



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

**Forty-eighth Report
of Session 2017–19**

Drawing special attention to:

*Environment, Food and Rural Affairs (Environmental Impact Assessment)
(Amendment) (EU Exit) Regulations 2019 (S.I. 2019/25)*

*Ordered by the House of Lords
to be printed 13 February 2019*

*Ordered by the House of Commons
to be printed 13 February 2019*

Joint Committee on Statutory Instruments

Current membership

House of Lords

[Baroness Bloomfield of Hinton Waldrist](#) (*Conservative*)

[Lord Lexden](#) (*Conservative*)

[Baroness Meacher](#) (*Crossbench*)

[Lord Morris of Handsworth](#) (*Labour*)

[Lord Rowe-Beedoe](#) (*Crossbench*)

[Lord Rowlands](#) (*Labour*)

[Baroness Scott of Needham Market](#) (*Liberal Democrat*)

House of Commons

[Jessica Morden MP](#) (*Labour, Newport East*) (Chair)

[Dan Carden MP](#) (*Labour, Liverpool, Walton*)

[Vicky Foxcroft MP](#) (*Labour, Lewisham, Deptford*)

[Patrick Grady MP](#) (*Scottish National Party, Glasgow North*)

[John Lamont MP](#) (*Conservative, Berwickshire, Roxburgh and Selkirk*)

[Julia Lopez MP](#) (*Conservative, Hornchurch and Upminster*)

[Sir Robert Syms MP](#) (*Conservative, Poole*)

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 73, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

© Parliamentary Copyright House of Commons 2019. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/copyright/.

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Jeanne Delebarre (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Statutory Instruments, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 2026; the Committee's email address is: jcsi@parliament.uk.

Contents

Instruments reported	3
1 S.I. 2019/25: Reported for defective drafting	3
Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019	3
Instruments not reported	4
Annex	4
Appendix	6
S.I. 2019/25	6
Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019	6

Instruments reported

At its meeting on 13 February 2019 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to one of those considered. The Instrument and the grounds for reporting it are given below. The relevant Departmental memorandum, is published as an appendix to this report.

1 S.I. 2019/25: Reported for defective drafting

Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019

1.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two related respects.**

1.2 The Regulations make changes to environmental impact regulations covering land drainage improvement works, forestry, water resources, agriculture and marine works to address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

1.3 The Committee asked the Department for Environment, Food and Rural Affairs to clarify certain aspects of the definition of “public” in regulations 2(2)(a)(ii) and 4(2)(c) and to confirm why the definition of “public” in regulations 5(2)(a)(ii) and 6(2)(b) differs from the definition of “public” in regulations 2(2)(a)(ii) and 4(2)(c). In a memorandum printed as an Appendix, the Department accepts that there is an inconsistency and undertakes to amend the definition in regulations 5(2)(a)(ii) and 6(2)(b) to be consistent with the clearer definition in regulations 2(2)(a)(ii) and 4(2)(c). The Department further explains that it “copied out” the definition from Council Directive 2011/92/EU (with an amendment to cover instances where the subject matter is devolved). The Committee believes that in this case a general copy-out approach is consistent with a clearer definition of “public” and since the powers in paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 have been cited in the preamble, the Department could have clarified the definition. **The Committee accordingly reports regulations 2(2)(a)(ii), 4(2)(c), 5(2)(a)(ii) and 6(2)(b) for defective drafting, acknowledged in part by the Department.**

Instruments not reported

At its meeting on 13 February 2019 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

S.I. 2019/134	Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019
S.I. 2019/135	Venezuela (Sanctions) (EU Exit) Regulations 2019
S.I. 2019/147	Civil Procedure (Amendment) (EU Exit) Rules 2019
S.R. 2019/8	Rules of the Court of Judicature (Northern Ireland) (Amendment) (EU Exit) 2019

Draft instruments requiring affirmative approval

Draft S.I.	Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	International Waste Shipments (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Animals (Legislative Functions) (EU Exit) Regulations 2019
Draft S.I.	Greater Manchester Combined Authority (Functions and Amendment) Order 2019
Draft S.I.	Nutrition (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Social Security Benefits Up-rating Order 2019
Draft S.I.	Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019
Draft S.I.	International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019

Draft S.I.	Aviation Security (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	General Food Law (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019
Draft S.I.	Contaminants in Food (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019
Draft S.I.	Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Local Elections (Northern Ireland) (Election Expenses) Order 2019
Draft S.I.	Mobile Roaming (EU Exit) Regulations 2019
Draft S.I.	Novel Food (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Human Medicines (Amendment etc.) (EU Exit) Regulations 2019

Instruments subject to annulment

S.I. 2019/88	Genetically Modified Organisms (Amendment) (England) (EU Exit) Regulations 2019
S.I. 2019/96	Control of Mercury (Amendment) (EU Exit) Regulations 2019
S.I. 2019/101	Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2019
S.I. 2019/106	Electricity (Individual Exemptions from the Requirement for a Transmission Licence) (England and Wales) Order 2019
S.I. 2019/107	Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019
S.I. 2019/109	Organic Products (Amendment) (EU Exit) Regulations 2019
S.I. 2019/111	Exotic Disease (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/112	Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/118	Pesticides (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/141	Rights of Passengers in Bus and Coach Transport (Amendment etc.) (EU Exit) Regulations 2019

Appendix

S.I. 2019/25

Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following points:

“1. In the definition of “public” in regulations 2(2)(a)(ii) and 4(2)(c), explain what is meant by “and, in accordance with the law or practice of any part of the United Kingdom, their associations, organisations or groups”.

2. Confirm why the definition of “public” in regulations 5(2)(a)(ii) and 6(2)(b) differs from the definition of “public” in the regulations referred to in question 1 above.”

2. The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019 (“**the 2019 Regulations**”) amends the following five principal regulations (“**the domestic Regulations**”):

- the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (S.I. 1999/1783);
- the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (S.I. 1999/2228);
- the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (S.I. 2003/164);
- the Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 (S.I. 2006/2522); and
- the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518).

3. The domestic Regulations implement, in part, Council Directive 2011/92/EU (“**the EIA Directive**”). In four of the five sets of domestic Regulations (the exception being the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999), it is specified in regulation 2 that expressions used in those regulations and the EIA Directive shall “have the same meaning as in that Directive”. In our view that provision lacks clarity, especially given that the EIA Directive will not form part of retained EU law pursuant to the European Union (Withdrawal) Act 2018 (“**the Withdrawal Act**”). It would place a potentially onerous burden on the reader to identify each term used in both the domestic Regulations and the EIA Directive, and then identify the correct version of the EIA Directive, namely the version immediately prior to exit day, given that it will not form part of retained EU law. We therefore decided to include the defined terms and meanings in the domestic Regulations.

4. We identified only a few defined terms, which included the term “*public*”. The definition of “*public*” in the EIA Directive is contained in Article 1(2)(d), which reads: “*public*’ means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;”.

5. We were conscious of the limitation of the power in section 8 of the Withdrawal Act. We considered whether the definition as a whole should be inserted or whether we could justify further amendments to that definition under the power. We noted that where the defined term is used in the domestic Regulations it is in the context of notifying or providing information to the public. We considered whether we could omit the words after “*natural or legal persons*” but concluded that, on balance, this may be limiting the definition and therefore not come within the vires of section 8. We therefore retained the definition in the EIA Directive, save for one amendment. We considered that the term “national legislation” does not work in the context of the United Kingdom where the subject matter is devolved. We therefore considered that “*the law of any part of the United Kingdom*” was an appropriate substitution.

6. Turning to the second request for information, we thank the Committee for bringing this to our attention. We can confirm that this was unintended. We accept that there is an inconsistency and a lack of clarity as a result. We consider that, from a drafting perspective, there is greater clarity in the definition of “*public*” used in regulations 2(2)(a)(ii) and 4(2)(c) of the 2019 Regulations and therefore we will look to amend the definition as it appears in regulations 5(2)(a)(ii) and 6(2)(b) at an early opportunity.

Department for Environment, Food and Rural Affairs

5 February 2019