



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Forty-Second Report of Session 2019–21

Drawing special attention to:

European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020 (Commencement, Transitional and Savings Provisions) Regulations 2020 (S.I. 2020/1622)

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Joint Committee on Statutory Instruments

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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](#), relating to Public Business.

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 Sue Beeby (Committee Operations Officer), Apostolos Kostoulas (Committee Operations Officer), Luanne Middleton (Commons Clerk), Christine Salmon Percival (Lords Clerk). Advisory Counsel: Sarita Arthur-Crow, Klara Banaszak, Daniel Greenberg, and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, and Ché Diamond (Lords).

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Instruments reported

At its meeting on 3 March 2021 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. 2020/1622: Reported for requiring elucidation

European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020 (Commencement, Transitional and Savings Provisions) Regulations 2020

1.1 The Committee draws the special attention of both Houses to these Regulations the ground that they require elucidation in one respect.

1.2 These Regulations, which are not subject to parliamentary procedure, bring into force provisions of the European Union (Withdrawal Act) 2018 and the European Union (Withdrawal Agreement) Act 2020. Regulation 20 states that Parts 3 and 4 of Schedule 8 to 2018 Act, Part 3 of Schedule 5 to the 2020 Act, these Regulations and certain other regulations made under those Acts are without prejudice to section 16 of the Interpretation Act 1978 or any corresponding provision. Section 16 is a general savings provision following repeals. The Committee asked the Cabinet Office to explain why regulation 20 is necessary and to give examples of what it might be expected to achieve. In a memorandum printed as an Appendix, the Department gives examples of specific transitional provisions which either overlap with or make different provision to section 16. The Department explains that a risk was identified that the wide range of transitional provisions across the 2018 and 2020 Acts and these Regulations could be read as being a comprehensive statement of all the transitional provision that was required and as being a contrary intention to any operation of section 16; it asserts that regulation 20 makes it clear that this wider contrary intention does not exist and “that there is still a residual role for section 16 IA 1978 where it is needed”. The Department does not, however, provide any examples of what that residual role might amount to. If a provision of general application is preserved expressly it should be possible for the reader to have some idea of at least a class of examples for which it is required; **and the Committee accordingly reports regulation 20 for requiring elucidation.**

Instruments not reported

At its meeting on 3 March 2021 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

S.I. 2021/64 Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) Regulations 2021

Draft Instruments requiring affirmative approval

Draft	Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021
Draft	Registration of Marriages Regulations 2021
Draft	Extradition Act 2003 (Codes of Practice and Transit Code of Practice) Order 2021
Draft	Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2021
Draft	Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021

The Draft Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021 were considered in error, having already been considered. See the [41st report](#).

Instruments subject to annulment

S.I. 2021/11	Education and Inspections Act 2006 (Prescribed Education and Training etc) (Amendment) Regulations 2021
S.I. 2021/17	M27 Motorway (Junctions 4 to 11) (Variable Speed Limits) Regulations 2021
S.I. 2021/21	Bank for International Settlements (International Development Act 2002 and Immigration (Exemption from Control) Order 1972) (Amendment) Order 2021
S.I. 2021/25	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 2) Regulations 2021
S.I. 2021/29	Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) Regulations 2021
S.I. 2021/31	Broads Authority (Transfer of Mutford Lock) Harbour Revision Order 2021

S.I. 2021/32	Port of Lowestoft (Transfer of Mutford Lock) Harbour Revision Order 2021
S.I. 2021/33	Health and Safety and Nuclear (Fees) Regulations 2021
S.I. 2021/36	Public Service Pensions Act 2013 (Judicial Offices) (Amendment etc.) Regulations 2021
S.I. 2021/40	Criminal Procedure (Amendment) Rules 2021
S.I. 2021/41	Shoreham Port Authority Harbour Revision Order 2021
S.I. 2021/45	Mersey Docks and Harbour Company (Liverpool Cruise Terminal Extension) Harbour Revision Order 2021
S.I. 2021/47	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 3) Regulations 2021
S.I. 2021/49	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 4) Regulations 2021
S.I. 2021/52	Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) (Amendment) (England) Regulations 2021
S.I. 2021/54	Trade in Endangered Species of Wild Fauna and Flora (Council Regulation (EC) No 338/97) (Amendment) Regulations 2021
S.I. 2021/55	Charities (Exception from Registration) (Amendment) Regulations 2021
S.I. 2021/58	Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021
S.I. 2021/60	Limited Liability Partnerships (Amendment etc.) Regulations 2021
S.I. 2021/64	Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021
S.I. 2021/68	Health Protection (Coronavirus, International Travel, Operator Liability and Public Health Information) (England) (Amendment) Regulations 2021
S.I. 2021/70	Sexual Offences Act 2003 (Prescribed Police Stations) (England and Wales) (Amendment) Regulations 2021
S.I. 2021/160	Local and Greater London Authority Elections (Coronavirus, Nomination of Candidates) (Amendment) (England) Rules 2021

Instruments not subject to parliamentary proceedings laid before Parliament

S.I. 2021/37	Libya (Sanctions) (Overseas Territories) Order 2021
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Appendix

S.I. 2020/1622

European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020 (Commencement, Transitional and Savings Provisions) Regulations 2020

1. The Committee has requested a memorandum on the following point:

“Explain why regulation 20(1) is necessary by reference to examples in Part 3 and 4 of Schedule 8 to EU(W)A 2018, Part 3 of Schedule 5 to EU(WA)A 2020 or these Regulations.”

2. Regulation 20(1) of the Regulations reads as follows:

“Parts 3 and 4 of Schedule 8 to EU(W)A 2018, Part 3 of Schedule 5 to EU(WA)A 2020, these Regulations and other regulations made under section 23(6) of EU(W)A 2018 or section 41(5) of EU(WA)A 2020 are without prejudice (so far as it is required) to section 16 of IA 1978 or any provision of interpretation legislation which corresponds to that section”.

3. “IA 1978” means the Interpretation Act 1978 and section 16 of that Act reads as follows:

“(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,—

- (a) revive anything not in force at the time at which the repeal takes effect;
 - (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;
 - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.
- (2) This section applies to the expiry of a temporary enactment as if it were repealed by an Act.”

4. Parts 3 and 4 of Schedule 8 to EUWA (as amended), Part 3 of Schedule 5 to EUWAA and the Regulations all contain various specific transitional provisions which either overlap in their effect with, or make provision which is different to, section 16 IA 1978. For

example, paragraph 37 of Schedule 8 to EUWA has an effect which overlaps to a degree with that of section 16 IA 1978. Likewise, paragraphs 41(1) and 42 of that same Schedule also overlap with that earlier section to the extent that they relate to the repealing element of amendments made by section 12 of, and Part 1 of Schedule 3 to, EUWA. Regulation 10 of the Regulations also concerns this same subject matter.

5. As can be seen above, section 16 IA 1978 operates unless there is a contrary intention. Where specific provision in EUWA, EUWAA or the Regulations overlap with, or diverge from, this section then there is a contrary intention to the extent of such overlap or divergence.

6. A risk was identified that the wide range of transitional provisions across EUWA, EUWAA and the Regulations would be read as being intended to be a comprehensive statement of all the transitional provision that was required for these Acts and, therefore, that they would be read as being a contrary intention to any operation at all of section 16 IA 1978.

7. Regulation 20(1) is intended to make it clear that this wider contrary intention does not exist and, therefore, that there is still a residual role for section 16 IA 1978 where it is needed. It does the same for the corresponding interpretation enactments in devolved areas.

Cabinet Office

15 February 2021