



House of Commons
European Statutory
Instruments Committee

**Seventh Report of
Session 2019–21**

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European Statutory Instruments Committee

The European Statutory Instruments Committee is appointed by the House of Commons to examine and report on:

(a) 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—

- (i) a draft of an instrument; and
- (ii) 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

(b) any matter arising from its consideration of such documents.

Current membership

Andrew Jones MP (*Conservative, Harrogate and Knaresborough*) (Chair)

Kirsty Blackman MP (*Scottish National Party, Aberdeen North*)

Geraint Davies MP (*Labour, Swansea West*)

Mrs Flick Drummond MP (*Conservative, Meon Valley*)

Rt Hon Mr Philip Dunne MP (*Conservative, Ludlow*)

Rt Hon Sir David Evennett MP (*Conservative, Bexleyheath and Crayford*)

Vicky Ford MP (*Conservative, Chelmsford*)

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Owen Thompson MP (*Scottish National Party, Midlothian*)

Liz Twist MP (*Labour, Blaydon*)

Craig Williams MP (*Conservative, Montgomeryshire*)

Powers

The Committee's powers are set out under a temporary Standing Order of 3 February 2020.

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 the committee website.

Committee staff

The current staff of the Committee are Elektra Garvie Adams (Second Clerk), Sue Beeby and Apostolos Kostoulas (Committee Assistants), and Luanne Middleton (Clerk). Advisory Counsel: Sarita Arthur-Crowe, Klara Banaszak, Daniel Greenberg and Vanessa MacNair.

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You can follow the Committee on Twitter using @CommonsESIC.

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Instruments recommended for the affirmative procedure

At its meeting on 14 July 2020 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 Communications Act (E-Commerce) (EU Exit) Regulations 2020

1.1 This proposed negative instrument changes the effect of sections 120-124 and 128-131 of the Communications Act 2003 Act by removing the direct effect of Article 3 of the Electronic Commerce Directive (eCD).

1.2 Sections 120 to 124 deal with the regulation of premium rate telephone services and sections 128 to 131 deal with persistent misuse of telephone networks. The impact of the instrument is twofold. Firstly, Ofcom will be able to enforce breaches of the relevant UK law by EEA-established providers in the same way as they enforce breaches by UK and non-EEA providers, and without applying for permission to derogate from the EU's country of origin rules. Secondly, UK-established service providers will only have to comply with the law of the EEA state in which they provide the service (not UK law as well).

1.3 At paragraph 12.1 of the Explanatory Memorandum it states that there is no significant impact on business. However, the instrument revokes directly applicable rights in relation to the way regulatory breaches are enforced against EEA-established service providers doing business in the UK. While the Explanatory Memorandum does not clarify how many service providers may be affected by these changes, it asserts that there is no significant impact on business and that the changes are minimal and technical. The Committee requested this information from the Department who informed us that "no data as to the number of firms to which these sections of the Communications Act may affect exists". In the absence of evidence as to the minimal effect of the change on relevant businesses, the Committee does not believe that the presumption of affirmative resolution for interference with primary legislation or the diminution of rights should be disapplied.

1.4 The Committee 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 it is of legal and political importance.

2. The Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2020

2.1 The instrument amends four EU Exit instruments made in 2019, three of which were made using the draft affirmative procedure. The instrument aims to correct errors, address minor defects and clarify the interaction of international conventions and domestic law after the end of the transition period.

2.2 The amendments made by Regulation 2 to ‘The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019’ (S.I. 2019/469) and by Regulations 3 to ‘The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019’ are sufficiently minor to displace the presumption of affirmative resolution. In the first instance the amendment merely reflects recent, minor changes to a Northern Ireland Order. In the second, the amendment fixes an incorrect transposition that did not achieve the Department’s policy intent.

2.3 Regulation 5 of this instrument makes several substantive amendments to fix two errors of transposition and clarify, in response to representations from key family law stakeholders, the application and effect of several saving and transitional provisions. Paragraph 7.7 of the Explanatory Memorandum states that “while the number of cases affected is not likely to be many, the impact on the parties involved in those cases could be significant” if the errors were left uncorrected.

2.4 The Explanatory Memorandum states at paragraph 3.2 that the amendments made by regulations 3 and 5 were included in an instrument which was laid in draft before the last Parliament, the subject of a report by the Delegated Legislation Committee, and approved by resolution of the House of Commons, but which was not debated in the House of Lords due to the general election.

2.5 The Explanatory Memorandum does not explain why it is felt to be appropriate now to make by negative resolution provisions that were subject to the draft affirmative procedure in 2019 and which only one House had the opportunity to debate. The Committee believes that the amendments made by regulation 5 in particular are neither sufficiently few in number nor of sufficiently minor effect to obviously to displace the presumption of affirmative resolution.

2.6 The Committee 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 it is of legal and political importance.

Instruments recommended for the negative procedure

At its meeting on 14 July 2020 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 Guarantees of Origin of Electricity Produced from High-Efficiency Cogeneration and Renewables Obligation (Amendment) (EU Exit) Regulations 2020

The Single Digital Gateway Regulation (Revocation) (EU Exit) Regulations 2020

The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020

The Air Traffic Management (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

The Motor Vehicles (Compulsory Insurance and Rights against Insurers) (Amendment) (EU Exit) Regulations 2020

The Online Intermediation Services for Business Users (Amendment) (EU Exit) Regulations 2020

The Aviation Security (Amendment) (EU Exit) Regulations 2020

The Product Safety and Metrology (Amendment) (EU Exit) Regulations 2020

Formal Minutes

Tuesday 14 July 2020

Members present:

Andrew Jones, in the Chair

Mrs Flick Drummond	Mary Robinson
Rt Hon Sir David Evennett	Owen Thompson
Mark Garnier	Liz Twist
Mr Richard Holden	Craig Williams
Charlotte Nichols	

The Chair declared that he was the Minister in the Department for Transport who signed the ‘Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019’ which are amended by the ‘The Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020’ considered by the committee today.

Draft Report (*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 2.6 agreed to.

Ordered, That the Report be the Seventh Report of the Committee to the House.

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

[Adjourned to a day and time to be fixed by the Chair]