



House of Commons

European Statutory Instruments Committee

Eleventh Report of Session 2017–19

Documents considered by the Committee on 11 December 2018

Drawing attention to:

The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018

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

The European Union (Withdrawal) Act 2018 (Consequential Modifications
and Repeals and Revocations) (EU Exit) Regulations 2018

The Rural Development (Amendment) (EU Exit) Regulations 2018

The Rural Development (Rules and Decisions) (Amendment) (EU Exit)
Regulations 2018

The Shipments of Radioactive Substances (EU Exit) Regulations 2018

The Veterinary Medicines and Animals and Animal Products (Examination
of Residues and Maximum Residue Limits) (Amendments etc.) (EU Exit)
Regulations 2018

Report, together with formal minutes

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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*)

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[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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Meeting summary

1.1 At its meeting on 11 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. MoJ—The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2018.

Instruments recommended for the affirmative procedure

At its meeting on 11 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 Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018

2.1 The Common Fisheries Policy (CFP) comprises approximately 100 EU Regulations which impose a common approach to the sustainable management of fisheries across the European Union and its waters (currently UK waters are part of EU waters).

2.2 This specific instrument amends 31 of these 100 regulations to ensure that the regulations operate effectively when the UK leaves the EU. The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, explains that “further, and more substantive, amendments to retained EU law in relation to the common fisheries policy will be made via the Fisheries Bill and later amendment instruments, including amendments transferring functions from EU institutions to the UK which will be achieved via an affirmative instrument.”

2.3 Regulation 4(82)(e) transfers from Member States to fisheries administrations a power to impose “effective, proportionate and dissuasive” criminal sanctions for infringements of the fisheries regulations. Regulation 19(18)(a) and (19)(a) transfers from Member States to fisheries administrations the power to make rules agreed with one organisation binding on non-members, or agreements etc. agreed within one organisation binding on other operators. These appear to be functions of a legislative character. The Committee believes this is sufficient to make this instrument mandatory affirmative under paragraph 1(2)(a) of Schedule 7 to the EU (Withdrawal) Act 2018.

2.4 Regulation 3(27) removes a provision that gives Member States the discretion to charge a cost-recovery fee. The Government has stated in the Explanatory Memorandum to a different instrument (Animal Breeding (Amendment) (EU Exit) Regulations 2018) that “it is considered that the omission of a provision that could potentially relate to fees should not attract the affirmative procedure.” In that case the instrument removed a fee-charging power that had not been and was not intended to be used. These omissions may fall within the same category.

2.5 At least two provisions (Regulation 4(37)(b) and (72)(f)) transfer to fisheries administrations (i.e. the Secretary of State and devolved administrations) the discretion to charge a cost-recovery fee. The Committee believes this is sufficient to make this instrument mandatory affirmative under paragraph 1(2)(b) of Schedule 7 to the EU (Withdrawal) Act 2018.

2.6 The Committee is also concerned that the instrument removes a number of provisions and obligations, for example requiring independent evaluations or assessments; reporting

obligations; monitoring and evaluation; or requiring publication of information or data. Notwithstanding the fact that some of these duties are imposed on or in relation to the Commission, it is not clear whether in substance they are replicated or retained in some other way in UK law, or whether their removal will result in a loss of transparency. It may be that some obligations removed by this instrument may be covered by the Fisheries Bill and/or related policies or delegated legislation, but this is not made clear in the Explanatory Memorandum (EM). The Committee is also concerned that some other changes made by the instrument are not effectively explained and appear to make changes to policy. It may be that these provisions will be covered by other legislation or that they are redundant or substantially redundant and are being removed for that reason but, if that is the case, it should be fully set out in the EM.

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 the, 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 European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2018

3.1 The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2018 amend Regulations laying down common provisions to allow programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD) and the European and Maritime and Fisheries Fund (EMFF) to continue to receive funding for the 2014–2020 programme after EU exit.

3.2 The Committee believes that the issue of future funding of programmes is important and believes that the additional safeguard of affirmative resolution is appropriate for this instrument. In its tenth Report of Session 2017–19, the Committee also recommended for the affirmative procedure the European Structural and Investment Funds Common Provisions Rules etc (Amendment etc) (EU Exit) Regulations 2018, which contained similar provisions to this instrument. Should the Government agree with our recommendation, and given the related nature of the instruments, the Committee believes that there would be merit for both instruments to be scheduled for debate together.

3.3 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 political importance.

4 The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2018

4.1 The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2018 amend the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010 (“the ILRA 2010”) and the Interpretation Act (Northern Ireland) 1954, which set out general rules of interpretation for legislation. The instrument makes provision for how non-ambulatory cross-references

to European Union legislation up to the point immediately before exit should be read. Non-ambulatory references are references which are not automatically updated. It also makes provision for how cross-references to EU legislation post-exit should be read. It also adds several words and expressions to the ILRA 2010 and the Interpretation Act (Northern Ireland) 1954 and provides general rules of interpretation in light of the introduction of “retained EU law”.

4.2 These Regulations repeal and revoke primary and secondary legislations in consequence of the repeal of the European Communities Act 1972 (“the ECA 1972”) and arising from the withdrawal of the UK from the EU. These repeals and revocations remove redundant provisions of domestic legislation. These Regulations also make transitional and savings provisions in relation to the repeals.

4.3 The instrument amends Interpretation Acts and provides general rules of interpretation in light of the introduction of “retained EU law”. Despite being technical in nature we consider the cumulative impact of the amendments is such that the additional safeguard of affirmative resolution is appropriate.

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 Rural Development (Amendment) (EU Exit) Regulations 2018 and The Rural Development (Rules and Decisions) (Amendment) (EU Exit)

5.1 The Rural Development (Amendment) (EU Exit) Regulations 2018 and the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018 amend the EU regulations governing rural development to enable the UK’s Rural Development Programmes for 2014–2020 to continue to operate in the event of a no deal situation on EU Exit, applying to programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD).

5.2 The UK Government has guaranteed that any projects where funding has been agreed before the end of 2020 will be funded for their full lifetime. This means, in the unlikely event the UK leaves the EU with no deal, the UK Government would fund any remaining payments, using domestic funding, to farmers, land managers and rural businesses due after March 2019. This would ensure continued funding for these projects until they finish.

5.3 To achieve this, significant obligations that were previously for the EU Commission are transferred to relevant authorities in the UK or stakeholders including the overall responsibility for the rural development programme and the process for approval of the annual implementation reports.

5.4 The Committee believes that the issue has significant financial implications and is of particular importance to rural communities. Although the amendments are required in a no deal scenario to implement the commitments made by the Government on funding, we consider the significance of the instruments 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.**

6 The Shipments of Radioactive Substances (EU Exit) Regulations 2018

6.1 The Shipments of Radioactive Substances (EU Exit) Regulations 2018 correct deficiencies in the operation of retained EU law within Euratom Regulation 1493/93 (the “Regulation”) on the shipment of radioactive substances between EU Member States. The Regulation requires that shipments of radioactive sources between Member States are controlled and documented.

6.2 The Regulation has two key aspects. The first of these, the requirement for source holders to obtain a prior written declaration (for sealed sources only) from the source receiver to demonstrate that the consignee complies with national requirements for their safe storage, use and disposal. The second key aspect of the Regulation requires source holders to submit a quarterly return detailing all the shipments made during the preceding quarter to the competent authority in the destination Member State. This part of the Regulation extends to both sealed and unsealed sources.

6.3 The instrument revokes the Regulation and replaces it with similar provisions so that the system of prior written declarations continues to function as it does now insofar as possible. However, as a result of the UK no longer being a Member State (and leaving the Euratom Treaty when it leaves the EU), and for jurisdictional reasons, the system cannot continue in exactly the same way.

6.4 The regime differs in three respects from the EU Regulation: (1) the regime now deals only with sealed sources as quarterly returns detailing shipments (for both sealed and unsealed sources) will no longer be required (though environment agencies require permitted sites who receive sealed and unsealed sources to record receipt of those sources); (2) the instrument does not apply to UK imports into the EU and (3) the obligation to obtain the prior written declaration that the consignee complies with national requirements for safe storage, use and disposal now rests with the consignee in the UK (the source receiver) rather than the source holder.

6.5 The Committee believes that the special importance of the issue is such that the additional safeguard of affirmative resolution is appropriate.

6.6 **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.**

7 The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Amendments etc.) (EU Exit) Regulations 2018

7.1 The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residues Limits) (Amendment etc.) (EU Exit) Regulations 2018 amend regulations that establish the veterinary medicines framework to ensure it can continue to operate effectively when the UK leaves the EU. The Explanatory Memorandum (EM) for this instrument sets out that the Government “plans to retain the current standards set out in EU legislation, and EU derived domestic regulations, that ensure the availability of medicines and the safety of produce from treated animals to continue after the UK has left the EU. The aim of these amendments is not a substantive policy change”.

7.2 This instrument introduces a change in relation to the location of holders of marketing authorisations for veterinary medicines which is required as a consequence of leaving the EU. This will require holders of authorisations for veterinary medicine to establish themselves in the UK, increasing the burden and likely costs of those holders currently based outside of the UK. The EM states that “there are 90 companies that will need to establish a UK base out of a total of 178 companies that hold authorisations for veterinary medicines”. The Committee is concerned that some companies may choose not to establish themselves in the UK and the impact this may have.

7.3 The Committee is also concerned that the effect of certain amendments is unclear and could potentially lead to a lowering of safety standards relating to four particular areas:

- The import of veterinary medicinal products from third countries;
- The use by veterinary surgeons of veterinary medicinal products from third countries where none has been authorised in the UK;
- The import of feeding stuff containing veterinary medicinal products; and
- The removal of a duty to investigate, in response to specified triggers, whether a prohibited substance has been illegally administered.

7.4 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.

Instruments recommended for the negative procedure

At its meeting on 11 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 Animal Breeding (Amendment) (EU Exit) Regulations 2018

The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2018

The European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018

The Exotic Disease (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

The Horizon 2020 Framework Programme for Research and Innovation (EU Exit) Regulations 2018

The Intelligent Transport Systems (EU Exit) Regulations 2018

The Radio Spectrum (EU Exit) Regulations 2018

The Renewables Obligation (Amendment) (EU Exit) Regulations 2018

Formal Minutes

Tuesday 11 December 2018

Members present:

Rt Hon Sir Patrick McLoughlin, in the Chair

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

Draft Report (*Eleventh 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 7.4 agreed to.

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

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

[Adjourned till 18 December at 3.30pm]