



House of Commons  
European Statutory  
Instruments Committee

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**Seventh Report of  
Session 2022–23**

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**Drawing attention to:**

*Data Protection (Fundamental Rights and Freedoms)  
(Amendment) Regulations 2023*

*Ordered by the House of Commons  
to be printed 17 October 2023*

## 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 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

(aa) any of the following documents laid before the House of Commons in accordance with paragraph 6(3)(b) of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 —

- (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](#) (*Independent, 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*)

[Peter Grant](#) (*Scottish National Party, Glenrothes*)

[James Grundy MP](#) (*Conservative, Leigh*)

[Sir Mark Hendrick MP](#) (*Labour, Preston*)

[Rt Hon Dame Margaret Hodge MP](#) (*Labour, Barking*)

[Mr Richard Holden](#) (*Conservative, North West Durham*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mary Robinson MP](#) (*Conservative, Cheadle*)

[Liz Twist MP](#) (*Labour, Blaydon*)

[Craig Williams MP](#) (*Conservative, Montgomeryshire*)

[Jacob Young MP](#) (*Conservative, Redcar*)

### 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 Sue Beeby (Committee Operations Officer), Ines Nizigama (Committee Operations Officer), Michael O'Leary (Committee Operations Manager), and Jonathan Whiffing (Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Justin Leslie, and Vanessa MacNair.

All correspondence should be addressed to the Clerk of the European Statutory Instruments Committee, House of Commons, London SW1A 0AA. The telephone number for general inquiries is: 020 7219 4838; the Committee's email address is: [esic@parliament.uk](mailto:esic@parliament.uk).

You can follow the Committee on X (formerly Twitter) using [@CommonsESIC](#).



# Contents

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<b>Instruments recommended for the affirmative procedure</b>	<b>3</b>
1. Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023	3
<b>Instruments recommended for the negative procedure</b>	<b>4</b>
<b>Appendix 1 - Memorandum from the Department for Science, Innovation and Technology</b>	<b>5</b>
<b>Formal Minutes</b>	<b>7</b>



# Instruments recommended for the affirmative procedure

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At its meeting on 17 October 2023 the Committee considered proposed negative instruments laid by the Government and has recommended that the appropriate procedure for the following 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).

## 1. Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023

1.1 The purpose of this instrument is to change the framework by which “fundamental rights and freedoms” are defined in UK data protection legislation. “Fundamental rights and freedoms” are currently defined by reference to retained EU rights, which will be repealed at the end of 2023 under the Retained EU Law (Revocation and Reform) Act 2023. This instrument amends such references to instead refer to the European Convention on Human Rights.

1.2 The Explanatory Memorandum provides limited information on or an assessment of the impact of this change on people’s rights. Paragraph 7.4 of the EM states that the change seeks to “replicate the current position as far as possible”. In its response to a request for more information, printed at Appendix 1, the Department iterates that the Government’s view is that “these [rights] will continue to be adequately protected by the European Convention on Human Rights (ECHR) and the rules for processing personal data contained within the UK GDPR and Data Protection Act 2018”. The Government further states that:

1.3 “In practice, the rights most likely to be of relevance to personal data processing are the right to private and family life and right to freedom of expression. These rights were recognised in EU law and affirmed in Article 7 and 11 of the Charter of Fundamental Rights of the European Union (EU Charter) and continue to be protected in domestic law under Article 8 and Article 10 of the ECHR. The EU Charter also includes a specific right to the protection of personal data under Article 8.”

1.4 Without more detailed analysis, it appears to the Committee to be unclear whether this effect is achieved or if there is in fact a diminution of rights in practice. The Committee believes that this makes the instrument appropriate to be considered under the affirmative resolution, so that Members may have the opportunity to ask questions to the Minister. Regulation 3 of the instrument amends primary legislation (the Data Protection Act 2018), which furthers the case for this instrument being taken through the affirmative procedure.

1.5 **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

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**At its meeting on 17 October 2023 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).**

European University Institute Regulations 2023



# Appendix 1 - Memorandum from the Department for Science, Innovation and Technology

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## S.I. presented for sifting

### Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023

#### Information request

- 1) Please explain what mapping the Government has conducted to determine whether there is likely to be any diminution of people's rights as a result of moving from a framework based on EU fundamental rights and freedoms to one based on the European Convention on Human Rights, or any other similar assessment.
- 2) Please also explain what assessment the Government has made of the effect on people's rights of removing references to "the right to" the protection of personal data and the removal of "respect the essence of the right to data protection.

#### Government response

- 1) We have assessed the fundamental rights and freedoms recognised under EU law prior to EU Exit which may be relevant to the processing of personal data. The Government's view is that these will continue to be adequately protected by the European Convention on Human Rights (ECHR) and the rules for processing personal data contained within the UK GDPR and Data Protection Act 2018. In practice, the rights most likely to be of relevance to personal data processing are the right to private and family life and right to freedom of expression. These rights were recognised in EU law and affirmed in Article 7 and 11 of the Charter of Fundamental Rights of the European Union (EU Charter) and continue to be protected in domestic law under Article 8 and Article 10 of the ECHR. The EU Charter also includes a specific right to the protection of personal data under Article 8. There is no direct equivalent to this right in the ECHR, however, data protection rights continue to be protected by the rules contained within the UK GDPR and Data Protection Act 2018. The protection of personal data has also been recognised as being of fundamental importance to the right to respect for private, family life, home and correspondence under Article 8 of the ECHR.
- 2) Article 8 of the Charter of Fundamental Rights of the European Union set out a specific right to the protection of personal data. The Charter was not incorporated into UK law after EU Exit and there is no direct equivalent to the right to the protection of personal data in UK law. References to "the right to" the protection of personal data and respect for the essence of "the right to data protection" in the UK GDPR are therefore omitted by the regulations as this wording is redundant. Data protection rights are protected by the rules contained within the UK GDPR and Data Protection Act 2018 and are also of fundamental importance to the right to respect for private and family life, home and

correspondence under Article 8 of the ECHR. The omission of this wording does not diminish the underlying level of protection afforded to personal data by the ECHR and data protection legislation. No discernible impact on data subjects' rights has therefore been identified as a result of the omission of this wording.

**Data Protection Policy Team**

**Department for Science, Innovation and Technology**

**9 October 2023**

# Formal Minutes

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**Tuesday 17 October 2023**

## **Members present**

Andrew Jones (in the Chair)

Kirsty Blackman

Sir David Evennett

James Grundy

Liz Twist

## **Report consideration**

Draft Report (*Seventh Report*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

*Resolved*, That the Report be the Seventh Report of the Committee to the House.

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

## **Adjournment**

Adjourned to a day and time to be fixed by the Chair.