodies) (Tax) Order 2018

S.I. 2018/238 Tonnage Tax (Prescribed and Specified Matters) Regulations 2018

S.I. 2018/243 Landfill Tax (Wales) (Consequential and Transitional Provisions) Order 2018

S.I. 2018/261 Value Added Tax (Amendment) Regulations 2018

S.I. 2018/267 Income Tax (Pay As You Earn) (Amendment) Regulations 2018

S.I. 2018/268 Capital Allowances (Energy-saving Plant and Machinery) Order 2018

S.I. 2018/299 Fulfilment Businesses (Approval Scheme) Regulations 2018

S.I. 2018/308	Section 318C Income Tax (Earnings and Pensions) Act 2003 (Amendment) Regulations 2018
S.I. 2018/317	Qualifying Care Relief (Specified Social Care Schemes) (Amendment) Order 2018
S.I. 2018/326	Fulfilment Businesses Regulations 2018
S.I. 2018/338	Public Service Pensions Revaluation Order 2018
S.I. 2018/359	Individual Savings Account (Amendment) Regulations 2018
S.I. 2018/372	Relevant Overseas Schemes (Transfer of Sums and Assets) Regulations 2018
S.I. 2018/373	Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2018
S.I. 2018/395	Aggregates Levy (General) (Amendment) Regulations 2018
S.I. 2018/396	Landfill Tax (Miscellaneous Provisions) Regulations 2018

Appendix

S.I. 2018/266

Taxation (International and Other Provisions) Act 2010 Transfer Pricing Guidelines Designation Order 2018

1. In its letter to H.M. Treasury of 21 March 2018, the Joint Committee requested a memorandum on the following point:

Explain why an address where a hard copy of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations can be consulted free of charge is not given.

2. This memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of H.M. Treasury.

3. Part 4 of the Taxation (International and Other Provisions) Act 2010 ("TIOPA 2010") makes provision in respect of transfer pricing. Transfer pricing rules are based on an internationally agreed arm's length principle. Guidance on applying the arm's length principle is set out in the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines, which are referred to in UK transfer pricing legislation.

4. On 10th July 2017 the OECD published a new version of its transfer pricing guidelines ("the Guidelines"). The Taxation (International and Other Provisions) Act 2010 Transfer Pricing Guidelines Designation Order 2018 ("the SI") updates the definition of 'the transfer pricing guidelines' in the UK's legislation by designating the new 2017 version in place of the version referred to in section 164(4)(a) of TIOPA 2010. No provision was made for access to a hard copy of the version of the guidelines then in publication in either TIOPA 2010 or the explanatory notes to the relevant provisions.

5. The Guidelines are a specialist technical text, published on-line and in hard copy. An electronic copy may be viewed on the OECD website and a footnote to the SI includes a web address at which the Guidelines may be viewed electronically.

6. The footnote also included a reference to the ISBN number of the hard copy publication to assist those wishing to obtain such a copy.

7. HMRC recognises the importance of ensuring that documents given a significance by subordinate legislation should be available to those who do not have access (or ready access) to the internet and acknowledges that the SI does not contain any reference to where a hard copy may be inspected free of charge. However, the Guidelines apply to transfers of assets between companies in multi-national groups of companies, and given the highly technical and specialised nature of the transfer pricing rules it is highly likely that those affected by the legislation would have ready internet access so failure to provide a reference as to the availability of hard copies would not impede understanding of the legislation by those affected. Indeed, although the original guidelines are referred to at s 164(4)(a) TIOPA 2010, HMRC is not aware of an occasion on which the department has received a request to view any version of the guidelines in hard copy.

8. HMRC has conducted a search of the online catalogues of a number of public libraries and has not identified a library holding a hard copy. The department proposes to arrange for a copy to be purchased and held with the department's Tax Treaty Team, whose office is at 100 Parliament Street, London, SW1A 2BQ and for the copy to be available for inspection free of charge upon request; subject to the Committee's view, reference to the availability of such a hard copy would then be made by an amendment to the Explanatory Note to be made by a correction slip.

Her Majesty's Revenue and Customs

27 March 2018