House of Commons
European Statutory Instruments Committee

Eighteenth Report of Session 2017–19

Documents considered by the Committee on 12 February 2019

Drawing attention to:

The Customs Safety and Security Procedures (EU Exit) Regulations 2019

The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

Report, together with formal minutes

Ordered by the House of Commons
to be printed 12 February 2019
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.

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Powers

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

Publications

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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 12 February 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. MoJ – The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018;
Instruments recommended for the affirmative procedure

At its meeting on 12 February 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 Customs Safety and Security Procedures (EU Exit) Regulations 2019

2.1 The EU introduced a safety and security policy for customs across Europe, governed by the Union Custom Code (UCC) legislation. It protects the EU against potential threats such as terrorism and the trade from illicit goods such as guns and drugs. The policy is designed for information on goods to be shared and risk assessed before they arrive in or leave the EU. This is to facilitate the movement of legitimate trade into or out of the EU.

2.2 The Customs Safety and Security Procedures (EU Exit) Regulations 2019 remove or replace references, phrases, processes and terms that will be inoperable in a no deal scenario. The aim is to allow the UK to continue to operate a robust safety and security regime and to meet its international obligations. It will also ensure the Authorised Economic Operator (AEO) programme, which provides the security of international supply chains, is maintained.

2.3 There will be an additional administrative and financial burden for businesses that currently trade with the EU, to meet new requirements for safety and security declarations to be made in respect of goods being exported from or imported to the UK. Industry has raised some specific concerns over the new authorisation process and the obstacles it will pose administratively and financially. The Explanatory Memorandum (EM) states in paragraph 10.1 that “the key message from the haulier industry and ferry operators at Roll on–Roll off ports is that safety and security requirements will be difficult to meet”. This instrument does not address those concerns, although the Department states it will continue to engage with the industry, look at how information requirements can be made less onerous, and publish future details in due course.

2.4 The impact on the public sector is assessed as high. There will be significant new administrative responsibilities on UK border agencies, albeit not as a result of this instrument alone: it is part of a range of instruments being made to establish the UK customs regime including the Taxation (Cross-border Trade) Act 2018 and instruments made under it. The Department anticipates that 300 extra border staff will be needed to prepare for ‘no deal’ and another 1,000 in the future.

2.5 The issue of how the safety and security requirements of the new UK-only customs regime will operate at UK ports is of national commercial, economic and security significance.
2.6 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 and legal importance.

3 The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

3.1 The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 amend Acts of Parliament, as well as several EU exit statutory instruments in order to ensure a “coherent and functioning” financial services regulatory regime once the UK leaves the EU. The instrument seeks to address deficiencies in UK domestic law and retained EU law arising from the UK’s withdrawal from the EU, in line with the approach taken in other financial services EU exit instruments under the EU (Withdrawal) Act 2018 (EUWA). Additionally, this instrument revokes several pieces of retained EU law and UK domestic law, which would not be appropriate to keep on the statute book after exit, as they deal with cross-border activity within the EU and the functioning of EU institutions.

3.2 This instrument also makes amendments to several financial services EU exit statutory instruments, correcting errors identified in legislation after it was made, and making amendments to ensure consistency between EU exit instruments. These amendments will ensure that these instruments operate effectively after the UK leaves the EU. Certain of those instruments were made in draft or laid under the affirmative procedure.

3.3 The Committee believes that it will usually be appropriate to use the affirmative procedure when amending EU Exit instruments which were themselves originally subject to the affirmative procedure.

3.4 The Committee notes that the instrument amends four Acts of Parliament and the transitional provisions apply the Financial Services and Markets Act 2000 with modification in certain circumstances. Although the amendments are technically modest, the Committee believes that the changes in the context of a coherent and functioning financial services regime once the UK leaves the EU are such that the additional safeguard of affirmative resolution is appropriate.

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.
Instruments recommended for the negative procedure

At its meeting on 12 February 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 Cash Controls (Amendment) (EU Exit) Regulations 2019

The Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019

The Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019

The Customs (Enforcement of Intellectual Property Rights) (Amendment) (EU Exit) Regulations 2019

The Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

The European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019

The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

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

The Mutual Assistance on Customs and Agricultural Matters (Revocation) (EU Exit) Regulations 2019

The Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019


The Roads (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

The Sanctions (Amendment) (EU Exit) (No. 2) Regulations 2019

The Sprouts and Seeds (Amendment) (EU Exit) Regulations 2019
Draft Report (Eighteenth 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 3.5 agreed to.

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

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

[Adjourned till 26 February at 3.30pm]