



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

**Fifty-third Report
of Session 2017–19**

Drawing special attention to:

Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/279)

Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/306)

National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019 (Draft S.I.)

Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019 (Draft S.I.)

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Joint Committee on Statutory Instruments

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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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Instruments reported

At its meeting on 20 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 four of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda, are published as appendices to this report.

1 S.I. 2019/279: Reported for failure to comply with *Statutory Instrument Practice*

Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019

1.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that in one respect it does not comply with *Statutory Instrument Practice*.**

1.2 The sole purpose of this instrument is to revoke and replace an earlier instrument which was found to be defective. According to *Statutory Instrument Practice*, this instrument should have been made available free of charge to all known purchasers of the earlier instrument and should have borne an italic headnote stating that that was so. There is no such headnote on this instrument.

1.3 In a memorandum printed at Appendix 1, the Department for Environment, Food and Rural Affairs states that it made the instrument on behalf of the Department of Agriculture, Environment and Rural Affairs in the absence of a Northern Ireland Executive. The Department became aware of the drafting error at the time that the instrument was submitted for registration. It rightly says that the correct thing for it to have done was to make a new instrument. It does not explain why the free issue procedure was not applied, but does apologise for the oversight.

1.4 **The Committee accordingly reports these Regulations for failing to comply with *Statutory Instrument Practice*, acknowledged by the Department.**

2 S.I. 2019/306: Reported for an unjustified breach of the 21-day rule

Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

2.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that there has been an unjustified breach of the 21-day rule.**

2.2 These Regulations were made on 13 February and laid on 19 February. Regulation 1(3) states that Part 3 comes into force on 1 March. The Committee asked the Department for Environment, Food and Rural Affairs to explain the breach of the 21-day rule and why this was not explained in the Explanatory Memorandum.

2.3 In a memorandum printed at Appendix 2, the Department states that a longer than usual time elapsed between making and laying, and apologises for the delay. The memorandum explains the exceptional pressures to which the Department is subject at present. The Committee notes that even if the instrument had been laid on the day of making there would still have been a breach of the 21-day rule, and **accordingly reports these Regulations for an unjustified breach of the 21-day rule.**

3 Draft S.I.: Reported for requiring elucidation and for failure to comply with proper legislative practice

National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019

3.1 **The Committee draws the special attention of both Houses to these draft Regulations on the ground that they require elucidation in two respects and fail to comply with proper legislative practice in one respect.**

3.2 These draft Regulations amend retained EU law relating to cross-border healthcare to address deficiencies arising as a result of the United Kingdom leaving the European Union. The draft Regulations remove current cross-border healthcare rights under domestic legislation but enable residents in England and Wales to access cross-border healthcare up to 31 December 2020 (through Directive 2011/24/EU) with “listed” countries that reach agreement with the United Kingdom to continue such arrangements.

3.3 The Committee asked the Department for Health and Social Care to explain whether “the day on which exit day falls” in regulation 15(6) is intended to have a different meaning to “exit day”. In a memorandum printed at Appendix 2, the Department confirms that a different meaning is intended. Section 20(1) of the European Union (Withdrawal) Act 2018 defines exit day as 29 March 2019 at 11pm and section 20(2) states that any reference to a time after exit day is a reference to a time after 11pm on 29 March 2019. Regulation 15(6) is intended to describe a period of time that will end at the end of a day and the reference to “the day after the day on which exit day falls” is intended to preclude any argument that the period of a year is to start at 11pm on 30 March 2019. **The Committee accordingly reports regulation 15(6) for elucidation, provided in the Department’s memorandum.**

3.4 The Committee asked the Department to explain what discretion the Secretary of State has in deciding whether to include an EEA State on the list referred to in regulation 16(4) and in specifying the times the cross-border arrangements begin and cease to have effect with that State and also to give examples of when the Secretary of State may use the power in regulation 16(8) to remove an EEA State from the list. In its memorandum, the Department explains that the intention is that the Secretary of State will include on the list those EEA States which agree to continue cross-border arrangements with the United Kingdom after exit day and his discretion is limited to extending the current cross-border healthcare regime continued by the Regulations rather than creating any other regime. The Department further explains that an EEA State may be removed from the list if the United Kingdom negotiates a new arrangement with that State, for example, an arrangement which is to be given effect under the Healthcare (International Arrangements) Bill (which it is hoped will receive Royal Assent before 29 March 2019). Although there is power to sub-delegate under the European Union (Withdrawal) Act 2018, the extent of permitted

sub-delegation is a question of fact and degree. In this instance, the Committee is of the view that the extent of sub-delegation is implicitly confined to reflecting changing external facts as described by the Department and is therefore permitted by the enabling power. **The Committee accordingly reports regulation 16 for elucidation, provided in the Department’s memorandum.**

3.5 Regulation 18 provides that any rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 cease to be available in domestic law so far as they are inconsistent with or otherwise capable of affecting the interpretation, application or operation of, provision made by the Regulations. The Committee asked the Department to explain the extent of this regulation and how users of the legislation are expected to find out what it achieves. In its memorandum, the Department explains that the intention is to prevent rights and obligations discontinued by the Regulations from being re-asserted through alternative routes, for example directly effective Treaty provisions such as the freedom to provide services. The Committee understands the policy intention but does not think that the “anything inconsistent” approach gives sufficient clarity to users of the legislation. The Committee believes that proper legislative practice would be to use a more detailed description of the rights being referred to, or even some kind of list, to provide a reasonable degree of clarity to the reader. The Committee notes that the Department is proposing to produce explanatory material relating to these Regulations (including regulation 18) but explanatory material, while helpful, is no substitute for maximising clarity in the legislative text. **The Committee accordingly reports regulation 18 for failure to comply with proper legislative practice.**

4 Draft S.I.: Reported for requiring elucidation and for defective drafting

Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019

4.1 **The Committee draws the special attention of both Houses to these draft Regulations on the grounds that they require elucidation in one respect and are defectively drafted in three respects.**

4.2 This draft instrument corrects deficiencies in retained EU law arising as a result of the United Kingdom leaving the European Union. Regulation 3 amends Council Regulation (EC) No 428/2009 (the Dual-Use Regulation), which establishes an EU-wide regime to control the export of items that can be used for both civil and military purposes, and which will apply on a UK basis after exit day. The amendments include changing the definitions of ‘export’ and ‘exporter’ to remove inappropriate references to the customs territory of the Community. The Committee noticed that for physical goods, export was defined as meaning the removal of goods “from the United Kingdom to a destination outside of the United Kingdom and the Isle of Man”, whereas for electronic transmission of such things as software or technology, it was defined as meaning transmission “to a destination outside the United Kingdom”. The Committee asked the Department for International Trade to explain the reason for this distinction. In a memorandum printed at Appendix 4, the Department confirms that this reflects the policy intent and is consistent with the Export Control Order 2008: the arrangement whereby physical movement of

goods from the United Kingdom to the Isle of Man is not considered to be export does not apply to electronic transmission of software or technology. **The Committee accordingly reports regulation 3(3)(b)(iii) for requiring elucidation, provided in the Department’s memorandum.**

4.3 Regulation 3(5)(f) amends the final paragraph of Article 4 of the Dual-Use Regulation so that it reads: “This Regulation is without prejudice to the right of Member States to take national measures under Article 10 of Regulation (EU) 2015/479.” The Committee was puzzled as to how domestic UK legislation could, after exit day, prejudice the right of member States to take national measures under EU law and therefore asked the Department to explain the intended effect of that provision as amended. In its memorandum, the Department acknowledges that this is an error and undertakes to correct it. **The Committee accordingly reports regulation 3(5)(f) for defective drafting, acknowledged by the Department.**

4.4 Regulation 3(22) amends Annex I of the Dual-use Regulation, which lists dual-use items for which export authorisation is required. Category 9 lists items relating to aerospace and propulsion, including assemblies and components that incorporate technologies for turbine engines “whose design or production origins are either non-EU Member States or Wassenaar Arrangement Participating States; or unknown to the manufacturer”. Regulation 3(22)(h)(ii) amends this provision by removing “either non- EU Member States or”. It appeared to the Committee that this amendment would have the unusual effect of requiring authorisation only where the design or production of these items originated from such places as Norway, Canada, Japan, Australia and EU member States (all Wassenaar Arrangement Participating States), or where their origins were unknown. The Committee therefore asked the Department to confirm whether the provision as amended should not read “whose design or production origins are either non-Wassenaar Arrangement Participating States; or unknown to the manufacturer”. In its memorandum, the Department acknowledges that this is an error and undertakes to correct it. **The Committee accordingly reports regulations 3(22)(h) for defective drafting, acknowledged by the Department.**

4.5 The Committee also asked the Department to explain why the words “This Regulation shall be binding in its entirety and directly applicable in all Member States” had not been omitted by regulations 3 or 4 (although regulations 3(21) and 4(17) omit the Article that precedes this phrase). In its memorandum, the Department acknowledges that this is an error and undertakes to correct it. **The Committee accordingly reports regulations 3(21) and 4(17) for defective drafting, acknowledged by the Department.**

Instruments not reported

At its meeting on 20 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

Draft instruments requiring affirmative approval

Draft S.I.	Agriculture (Legislative Functions) (EU Exit) (No.2) Regulations 2019
Draft S.I.	Health Services (Cross-Border Health Care and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019
Draft S.I.	Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc) (EU Exit) Regulations 2019
Draft S.I.	Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2019
Draft S.I.	Protecting Against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Food and Farming (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

S.I. 2019/326	Customs (Import Duty, Transit and Miscellaneous Amendments) (EU Exit) Regulations 2019
S.I. 2019/376	Social Security Revaluation of Earnings Factors Order 2019
S.I. 2019/377	Roads (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/378	Police and Firefighters' (Pensions etc.) (Amendment) (England and Wales) Regulations 2019
S.I. 2019/380	Sanctions (Amendment) (EU Exit) (No 2) Regulations 2019
S.I. 2019/381	Child Trust Funds (Amendment) Regulations 2019
S.I. 2019/383	Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019
S.I. 2019/387	Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
S.I. 2019/392	Conformity Assessment (Mutual Recognition Agreements) Regulations 2019
S.I. 2019/395	Central Rating List (England) (Amendment) Regulations 2019
S.I. 2019/396	Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2019

- S.I. 2019/409** Airports (Noise-related Operating Restrictions) (Scotland) Regulations 2019
- S.I. 2019/410** Animals (Scientific Procedures) Act 1986 (Fees) Order 2019
- S.I. 2019/418** National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019
- S.I. 2019/421** Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019
- S.I. 2019/426** Mutual Assistance on Customs and Agricultural Matters (Revocation) (EU Exit) Regulations 2019
- S.I. 2019/433** Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019

Instruments not subject to Parliamentary proceedings not laid before Parliament

- S.I. 2019/399** European Union (Withdrawal) Act 2018 (Commencement No. 2) Regulations 2019
- S.I. 2019/401** Annual Tax on Enveloped Dwellings (Indexation of Annual Chargeable Amounts) Order 2019
- S.I. 2019/429** Taxation (Cross-border Trade) Act 2018 (Appointed Days No. 4 and Transitional Provisions) (Modification) (EU Exit) Regulations 2019
- S.I. 2019/446** Offshore Installations (Safety Zones) Order 2019

Appendix 1

S.I. 2019/279

Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs (“the Department”) for a memorandum on the following point:

This instrument replaces S.I. 2019/123 due to an error in that instrument. Was the free issue procedure applied? If so, why is there no headnote to that effect? If not, why not?

2. This instrument has been made on behalf of the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in the absence of a Northern Ireland Executive.

3. The drafting error in S.I. 2019/123 was noticed at the time of registration. Due to the nature of the error, the use of a correction slip was considered inappropriate. Given that it had already been signed, it was decided that a new instrument would need to be made in order to revoke and replace S.I. 2019/123. Unfortunately, the free issue procedure was inadvertently not applied to the second instrument, for which the Department apologises.

Department for Environment, Food and Rural Affairs

12 March 2019

Appendix 2

S.I. 2019/306

Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

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

Regulation 1(3) states that Part 3 come into force (sic) on a date 10 days later than the date on which these Regulations were laid before Parliament. Explain the reason for the breach of the 21-day rule and why it is not explained in the Explanatory Memorandum.

2. The Department recognises that in respect of this instrument a longer than usual time elapsed between making and laying, and apologises for that delay which resulted in a breach of the 21 day rule.

3. In explanation of that delay, the Committee may be aware that the Department laid an extremely high number of SIs in the period in question (over 40), and this depleted staff resources to concentrate on making. In addition, the Department experienced an unusually high number of rejections during the registration process at this time—an issue we have since resolved through increasing capability and experience in this area, partly as a result of generous staff loans and training from other departments. Our performance in the registrations has as a result improved significantly.

4. The Department remains committed to maintaining transparency and accessibility of new legislation, and it is not our intention to expect or tolerate undue delays between signing, registering and laying made instruments.

Department for Environment, Food and Rural Affairs

12 March 2019

Appendix 3

Draft S.I.

National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019

1. In its letter to the Department of 6 March 2019, the Committee requested a memorandum on the following points:

1: Explain whether “the day on which exit day falls” in regulation 15(6) is intended to have a different meaning to “exit day”.

2: (i) Explain what discretion the Secretary of State has in deciding whether to include an EEA State on the list referred to in regulation 16(4) and in specifying the times the cross-border arrangements begin and cease to have effect with that State.

(ii) Give examples of when the Secretary of State may use the power in regulation 16(8).

3: (i) Explain the extent of regulation 18.

(ii) How are users of the legislation expected to find out what it achieves?

(iii) Is the Department proposing to produce explanatory material to explain the extent and, if so, where will that information be published?

2. The Department’s response to the Committee’s points is as follows.

Whether “the day on which exit day falls” in regulation 15(6) is intended to have a different meaning to “exit day”

3. The Department answers this question in the affirmative. “Exit day” is defined by section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) as “29 March 2019 at 11.00 pm”, whereas “the day on which exit day falls” is 29 March.

4. Section 20(2) of the 2018 Act provides: “In this Act references to before, after or on exit day, or to beginning with exit day, are to be read as references to before, after or at 11.00 p.m. on 29 March 2019 or (as the case may be) to beginning with 11.00 p.m. on that day.”.

5. Thus, a reference to a time “after exit day” would be a reference to a time after 11.00 pm on 29 March 2019.

6. Regulation 15(6)(a) and (b) is intended to describe a period of time that will end at the end of a day. A period of a year that begins with “the day after the day on which exit day falls” is clearly to be reckoned from the beginning of the day following 29 March, and will end accordingly at the end of a day. The reference to “the day after the day on which exit day falls” is intended to preclude any argument that the period of a year is to start at 11.00 pm on 30 March.

The Secretary of State’s discretion in deciding whether to include an EEA State on the list referred to in regulation 16(4) and in specifying the times the cross-border arrangements begin and cease to have effect with that State

7. Regulation 16 confers broad discretion on the Secretary of State in deciding whether to include an EEA State on the list referred to in regulation 16(4) and in specifying the times the cross-border arrangements begin and cease to have effect with that State.

8. However, in exercising that discretion, the Secretary of State would have to act in accordance with ordinary public law principles, including rationally, taking on board relevant considerations and disregarding irrelevant ones. Further the Secretary of State’s discretion would be limited to extending the current cross-border healthcare regime continued by the Regulations to listed countries, rather than creating any other regimes.

9. The intention is that the Secretary of State would include in the list those EEA States which agree to continue cross-border arrangements with the United Kingdom following exit day.

10. Once the States with which cross-border arrangements have effect, and the period for which they have effect, are established (both ascertainable from the list referred to in regulation 16(4)), the substance of the rights enjoyed can be established from the legislation continued by regulation 16.

Examples of when the Secretary of State may use the power in regulation 16(8)

11. Regulation 16(8) provides: “The Secretary of State may remove an EEA State from the list before the time specified in the list as the time when the EEA State’s cross-border arrangements are to be treated as beginning to have effect.”

12. An example of when the Secretary of State may use this power is if, following agreement with a State, to continue cross-border arrangements with that State, the agreement were to be supplanted and replaced by an agreement to enter into alternative arrangements with that State or with the European Union.

13. This might arise, for example, if the United Kingdom were to negotiate and enter into new arrangements which were to be given effect under the Healthcare (International Arrangements) Bill. That Bill started in the House of Commons on 26 October 2018 and is currently in the House of Lords with the intended aim of receiving Royal Assent before 29 March 2019. Clause 2 of that Bill provides that the Secretary of State may, by regulations, make provision to give effect to a healthcare agreement (as defined in the Bill).

The extent of regulation 18

14. Regulation 18 covers the breadth of EU rights and obligations recognised and made available by section 4 of the 2018 Act but only to the extent that they are inconsistent with, or otherwise capable of affecting, provision made by the Regulations.

15. The intention behind regulation 18 is to prevent the rights and obligations discontinued by the Regulations being re-asserted through alternative routes, thus undermining the policy underlying the Regulations.

16. The potential for those alternative routes arises through section 4 of the 2018 Act which saves residual rights and obligations that flow through section 2(1) of the European Communities Act 1972 (“the 1972 Act”), namely those arising under the EU Treaties, including the general principles of EU law and Francovich damages, and directly effective rights contained within the EU Treaties. Where directly effective rights are retained under section 4, it is the right which is retained, not the text of the Treaty article itself.

17. In this case, the Cross-Border Healthcare Directive codified caselaw of the Court of Justice of the European Union on the application of the provisions of the Treaty on the Functioning of the European Union (“TFEU”) on the free movement of patients, goods and services to cross-border healthcare, including (but not only) *Watts (Case C-372/04, The Queen on the application of Yvonne Watts v Bedford Primary Care Trust and Secretary of State for Health [2006])*. This involved, for example, in the case of *Watts*, an interpretation of Article 56 TFEU to the effect that persons in need of medical treatment should be able to go to another Member State in order to receive that treatment there.

18. The Regulations omit provisions of domestic legislation which implemented the Directive and which were enacted under section 2(2) of the 1972 Act.

19. Therefore, in order to give effect to the policy, it was also necessary to cease recognition of the directly effective Treaty provisions, such as on the freedom to provide services, which would otherwise be recognised in domestic law by virtue of section 2(1) of the 1972 Act as read with section 4 of the 2018 Act, and provide an alternative route for claimants to assert rights to healthcare abroad. Regulation 18 achieves this.

20. Without regulation 18, it could be unclear whether the Regulations override those provisions. This could create confusion and uncertainty which regulation 18 avoids. In particular, a court might be likely to adopt a broad, purposive interpretation to give effect to directly effective rights unless there was a clear manifestation of Parliament’s intent to the contrary, since the courts have made clear that they will “decline to hold that Parliament has interfered with fundamental rights unless it has made its intentions crystal clear.” (*R (Jackson) v Attorney General [2006]*).

21. Further, by adopting the approach of a generalised description of the provisions in question, rather than a list approach, regulation 18 avoids the risk of an unanticipated right or principle being relied on to circumvent the effect of the Regulations.

How users of the legislation are expected to find out what regulation 18 achieves

22. In the Department’s view, it would be clear to users of the legislation that regulation 18 prevents them from asserting rights or obligations through alternative routes to those which are closed down by the Regulations and that, if those routes are incompatible with the provisions of the Regulations, the latter prevails.

23. However, the Department will ensure that reference to this is made in explanatory material relating to the Regulations, as to which please see below.

Whether the Department is proposing to produce explanatory material to explain the extent of regulation 18 and, if so, where that information will be published

24. The Department is proposing to produce explanatory material in relation to the Regulations, and it is proposed that this will include material on regulation 18. This will be published on the website of the Department and, where appropriate, the websites of bodies such as the National Health Service Commissioning Board.

25. In addition, the National Contact Points which may be appointed under the National Health Service (Cross-Border Healthcare) Regulations 2013, which are continued on a transitional basis under regulations 15 to 17, could provide information in accordance with those Regulations.

Department of Health and Social Care

12 March 2019

Appendix 4

Draft S.I.

Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019

1. The Committee has asked four questions regarding the drafting in this instrument and has asked the Department for International Trade for a memorandum in relation to the following points:

(1) Explain why regulation 3(3)(b)(iii) amends a provision relating to goods exported by electronic means so that it refers to transmission “to a destination outside of the United Kingdom”, rather than “to a destination outside of the United Kingdom and the Isle of Man”—the phrasing used for goods exported by physical means.

2. This is the policy intention and it is consistent with the Export Control Order 2008. As a consequence of the UK’s customs arrangements with the Isle of Man the physical movement of goods from the UK to the Isle of Man is not considered an export, however these arrangements do not apply to the electronic transmission of software or technology.

(2) Explain the intended effect of the phrase “This Regulation is without prejudice to the right of Member States to take national measures under Article 10 of Regulation (EU) 2015/479”, which results from the amendment made by regulation 3(5)(f); how could UK domestic legislation prejudice the rights of member States to take national measures under an EU Regulation after exit day?

3. This is a mistake and the redundant reference to Member States should also have been omitted. The provision should read *this Regulation is without prejudice to Article 10 of Regulation (EU) 2015/479.*

(3) Explain why the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”, which appear after Article 28 of the Dual-Use Regulation and Article 22 of the Firearms Regulation, have not been omitted. (See <http://publications.europa.eu/code/en/en-120400.htm>.)

4. This is a mistake. The omission of Articles 28 and 22 was intended to omit those words. On reflection we agree that the words are not part of the preceding Article and have not been omitted as we intended.

(4) In relation to regulation 2(22)(h)(ii), should the provision as amended not read “whose design or production origins are either non-Wassenaar Arrangement Participating States; or unknown to the manufacturer” rather than “whose design or production origins are Wassenaar Arrangement Participating States; or unknown to the manufacturer”?

5. This is also a mistake. The amended entry at paragraph 9003.b should refer to “non-Wassenaar” states.

6. We are grateful to the Committee for drawing the above issues to our attention.
7. We wish to share with the Committee that we are also aware of an additional issue that requires resolution relating to the omission of Annex IV. We propose to lay an amending instrument to address these issues.

Department for International Trade

18 March 2019