

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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4th Report of Session 2017–19

# **Criminal Justice (European Investigation Order) Regulations 2017**

Includes 10 Information Paragraphs on 10 Instruments

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### *Secondary Legislation Scrutiny Committee*

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

Lord Faulkner of Worcester	Lord Hodgson of Astley Abbots	Lord Sherbourne of Didsbury
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne ( <i>Chairman</i> )
Baroness Gould of Potternewton	Lord Kirkwood of Kirkhope	Baroness Watkins of Tavistock
Lord Haskel	Baroness O'Loan	

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

### *Information and Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hseclegscrutiny@parliament.uk](mailto:hseclegscrutiny@parliament.uk).

# Fourth Report

## INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Criminal Justice (European Investigation Order) Regulations 2017 (SI 2017/730)

*Date laid: 10 July 2017*

*Parliamentary procedure: negative*

*This instrument transposes Directive 2014/41/EU regarding the European Investigation Order which standardises the way one Member State can ask another for help in pursuing cross-border criminality. Investigators in another Member State can request assistance with gathering evidence, investigating banking information, executing search warrants or taking evidence from witnesses. Regulations standardise the format and the timetable for executing the request. The Explanatory Memorandum also notes that regulation 59 designates a request made under the Directive as an EU Mutual Assistance Instrument for the purposes of section 10 of the Investigatory Powers Act 2016 (not yet in force), enabling the UK to give effect to European investigation orders relating to the interception of telecommunications. The Committee raised questions about how “temporary transfers” of prisoners to another Member State to help with their investigations are to be handled and what assurances there are that the prisoner will be returned. Regrettably, the Home Office has failed to respond in the seven weeks since we made that request. We shall pursue those enquiries directly with the Minister.*

**These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. These Regulations are laid by the Home Office under section 2(2) of the European Communities Act 1972 and are accompanied by an Explanatory Memorandum (EM). They transpose the requirements of Directive 2014/41/EU regarding the European Investigation Order in criminal matters (“The Directive”).<sup>1</sup> A standardised form for making these requests is included as Annex A to the Directive.

#### *Content*

2. The Directive seeks to standardise the way one Member State can ask another for help in pursuing cross-border criminality. Prosecutors and investigators have complained of the varying, and sometimes significant amount of time, it was taking to execute these requests under the previous system of Mutual Legal Assistance (MLA). Regulation 8 introduces the standardised form for the request and regulation 30 sets time limits, for example the request must be recognised within 30 days and executed within a further 90 days. Regulation 28 sets out the grounds on which the request can be refused, for example if the conduct being investigated does not constitute an offence under the law of the relevant part of the UK.

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<sup>1</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ([OJ L 130, 1.5.2014, p. 1](#)).

3. The EM also explains that regulation 59 designates the Directive as an EU Mutual Assistance Instrument for the purposes of section 10 of the Investigatory Powers Act 2016 (not yet in force), enabling the UK to give effect to European Investigation Orders relating to the interception of telecommunications. This is the first time this provision has been used.

#### *Implementation*

4. The transposition date for the Directive was 22 May 2017 but the Home Office thought it inappropriate to make the Regulations in the period immediately before the General Election on 8 June. We note with approval that, unlike several instruments we have recently drawn to the House's attention, the Home Office's approach to transposition still allows the standard period for Parliamentary scrutiny.
5. The EM states that around 80% of MLA requests received by the UK are from EU Member States. Applying a streamlined approach to recognising and executing requests is therefore mutually beneficial to the UK and other Member States who are subject to the Directive. It is expected that the legislation will result in a gradual rise in the number of such requests as standardisation makes it easier for the authorities to anticipate the outcome. **Given that the changes these Regulations make are all recognised as a significant improvement on the MLA system, the House may wish to know what arrangements the Home Office proposes to make for such exchanges once we leave the European Union.**

#### *Clarifications*

6. The Committee had a number of concerns in relation to the provisions which allow a prisoner to be "temporarily" transferred to the custody of another Member State to assist with their investigations although a primary requirement is that the prisoner must consent to the proposed transfer. The Committee noted that, in contrast to the provisions relating to an item of evidence, there was no provision on the form to set a time period for the return of a prisoner and that there appeared to be no provision preventing the receiving country transferring the prisoner to another Member State. We wrote to the Minister on 19 July seeking clarification of how certain aspects of this process are intended to operate (this letter is published in Appendix 1). Regrettably, the Home Office has failed to respond in the seven weeks since we made the request. We shall pursue those enquires directly with the Minister.

## INSTRUMENTS OF INTEREST

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### Draft Greater Manchester Combined Authority (Public Health Functions) Order 2017

7. This instrument will allow the Greater Manchester Combined Authority (GMCA) to exercise the public health functions under section 2B(1) of the National Health Service Act 2006 concurrently with its 10 constituent local authorities. The Explanatory Memorandum (EM) states that conferral of this power on the Combined Authority is necessary for it to play a full part in the Greater Manchester Health and Social Care Partnership and to support integrated, strategic commissioning decisions across the Greater Manchester area with a view to improving health outcomes and reducing health inequalities. The EM, confusingly, then goes on to refer to transport and economic development matters. While noting that this legislation is largely consequential on the formation of the overarching authority, the Committee asked for clarification on what health functions the GMCA would pursue under it. Our concern was that the change should result in value added to the population of Manchester rather than duplication or additional layers of bureaucracy. The Greater Manchester Population Health Plan 2017–2021<sup>2</sup> referred to in a footnote and certain GMCA position papers<sup>3</sup> gave us some better indications of how GMCA intend to use these powers to improve the coordination and efficiency of public health programmes, but the EM should have been more explicit. The Department of Health has been asked to revise the EM to make clear how GMCA intends to use these powers to improve public health.

### Draft Renewables Obligation (Amendment) (Energy Intensive Industries) Order 2017

8. In our 32nd Report of Session 2016–17,<sup>4</sup> we drew to the attention of the House the draft Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017. In particular, we flagged up the fact that the draft Regulations proposed to withhold an exemption from the so-called Electricity Supplier Obligations levy from direct competitors of eligible Energy-Intensive Industries (EIIs), while the EIIs would continue to enjoy this exemption. We noted an explanation from the Department for Business, Energy and Industrial Strategy (BEIS) that it had notified to the European Commission, for approval as State aid, its original proposal that non-eligible direct competitors should be entitled to receive the exemption; and that, since the proposal had not been approved, BEIS was unable to extend the exemption to these businesses.
9. In the Explanatory Memorandum (EM) to the latest draft Order, BEIS says that the costs of the Renewables Obligation (RO) scheme<sup>5</sup> are passed through in bills to EIIs from energy suppliers; as they operate in global markets where commodity prices are set internationally, they are often unable to pass these costs through to the end customer, placing EIIs that face higher electricity costs at a competitive disadvantage. A compensation scheme for eligible EIIs for RO policy costs opened in January 2016. Now, only 18 months

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2 <http://www.gmhsc.org.uk/assets/GM-Population-Health-Plan-Full-Plan.pdf>

3 For example <http://www.gmhsc.org.uk/assets/08-Public-Health-System-Reform-Full-Report-Exec-Summary-FINAL-v2.pdf>

4 [32nd Report](#), Session 2016–17 (HL Paper 161).

5 Renewables Obligation Certificates are tradable.

after introducing that scheme, BEIS proposes to move from compensating to exempting eligible EIIs from up to 85% of the RO scheme costs. BEIS says that this will improve long-term investment certainty for EIIs, as the exemption will provide real-time support and will not be contingent on Departmental budgets, which can fluctuate. BEIS says that this increased certainty can help maintain the competitiveness of EIIs.

10. In response to our questions, BEIS has provided additional information about the implications of these proposals for direct competitors to EIIs who are not eligible for this exemption. We are publishing that information at Appendix 2; BEIS is revising the EM to incorporate this material.

#### **Draft Small Business Commissioner (Scope and Scheme) Regulations 2017**

11. The Department for Business, Energy and Industrial Strategy (BEIS) has laid this instrument with an Explanatory Memorandum. The Small Business Commissioner (SBC) was established by the Enterprise Act 2016 to assist small businesses in payment disputes with larger businesses. These Regulations set out which small businesses will be eligible to use the SBC's services, and also set out the framework for the SBC to operate a complaints scheme. In particular, they provide that a business must have a headcount of fewer than 50 staff on a specified date to use the Commissioner's services; and they set out the requirements before presenting a complaint, the requirements as to the form and content of the complaint, the time limit for presenting a complaint, and the power for the Commissioner to fix and extend time limits and to dismiss complaints.

#### **Recreational Craft Regulations 2017 (SI 2017/737)**

12. In our 2nd Report of this Session,<sup>6</sup> we drew three instruments to the special attention of the House (the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692), and two related instruments), noting that all had been laid on either 22 or 23 June 2017 and brought into force on 26 June, in order to meet the transposition date in the EU Fourth Money Laundering Directive of 26 June 2017. In our 3rd Report,<sup>7</sup> we published a related exchange of correspondence with the Economic Secretary to the Treasury which highlighted our concern about Government decisions to breach the 21-day rule for laying instruments and bringing them into force in order to meet deadlines for transposing EU legislation.
13. The Recreational Craft Regulations 2017, laid by the Department for Business, Energy and Industrial Strategy (BEIS), exemplify a different approach to such deadlines. In the Explanatory Memorandum (EM), BEIS states that the "instrument is being made in order to implement the provisions of the revised EU Directive on recreational craft and personal watercraft (2013/53/EU), which entered into force on 18 January 2016". No more light is shed in the EM on the delay in implementing the Directive. On page 13 of the accompanying Impact Assessment, BEIS states that, as "the UK had not transposed the Directive by the deadline set by the legislation (18 January 2016) the UK risks proceedings being pursued against it by the Commission which is likely to result in a fine if there is any further delay in transposition".

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6 [2nd Report](#), Session 2017–19 (HL Paper 8).

7 [3rd Report](#), Session 2017–19 (HL Paper 14).

14. We obtained further information from BEIS about the background to the laying of these Regulations, which we are publishing at Appendix 3.
15. We recognise that the EU Fourth Money Laundering Directive is of far greater significance than the EU Directive on recreational craft and personal watercraft. However, BEIS' approach to implementing the Directive on recreational craft appears at odds with what we understand to be the UK Government's general commitment to effective compliance with EU legislation. BEIS has undertaken to revise the EM to give a better explanation.

**National Health Service (Quality Accounts) (Amendment) Regulations 2017 (SI 2017/744)**

16. On 13 December 2016, the Care Quality Commission (CQC) published *Learning, candour and accountability: A review of the way NHS trusts review and investigate deaths of patients in England*.<sup>8</sup> The CQC's report concluded that learning from deaths is not being given enough consideration in the NHS and that opportunities to improve care for future patients are being missed. Further guidance has since been published.<sup>9</sup>
17. These Regulations require NHS Trusts and NHS Foundation Trusts (apart from ambulance Trusts) to report on the number of their patient deaths which have occurred during a reporting year, 1 April to 31 March, as part of their Quality Accounts. The information must include the number of deaths in the reporting period which have been reviewed (whether by case record review or an investigation), how many of those deaths the Trust considers are more likely than not to be due to problems in care provided to the patient, and a description of what the Trust has learnt and the action it has taken as a result of the reviews. The first publication of Quality Accounts with this data will be in June 2018.

**Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2017 (SI 2017/745)**

18. These Regulations provide that money received from the emergency funds as a result of the Grenfell Tower fire on 14 June 2017 shall be disregarded for the purpose of means-testing for Legal Aid. This disregard would include money received from the Grenfell Tower Residents' Discretionary Fund which was created by the Government to provide immediate assistance with clothing, food and other essentials. Other potential monies disregarded include charitable donations and support, money donated by members of the public, and contributions from fundraising campaigns. It is likely that the numbers affected will be very small, and limited to residents of, or visitors to, the Grenfell Tower at the time of the fire, those in the area surrounding the Tower whose homes were evacuated and close relatives of the deceased. The legislation came into effect immediately after laying, on 14 July 2017.

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<sup>8</sup> See: <http://www.cqc.org.uk/content/learning-candour-and-accountability>

<sup>9</sup> National Guidance on Learning from Deaths <https://improvement.nhs.uk/resources/learning-deaths-nhs/>

**Child Trust Funds (Amendment No. 2) Regulations 2017 (SI 2017/748)**

19. HM Revenue and Customs (HMRC) has laid these Regulations with an Explanatory Memorandum (EM), in which HMRC says that, in the case of a “looked after” child for whom a Child Trust Fund (CTF) has been opened, only the Official Solicitor (OS—in England, Wales and NI) or Accountant of Court (in Scotland) may manage the account on the child’s behalf. An equivalent scheme provides Junior ISAs for “looked after” children who are ineligible for a CTF. However, the Government consider that a single provider managing the CTFs and Junior ISAs of “looked after” children has the potential to provide more focused financial support to the children, in addition to its management role. In amending earlier instruments, these Regulations allow HM Treasury to appoint an organisation to undertake this role; from October 2017 the appointed organisation will be a charity, The Share Foundation.
20. HMRC has told us that, since the ending of CTF eligibility in 2011, the Department for Education (DfE) has operated a similar scheme which provides Government-funded Junior ISAs for “looked after” children who do not qualify for a CTF. The scheme is UK-wide and is managed under commercial contract by The Share Foundation which also undertakes activities that are not within the OS’s remit (such as providing access to financial education, incentivised learning and potentially sourcing charitable donations) and which has experience of working with marginalised children. The Share Foundation has managed Junior ISAs for “looked after” children since their introduction in 2012; following DfE’s tender exercise last year, it was re-awarded the contract for managing Junior ISAs and also for CTFs. The change relates to the day-to-day management of the CTF accounts of “looked after” children. The ability to transfer responsibility for the management of accounts will not affect the ability of the person with parental responsibility, or the child if 16 or over, to become the registered contact for the account.

**Payment Services Regulations 2017 (SI 2017/752)**

21. On 19 July 2017, HM Treasury (HMT) issued a press release<sup>10</sup> headlined “Rip-off card charges to be outlawed”, which stated that the Government were “unveiling new rules that will mean card-charging in Britain — where people can be charged 20% extra for purchases like a flight just for paying with a credit card — will come to an end in January”. The press release included a link to the Government response to the consultation carried out on implementation of the Payment Services Directive II (PSDII):<sup>11</sup> the “new rules on card-charging” are part of this implementation. Also on 19 July, HMT laid these Regulations with an Explanatory Memorandum (EM) and transposition note. The Regulations set out the detailed implementation of PSDII, which must be transposed by 13 January 2018.
22. In the EM, HMT explains that the 2007 Payment Services Directive (PSD) aimed to improve the competitiveness of the EU, by integrating national payments markets, and to support the creation of a single market for retail payment services. The PSD had three main objectives: to enhance competition; to harmonise information disclosure; and to standardise the rights and obligations for the use of payment services in the EU, with a

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10 See: <https://www.gov.uk/government/news/rip-off-card-charges-to-be-outlawed>

11 Directive 2015/2366/EU on payment services in the internal market.



strong emphasis on customer protection. HMT says that, in replacing the 2007 Directive, PSDII seeks to build on these objectives by creating a level playing-field between all categories of payment providers, in turn increasing the choice, efficiency, transparency and security of payments. It does this by addressing limitations to the scope of PSD, potential security risks in the payment chain, and consumer protection risks.

23. HMT gives no figures for the cost to business in the EM. In response to our queries it has told us that its central estimate for the equivalent annual net direct cost to business (EANDCB) is £187.2 million, with an overall net present value of £727 million, reflecting the fact that most of the EANDCB comprises the ban on surcharging of cards and other payment instruments (a cost to business, but a benefit to consumers). In the EM, HMT also states that it was unable to submit a final Impact Assessment (IA) with the Regulations because preparation of the assessment was delayed as a result of the General Election. **We find this disappointing, and we repeat the concern that we have expressed before, that failure by a Government Department to provide an IA inhibits the process of Parliamentary scrutiny of secondary legislation.**

**National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017(SI 2017/756)**

24. This instrument amends the NHS (Charges to Overseas Visitors) Regulations 2015<sup>12</sup> to extend the charging regime to include secondary and community services, to require that the full estimated cost of a service is secured in advance of any non-urgent care being provided, and to alter some existing exemptions, for example, to exempt from charge advice provided by telephone help lines such as NHS 111 or the dependents of refugees and asylum seekers. This follows an extensive consultation exercise by the Department of Health in 2015–6.<sup>13</sup> The Government’s response to the consultation was published in February 2017<sup>14</sup> and this instrument is the first stage in the implementation of the changes it describes.

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12 [SI 2015/238](#) as amended.

13 Making a fair contribution: A consultation on the extension of charging overseas visitors and migrants using the NHS in England (December 2015) [www.gov.uk/government/consultations/overseas-visitors-and-migrants-extending-charges-for-nhs-services](http://www.gov.uk/government/consultations/overseas-visitors-and-migrants-extending-charges-for-nhs-services)

14 Making a fair contribution: Government response to the consultation on the extension of charging overseas visitors (Feb 2017) [www.gov.uk/government/consultations/overseas-visitors-and-migrants-extending-charges-for-nhs-services](http://www.gov.uk/government/consultations/overseas-visitors-and-migrants-extending-charges-for-nhs-services)

**Protection of Wrecks (Designation) (England) Order 2017 (SI 2017/773)**

25. The Protection of Wrecks Act 1973 (“the 1973 Act”) allows the Secretary of State to designate a restricted area around the site of a vessel of archaeological, historical or artistic importance which is lying wrecked on or in the sea bed in UK waters. It is a criminal offence for a person to engage in specified activities in a restricted area, unless licensed by the Secretary of State.
26. This Order, laid by the Department for Digital, Culture, Media and Sport (DCMS), designates five such areas:
- two circular areas of 30 metres radius surrounding material from an unknown wreck off the Dorset coast, referred to as the Chesil Beach (Cannon Site);
  - a circular area of 30 metres radius surrounding the wreck of the UC-70 (a World War One German U-boat) off the North Yorkshire coast;
  - a rectangular area of 800 metres by 300 metres surrounding the wreck of HMS Colossus (a Nelsonian warship grounded in 1798) in the Isles of Scilly; and
  - a circular area of 150 metres radius surrounding the wreck of the Hazardous (an English warship beached in 1706) off the West Sussex coast.
27. The Order also revokes an earlier instrument (Protection of Wrecks (Designation No.1) Order 1983 (SI 1983/1400)), which designated a restricted area adjacent to the Brighton Marina Western Breakwater. In the Explanatory Memorandum, DCMS refers to advice from Historic England that, while a C15/C16 wreck may have lain in the general area of the breakwater, it is highly likely that the main site lay in an area now covered by the marina, which seems to have been destroyed during the marina’s construction. Historic England therefore recommends that the present restricted area no longer merits designation under the 1973 Act.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

Banking Act 2009 (Service Providers to Payment Systems) Order 2017

Greater Manchester Combined Authority (Public Health Functions) Order 2017

Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2017

Renewables Obligation (Amendment) (Energy Intensive Industries) Order 2017

Scotland Act 2016 (Onshore Petroleum) (Consequential Amendments) Regulations 2017

Small Business Commissioner (Scope and Scheme) Regulations 2017

### **Draft instruments subject to annulment**

Allerdale (Electoral Changes) Order 2017

Ashford (Electoral Changes) Order 2017

East Devon (Electoral Changes) Order 2017

Horsham (Electoral Changes) Order 2017

Manchester (Electoral Changes) Order 2017

Newcastle-under-Lyme (Electoral Changes) Order 2017

North Norfolk (Electoral Changes) Order 2017

South Norfolk (Electoral Changes) Order 2017

Torrige (Electoral Changes) Order 2017

Teignbridge (Electoral Changes) Order 2017

### **Instruments subject to annulment**

HC 290 Statement of Changes in Immigration Rules

SI 2017/731 Electricity (Exemptions from the Requirement for a Generation Licence) Order 2017

SI 2017/734 Milk and Milk Products (Pupils in Educational Establishments) (England and Northern Ireland) Regulations 2017

SI 2017/736 Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) (Amendment) Order 2017

SI 2017/737 Recreational Craft Regulations 2017

SI 2017/741 Family Procedure (Amendment No. 2) Rules 2017

SI 2017/742 Justices' Clerks and Assistants (Amendment) Rules 2017

- SI 2017/744 National Health Service (Quality Accounts) (Amendment) Regulations 2017
- SI 2017/745 Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2017
- SI 2017/748 Child Trust Funds (Amendment No. 2) Regulations 2017
- SI 2017/751 Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2017
- SI 2017/752 Payment Services Regulations 2017
- SI 2017/753 Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2017
- SI 2017/754 European Union Financial Sanctions (Amendment of Information Provisions) Regulations 2017
- SI 2017/755 Criminal Procedure (Amendment No. 3) Rules 2017
- SI 2017/756 National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017
- SI 2017/760 Jobseeker's Allowance (Hardship) (Amendment) Regulations 2017
- SI 2017/768 Childcare (Fees) (Amendment) Regulations 2017
- SI 2017/769 Home Loss Payments (Prescribed Amounts) (England) Regulations 2017
- SI 2017/773 Protection of Wrecks (Designation) (England) Order 2017
- SI 2017/774 Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017
- SI 2017/779 Antarctic Act 1994 (Overseas Territories) (Amendment) Order 2017
- SI 2017/783 Charities (Shakespeare Birthplace Trust) Order 2017
- SI 2017/787 National Savings (Amendment) Regulations 2017
- SI 2017/793 M60 Motorway (Junctions 8 to 18) and the M62 Motorway (Junctions 18 to 20) (Variable Speed Limits) Regulations 2017
- SI 2017/794 Apprenticeships (Modifications to the Specification of Apprenticeship Standards for England) Order 2017

## **APPENDIX 1: CRIMINAL JUSTICE (EUROPEAN INVESTIGATION ORDER) REGULATIONS 2017 (SI 2017/730)**

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**Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee to Nick Hurd MP, Minister of State for Policing and the Fire Service at the Home Office**

I am writing as Chairman of the Secondary Legislation Scrutiny Committee which, at its meeting yesterday, considered this instrument but declined to clear it as there were outstanding questions to which your officials were unable to respond in time for the meeting. The Committee's concerns particularly relate to the temporary transfer of prisoners to another Member State under a European Investigation Order (EIO).

Under article 54(5)(c) to transfer a prisoner the Secretary of State must be satisfied that the required information cannot be obtained by videolink, phone etc. We presume a visit by an officer of the relevant police force to the UK to take a statement from the individual, would also be considered but we cannot see it mentioned explicitly. Is this the case?

We would also be grateful if you could give an example of the type of scenario where this transfer provision might be needed.

The Committee noted the restriction in article 56 to prevent the UK from prosecuting or detaining a transferred EU person in relation to any other matter, they can only be questioned in relation to a matter specified in the EIO. We could not find an equivalent limitation for a UK prisoner being transferred to somewhere in the EU and would be grateful if you could point to that provision.

The Committee's greatest concern was about how the term "temporary" is defined in these circumstances. In contrast to section H3 of the form, which allows for the transfer of an item of evidence to be time limited, we could see no section on the form that allows for a set period to be specified for the return of a prisoner. The Committee is concerned that if a prisoner is transferred there is no apparent guarantee that we will get him back. What is to prevent the receiving country detaining him indefinitely?

The Committee also asked, if a UK prisoner is transferred to country A under an EIO could that State then send him to country B in response to another EIO? Or is there a specific requirement in the Regulation that the prisoner must first be "returned to sender" and country B may only send an EIO to the first country (in this case the UK)?

We would be grateful to receive your clarification on these points by Friday 4 August.

**19 July 2017**

## APPENDIX 2: DRAFT RENEWABLES OBLIGATION (AMENDMENT) (ENERGY INTENSIVE INDUSTRIES) ORDER 2017

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### Additional Information from the Department for Business, Energy and Industrial Strategy (BEIS)

*Q1: Is BEIS seeking state aid clearance to extend the Renewables Obligation (RO) exemption to direct competitors to the Energy Intensive Industries (EIIs) that will benefit from the RO exemption?*

A1: BEIS notified the European Commission of a proposal to provide State aid to direct competitors in December 2015 and officials have had a number of discussions with Commission officials regarding the notification. However, we currently do not have Commission approval for the approach set out in the proposal. We are therefore considering options that may be available to us within the scope of the 2014 environmental and energy State aid guidelines.

*Q2: If so, when will this issue be resolved?*

A2: Resolving the issue depends on appraisal of alternative options, which may lead to a revision of our State aid notification and further discussions with the European Commission to obtain State aid approval.

*Q3: If not, what is BEIS' view of the impact of the proposed RO exemption on the competitive position of non-eligible direct competitors to the EIIs?*

A3: We recognise that the Government's business level test may lead to intra-sectoral competitive distortions where one company qualifies for aid, but its direct competitor does not and we submitted a State aid notification to the Commission with a proposal to provide state aid to direct competitors in December 2015. As mentioned in the answer to question one, we are considering options within the scope of the 2014 environmental and energy State aid guidelines.

*Q4: What representations has BEIS received from the latter?*

A4: BEIS has received representations from, in particular, the trade associations and/or companies in the glass, ceramics and cement sectors. They call for a widening of eligibility to address competitive distortions within their respective sectors.

*Q5: BEIS proposes to switch from a compensation scheme to an exemption. Why has BEIS decided on this change so soon after the compensation scheme was introduced? Was an exemption approach not considered in January 2016 and, if it was, why was it not implemented then?*

A5: Budget 2014 announced that "The government intends to compensate energy intensive industries for higher electricity prices resulting from the Renewables Obligation and small scale Feed-in Tariffs'. The compensation schemes were then introduced in January 2016. The Autumn Statement 2015 announced that "The government will provide an exemption for Energy Intensive Industries, including the steel industry, from the policy costs of the Renewables Obligation and Feed-in Tariffs'.

The Government believes that the exemption scheme provides additional benefits to EIIs of increased certainty, compared with a compensation scheme, and real time support provided to EIIs by being exempt from the costs of the RO. An exemption is not contingent upon departmental budgets which can fluctuate. This increased certainty, in turn, can help maintain competitiveness of EIIs in two ways. Firstly, as EIIs will be supported in real time this frees up working capital which can be deployed elsewhere. Secondly, the EII may be able to raise or service debt at a lesser cost while maintaining their target debt service coverage ratios. This may have wider beneficial impacts on output, investment and employment decisions. Moreover, this may also reduce the risks of investment and carbon leakage.

**27 July 2017**

## APPENDIX 3: RECREATIONAL CRAFT REGULATIONS 2017 (SI 2017/737)

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### Additional Information from Department for Business, Energy and Industrial Strategy (BEIS)

*Q1: In the Impact Assessment, you explain that the UK failed to transpose the relevant EU Directive by the deadline of 18 January 2016. Given that SI 2017/737 comes into force only on 3 August 2017, this suggests an 18-month delay in transposition. Why did the UK fail to meet the deadline of 18 January 2016?*

A1: The primary reason for the delay in meeting the deadline of 18 January 2016 was the need to ensure that the domestic penalties would be effective, dissuasive and proportionate. Lengthy consideration was given to the options for penalties and to ensure the right balance between criminal and civil sanctions.

*Q2: Why has it taken a further 18 months to achieve transposition?*

A2: In part this was due to further discussions on an appropriate sanctions regime, which led to several redrafts. In part it was due to the consultation being held back, first by the purdah period for the referendum in June last year, and again, by the purdah period for the Election in May this year.

*Q3: What steps has the Commission taken against the UK as a result of this delay?*

A3: The Commission issued a first letter on the potential for infraction due to non-transposition on 23 March 2016. We responded to this in May 2016 stating our intention to transpose the Directive and comply with the UK's obligations. The Commission issued a Reasoned Opinion letter on 17 May this year regarding the UK's failure to transpose the Directive within the deadline. The UK responded to the Reasoned Opinion on 14 July informing the Commission that we had laid UK Regulations to transpose the Directive in Parliament on 13 July.

*Q4: In the Explanatory Memorandum, you refer to two consultations carried out by BIS / BEIS:*

- *when were these held (i.e., from what date to what date)?*
- *why were there two consultations?*

A4: The first consultation was on the draft EU Directive which was used to inform the negotiating position regarding the wishes of stakeholders. This ran from 11 November 2011 until 11 February 2012. The second was on the draft UK Regulations and was open between 8 December 2016 and 22 January 2017. Consultation was required to give stakeholders an opportunity to comment on whether we had correctly transposed the Directive, dealt with UK enforcement arrangements adequately and that our Impact Assessment was fit for purpose.

**28 July 2017**



## APPENDIX 4: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 5 September 2017, a Member declared the following interest:

### **Draft Banking Act 2009 (Service Providers to Payment Systems) Order 2017**

Lord Janvrin

*Senior Adviser, HSBC Private Bank (UK) Ltd*

### **Attendance:**

The meeting was attended by Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Lord Sherbourne of Didsbury, Lord Trefgarne and Baroness Watkins of Tavistock.

