

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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46th Report of Session 2017–19

Drawn to the special attention of the House:  
**Draft European Union (Withdrawal)  
Act 2018 (Exit Day) (Amendment)  
Regulations 2019**

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### *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), Helen Gahir (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant), Ben Dunleavy (Committee Assistant) and Paul Bristow (Specialist Adviser).

### *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).

# Forty Sixth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019

*Date laid: 25 March 2019*

*Parliamentary procedure: affirmative*

*Decisions made by the European Council under Article 50(3) of the Treaty of Lisbon to alter the date of the UK's exit from the European Union can only operate for the purposes of EU law. These Regulations are necessary to change the date in UK domestic law. This is because section 20(1) of the European Union (Withdrawal) Act 2018 defines "exit day" as 29 March 2019. Many of the 500 or so statutory instruments that the Secondary Legislation Scrutiny Sub-Committees have considered recently, which prepare for the UK leaving the EU, come into operation "on exit day". This instrument therefore proposes to alter that date to either 12 April 2019 or 22 May 2019 depending on whether the House of Commons approves the negotiated withdrawal agreement. These Regulations will not alter the content of any of the "Brexit-related" instruments that have already been considered, but simply ensure that the provisions in them that are necessary to keep the UK statute book operational only come into effect at the point at which the UK's membership of the EU lapses.*

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

#### *Background*

1. The UK gave notice of its intention to withdraw from the EU two years ago under Article 50(2) of the Treaty of European Union (TEU). Under Article 50(3), "exit day" is either two years after notification or a longer period if agreed by the European Council and the Member State. The European Union (Withdrawal) Act 2018 ("the withdrawal Act") is premised on the UK leaving on 29 March 2019. In international law, this is no longer the case.
2. On 22 March 2019, the European Council adopted decision 2019/476 to extend the period provided for in Article 50(3), and the UK agreed. However, decisions made by the European Council under Article 50(3) to alter the date of the UK's exit from the EU only operate for the purposes of EU and international law, and not in UK domestic law.
3. Section 20(1) of the withdrawal Act defines "exit day" as 29 March 2019 at 11 pm GMT. Many of the 500 or so statutory instruments that the Secondary Legislation Scrutiny Sub-Committees have considered recently, that prepare for the UK leaving the EU, come into operation "on exit day". Regulations are necessary to change the date in UK domestic law. This instrument therefore proposes that "exit day" should be 22 May 2019, in the

event that the House of Commons approves the withdrawal agreement, or, if not, 12 April 2019, in line with the European Council's decision.

4. These Regulations will not alter the content of any of the "Brexit-related" instruments that have already been considered, but simply ensure that the provisions in them that are necessary to keep the UK statute book operational only come into effect at the point at which the UK's membership of the EU lapses.

*Format*

5. The withdrawal Act includes specific provision to enable changing the exit date: section 20(4) confers a power on a Minister of the Crown to amend the definition of "exit day" by draft affirmative procedure regulations so as "to ensure that the day and time specified in the definition are the day and time that the [EU] Treaties are to cease to apply to the United Kingdom".
6. As with all affirmative instruments, these Regulations must be debated by each House and then made by a Minister. The instrument must be made before 11 pm on 29 March 2019 if UK domestic law is to be in line with the UK agreement with the European Council. A letter from Lord Callanan, Minister of State for Exiting the European Union, setting out the Government's plan for debating the instrument is published at Appendix 1.

## **APPENDIX 1: DRAFT EUROPEAN UNION (WITHDRAWAL) ACT 2018 (EXIT DAY) (AMENDMENT) REGULATIONS 2019**

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### **Letter from Lord Callanan, Minister of State for Exiting the European Union, to the Rt Hon. the Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee**

On Thursday 14 March the House of Commons approved a motion noting that the Government would seek an extension of the Article 50 process with the European Union (EU). On Friday 22 March the EU and UK agreed to an extension until 22 May 2019 should Parliament approve the negotiated Withdrawal Agreement this week, or until 12 April 2019 if it does not approve the Withdrawal Agreement by 29 March.

Today, Monday 25 March, the Government has therefore laid a statutory instrument (SI) commensurate with the agreed extension to ensure the proper functioning of the domestic statute book and avoid a discrepancy between UK law and EU law. It amends the definition of “exit day” in section 20(1) of the EU (Withdrawal) Act 2018 from 29 March 2019 at 11 pm to 22 May 2019 at 11 pm if the negotiated Withdrawal Agreement has been approved by the House of Commons by 11 pm on 29 March 2019 or to 12 April 2019 at 11 pm if the negotiated Withdrawal Agreement has not been approved by the House of Commons by 11 pm on 29 March 2019.

Given the time critical nature of this legislation we recognise that it is unlikely that the Committee will be able to report on this SI in the normal manner. A motion will be tabled in the House of Lords to disapply its standing order 72 so that an approval motion for the SI can be moved later this week. Nevertheless, I stand ready to do everything possible to ensure the Committee can contribute fully to the debate.

The extension of Article 50 has been agreed with the EU, and is therefore legally binding as a matter of EU and international law. However, our domestic law currently operates on a departure from the EU of 29 March at 11 pm, in light of the definition of “exit day” in the EU (Withdrawal) Act 2018 and Schedule 1 of the Interpretation Act 1978, Schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, and section 44A of the Interpretation Act (Northern Ireland) Act 1954 (the Interpretation Acts). The extension of Article 50 therefore requires a redefinition of “exit day” to ensure the correct functioning of the domestic statute book.

To deliver this change, the Government will use the power provided for this purpose in section 20(4) of the EU (Withdrawal) Act. As provided for in the Act, this SI will be made under the draft affirmative procedure. Once the SI comes into force, the definition of “exit day” will be updated in the EU (Withdrawal) Act and across the statute book as a result of the Interpretation Acts.

To avoid a conflict between UK and EU law it is essential that this SI is made before 11 pm on 29 March so that it may come into force ahead of that time. This will align “exit day” with the new day and time on which the EU Treaties cease to apply to the United Kingdom.

The Government remains committed to providing the Committee with the information necessary to fulfil its functions. If you think it would be useful, I am

happy to offer all members of the Committee, and Committee legal advisors, a briefing from officials.

**25 March 2019**

## 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 26 March 2019, Members declared no interests.

### **Attendance:**

The meeting was attended by Lord Cunningham of Felling, Lord Faulkner of Worcester, Lord Goddard of Stockport, Lord Haskel, Baroness O'Loan and Lord Trefgarne.