



LAYING, DISTRIBUTION AND PUBLISHING OF 'PROPOSED NEGATIVES' UNDER THE EU (WITHDRAWAL) ACT 2018

Introduction

1. The European Union (Withdrawal) Act 2018 confers powers on Ministers to make a broad range of amendments to deal with the UK's withdrawal from the EU. These include powers to: deal with deficiencies arising from withdrawal (section 8(1)); implement any withdrawal agreement (section 9); and make consequential provision (section 23(1)).
2. Where the powers above are exercised, the statutory instrument, if not subject to the affirmative procedure, is subject to a 'sifting' procedure. This procedure is to be undertaken by the European Statutory Instruments Committee (ESIC) in the House of Commons and the Secondary Legislation Scrutiny Committee in the House of Lords (SLSC).
3. Where the Minister is contemplating using the negative procedure, the act says that the Minister must: (a) make a statement in writing 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, and (b) lay before both Houses of Parliament (i) a draft of the instrument, and (ii) a memorandum setting out the statement and the reasons for the Minister's opinion (Paragraphs 3(3) and 17(3) of Schedule 7).
4. The Act also sets out the other conditions that must be met before the Minister can make the instrument.
5. This new 'sifting process' only relates to instruments under the above powers in the Act and is additional to the normal Parliamentary and scrutiny consideration of Statutory Instruments. The arrangements for those are unchanged by this guidance and departments should still follow Statutory Instrument Practice and other guidance in relation to the process of Statutory Instruments.

Authority for Laying

6. These documents are required by statute to be laid before Parliament, and so are Act papers and are referred to as being laid “By Act”. Since the papers will be unnumbered (i.e. they do not form part of a numbered series of papers), the papers will be treated as unnumbered Act papers.
7. The statements that Ministers are required to make under paragraphs 3(3)(a) and 17(3)(a) of Schedule 7 to the Act have been included in the Explanatory Memorandum template and should be laid as unnumbered Act Papers.

Laying

8. All documents need to be laid before both the House of Commons and the House of Lords and the title page should be worded accordingly (i.e. Presented to Parliament).
9. In accordance with the ‘guide to laying papers’ two complete copies of the documents must be delivered, by hand to the Journal Office of the House of Commons. Two copies will also need to be laid in the House of Lords Printed Paper Office. When laying you will need:
 - i. two copies of the Proposed Negative, EM and any associated documents such as Impact Assessments; and
 - ii. two copies of the covering letter and a third copy of the cover letter to act as a receipt.
10. A sample of the laying letter is shown at Annex A.
11. The Standing Orders in both Houses have been amended to make it clear that Proposed Negatives laid during recesses will be treated as having been laid on that day during recess, and may therefore be published. Please note, however, that recess days will not count towards the ten-sitting day period specified for consideration of the documents under the Act.
12. If the House of Lords rises earlier than the Commons the Journal Office will stop taking papers which are due to be laid before both Houses on that day, and vice versa.

13. Papers may be laid whenever the Votes and Proceedings Office (commonly referred to as the Journal Office) in the Commons and the Printed Paper Office in the Lords are open; the table below sets out the days and times:

Days when papers may be laid	Time at which papers may be laid in Printed Paper Office/Journal Office	
	Earliest	Latest
House sitting for public business	9.30 a.m. (or start of business if earlier)	Rising of the House
Non-sitting day (Monday to Friday)	11 a.m.	3 p.m.
Prorogation	11 a.m.	3 p.m.
Dissolution	Papers may not be laid	

14. Members may come to the Journal Office in the Commons or Printed Paper Office in the Lords to look at a document as soon as it is laid. Departments must provide copies of laid papers so they are ready and available for distribution to Members as soon as they have been laid. Numbers required are set out below.
15. The Lords Business will have a new section that will show all the Proposed Negatives currently in the sifting process and the date the sifting period expires. The House of Commons will show Proposed Negatives under the EU(W) Act in the Appendix to the Votes and Proceedings.

Distribution after laying

16. It is the Department's responsibility to supply Parliament with the correct number of document bundles, comprising Proposed Negative, Explanatory Memorandum and any other associated document, required.



17. Copies of the document bundle should be made available on the day of laying. They should be delivered by hand, given the short scrutiny period, they should never be put in the post.

18. The numbers required are as follows:

- 20 copies of the document bundles are required for the Printed Paper Office of the House of Lords.
- 10 copies for the Vote Office of the House of Commons.

(Departments should use their judgement and supply more if greater demand is anticipated.)

- 15 copies of the document bundle, envelope clearly marked STAGE 1 scrutiny, should be delivered to the Secondary Legislation Scrutiny Committee, Room 25 West Front, Palace of Westminster, London SW1A 0PW.
- 5 copies of the document bundle should be delivered to the European Statutory Instruments Committee. Correspondence to the Committee should be addressed to Clerk, European Statutory Instruments Committee, House of Commons, London, SW1A 0AA.

Publishing on gov.uk

19. It is the responsibility of the Department to put in place procedures to ensure that the Proposed Negative and related memorandum are published on the gov.uk finder (<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>) on the same day as laying.

Withdrawing a Proposed Negative

20. A sample of a letter for the purpose of withdrawing a Proposed Negative is shown at Annex B.
21. As the Explanatory Memorandum for a Proposed Negative is also by Act, it is not possible to withdraw an EM without also withdrawing the proposed Instrument. If you need to make a correction to an EM, you must withdraw and relay both the EM and the proposed Instrument to which it relates.

When you relay the Instrument with its corrected EM, the 10-day sifting period restarts.¹

Laying of Affirmative or Negative Instruments after sifting

22. Once a proposed Negative Instrument has been sifted and is due to be laid as a Negative Instrument or Affirmative instrument, the requirement to lay an EM by Act is switched off by paragraph 28(11) of Schedule 7 to the European Union (Withdrawal) Act.
23. Any Explanatory Memorandum to an Affirmative/Negative instrument that is laid after its proposed Negative version has been sifted should be laid by Command, rather than by Act even if the wording of the EM is identical to the EM laid with the related proposed Negative Instrument. If an EM is laid with an incorrect authority, the Journal Office may reject the Instrument.

Further Questions

24. Further information is available in the Guide to Laying Papers available on the Parliamentary website at <https://www.parliament.uk/documents/upload/laying-papers.pdf>

If you have any questions or queries about laying papers please contact:

i) House of Commons Journal Office on 020 7219 3361 or [Journal office@parliament.uk](mailto:Journaloffice@parliament.uk), or the House of Commons Vote Office on 020 7219 3631: or

ii) House of Lords Printed Paper Office on 020 7219 1246.

For queries about the work of the sifting Committees please look at their webpages on the parliament.uk website. You can contact the staff of ESIC in the Commons on 020 7219 7597 (esic@parliament.uk) or the Lords' SLSC on 020 7219 8821.

¹ See the Report of the European Statutory Instruments Committee, Fourth Report of Session 2017-19, 25 October 2018 (HC 1608)

19 July 2018 (Updated 29 October 2018)

Annex A - Sample covering letter for a proposed negative statutory instrument

DEPARTMENTAL CONTACT
INFORMATION HERE

DATE

The Clerk in Charge
Journal Office/Printed Paper Office
House of Commons/House of Lords
LONDON

SW1A 0AA/SW1A 0PW

Dear Sir/Madam,

[XX Long title of proposed negative statutory instrument in bold]

1. The above paper is presented for laying before [Parliament/ the House of Commons] pursuant to:

[Section of European Union (Withdrawal) Act under which laying is authorised] or [Section of European Union (Withdrawal) Act under which laying is authorised, as amended by Section of Amending Act]

2. We are also laying [delete as appropriate]

- a Memorandum setting out the reasons for the Minister's opinion that the instrument should be subject to the negative procedure by Act, or
- an Explanatory Memorandum with a memorandum setting out the reasons for the Minister's opinion that the instrument should be subject to the negative procedure by Act
- [other papers- please state] by Command of Her Majesty

3. The instrument is subject to "***proposed negative***" procedure

4. Please lay in the name of **[Laying Minister]**

Regards,

Parliamentary Branch

[Name and contact telephone number of person dealing with this document]

Annex B - Sample covering letter withdrawing a proposed negative statutory instrument

DEPARTMENTAL CONTACT
INFORMATION HERE

DATE

The Clerk in Charge
Journal Office/Printed Paper Office
House of Commons/House of Lords
LONDON

SW1A 0AA/SW1A 0PW

Dear Sir/Madam,

Full title of Document in Bold

1. Due to a defect in/the decision not to proceed with the proposed negative statutory instrument, the above document, which was **laid on [date]**, needs to be withdrawn. The Explanatory Memorandum laid with document is also being withdrawn.
2. The original document was subject to the proposed negative procedure.
3. [An affirmative statutory instrument/ A revised proposed negative statutory instrument is being laid today/ will be laid on [date] with an Explanatory Memorandum.]

Regards

Parliamentary Branch

[Name and contact telephone number of person dealing with this document]

