

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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39th Report of Session 2017–19

**Proposed Negative Statutory Instruments  
under the European Union (Withdrawal)  
Act 2018**

Includes Recommendations on the following:  
Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2018  
Trade Barriers (Revocation) (EU Exit) Regulations 2018

**Draft Child Support (Miscellaneous  
Amendments) Regulations 2018**

Includes 2 Information Paragraphs on 4 Instruments

**Report on sifting “proposed negative  
instruments” – Government response**

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Ordered to be printed 4 September 2018 and published 6 September 2018

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Published by the Authority of the House of Lords

### *Secondary Legislation Scrutiny Committee*

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, 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 the grounds specified in the terms of reference.

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*

Rt Hon. Lord Chartres	Lord Goddard of Stockport	Baroness O'Loan
Rt Hon. Lord Cunningham of Felling	Lord Haskel	Lord Sherbourne of Didsbury
Lord Faulkner of Worcester	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne (Chairman)
Baroness Finn	Lord Kirkwood of Kirkhope	

### *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 <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>

### *Committee Staff*

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

### *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 [hlseclegscrutiny@parliament.uk](mailto:hlseclegscrutiny@parliament.uk).

# Thirty Ninth Report

## PROPOSED NEGATIVE STATUTORY INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

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### Instruments recommended for upgrade to the affirmative resolution procedure

#### *Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2018*

*Date laid: 25 July 2018*

*Sifting period ends: 11 October 2018*

1. Under existing legislation, there is a set number of designated days each year on which the Union flag must be flown on specified government buildings in Northern Ireland. On Europe Day, which falls on 9 May, there is currently a requirement to fly the Union flag and, where a building has two flagpoles, the European flag. This Proposed Negative instrument, laid by the Northern Ireland Office, seeks to remove the existing legal requirement to fly any flag on 9 May when the United Kingdom withdraws from the European Union. **Flag flying is a controversial issue in Northern Ireland and given the political and legal sensitivity of this matter we believe the House would expect to debate it. We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

#### *Trade Barriers (Revocation) (EU Exit) Regulations 2018*

*Date laid: 27 July 2018*

*Sifting period ends: 11 October 2018*

2. This Proposed Negative instrument revokes the EU Trade Barriers Regulation 2015/1843 (“the TBR”) which established a statutory procedure for the European Commission to examine concerns about trade barriers in non-EU (“third”) countries. Under the TBR, businesses, trade associations and Member States can present a complaint to the Commission with evidence of the trade barrier. Where a trade barrier is deemed to have a significant impact on the EU, the Commission is tasked with attempting to resolve the barrier. The Department for International Trade (DIT) explains that the TBR has been used infrequently; since 1996 only 24 TBR cases have been investigated by the Commission. In 2017, 70 new barriers were raised with the Commission and only one was raised as a result of the TBR. In the EU, the vast majority of trade barriers are raised via the Market Access Advisory Committee (a Commission-chaired committee attended by Member States and European-level trade associations).
3. DIT says that the TBR will no longer apply to UK stakeholders after the UK’s exit from the EU and will be superseded by new UK market access processes. The policy intention is to provide a clear, non-statutory route for UK businesses to report market access barriers they encounter. In the sifting statement in Part 2 of the Annex to the Explanatory Memorandum (EM), the Minister of State for Trade Policy proposes that the instrument should

be subject to negative resolution because it does not meet any of the criteria for affirmative resolution set out in section 8 of the EU (Withdrawal) Act 2018.

4. We are not persuaded by the Minister's statement. As we made clear in our report on sifting "proposed negative instruments" under the Withdrawal Act,<sup>1</sup> we intend to apply the overarching test of whether the subject matter of an instrument and the scope of any policy change effected by it is of such significance that the House would expect to debate it. **We think that the House would expect to debate this instrument, both because it bears upon a subject matter - market access barriers in international trade - which is of particular salience, and because the policy intention is to close off a statutory procedure for tackling such barriers and to provide only a non-statutory approach.** In the EM, DIT sets out the features of a non-statutory procedure, but, while describing the limitations of the TBR, DIT does not explicitly address the possibility that, after the UK leaves the EU, domestic arrangements could include a statutory procedure alongside non-statutory arrangements. **We recommend that this instrument should be subject to the affirmative resolution procedure.**

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1 [37th Report](#), Session 2017–19 (HL Paper 174).

**Proposed Negative Statutory Instruments about which no recommendation to upgrade is made**

Airport Charges (Amendment) (EU Exit) Regulations 2018  
Airports (Groundhandling) (Amendment) (EU Exit) Regulations 2018  
Civil Aviation Act 1982 (Amendment) (EU Exit) Regulations 2018  
Computer Reservation Systems (Amendment) (EU Exit) Regulations 2018  
Consumer Credit (Amendment) (EU Exit) Regulations 2018  
Design Right (Semiconductor Topographies) (Amendment) (EU Exit) Regulations 2018  
European Communities (Designation Orders) (Revocation) (EU Exit) Regulations 2018  
European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018  
European Research Infrastructure Consortium (Amendment) (EU Exit) Regulations 2018  
European Union (Definition of Treaties Orders) (Revocation) (EU Exit) Regulations 2018  
Feed-in Tariffs and Contracts for Difference (Amendment) (EU Exit) Regulations 2018  
Freedom of Information Act 2000 (Amendment) (EU Exit) Regulations 2018  
Groceries Code Adjudicator Act 2013, Small Business, Enterprise and Employment Act 2015 and Enterprise Act 2016 (Amendment) (EU Exit) Regulations 2018  
Postal and Parcel Services (Amendment etc.) (EU Exit) Regulations 2018  
Vehicle Drivers (Certificates of Professional Competence) (Amendment) (EU Exit) Regulations 2018

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft Child Support (Miscellaneous Amendment) Regulations 2018

*Date laid: 12 July 2018*

*Parliamentary procedure: affirmative*

*Summary: This instrument, laid by the Department for Work and Pensions (DWP), proposes to introduce a number of changes to child maintenance legislation. These include: including major assets in the calculation of child maintenance liabilities; adding to the range of collection and enforcement powers to include deductions from joint accounts and the confiscation of the payer's passport; and mechanisms to write off certain debts that built up under the 1993 and 2003 Child Support Agency schemes which are now being closed down. We have received four submissions which are published in full on the Committee's website with DWP's response.<sup>2</sup> The submissions express a wide range of, sometimes contradictory, reactions to the proposed legislation but seem consistent in their view that it is premature and that further work is needed to get the detail right. We take the view that the enforcement measures proposed are likely to have very little effect in improving the current 57% compliance rate for Non-Resident Parents which has been roughly static for the past two years.*

**These draft 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.**

5. This affirmative instrument has been laid by the Department for Work and Pensions (DWP) under the Child Support Act 1991 to introduce a number of changes to child maintenance legislation. These include: including major assets in the calculation of child maintenance liabilities; adding to the range of collection and enforcement powers to include deductions from joint accounts and the confiscation of the payer's passport; and mechanisms to write off certain debts that built up under the 1993 and 2003 Child Support Agency schemes which are now being closed down. It will also introduce powers to write off debt that has been sequestered in Scotland. The instrument is accompanied by an Explanatory Memorandum (EM) and a partial Impact Assessment (IA).
6. The instrument has resulted in four submissions being sent to the Committee from Ms Joanna Archer, Dr CM Davies, Families Need Fathers and Gingerbread. They are published in full on the Committee's website. They express a wide range of, sometimes contradictory, views on the proposed legislation but seem consistent in their view that it is premature and that further work is needed to get the detail right. The DWP has responded to the key points raised in the submissions, some of which go beyond the content of this specific instrument. That document is also published in full on our website.

#### *Child Maintenance calculation amendments*

7. The existing system is being amended to address the concerns of stakeholders that a small number of wealthy Non-Resident Parents (NRP) are currently

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2 See: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> [accessed 5 September 2018].

able to manipulate their assets to artificially lower or avoid their child maintenance liability. In her submission, Ms Archer mentions that her former spouse has bought a yacht but cannot be made to pay the weekly cash sum due to her.

8. The change enables a notional income at a set percentage to be inferred from assets individually worth more than £31,250. Assets include shares, bonds, bullion and virtual currency. However, Gingerbread states that it is not clear from the wording of legislation whether this provision is limited to UK assets and whether penalty could be avoided by moving assets offshore.

9. The submission from Fathers Need Families expresses concern that the calculation of assets is biased towards the parent with care:

“... this legislation proposes to extend the value of future assessments to include unearned income of paying parents, without taking any account of income earned or otherwise received by the receiving parent... receiving parents experience a measure of financial ‘protection’ in so far as they receive child-related benefits, housing support, etc, which are reviewed regularly and ... their state benefits are unaffected by received Child Maintenance payments, regardless of whether these are £0 or £1,000 a week.”

10. DWP’s response confirmed this approach:

“We believe both parents have a responsibility to contribute financially towards the cost of bringing up their child, including their food and clothing, as well as contributing towards the associated costs of running a home. While this responsibility is shared, the purpose of a statutory child maintenance scheme is to calculate and, where necessary, arrange collection of a legal liability from the person named as the Paying Parent. The calculation represents an amount of money that is broadly in line with the amount that a Paying Parent would spend on the child if they were still living with them, irrespective of the income or assets of the Receiving Parent.”

#### *Deductions from joint and unlimited partnership accounts*

11. To close down another avenue to avoidance, the changes enable the Secretary of State to make regular or lump sum deductions from joint and unlimited partnership accounts in which the NRP has an interest. The other account holders will be informed of the intention and given a set number of days to make representations. Ms Archer expressed concern that this notification period would allow the NRP to move their assets elsewhere but one of the provisions of the initial Interim Order that the instrument introduces includes an instruction to the deposit-taker not to do anything that would reduce the amount standing to the credit of the account below the amount specified in the order (regulation 3(13)).

#### *Passports*

12. The instrument also commences a power set out in sections 39B-G of the Child Support Act 1991 enabling the Secretary of State to apply to the court for an order to disqualify an NRP who is wilfully refusing to pay what is owed from holding or obtaining a UK passport for up to two years.

13. The views on this provision in the submissions were mixed—while welcoming stronger enforcement measures, Gingerbread wondered how frequently they would be used, and suggested there should be greater focus on common enforcement powers. Dr Davies questioned whether the withdrawal of someone’s passport was consistent with the European Convention on Human Rights. DWP responded that the decision would be for the courts to exercise this power in a proportionate manner:

“This measure will be used as a last resort, where all other enforcement actions have been found to be inappropriate or ineffective. We will apply to the court to disqualify a Paying Parent from holding or obtaining a UK passport where they have consistently failed to pay, and demonstrated wilful refusal or culpable neglect to pay their maintenance, and we have exhausted all our other enforcement options.”

*Historic debt under Child Support Agency schemes*

14. The DWP currently operates three schemes. It is the DWP’s intention to shut down in 2018 the two legacy schemes from the Child Support Agency (CSA), known as the 1993 and the 2003 schemes. As part of that process these Regulations introduce criteria to enable DWP to write off certain debts which are too small or too old to collect cost effectively. Again the submissions provide a mixed response to this proposal.
15. We found this section of the EM rather weak in setting out the rationale for the policy choices made and the likely policy effects and DWP has provided a further summary:

**“Write-off measures**

Our existing write-off powers are limited and do not allow us to effectively address the £3.7 billion arrears accumulated under the CSA. Alternative options that don’t involve legislative change represent significant costs and legal risks. In addition they do nothing to increase the amount of money flowing to children, and create prolonged uncertainty for both parents as to what, if any, further enforcement steps may be taken and when this might be.

Some of the options we have considered include:

- Maintaining the historic debt on CSA IT systems. This would incur significant technology costs of around £25 to £30 million per year—an annual cost potentially lasting for decades.
- Moving all the debt to the CMS [Child Maintenance Service] system. This would cost at least £230 million, requiring a check of the debt balance for each case before it is moved to ensure it is correct.
- Neither of these options would enable us to attempt collection of any of the debt, as they would adversely affect our funding position, leaving no resources to do anything but maintain the cases as archive records. In short, this means that not writing off would cost the taxpayer more money, and be worse for parents.

### Write off approach

- Our proposed approach will end the uncertainty for families about how the historic arrears that built up on CSA cases will be treated in future, as the final CSA liabilities are brought to an end during 2018. These regulations will allow:
  - Representations to be sought from clients in cases with non-paying CSA debt about whether they would like a last attempt to collect the debt, where the case started on or before 1 November 2008 and the debt is more than £1000, and where the case started after 1 November 2008 and the debt is more than £500. Where no representations are received, or collection of the debt is not possible, the debt may be written off.
  - CSA debt in non-paying cases to be written off without seeking representations from clients, where the case started on or before 1 November 2008 and the debt is less than £1000, and where the case started after 1 November 2008 and the debt is less than £500.
  - CSA debt under £65 in non-paying cases to be written off without notice to the parties.
- Some CSA cases with debt have already been closed as a part of the ongoing CSA case closure programme, with the debt transferred to the CMS IT systems. For the purpose of this process then the cases will be treated as if they started after 1 November 2008.
- Enable debt subject to sequestration (Scottish insolvency) to be written off when the sequestration expires. This technical amendment will apply to both CSA and CMS cases, as this debt becomes legally uncollectable due to the way sequestration operates.

### Policy rationale—debt below threshold

It is not cost effective to attempt collection on individual debts of less than £500 (or debts of less than £1000 where the case is ten or more years old, as older debt is harder to recover) so we propose to write off all in-scope debt below this amount. It costs on average between £500 and £1000 to investigate and take action on these cases. This includes some of the cases going forward for collection activity in our arrears teams and some cases being put through legal enforcement processes. We feel that the thresholds based on age of case and amount of debt provide a reasonable cut off point to ensure that we do not pursue cases at disproportionate cost to the taxpayer.”

16. A partial IA is included for the provisions that enable Deduction Orders from joint and unlimited partnership business accounts. The Committee was surprised that the measures which have the potential to write off billions of pounds worth of debt, including debts owed to the Secretary of State, were not also analysed more fully in an Impact Assessment. Nor is any indication given of the number of cases which will be subject to this termination process. **While we fully acknowledge the DWP’s need to balance the costs and the benefits of the system to the taxpayer as well as the parents, we would expect to have been presented with a more cogent explanation for the decisions about the various thresholds that the Regulations apply.**

*Conclusion*

17. We note the figure quoted by a number of sources that the current rate of compliance of NRS using the current Child Maintenance Service is 57% and has been roughly static for the past two years. While the stronger enforcement measures set out in this instrument sound impressive, DWP's own estimate is that Deduction Orders on joint and business accounts are only likely to successfully obtain the money owed in about 200 cases per year. We question whether this is going to make an appreciable difference to that overall compliance statistic.
18. Although the EM makes no reference to it, it would appear that these measures are largely in response to the Commons' Works and Pensions Committee report on the *Child Maintenance Service* published in May 2017.<sup>3</sup> Amongst other conclusions that Report described DWP as tentative in deploying its current enforcement powers and recommended "a stronger approach to enforcement, comparable with the Government's approach to other areas of financial liability such as benefit fraud or tax." We note that in a letter to the Minister, the DWP Committee described the Government's initial response to their recommendations as disappointing.<sup>4</sup> We await with interest the DWP Committee's reaction to the current legislation.
19. The submissions we have received go beyond the scope of this instrument and call for a major review of how assessments are calculated and the way in which Child Maintenance payments interact with Universal Credit. In its supplementary material DWP have acknowledged that there is a problem, but "believe it applies only in limited scenarios to a very small proportion of the child maintenance caseload. We are currently performing analysis to confirm the scale of this complex issue, which in turn will inform our approach to addressing it. We have committed to sharing the results with interested stakeholders once completed."

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3 Work and Pensions Committee, [Child Maintenance Service](#) (Fourteenth Report, Session 2016–17, HC Paper 762).

4 Work and Pensions Committee, [Letter to Caroline Dinéage MP re. Child Maintenance Inquiry 18 September 2017](#) (Session 2017–19).

## INSTRUMENTS OF INTEREST

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### **Draft Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018**

#### **CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018 (SI 2018/841)**

20. These instruments change the reporting requirements of companies in relation to emissions, energy consumption and energy efficiency and provide for the early closure of one of the UK's emissions trading schemes. The Department for Business, Energy and Industrial Strategy (BEIS) explains that both measures are part of a package of changes that were announced in the 2016 Budget, with the aim of simplifying what stakeholders view as an overly complex tax and policy landscape. The draft Regulations introduce new requirements for companies from 1 April 2019 to disclose information about their emissions, energy use and actions on energy efficiency in annual directors' reports or energy and carbon reports. These new requirements will apply to both quoted companies and large unquoted companies. BEIS says that the aim is to deliver greater transparency and consistency in company reporting in this area, and to ensure that reporting on emissions continues following the early closure of the Carbon Reduction Commitment (CRC) Energy Efficiency scheme, as provided for in SI 2018/841. This mandatory trading and reporting scheme was first launched in April 2010 and aims to incentivise energy efficiency and cut emissions in large energy users in both the public and private sector. The scheme was scheduled to operate until 2043 but BEIS explains that it has decided to close it early in response to feedback from stakeholders who regard the scheme as overly complex and difficult to administer. 2018–19 will be the last compliance year for which participants will be required to report their energy use and surrender CRC allowances to cover their emissions. BEIS says that lost revenue from the early closure of the scheme will be recovered by increasing the main rates of the Climate Change Levy, a tax on energy delivered to non-domestic users in the UK, from April 2019. This tax increase has already been put into statute.

### **Statement of Changes in Immigration Rules (Cm 9675)**

#### **Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018 (SI 2018/875)**

21. These instruments<sup>5</sup> set up the key features of the EU Settlement Scheme announced in the Government's Statement of Intent on the EU Settlement Scheme.<sup>6</sup> SI 2018/875 sets out the fees for the process, which will not apply in many cases and, where they do apply, will not exceed the cost of a passport (currently £75.50). The Statement of Changes in Immigration Rules introduces the new Appendix EU to the Immigration Rules to provide a basis on which resident EU citizens and their family members, and the family members of certain British citizens, can apply for leave to remain in the UK beyond the end of the planned post-exit implementation period on 31 December 2020. The instrument provides a self-contained set of Immigration Rules for the EU Settlement Scheme, which will, for

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5 See also the affirmative instrument on the Immigration (Provision of Physical Data) (Amendment) (EU Exit) Regulations 2018 mentioned in our [36th Report](#), Session 2017–19 (HL Paper 173).

6 Home Office, EU Settlement Scheme: Statement of Intent. June 2018: <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent> [accessed 5 September 2018].

the purposes of applications under Appendix EU, displace any provision made elsewhere in the Immigration Rules which would otherwise apply. An initial test phase of implementation will begin on 28 August 2018 and will be limited to volunteers from certain specified institutions.<sup>7</sup> This provides a group of about 4,000 potential applicants and will enable the Home Office to test the relevant processes and ensure that they work effectively before the scheme is opened more widely. Further legislation will be required to roll out subsequent phases.

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7 (i) A student enrolled for study at, or a person on the payroll of, one of the following institutions: Liverpool Hope University; Liverpool John Moores University; or The University of Liverpool; or (ii) A person on the payroll of one of the following institutions: Aintree University Hospital NHS Foundation Trust; Blackpool Teaching Hospitals NHS Foundation Trust; Countess of Chester Hospital NHS Foundation Trust; East Lancashire Hospitals NHS Trust; Lancashire Teaching Hospitals NHS Foundation Trust; Liverpool Heart and Chest Hospital NHS Foundation Trust; Liverpool Women's NHS Foundation Trust; Southport and Ormskirk Hospital NHS Trust; The Royal Liverpool and Broadgreen University Hospitals NHS Trust; The Walton Centre NHS Foundation Trust; Warrington and Halton Hospitals NHS Foundation Trust; or Wirral University Teaching Hospital NHS Foundation Trust.

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

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

Armed Forces (Specified Aviation and Marine Functions) Regulations 2018

Building Societies Legislation (Amendment) (EU Exit) Regulations 2018

Cambridgeshire and Peterborough Combined Authority (Adult Education Functions) Order 2018

Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Civil Aviation (Insurance) (Amendment) (EU Exit) Regulations 2018

Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018

Electricity and Gas (Energy Company Obligation) Order 2018

European Union (Definition of Treaties) (Economic Partnership Agreements and Trade Agreement) (Eastern and Southern Africa States, Southern African Development Community States, Ghana and Ecuador) Order 2018

European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018

Greater Manchester Combined Authority (Adult Education Functions) Order 2018

Liverpool City Region Combined Authority (Adult Education Functions) Order 2018

Tees Valley Combined Authority (Adult Education Functions) Order 2018

West Midlands Combined Authority (Adult Education Functions) Order 2018

West of England Combined Authority (Adult Education Functions) Order 2018

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

Dartford (Electoral Changes) Order 2018

North Devon (Electoral Changes) Order 2018

Redcar and Cleveland (Electoral Changes) Order 2018

### **Instruments subject to annulment**

Cm 9664      Protocol of Accession to the Trade Agreement between the European Union and its Member States and Colombia and Peru, to take account of the accession of Ecuador

- Cm 9665 Interim Agreement establishing a Framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, and the European Community and its Member States
- Cm 9675 Statement of Changes in Immigration Rules
- SI 2018/841 CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018
- SI 2018/849 Sea Fishing (Enforcement) Regulations 2018
- SI 2018/851 British Nationality (General) (Amendment) Regulations 2018
- SI 2018/869 Safety of Sports Grounds (Designation) (Amendment) Order 2018
- SI 2018/871 Export Control (Burma Sanctions) Order 2018
- SI 2018/872 Social Security (Scotland) Act 2018 (Consequential Modifications) Order 2018
- SI 2018/875 Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018
- SI 2018/894 Export Control (Burma Sanctions) (No.2) Order 2018
- SI 2018/901 Independent Educational Provision in England (Provision of Information) and Non-Maintained Special Schools (England) and Independent School Standards (Amendment) Regulations 2018
- SI 2018/910 Plant Health (England) (Amendment) (No. 3) Order 2018
- SI 2018/911 Non-Domestic Rating (Alteration of Lists, Appeals and Procedure) (England) (Amendment) Regulations 2018
- SI 2018/915 Home Loss Payments (Prescribed Amounts) (England) Regulations 2018
- SI 2018/930 Local Government (Structural Changes) (General) (Amendment) Regulations 2018
- SI 2018/932 Social Security (Treatment of Arrears of Benefit) Regulations 2018

## APPENDIX 1: SIFTING ‘PROPOSED NEGATIVE INSTRUMENTS’ LAID UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018— GOVERNMENT RESPONSE

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### Letter from Mr Chris Heaton-Harris, MP, Parliamentary Under Secretary of State for Exiting the European Union, to Lord Trefgarne, Chairman to the Secondary Legislation Scrutiny Committee

The Committee received a response from the government, in the form of a letter from Chris Heaton-Harris, MP, Parliamentary Under Secretary of State for Exiting the EU, on its 37th Report on ‘Sifting “proposed negative instruments” laid under the European Union (Withdrawal) Act 2018: criteria and working arrangements’.<sup>8</sup> This letter is published below:

Thank you to you and your committee for their consideration of how the new EU (Withdrawal) Act 2018 (EUWA) sifting mechanism for proposed negative SIs should work, and for the open and collaborative approach on the EUWA and the processes that flow from it.

Now the sifting role of your Committee has been agreed by the House, I would like to thank you for your 37th report of this session. It is important the SLSC and Government departments are clear on what to expect and what the process is, and this report very usefully highlights that matters which will be of most interest to the SLSC when carrying out its sifting function.

I note with interest that particular attention will be given to amendments to primary legislation or retained direct principal EU law where these amendments are deemed significant enough to warrant the affirmative procedure being applied. While amendments to primary legislation in themselves do not automatically trigger the affirmative procedure, it was always the Government’s intention that such amendments could mean the affirmative procedure being applied when coupled with other triggers.

I am grateful to you for bringing clarity to this point, and we will expect departments to be very clear in the Explanatory Memorandum on why the negative procedure has been chosen. The Explanatory Memorandum accompanying EUWA SIs will also set out what the law did before, what the changes are and what the law does after the changes.

The Government is committed to ensuring a smooth flow of SIs and will continue to work closely and constructively at official level in order to assist the committee staff. As you may have seen from my letter to the Chair of the Commons Procedure Committee<sup>9</sup>, I will be the point of contact for your committee, the Procedure Committee and the European Statutory Instruments Committee for any issues that you may have.

I am copying this letter to the Rt Hon Sir Patrick McLoughlin, chair of the Commons’ European Statutory Instruments Committee, the Leader of the House of Commons, and the Leader of the House of Lords.

**16 August 2018**

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<sup>8</sup> [37th Report](#), Session 2017–19 (HL Paper 174).

<sup>9</sup> Not published.

## **APPENDIX 2: INTERESTS AND ATTENDANCE**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 4 September 2018, Members declared no interests.

### **Attendance:**

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.