



House of Lords  
House of Commons  
Joint Committee on  
Statutory Instruments

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# Fifty-first Report of Session 2017–19

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**Drawing special attention to:**

*Export Control (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/137)*

*Ordered by the House of Lords  
to be printed 6 March 2019*

*Ordered by the House of Commons  
to be printed 6 March 2019*

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## 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](http://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](http://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](mailto:jcsi@parliament.uk).



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# Instruments reported

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At its meeting on 6 March 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. 2019/137: Reported for defective drafting

### *Export Control (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 numerous respects.**

1.2 In a memorandum printed as an Appendix, the Department for International Trade acknowledges that this instrument contains a large number of drafting errors which were identified by the Committee. It states that the legislation that it drafts is checked by other drafters within the Department (who are, apparently, only “typically” other lawyers—a fact the Committee finds somewhat disturbing) and expresses its regret that the errors were not spotted. It states that it will place a renewed emphasis on drafting assurance.

1.3 Although none of the errors in this instrument is of such a nature as to cause difficulty in ascertaining its intended effect, the sheer quantity of errors in a short instrument is such as to merit a critical report by the Committee. **The Committee accordingly reports these Regulations for defective drafting, acknowledged by the Department, and reminds all departments of the need to ensure the quality of legislation.**

## Instruments not reported

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At its meeting on 6 March 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

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### Draft instruments requiring affirmative approval

<b>Draft S.I.</b>	Plant Health (Amendment) (England) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
<b>Draft S.I.</b>	Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Rural Development (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Agriculture (Legislative Functions) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Market Measures Payment Schemes (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019
<b>Draft S.I.</b>	Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019

<b>Draft S.I.</b>	Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019
<b>Draft S.I.</b>	Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Immigration, Nationality and Asylum (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019
<b>Draft S.I.</b>	Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019

### **Instruments subject to annulment**

<b>S.I. 2019/248</b>	Amendments Relating to the Provision of Integrated Care Regulations 2019
<b>S.I. 2019/251</b>	Primary Medical Services (Prohibition on the Sale of Goodwill) Regulations 2019
<b>S.I. 2019/267</b>	Transfer of Undertakings (Protection of Employment) (Transfer of Police Staff to the National Crime Agency) Regulations 2019
<b>S.I. 2019/274</b>	International Joint Investigation Teams (International Agreements) (EU Exit) Order 2019
<b>S.I. 2019/281</b>	Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
<b>S.I. 2019/282</b>	Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019
<b>S.I. 2019/289</b>	Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

### **Instrument not subject to Parliamentary proceedings not laid before Parliament**

<b>S.I. 2019/260</b>	Tenant Fees Act 2019 (Commencement No. 1) Regulations 2019
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# Appendix

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## S.I. 2019/137

### ***Export Control (Amendment) (EU Exit) Regulations 2019***

1. The Committee has identified numerous minor drafting errors in this instrument and has asked the Department for International Trade for a memorandum in relation to the following points:

***(a) the use of the term sub-sub-sub paragraph in regulation 3(2)(c)***

2. We acknowledge that incorrect terminology was used to refer to 5(3)(b)(ii)(bb) of the Export of Radioactive Sources (Control) Order 2006.

***(b) sub-paragraphs being described as subsections; (regulation 4(6)(b) and (c))***

3. We acknowledge the use of ‘subsection’ rather than ‘sub-paragraph’ is not the correct terminology for divisions within regulations.

***(c) numbered sub-paragraphs (1), (2), etc. being described as sub-paragraphs 1, 2, etc.; (regulation 4(21)(a) and (b), (24)(b), (28)(a) and (b), (29)(a), (b) and (c))***

4. We acknowledge that numbered sub-paragraphs are erroneously unbracketed at regulation 4(21)(a) and (b), (24)(b), (28)(a) and (b), (29)(a), (b) and (c).

***(d) an unnecessary “(2)” in regulation 4(6)(c);***

5. We acknowledge the unnecessary “(2)” at the beginning of the quoted section.

***(e) an unnecessary “(d)” in regulation 4(29)(c),***

6. We acknowledge the unnecessary “(d)” at the beginning of the quoted section.

***and ‘what systems does the Department have in place for checking the quality of the legislation it produces, and why were they not applied in this instance?’***

7. Legislation drafted within the Department is subject to checks by other drafters, typically by other lawyers within the Department. We regret that these errors were not spotted on review and thank the Committee for drawing them to our attention. We will be placing a continuing and renewed emphasis on drafting assurance within the Department.

**Department for International Trade**

**25 February 2019**