



House of Commons

European Statutory Instruments Committee

Fourteenth Report of Session 2017–19

Documents considered by the Committee on 15 January 2019

Drawing attention to:

The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019

The Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019

The Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2018

The Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2018

The Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2018

The Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (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*)

[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*)

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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.

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 15 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. HMT—The Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2018;
- ii. DEFRA—The Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018;
- iii. DEFRA—The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residues Limits) (Amendment etc.) (EU Exit) Regulations 2018;
- iv. DEFRA—The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019;
- v. DEFRA—The Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Northern Ireland) (Amendment) (EU Exit) Regulations;
- vi. DEFRA—The Animal Welfare (Amendment) (EU Exit) Regulations 2019;
- vii. DEFRA—The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018;
- viii. DEFRA—The Common Fisheries Policy (Amendments) (EU Exit) Regulations 2018;
- ix. DEFRA—The European Structural and Investment Funds Common Provisions (Amendments) (EU Exit) Regulations 2018;
- x. DEFRA—The European Structural and Investment Funds Common Provisions Rules etc. (Amendment etc.) (EU Exit) Regulations 2018;
- xi. DEFRA—The Rural Development (Amendment) (EU Exit) Regulations;
- xii. DEFRA—The Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018; and
- xiii. BEIS—The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2018.

Instruments recommended for the affirmative procedure

At its meeting on 15 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 Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019

2.1 The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 is one of five instruments amending elements of retained EU law in the field of electricity and gas markets to ensure that the energy market continues to operate effectively in the event of a no-deal Brexit.

2.2 The retained EU law amended by this instrument relates mainly to a legislative programme to harmonise energy markets across the EU (known as the ‘third energy package’) and includes both domestic legislation and retained direct EU legislation.

2.3 This instrument amends various core pieces of domestic electricity and gas legislation that were amended to bring in the third energy package, including the Gas Act 1986, the Electricity Act 1989, and the Utilities Act 2000 (which apply in Great Britain), and the electricity (Northern Ireland) Order 1992, the Gas (Northern Ireland) Order 1992 and the Energy (Northern Ireland) Order 2003 (which apply in Northern Ireland). Together these Acts and Orders establish the roles and responsibilities of Ofgem and the Utility Regulator, set out energy licencing regimes, and implement provisions of EU Directives, principally the Electricity Directive (Directive 2009/72/EC) and the Gas Directive (Directive 2009/73/EC).

2.4 The main instruments of retained direct EU legislation which implemented the third energy package are the Agency Regulation, the Electricity Regulation and the Gas Regulation. Together these regulations set out the roles and responsibilities of key electricity and gas authorities and industry participants (such as energy regulators), put in place processes to harmonise energy markets across the EU and created the Agency for the cooperation of Energy Regulators (ACER).

2.5 This instrument amends the Electricity and Gas Regulations and revokes the Agency Regulation. In addition, it also revokes the TEN-E Regulation and the European Energy Programme for Recovery Regulation, among other Regulations. The TEN-E Regulation provides for the designation of energy infrastructure projects that contribute to European energy networks as ‘projects of common interest’ and the European Energy Programme for Recovery Regulation establishes funding schemes which are spent in relation to the United Kingdom.

2.6 The Committee accepts that the changes are necessary to prepare the statute book for the possibility of a no-deal Brexit. The Committee also notes that the amendments are technically modest. However, the Government describes the number of inoperabilities

dealt with by this instrument as “numerous” and the Committee is concerned that the volume of changes, including to primary legislation, is such that the additional safeguard of affirmative resolution is appropriate.

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 Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019

3.1 The Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 amend various pieces of domestic legislation, including minor amendments to one Act and one Northern Ireland Order in Council (which is similar in some respects to primary legislation), to deal with deficiencies in the statutory framework for compulsory motor insurance that arise once the UK leaves the EU.

3.2 It introduces a policy change, which the Explanatory Memorandum states is “required as a consequence of leaving the EU”. This policy change is to remove the requirements for the Motor Insurers Bureau (‘MIB’) to act as Compensation Body for UK residents injured in road traffic accidents in the EEA, and to reimburse its foreign counterparts in respect of EU27 visitors in the UK who have been compensated by their ‘home’ Compensation Body.

3.3 Without the amendments domestic visiting victim’s provisions and the role of the MIB as UK Compensation Body would continue unilaterally. This means UK residents injured in a traffic accident in the EEA could continue to make visiting victims claims in the UK following EU Exit. The MIB would also have to continue reimbursing EEA countries for claims made by EEA residents injured in the UK. The Government states that the MIB would have cost exposure for these claims and would no longer be able to seek reimbursement from its foreign counterparts, which could result in costs being passed on to insurers and, in turn, to motorists. The instrument therefore removes the Compensation Body requirements from the MIB.

3.4 This means that UK drivers who are victims of road traffic accidents in the EEA will continue to be able to pursue claims for compensation, although the method for doing so will vary from Member State to Member State and could require pursuit of a claim against the uninsured driver directly.

3.5 If there is no deal with the EU, UK motorists will also be required to carry a ‘Green Card’ which guarantees third-party insurance provision when driving in the EU. This may result in increased bureaucracy and costs for those drivers.

3.6 Having considered the impact on UK drivers of these changes, 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 that it is of political and legal importance.

4 The Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003 (Amendment) (EU Exit) Regulations 2018

The Social Security Coordination (Council Regulation EEC) No 574/72) (Amendment) (EU Exit) Regulations 2018

The Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2018

The Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2018

4.1 These four instruments amend the retained EU Regulations which provide for EU Social Security Coordination (the ‘Coordination Regulations’). The amendments remedy deficiencies arising because of the United Kingdom’s withdrawal from the European Union, ensuring that retained EU law is operable in the event there is no withdrawal agreement, and no future relationship agreement.

4.2 The instruments maintain the status quo on a unilateral basis. An amendment is made to an older EU Coordination Regulation which still applies in some transitional cases and an EU Regulation which extends it to third country nationals. The approach taken is to focus on circumstances where UK legislation will apply after exit. The SI amending Regulation 883/2004 removes (from Article 8) the provision stating that EU social security co-ordination regulations “replace any social security convention applicable between Member States falling under its scope” and adds a paragraph stating “(T)his Regulation does not apply to any matter within the scope of a convention in force between the United Kingdom and a Member State on or after exit day, to the extent that convention makes different provision”. The issue of bilateral agreements is not elaborated on further in the Explanatory Memorandum and debate would allow this, and other issues, to be explored.

4.3 Although it may well be the case that the amendments made by this instrument make only the necessary changes to reflect Brexit, the Committee believes that the issue of social security coordination is of sufficient importance to justify the scrutiny and debate afforded by affirmative resolution.

4.4 The Committee recommends that the appropriate procedure for these instruments is for a draft of each to be laid before, and approved by a resolution of, each House of Parliament before being made (i.e. the affirmative procedure), on the ground they are of political importance.

Instruments recommended for the negative procedure

At its meeting on 15 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 Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018

The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2018

The Driving Licences (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

The Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019

The Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019

The Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019

The Electronic Commerce (Amendment etc.) (EU Exit) Regulations 2019

The EU Export Credits Legislation (Revocation) (EU Exit) Regulations 2018

The Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019

The Genetically Modified Organisms (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019

The Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

Formal Minutes

Tuesday 15 January 2019

Members present:

Rt Hon Sir Patrick McLoughlin, in the Chair

Kirsty Blackman

Julia Lopez

Mr Philip Dunne

Bridget Phillipson

Ms Angela Eagle

Mary Robinson

Rt Hon Sir David Evennett

Jo Stevens

Patrick Grady

Liz Twist

Trudy Harrison

Draft Report (*Fourteenth 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 4.4 agreed to.

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

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

[Adjourned till 22 January at 3.30pm]