House of Commons
European Statutory Instruments Committee

Twenty-seventh Report of Session 2017–19

Documents considered by the Committee on 2 July 2019

Report, together with formal minutes

Ordered by the House of Commons to be printed 2 July 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)
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Jo Stevens MP (Labour, Cardiff Central)
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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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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 Yohanna Sallberg (Clerk) and Paul Simpkin (Senior 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.

You can follow the Committee on Twitter using @CommonsESIC.
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**Instruments recommended for the negative procedure**

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Instruments recommended for the affirmative procedure

At its meeting on 2 July 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).

1 The Electronic Commerce Directive (Adoption and Children) (Amendment etc.) (EU Exit) Regulations 2019

1.1 The Electronic Commerce Directive (“eCD”) seeks to contribute to the operation of the internal market by ensuring the free movement of information society services (ISS) between EEA states and approximating EEA states’ laws concerning the regulation and provision of information society services.

1.2 This statutory instrument amends two pieces of legislation, which stem from the “eCD”, including Schedule 11B of the Education Act 2002 to remove provisions that apply the country of origin (“CoO”) principle to enforcement of an offence under that Act.

1.3 The effect is that an offence committed in England and Wales will be prosecuted domestically no matter where the person who committed the offence is established. If persons established in the UK commit the offence in another country, they will be subject to the law of that country.

1.4 The amendments reflect the fact that CoO arrangements are necessarily reciprocal, and no such reciprocity can be assured in a no-deal Brexit. The Committee understands that the legislation may be the only appropriate approach. However, the Committee believes that the issue is significant enough that it should be subject to further scrutiny by Parliament.

1.5 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.
2 The European Grouping of Territorial Cooperation (EU Exit) Regulations 2019

2.1 The European Grouping of Territorial Cooperation (EGTC) is a European legal instrument designed to facilitate and promote cross-border, transnational and interregional cooperation. It enables regional and local authorities and other public bodies from different European Union Member States to set up cooperation groupings with a legal personality.

2.2 The EGTC allows public authorities of EU Member States to deliver joint services without requiring a prior international agreement to be signed and ratified by national parliaments. Although the United Kingdom will not be able to participate on a Member State level in a no-deal scenario, the relevant legislation provides for third country participation for public authorities in an EGTC provided that the third country is a neighbouring country to an EU Member State.

2.3 Paragraph 7.3 of the explanatory memorandum sets out that “an application by a devolved Welsh authority (as defined in section 157A of the Government of Wales Act 2006 c. 32) or a Scottish public authority (as defined in section 126(1) of the Scotland Act 1998 c. 46) must not be approved or rejected by the Secretary of State without agreement from the devolved Ministers (the Scottish or the Welsh Ministers, as appropriate).”

2.4 However, paragraph 6 of the Statutory Instrument states:

“(e) where the relevant Ministers do not agree with the Secretary of State’s decision, the Secretary of State must reject the application; and

(f) if the Secretary of State does not approve the application within the six-month period mentioned in regulation 5(1), the application is deemed to be rejected”.

2.5 It is not clear why the Secretary of State has to be in agreement with the devolved Minister in order for an application from a devolved public authority to be granted and we therefore believe the House would benefit from further scrutiny of this instrument.

2.6 We therefore recommend 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.

3 The Human Medicines (Amendment etc.) (EU Exit) (No. 2) and the Medical Devices (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

3.1 This instrument seeks to correct drafting defects and omissions in two previously made statutory instruments. Both of these previous instruments were laid under the affirmative procedure.

3.2 It makes substantive amendments to one of those two instruments. Examples of such amendments include inserting provisions that will govern the procedural aspects of
reviews of licensing authority decisions on paediatric matters and rare diseases medicines (for the former, inserting a whole new Part into a Schedule) and creating a 21-month transitional period relating to the pharmacovigilance system master file.

3.3 The Committee agrees that these amendments are sufficient to indicate that the amending instruments should also be made using the affirmative procedure.

3.4 In addition, the Committee believes it will usually be appropriate to use the affirmative procedure when amending EU Exit instruments which were themselves originally subject to the affirmative procedure.

3.5 The Committee believes that the amendments made to previous legislation are substantive and therefore warrant further scrutiny by Parliament before passing into law. 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 Pesticides (Amendment) (EU Exit) Regulations 2019

4.1 This instrument makes amendments to previous EU Exit statutory instruments in the area of plant health. Two of the statutory instruments being amended were both subject to the affirmative procedure.

4.2 The instrument revokes Article 13a of Implementing Regulation (EU) No 844/2012. This Implementing Regulation allows EU Member States to require the payment of fees and charges to recover the costs of any work they carry out within the scope of that Regulation. In practice, this means dealing with applications for the renewal of approvals for active substances used in pesticides. The Committee believes that this falls within the provisions of Schedule 7 paragraph 1(2)(b) relating to a fee, thereby requiring consideration under the affirmative procedure.

4.3 The Committee has previously recommended that some of the proposed negative statutory instruments revoking large numbers of EU statutory instruments should be uplifted. However, two aspects make this statutory instrument different:

(1) substantive provisions of most of the instruments being revoked are given effect through the statutory registers established by earlier EU Exit SIs; and

(2) the remaining instruments appear to be spent transitional measures or to deal with EU-level matters that will not be relevant after exit day (e.g. the accession of Croatia, the allocation of tasks to member States exercising a rapporteur function).

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.
Instruments recommended for the negative procedure

At its meeting on 2 July 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 Aviation Safety (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

The REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019
Formal Minutes

Tuesday 2 July 2019

Members present:

Rt Hon Sir Patrick McLoughlin, in the Chair

Kirsty Blackman
Nic Dakin
Rt Hon Sir David Evennett
Angela Eagle
Patrick Grady

Ian C. Lucas
Mary Robinson
Andrew Selous
Liz Twist

Draft Report (Twenty-seventh 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 4.4 agreed to.

Ordered, That the Report be the Twenty-seventh Report of the Committee to the House.

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

[Adjourned till Tuesday 16 July at 3.30pm]