



House of Commons  
European Statutory  
Instruments Committee

---

**Twenty-Second Report  
of Session 2019–21**

---

**Documents considered by the Committee  
on 23 March 2021**

**Drawing attention to:**

**The Criminal Justice (Electronic Commerce) (Amendment)  
(EU Exit) Regulations 2021**

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 23 March 2021*

## 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*)

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

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

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

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

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

[Jo Stevens MP](#) (*Labour, Cardiff Central*)

[Owen Thompson MP](#) (*Scottish National Party, Midlothian*)

[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

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at [www.parliament.uk/copyright](http://www.parliament.uk/copyright).

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 Assistant), Elektra Garvie-Adams (Second Clerk), Kutumya Kibedi (Committee Assistant), and Apostolos Kostoulas (Committee Assistant), and Luanne Middleton (Clerk). Advisory Counsel: Sarita Arthur-Crowe, Klara Banaszak, Daniel Greenberg 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 7599; the Committee's email address is: [esic@parliament.uk](mailto:esic@parliament.uk).

You can follow the Committee on Twitter using [@CommonsESIC](https://twitter.com/CommonsESIC).



# Contents

---

<b>Instruments recommended for the affirmative procedure</b>	<b>2</b>
1 The Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021	2
<b>Instruments recommended for the negative procedure</b>	<b>4</b>
<b>Appendix</b>	<b>5</b>
<b>Formal Minutes</b>	<b>6</b>

# Instruments recommended for the affirmative procedure

---

At its meeting on 23 March 2021 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 The Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021

1.1 The purpose of this instrument is to amend domestic legislation which implements a reciprocal arrangement known as the ‘Country of Origin principle’ (CoOp) which forms part of the e-Commerce Directive. The e-Commerce Directive applies to all EEA states with the aim of simplifying rules for companies when operating online across borders. These rules apply to companies which meet the definition of ‘information society services’. This covers the vast majority of online service providers, for example online retailers, video sharing sites, search tools, social media platforms and internet service providers.

1.2 The instrument amends primary legislation, and the changes made to each Act have substantially the same effect: in respect of domestic information society services providers, they remove liability under UK law for offences committed in EEA states, as well as the ability to prosecute those offences in the UK; and in respect of EEA-based information society service providers, they remove the restriction on bringing prosecutions in the UK for offences committed in the UK. At paragraph 2.3 in the explanatory memorandum, the Department asserts that both changes are appropriate because the reciprocal arrangement on which they were based ceased to operate at the end of the transition period. At paragraph 2.5, the Department argues that without these changes, domestic service providers would be subject to “*a dual legislative burden*” that could put them at “*competitive disadvantage*” when providing services in EEA states, because they must comply with both UK law and the law of the relevant EEA state.

1.3 The UK offences in question include:

- publishing identifying information about a child or young person involved in civil proceedings in contravention of a court order (Children and Young Persons Act 1933, s.39);
- publishing identifying information about a person about whom an FGM offence is alleged to have been committed, during that person’s lifetime (Female Genital Mutilation Act 2003, Sch.1, para.1);
- possession of an extreme pornographic image (Criminal Justice and Immigration Act 2008, s.63); and
- possession of a paedophile manual (i.e. any document that contains advice or guidance about abusing children sexually; Serious Crime Act 2015 s.69).

1.4 The Committee is concerned that the effect of this instrument could be to dilute regulation of the international effect of publication of certain kinds of material (particularly online material with global reach) as it is not clear whether equivalent offences exist across the EEA. We therefore requested further information from the Department on this question. The Department's response [printed in the appendix] clearly states that it has not carried out a thorough review and is therefore not in a position to explain the extent of any dilution of international regulation. Given the serious nature of the offences covered by the instrument, and the ambiguity surrounding parallel offences in other EEA countries, the Committee believes that this issue is of sufficient political importance to justify the scrutiny and debate afforded by affirmative resolution.

**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

---

**At its meeting on 23 March 2021 the Committee considered four 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 Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2021

The Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021

The European Union (European Schools) Regulations 2021

The Road Tunnel Safety (Amendment) Regulations 2021

# Appendix

---

## Further explanatory information, provided by the Department, regarding the Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021

1) The dual legal burden described in paragraph 7.2 is not necessarily connected to the existence of parallel offences in all EEA states or all EEA states censoring the same conduct as the UK. Where parallel offences do exist, paragraph 7.2 describes the burden a UK-established ISS currently faces in that such a company could be held liable for conduct in the EEA state in which the conduct itself took place, as well as in the UK. As explained, this dual-burden flows from the UK's withdrawal from the EU and the removal of reciprocal arrangements that, when in place, meant there was a restriction on the prosecution of a UK-established ISS in the EEA state where the conduct took place on the basis that this conduct could be prosecuted in the UK. Where parallel offences do not exist and the laws are different in the UK from the EEA state in question, this could result in proceedings being brought against conduct which was legal in one but not the other. Either way there is a potential impact and a dual-burden on UK-established ISS operating in the EEA, whether or not the laws of the UK align with the laws of the EEA states, in that all UK-established ISS must ensure they are adhering to the laws of both the UK and the EEA state where the conduct took place. In light of the UK's withdrawal from the EU and the end of the reciprocal arrangements on this point, it is appropriate, in the interests of fairness and clarity, that UK law reverts to the position that a UK-established ISS is held liable for any criminal conduct only in the country where the conduct takes place, as would be the case when operating in a non-EEA member state.

2) Our analysis (of the offences in paragraph 6.2) showed that much of the conduct which would be an offence in the UK would also be an offence under the law of various EEA states. However, a review of the law of each of the EEA states, looking for analogous offences, would have been disproportionately time consuming and expensive. Even in the simplest situation, in which there were directly analogous offences in every EEA state, this would have involved us identifying and verifying several hundreds of foreign offences. Although we did not conduct a full review, we understand some conduct which would be an offence in the UK would not be illegal in some EEA states. We also believe there are examples where conduct that would constitute an offence in the UK does not have a directly 'analogous offence' in some EEA states, but could be captured by other laws of that state, further complicating comparing the UK law to that of an EEA state. Indeed, one of the aims of the E-Commerce Directive was to remove obstacles which arise from divergences in legislation and from the legal uncertainty as to which national rules apply. If there were no differences in the law between EEA states, there wouldn't have been any benefit in the directive confirming which national rules apply. Therefore, for these reasons and those set out in the paragraph above, it was considered that a full review of the existence of parallel offences in EEA states was not necessary.

**Ministry of Justice**

**10 March 2021**

# Formal Minutes

---

**Tuesday 23 March 2021**

Members present:

Andrew Jones, in the Chair

Kirsty Blackman	Charlotte Nichols
Mrs Flick Drummond	Mary Robinson
Sir David Evennett	Liz Twist
James Grundy	Jacob Young

Draft Report (*Twenty-Second 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 1.5 agreed to.

A paper was appended to the Report as an Appendix.

*Ordered*, That the Report be the Twenty-Second 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.]