



House of Commons
European Statutory
Instruments Committee

**Thirteenth Report
of Session 2017–19**

**Documents considered by the Committee on
8 January 2019**

Drawing attention to:

The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018

The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2018

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 8 January 2019*

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.

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Meeting summary

1.1 At its meeting on 8 January 2019 the Committee noted and welcomed the Government's confirmation that it had accepted the Committee's recommendations and would lay the following instruments under the affirmative procedure:

- i. BEIS—The Shipment of Radioactive Substances (EU Exit) Regulations 2018;
- ii. DExEU—The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2018

Instruments recommended for the affirmative procedure

At its meeting on 8 January 2019 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 Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018

2.1 The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018 aim to ensure that the European Union (EU) rules that determine the law applicable to contractual and non-contractual obligations continue to operate effectively in domestic law following Brexit.

2.2 The relevant Regulations establish the rules applicable to EU Member States (except Denmark) that determine which country’s laws apply to contractual and non-contractual obligations raising cross-border issues.

2.3 The changes proposed “*address deficiencies such as amending references to ‘Member State’ where they need to be read as continuing to include the UK, removing redundant provisions or references to EU law which are no longer appropriate and deal with arrangements dependent on EU membership which will no longer exist, in particular, the termination of the UK’s participation in the 1980 Rome Convention (whilst retaining its substantive rules).*”

2.4 The Committee accepts that the changes are an inevitable consequence of the UK no longer being a Member State. However, the Committee is concerned about the significance of changes to primary legislation and believe that the cumulative impact of changes is such that the additional safeguard of affirmative resolution is appropriate.

2.5 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.

3 The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2018

3.1 EU law requires manufacturers of road vehicles and engines for non-road mobile machinery to be type approved before production can begin. It sets out the regimes under which a new vehicle or engine must be tested by an approval authority based in a Member State, and specifies harmonised standards covering safety and environmental protection, which are regularly updated.

3.2 The Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2018 aim to ensure that both converted EU legislation relating to the type approval of road vehicles and machinery engines and existing primary and secondary legislation will remain legally operable post-Brexit by correcting, for a period of two years, several deficiencies which will arise because of EU withdrawal. This instrument also aims to ensure that the law in Northern Ireland correctly transposes a definition from a European Directive before that definition is amended by this instrument.

3.3 As a result of this instrument passing in to law the UK will no longer accept EU-27 approvals when motor vehicles are registered, other than for motor vehicles that are in the UK prior to Exit day. A process will be established to issue UK approvals for holders of EU-27 approvals. Existing EU approvals issued by the UK's Vehicle Certification Agency (VCA) will remain valid.

3.4 This instrument amends the Road Traffic Act 1988, the Vehicle Excise and Registration Act 1994, and the Road Traffic (Northern Ireland) Order 1981 (a Northern Ireland direct rule Order in Council, similar in some respects to primary legislation). The amendments create a new scheme of provisional UK type approval for motor vehicles and engines that will function alongside the EU type approval regime for up to two years; this will be a transitional period while long-term arrangements are made.

3.5 The amendments are substantial and are such that the additional safeguard of affirmative resolution is appropriate.

3.6 The instrument also makes amendments which will require the Secretary of State to implement the new scheme, and this is consistent with the duties already carried out by the UK as a Member State that issues EU type approvals directly. However, the new scheme will mean an added layer of bureaucracy as manufacturers registering vehicles in the UK will no longer be able to rely solely on EU type approvals.

3.7 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.

Instruments recommended for the negative procedure

At its meeting on 8 January 2019 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 Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018

The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018

The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

The Pesticides (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

Formal Minutes

Tuesday 8 January 2019

Members present:

Rt Hon Sir Patrick McLoughlin, in the Chair

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
Ian C. Lucas	

Draft Report (*Thirteenth 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 3.7 agreed to.

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

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

[Adjourned till 15 January at 3.30pm]