



House of Commons

European Statutory Instruments Committee

Seventh Report of Session 2017–19

**Documents considered by the Committee on
13 November 2018**

Drawing attention to:

The Companies, Limited Liability Partnerships and Partnerships
(Amendment etc.) (EU Exit) Regulations 2018

The Employment Rights (Amendment) (EU Exit) Regulations 2018

The Employment Rights (Amendment) (Northern Ireland) (EU Exit)
Regulations 2018

The Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit)
Regulations 2018

Report, together with formal minutes

*Ordered by the House of Commons
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European Statutory Instruments Committee

The European Statutory Instruments Committee is appointed by the House of Commons to examine and report on:

(i) any of the following documents laid before the House of Commons in accordance with paragraph 3(3)(b) or 17(3)(b) of Schedule 7 to the European Union (Withdrawal) Act 2018—

- (a) a draft of an instrument; and
- (b) a memorandum setting out both a statement made by a Minister of the Crown to the effect that in the Minister's opinion the instrument should be subject to annulment in pursuance of a resolution of either House of Parliament (the negative procedure) and the reasons for that opinion, and

(ii) any matter arising from its consideration of such documents.

Current membership

[Rt Hon Sir Patrick McLoughlin MP](#) (*Conservative, Derbyshire Dales*) (Chair)

[Kirsty Blackman MP](#) (*Scottish National Party, Aberdeen North*)

[Nic Dakin MP](#) (*Labour, Scunthorpe*)

[Mr Philip Dunne MP](#) (*Conservative, Ludlow*)

[Ms Angela Eagle MP](#) (*Labour, Wallasey*)

[Rt Hon Sir David Evennett MP](#) (*Conservative, Bexleyheath and Crayford*)

[Vicky Ford MP](#) (*Conservative, Chelmsford*)

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

[Trudy Harrison MP](#) (*Conservative, Copeland*)

[Julia Lopez MP](#) (*Conservative, Hornchurch and Upminster*)

[Ian C. Lucas MP](#) (*Labour, Wrexham*)

[Bridget Phillipson MP](#) (*Labour, Houghton and Sunderland South*)

[Mary Robinson MP](#) (*Conservative, Cheadle*)

[Andrew Selous MP](#) (*Conservative, South West Bedfordshire*)

[Jo Stevens MP](#) (*Labour, Cardiff Central*)

[Liz Twist MP](#) (*Labour, Blaydon*)

Powers

The Committee's powers are set out under a Temporary Standing Order of 16 July 2018.

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/esic.

Committee staff

The current staff of the Committee are Mike Winter (Clerk), Yohanna Sallberg (Second Clerk), Paul Simpkin (Senior Committee Assistant) and Zsofia Kiss (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak and Vanessa MacNair.

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Instruments recommended for the affirmative procedure

At its meeting on 13 November 2018 the Committee considered proposed negative instruments laid by the Government and has recommended that the appropriate procedure for the following instruments is for a draft of them to be laid before, and approved by a resolution of, each House of Parliament before they are made (i.e. the affirmative procedure).

1 The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2018

1.1 This proposal addresses deficiencies in retained law arising from the UK’s exit from the EU in relation to the Companies Act 2006 (and supporting secondary legislation), which provides the framework for company law in the UK. The proposal makes a significant volume of changes to primary legislation and supporting secondary legislation.

1.2 The 2006 Act currently provides for different treatment of EEA companies and EEA ‘regulated markets’ as compared to non-EEA companies and markets. It also refers to arrangements in which the UK participates by virtue of being an EEA state, such as the cross-border mergers regime and taking part in the e-Justice portal (an electronic one-stop shop in the area of justice, providing information on justice systems throughout the EEA, including registers of companies).

1.3 The statutory instrument makes technical amendments and changes to provide a “functioning, clear system for companies and affected business after exit day”. In case of a no-deal scenario the amendments ensure that the UK does not provide preferential treatment to EEA companies or EEA States which would breach WTO Most Favoured Nation rules.

1.4 The proposal also revokes legislation dependent on UK status as an EEA State, including the Companies (Cross-Borders Mergers) Regulations 2007. The Government states that “(a)fter exit day the UK will no longer have access to the regime and EEA States will no longer be required to give effect to mergers involving a UK company. On average, around fifty cross-border mergers take place under the Regulations in the UK per year. After exit day, cross-border mergers will still be able to be structured through private contractual arrangements”.

1.5 The Committee believes that this is one of several important issues being raised in these proposals. Despite the Government’s assurance that the instrument “makes no significant changes to the nature of the UK’s company law framework”, the Committee believes that there are issues that the House will want to debate. Some of the issues have not been fully exposed previously as the Explanatory Memorandum states that the Government “has not been able to publicly consult in order to minimise sensitivities in advance of negotiations with the EU.”

1.6 Given the volume of legislation, including primary legislation, being changed and the importance of the issues as explored above we recommend that this proposed negative instrument be upgraded to affirmative on the ground that it is of political and legal importance.

2 The Employment Rights (Amendment) (EU Exit) Regulations 2018

2.1 This proposed negative statutory instrument amends employment law to reflect the withdrawal of the UK from the EU in the event of a no-deal.

2.2 This includes repealing powers for the Secretary of State to make secondary legislation in four Employment Acts to implement Council Directives which provide: the framework on parental leave; the framework agreement on part-time work and fixed-term work in its application to terms and conditions of employment; and the framework for informing and consulting employees of the European Community.

2.3 Additionally, the instrument amends references that are considered no longer appropriate or relevant if the UK leaves the EU without a withdrawal agreement, in a range of legislation dealing with: working time regulations; statutory paternity and adoption pay; employment tribunals; shared parental leave and posted workers. The Government states that the changes are intended to ensure that the “existing statutory framework continues to operate as effectively” but “does not change the operation of these aspects of employment laws in other ways”.

2.4 Changes to the Transnational Information and Consultation of Employees (TICE) Regulations reflect the fact that in a no-deal scenario the UK would no longer be included within EU rules on European Works Councils (EWCs). The purpose of EWCs are to function as a representative body of multinational employees in the European Economic Area (EEA) in discussions with management on transnational issues.

2.5 The statutory framework that applies to EWCs requires reciprocal arrangements with the EU to function. Although some of the current policy framework for EWCs are retained and will continue to operate after the UK’s departure from the EU, this proposed negative statutory instrument amends the TICE Regulations so that no new requests to set up a EWC or information and consultation procedure can be made. It is difficult to evaluate the impact this may have as no information has been provided and no consultation has been held, apart from the publication of a draft of the instrument.

2.6 Despite the necessity of providing for a no-deal scenario, the Committee is concerned about the implications of the repeal of the powers in the four Acts contained in this instrument and the amendments to other employment law legislation, including the TICE Regulations and the impact on EWCs. The issues covered by the instrument will be of concern to Members of the House and a debate will provide an opportunity to consider those matters further.

2.7 The Committee therefore recommends that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of each House of Parliament before it is made (i.e. the affirmative procedure), on the ground that it is of political and legal importance.

3 The Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

3.1 The Committee expresses similar concerns for this proposed negative statutory instrument as it did for The Employment Rights (Amendment) (EU Exit) Regulations 2018. These concerns are mainly centred on the political importance of employment law.

3.2 This instrument makes law for Northern Ireland in respect of a transferred matter (employment rights) due to the continued absence of a Northern Ireland Executive, to ensure that Northern Ireland has legal certainty on exit day.

3.3 Due to its catering for a no-deal scenario, and the political importance of employment law in Northern Ireland the Committee believes that this should be further debated in the House.

3.4 The Committee recommends that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure), on the ground it is of political importance.

4 The Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit) Regulations 2018

4.1 The EU has legislated in many areas of maritime policy. The Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit) Regulations 2018 deal with legislation related to market access and regulation for maritime transport services, including action against anti-competitive practice. It revokes legislation which will be redundant after the UK leaves the EU or which creates rights for the remaining Member States which may not be reciprocated.

4.2 Ten Regulations or Decisions are being revoked in their entirety and so will no longer have any effect. These include, for example, a regulation applying the freedom to provide shipping services between Member States and between Member States and third countries (4055/86) and a regulation applying the principle of freedom to provide shipping services within Member States (maritime cabotage) (3577/92).

4.3 About Regulation 4055/86, the Government states that the “UK’s open approach to the provision of maritime transport services means that the express guarantee provided for ... is not required in UK legislation” and goes on to say this is the case “particularly where access for UK registered ships may not be guaranteed under EU legislation”.

4.4 The Explanatory Memorandum (EM) states that retaining Regulation 3577/1992 would mean that rights for shipowners in the 27 remaining Member States to provide maritime cabotage services would continue to be guaranteed in UK Legislation. However, because the UK would no longer be a Member State, shipowners on the UK register would no longer necessarily benefit from equivalent rights in relation to cabotage services in the remaining 27. Therefore, the regulation will be revoked. However, the EM states that the UK has no intention of restricting cabotage stating that the UK “believes that an open approach promotes competition leading to better and more efficient services”.

4.5 The Government says the changes to legislation “are of themselves uncontroversial” and the outcome of an informal consultation summarised the view that “market access generally was not a significant concern for stakeholders”.

4.6 The Committee believes that issues around the continued relevance of rights, the UK operators’ ability to provide shipping services in the EU after exit, and uncertainty about service provision in the UK by EU providers, raise questions of particular commercial and economic importance that Members will want to debate, and **we therefore recommend that this proposed negative instrument be upgraded to affirmative on the ground that it is of political and legal importance.**

Instruments recommended for the negative procedure

At its meeting on 13 November 2018 the Committee considered proposed negative instruments and has recommended that the appropriate procedure for the following instruments is for them to be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure).

The Consumer Protection (Amendment etc.) (EU Exit) Regulations 2018

The European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018

The European Network of Employment Services (EU Exit) Regulations 2018

The European Public Limited-Liability Companies (Amendment etc.) (EU Exit) Regulations 2018

The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018

The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

The Livestock (Records, Identification and Movement) (England) (Amendment) (EU Exit) Regulations 2018

The Official Controls (Animals, Feed and Food) (England) (Amendment) (EU Exit) Regulations 2018

The Service of Documents and Taking Evidence in Civil and Commercial Matters (Revocation and Saving Provisions) (EU Exit) Regulations 2018

The Weighing and Measuring Equipment and Meters (Amendment of Secondary Legislation) (EU Exit) Regulations 2018

Formal Minutes

Tuesday 13 November 2018

Members present:

Rt Hon Sir Patrick McLoughlin, in the Chair

Kirsty Blackman	Julia Lopez
Nic Dakin	Bridget Phillipson
Ms Angela Eagle	Mary Robinson
Rt Hon Sir David Evennett	Andrew Selous
Patrick Grady	Jo Stevens
Ian C. Lucas	Liz Twist

Draft Report (*Seventh Report*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4.6 agreed to.

Ordered, That the Report be the Seventh Report of the Committee to the House.

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

[Adjourned till 20 November at 3.30pm]