



House of Commons
European Statutory
Instruments Committee

**Tenth Report
of Session 2017–19**

**Documents considered by the Committee on
4 December 2018**

Drawing attention to:

The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018

The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2018

The European Structural and Investment Funds Common Provisions Rules etc (Amendment etc) (EU Exit) Regulations 2018

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 4 December 2018*

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.

All correspondence should be addressed to the Clerk of the European Statutory Instruments Committee, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 7597; the Committee's email address is: esic@parliament.uk.

Contents

Meeting summary	3
Instruments recommended for the affirmative procedure	4
2 The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2018	4
3 The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018	4
4 The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2018	5
5 The European Structural and Investment Funds Common Provisions Rules etc (Amendment etc) (EU Exit) Regulations 2018	6
Instruments recommended for the negative procedure	7
Formal Minutes	8

Meeting summary

1.1 At its meeting on 4 December 2018 the Committee noted and welcomed the Government's confirmation that it had accepted the Committee's recommendation and would lay the following instrument under the affirmative procedure:

- i. DfT—The Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit) Regulations 2018.

Instruments recommended for the affirmative procedure

At its meeting on 4 December 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).

2 The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

2.1 The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 aim to correct domestic laws in Northern Ireland to ensure the aquatic animal health and alien species in agriculture regimes remain operable when the UK leaves the EU.

2.2 Regulation 2(11) confers a legislative function - to establish appropriate buffer zones to prevent the introduction of exotic diseases to aquatic species in Northern Ireland - directly on the competent authority in Northern Ireland, in its capacity as a UK public authority, that EU Regulations confer in respect of the UK as a Member State. The Committee believes this may be sufficient to make this instrument mandatory affirmative under paragraph 1(2)(a) of Schedule 7 to the Withdrawal Act. In any event it is probably sufficient to indicate affirmative resolution, as a legislative delegation (albeit one of a relatively narrowly circumscribed nature).

2.3 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 legal importance.

3 The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018

3.1 The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018 amend three separate domestic regulations, and revoke one, relating to the implementation of the EU Common Agricultural Policy (“CAP”) and amend one Order concerned with the Agriculture and Horticulture Development Board (“AHDB”). This instrument is one of a package of regulations that will cover a range of CAP-related areas.

3.2 The proposals make “predominantly technical changes” to ensure that “EU CAP schemes and farming support measures, such as Direct Payments to farmers and land managers, can continue to operate effectively (until such time as they may be amended by future agriculture policy changes).” The relevant Minister also states in the ‘sifting’ statement that the contents of this instrument “are not of such significance that Parliament would expect to debate it”.

3.3 This instrument corrects two deficiencies in the AHDB Order. One of these removes the Agriculture and Horticulture Development Board red meat levy on animals imported from the rest of the world for short term slaughter. The instrument explains that:

“Removing this levy will ensure that, following EU Exit, there will be equal treatment between the EU and the rest of the world for animals imported for slaughter. Defra’s estimate of the maximum financial impact to the AHDB caused by this change is a loss of c. £1,000 per year in levy, although it is believed that the amount actually collected by the AHDB in relation to the rest of the world imports are far lower than this, and are probably nil.”

3.4 Regulation 3(a), that removes the levy, may or may not fall within the provision of Paragraph 1(2) to Schedule 7 of the European Union (Withdrawal) Act 2018 that specifies mandatory affirmative procedure for any instrument containing regulations that relate to a fee in respect of a function exercisable by a public authority in the United Kingdom. Regardless, the Committee feels that it is sufficiently cognate to merit uplift to the affirmative procedure.

3.5 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.

4 The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2018

4.1 The purpose of the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2018 is to address failures in retained EU law to operate effectively and other deficiencies arising from the UK’s withdrawal from the EU by amending the domestic legislation which implements five EU criminal justice measures. The instrument will revoke, repeal, or otherwise amend the implementing legislation since the measures will be inoperable when the UK leaves the EU. Four of the five measures rely on reciprocity between EU Member States which will cease as between the UK and the EU Member States when we leave. The other measure would require the UK to continue to distinguish between prior convictions from EU Member States and those from non-EU Member States, a situation which the Government states “will no longer be appropriate”.

4.2 In achieving these aims the proposal makes changes to 11 Acts. Although the amendments are a necessary consequence of Brexit, we consider the cumulative impact of the large volume of amendments is such that the additional safeguard of affirmative resolution is appropriate.

4.3 We also consider whether an instrument significantly diminishes rights, whether in a consumer context or in other contexts. The threshold is one of significance—but when in doubt we are inclined to assume that an instrument which in disengaging from EU obligations results in a diminution of rights should be subject to affirmative resolution. This proposal means that UK nationals seeking access to non-UK criminal compensation schemes will now have to do so through a Convention (to which only 18 EU Member States are party). There will no longer be mutual recognition of European protective orders and supervision orders and the UK will not be able to transfer certain financial penalties to Member States.

4.4 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.

5 The European Structural and Investment Funds Common Provisions Rules etc (Amendment etc) (EU Exit) Regulations 2018

5.1 The European Structural and Investment Funds Common Provisions Rules etc (Amendment etc) (EU Exit) Regulations 2018 amend retained EU legislation to allow continuing funding after EU exit for 2014-2020 programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

5.2 The regulations, as they apply to the European Social Fund (ESF) and the European Regional Development Fund (ERDF), will be amended through another instrument.

5.3 This proposal caters for a no-deal scenario and enables the above programmes to continue to function and to pay to their beneficiaries, as well as removing certain requirements and transferring requirements or obligations previously for the European Commission (or another Member State country) to the relevant public authority. The Government has guaranteed that any programmes where funding has been agreed before the end of 2020 will be funded for their full lifetime. This instrument enables the UK government to fund any remaining payments to farmers, land managers and rural businesses due after March 2019.

5.4 The Committee believes that the issue of future funding of programmes is important. Although the amendments are required to correct deficiencies found in the regulations ensuring that programmes currently funded by the EAFRD and EMFF remain operable post-exit, we consider the substance of the amendments and interest in the subject is such that the additional safeguard of affirmative resolution is appropriate.

5.5 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 importance.

Instruments recommended for the negative procedure

At its meeting on 4 December 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 Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

The CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018

The Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018

The Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

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

The Equine Identification (England) (Amendment) (EU Exit) Regulations 2018

The Fertilisers (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

The Health and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

The International Waste Shipments (Amendment) (EU Exit) Regulations 2018

The Leghold Trap and Pelt Imports (Amendment etc.) (EU Exit) Regulations 2018

The Marine Environment (Amendment) (EU Exit) Regulations 2018

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

The Organic Products (Amendment) (EU Exit) Regulations 2018

The Rights of Passengers in Bus and Coach Transport (Amendment etc.) (EU Exit) Regulations 2018

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2018¹

The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018

The Zoonotic Disease Eradication and Control (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

¹ The Department provided additional information to the Committee relating to some of the amendments proposed by this instrument that sought to address deficiencies relating to redundant or substantially redundant provisions. Where this is the case we expect such information to be clearly and fully set out in the Explanatory Memorandum.

Formal Minutes

Tuesday 4 December 2018

Members present:

Rt Hon Sir Patrick McLoughlin, in the Chair

Mr Philip Dunne	Bridget Phillipson
Ms Angela Eagle	Mary Robinson
Rt Hon Sir David Evennett	Andrew Selous
Patrick Grady	Jo Stevens
Julia Lopez	Liz Twist
Ian C. Lucas	

Draft Report (*Tenth 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 1.1 to 5.5 agreed to.

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

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

[Adjourned till 11 December at 3.30pm]