



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Forty-ninth Report of Session 2017–19

Drawing special attention to:

Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/38)

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Joint Committee on Statutory Instruments

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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

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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).

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Instruments reported

At its meeting on 20 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. 2019/38: Reported for defective drafting

Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (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 one related respect.**

1.2 Regulation 1(2) states that regulations 1 and 3(2)(b) come into force on [*date*]. The remainder of the instrument comes into force on exit day. The Committee asked the Treasury how this error was allowed to occur and what it proposes to do to rectify the error.

1.3 In a memorandum printed as an Appendix, the Treasury states that the error was due to an oversight in its checking process and apologises for the error. It further states that, as a result of the error, regulation 3(2)(b) came into force on the day the instrument was made, and the error will be corrected in a further instrument by amending regulation 1(2) by replacing “on [date]” with “when these Regulations are made”.

1.4 The Committee does not share the Treasury’s understanding of the legal effect of the error. Although it is a general principle that, in the absence of a clear intention otherwise, an enactment comes into force when made, in this instance the inclusion of regulation 1(2) does indicate an intention that regulation 3(2)(b) should come into force on a different (currently unknown) date. The correct approach would therefore be for the amending instrument to amend regulation 1(2) by substituting a calendar date. Furthermore, the Treasury’s suggested amendment would amount to applying regulation 3(2)(b) retrospectively from the time when the amending instrument came into force.

1.5 **The Committee accordingly reports regulation 1(2) for defective drafting, acknowledged by the Treasury.**

Instruments not reported

At its meeting on 20 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

Instrument requiring affirmative approval

S.I. 2019/136 Burma (Sanctions) (EU Exit) Regulations 2019

Draft instruments requiring affirmative approval

- Draft S.I.** Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019
- Draft S.I.** Plant Health (EU Exit) Regulations 2019
- Draft S.I.** Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** Medical Devices (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** Conservation (Natural Habitats etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Draft S.I.** Conservation of Habits and Species (Amendment) (EU Exit) Regulations 2019
- Draft S.I.** Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019
- Draft S.I.** Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** Public Procurement (Electronic Invoices etc.) Regulations 2019
- Draft S.I.** General Food Hygiene (Amendment) (EU Exit) Regulations 2019
- Draft S.I.** Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** REACH etc. (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019
- Draft S.I.** Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019
- Draft S.I.** Immigration (European Economic Area Nationals) (EU Exit) Order 2019
- Draft S.I.** Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019
- Draft S.I.** Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019

Draft S.I. Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019

Instruments subject to annulment

- S.I. 2019/42** Merchant Shipping (Prevention of Oil Pollution) Regulations 2019
- S.I. 2019/100** Fertilisers (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- S.I. 2019/139** Education (Student Fees, Awards and Support) (Amendment) (EU Exit) Regulations 2019
- S.I. 2019/142** Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2019
- S.I. 2019/143** Criminal Procedure (Amendment) Rules 2019
- S.I. 2019/150** Food (Amendment) (England) (EU Exit) Regulations 2019
- S.I. 2019/151** Communications (Television Licensing) (Amendment) Regulations 2019
- S.I. 2019/157** Livestock (Records, Identification and Movement) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- S.I. 2019/158** Animal Health and Welfare (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- S.I. 2019/159** Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2019
- S.I. 2019/160** Merchant Shipping (Technical Requirements for Inland Waterway Vessels) (Amendment) Regulations 2019
- S.I. 2019/162** Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019
- S.I. 2019/170** Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2019/105** Taxation (Cross-border Trade) Act 2018 (Value Added Tax Transitional Provisions) (EU Exit) Regulations 2019
- S.I. 2019/127** Wireless Telegraphy (Licence Charges for the 900 MHz Frequency Band and the 1800 MHz Frequency Band) (Amendment) Regulations 2019
- S.I. 2019/167** Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019
- S.I. 2019/174** Investigatory Powers Act 2016 (Commencement No. 11) Regulations 2019

Appendix

S.I. 2019/38

Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019

1. The Committee has asked, in relation to the above instrument, for a memorandum on the following point:

How did this instrument come to be made without a commencement date being included in regulation 1(2), and what does the Department propose to do to correct the situation?

2. With one exception, this instrument comes into force on exit day, as defined by the European Union (Withdrawal) Act 2018. That one exception concerns the amendment made by regulation 3(2)(b), which together with regulation 1(2) is the subject of the error that the Committee has identified. Regulation 3(2)(b) amends existing subordinate legislation to cross-refer to existing directly effective EU law. Because directly effective EU law will form part of domestic law from exit day, the cross-reference needs to distinguish between its current form (i.e. as EU law) and its future form (i.e. as retained EU law).

3. The word “date” in square brackets should have been removed, and replaced with a specified date 21 days after the laying date. This did not happen due to an oversight in the Treasury’s checking process and the Treasury apologises that this matter was not detected and corrected before the SI was made and laid, with the result that regulation 3(2)(b) automatically (but inadvertently) came into force on the day that this instrument was made.¹ The other substantive provisions of the instrument will come into force on exit day, and no individuals or businesses have been negatively affected by this one element of the instrument coming into force early.

4. The Treasury apologises for this error and we will ensure that our checking processes are applied rigorously in future to minimise the risk of a similar mistake recurring.

5. The Treasury intends to correct this error by amending this instrument so that “on [date]” is replaced with “when these regulations are made”. This correction will ensure that, in the interests of transparency, any reader of the instrument can see when it in fact came into force. The correction will be made via the draft Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations, which were published for sifting on 11 February 2019.

HM Treasury

12 February 2019

¹ Paragraph 1.3.5 of *Statutory Instrument Practice* provides that when no coming into force date is specified, the default assumption is that an SI comes into force at the moment of making.