



House of Commons
Select Committee on
Statutory Instruments

**Second Report
of Session 2009–10**

Drawing special attention to:

Value Added Tax (Amendment) (No. 4) Regulations 2009 (S.I. 2009/2978)

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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/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 by The Stationery Office 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 John Whatley (*Commons Clerk*) and Jennifer Steele (*Committee Secretary*). Advisory Counsel: Peter Davis, Peter Brooksbank and Christine Cogger.

Contacts

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Instruments reported

At the Committee's meeting on 16 December 2009 it scrutinised a number of instruments. It was agreed that the special attention of the House 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. 2009/2978: Reported for defective drafting

Value Added Tax (Amendment) (No. 4) Regulations 2009 (S.I. 2009/2978)

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 Regulation 4 inserts a new regulation 25A into the Value Added Tax Regulations 1995. New regulation 25A(12) reads as follows (Committee's underlining):

(12) *Subject to paragraph (13) below and unless the contrary is proved-*

- (a) *the use of an electronic return system shall be proved to have resulted in the making of the return to the Controller only if this has been successfully recorded as such by the relevant electronic validation process;*
- (b) *the time of making the return to the Controller using an electronic return system shall be conclusively presumed to be the time recorded as such by the relevant electronic validation process; and*
- (c) *the person delivering the return to the Controller shall be presumed to be the person identified as such by any relevant feature of the electronic return system.*

1.3 In a memorandum printed at the Appendix HM Revenue and Customs accepts that the use of a conclusive presumption in sub-paragraph (b) of regulation 25A(12) is inconsistent with the words "unless the contrary is proved" in the opening line of the paragraph. The Department explains that it intended that sub-paragraph (b) should operate as a rebuttable presumption, and undertakes to prepare amending Regulations at the first suitable opportunity. **The Committee accordingly reports regulation 4 of these Regulations for defective drafting in this respect, 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

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*

Instruments subject to annulment

- | | |
|-----------------------|--|
| S.I. 2009/3073 | Taxes, etc. (Fees for Payment by Telephone) Regulations 2009 |
| S.I. 2009/3088 | Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Over the Counter) Regulations 2009 |
| S.I. 2009/3127 | Value Added Tax (Supplementary Charge) Order 2009 |
| S.I. 2009/3139 | Offshore Funds (Tax) (Amendment) Regulations 2009 |

Appendix

S.I. 2009/2978: memorandum from HM Revenue and Customs

Value Added Tax (Amendment) (No. 4) Regulations 2009 (S.I. 2009/2978)

1. In its letter to HMRC of 2 December 2009, the Select Committee has requested a memorandum to be submitted on the following point—:

Given the inclusion of the words “unless the contrary is proved” in the opening line of new regulation 25A(12) of the Value Added Tax Regulations 1995 (inserted by regulation 4), explain why—

- (a) new regulation 25A(12)(a) uses the word “proved”; and*
 - (b) new regulation 25A(12)(b) uses the word “conclusively”.*
2. New regulation 25A of the Value Added Tax Regulations 1995 inserted by this instrument makes provision for the making of VAT returns to HMRC by electronic means. Paragraph (12) provides rules for determining whether a return has been

submitted, the time at which the return has been submitted and by whom the return has been submitted.

3. Paragraph (12)(a) provides that a return is proved to have been made to HMRC if the electronic validation process records that a return has been submitted. The opening words of the paragraph “unless the contrary is proved” allow taxpayers the opportunity to provide alternative evidence to prove a return has been submitted electronically. This might be necessary, for example, in cases where the electronic validation process is inoperative. Accordingly, whilst paragraph 12(a) provides that a return shall be proved to have been made if recorded by an electronic validation process the opening words of the paragraph provide that the making of the return can nevertheless be proved in other ways.
4. Paragraph (12)(b) provides that the time of making a return is conclusively presumed to be the time recorded in the electronic validation process. HMRC accepts that the use of a conclusive presumption in paragraph (12)(b) is inconsistent with the opening words of the paragraph in providing “unless the contrary is proved”. HMRC accepts that the proposition in paragraph 12(b) should either have been an irrebuttable presumption (i.e. a conclusive presumption) or a rebuttable presumption (i.e. unless otherwise proved) but that it could not be both. HMRC’s intention is that paragraph 12(b) should operate as a rebuttable presumption and that is how the paragraph will be applied in practice by HMRC.
5. HMRC apologises to the Committee for this oversight and undertakes to prepare amending Regulations at the first suitable opportunity.

HM Revenue and Customs

10 December 2009