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

Includes information paragraphs on:
- Draft Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2019
- Proxy Advisors (Shareholders’ Rights) Regulations 2019
- Meteorological Office Trading Fund (Maximum Borrowing) Order 2019
- Cyber-Attacks (Asset-Freezing) Regulations 2019
- Education (Pupil Information) (England) (Amendment) Regulations 2019

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HL Paper 377
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.
Fifty Second Report

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

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

- Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
- Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019
INSTRUMENTS OF INTEREST


1. The purpose of these draft Regulations is to prohibit the sale of puppies and kittens aged under six months if they were not bred by the seller. The Department for Environment, Food and Rural Affairs (Defra) explains that the instrument seeks to strengthen protections under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. Under the current rules, people may purchase puppies and kittens only from a licensed third-party seller, directly from a breeder or from a rescue and rehoming organisation. This instrument would require those who have a pet selling licence also to breed the puppies or kittens they advertise for sale, in effect banning, from April 2020, the sale of puppies and kittens by pet shops or third parties which do not breed them. Defra explains that the proposals are being introduced following public consultation1 and an e-petition2 which highlighted concerns about the welfare of puppies and kittens sold by third parties, and widespread public support for prohibiting such sales. According to Defra, there are currently some 63 pet shop licence-holders selling puppies and 129 licence-holders selling kittens in England. With regard to enforcing the new rules, the Department told us that:

“Local authorities have to inspect businesses before they issue or renew licences, and in addition they have powers to inspect at other times, for example when they need to act on intelligence or reports of malpractice by licensed pet sellers. [T]he local authority can use the enforcement powers and procedure … to suspend, vary or revoke a licence. [I]t may charge such fees as it considers necessary for the reasonable anticipated costs of consideration of a licence holder’s compliance with the regulations and the licence conditions to which the licence holder is subject. [L]ocal authorities can also raise resource through fees for the reasonable anticipated costs of enforcement against unlicensed operators who should be licensed. It will be for local authorities to decide on their enforcement and inspection policy.”

Draft Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2019

2. According to the Department for Business, Energy and Industrial Strategy (BEIS), the main purpose of this instrument is to enable the Secretary of State, and the Office of Product Safety and Standards (OPSS)3 on their behalf, to investigate claims about unsafe consumer products. Under the current arrangements, investigatory powers, as listed in Schedule 5 to the Consumer Rights Act 2015, apply to enforcement authorities under the General Product Safety Regulations 2005 (“the 2005 Regulations”), including local authority

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2 The e-petition, known as “Lucy’s law”, received 148,248 signatures and is named after a Cavalier King Charles Spaniel who died in 2016 after having been treated poorly as a puppy.

Trading Standards and district councils in Northern Ireland, but not the Secretary of State or the OPSS. The 2005 Regulations cover all products that are not subject to sector-specific product safety legislation. The changes would allow the OPSS, on behalf of the Secretary of State, to investigate claims of unsafe products where there is a national incident and where local authority Trading Standards, or other relevant enforcement authorities, lack the resources or expertise to carry out an investigation. BEIS expects the investigatory powers to be used infrequently, as Trading Standards departments deal with local incidents and there are few incidents requiring a national response. BEIS explains that the instrument builds on the work of the OPSS’s predecessor organisation, the Regulatory Delivery Directorate, in response to the Grenfell Tower fire, and the OPSS’s current review of Whirlpool’s actions in relation to a modification programme for tumbler dryers.\(^4\) The instrument also proposes to ensure that both the Secretary of State and the relevant market surveillance authorities are able to use the same set of investigatory powers in enforcing the regulation of gas appliances and personal protective equipment.

**Proxy Advisors (Shareholders’ Rights) Regulations 2019 (SI 2019/926)**

3. Proxy advisors offer voting services and advice to shareholders in publicly listed companies. However, there have been concerns about a possible lack of transparency in the way proxy advisors deliver their services, and the resulting risk of low-quality services. Article 3j of the revised EU Shareholder Rights Directive\(^5\) places requirements on proxy advisors to make certain disclosures about the way in which they conduct their business, and this instrument transposes those provisions into UK law. These Regulations, laid by HM Treasury, place disclosure obligations on proxy advisors with regard to how they conduct their business, including whether they apply a code of conduct, how they produce their advice and voting recommendations, and how they manage conflicts of interests, with the aim to increase transparency and assist investors and asset managers to make informed decisions. This instrument makes the Financial Conduct Authority responsible for enforcing the requirements in Article 3j and gives it powers to sanction breaches of the obligations in the instrument through public censure and/or financial penalties.

**Meteorological Office Trading Fund (Maximum Borrowing) Order 2019 (SI 2019/927)**

4. The purpose of this instrument is to increase the maximum amount that the Meteorological Office (Met Office) may borrow from the Department for Business, Energy and Industrial Strategy (BEIS) from £200 million to £300 million. BEIS explains that the Met Office is responsible, on behalf of the Government, for subscriptions to international satellite programmes, and that the costs of these subscriptions vary during the lifetime of the programmes, including due to currency exchange fluctuations. According to BEIS, substantial upfront investment is needed before the launch and operation of satellites and the most efficient way for the Met Office to manage these payments is to borrow funds from BEIS. The Department says that these loans are repaid over 10 years from income the Met Office

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derives from contracts with customers which subscribe to its services once the satellites become operational. BEIS explains that the increase in the borrowing cap is needed to fund the upfront investment in two new EUMETSAT (European Organisation for the Exploitation of Meteorological Satellites) satellite programmes. EUMETSAT is independent of the EU; it is an intergovernmental organisation that was founded in 1986 and supplies weather and climate-related satellite data, images and products to the national meteorological services of its member states and other users worldwide. BEIS says that this will be the first increase in the borrowing cap since the Met Office was established as a Government Trading Body in 1996. The original Explanatory Memorandum (EM), laid before Parliament alongside the instrument did not include any information on the costs of the two new satellite programmes, the actual borrowing requirements, or the time needed to re-pay the loans to BEIS. We asked the Department to revise the EM to include this information and welcome that an improved EM has been made available.


5. In May 2013, the then Home Secretary created the Daniel Morgan Independent Panel (“the Panel”) to investigate the circumstances of the unsolved murder of Daniel Morgan, its background and the handling of the case over the period since 1987. The Metropolitan Police has admitted that police corruption was a “debilitating factor” in the original investigation. The Panel believes that the Criminal Cases Review Commission (CCRC) holds information that is relevant to its investigation but disclosure of it requires an Order made by the Secretary of State. This is the first such Order. The Order is permissive: it is left to the CCRC to decide whether to disclose the information or whether to redact any sensitive or privileged documents. The Panel itself has a clear protocol on the disclosure of documents,6 which states at paragraph 6(b) that it is expected that the organisation providing the information will work with the solicitor to the Panel to identify a mechanism by which unredacted disclosure of the material in question may be made. The Committee took the view that these were important issues and the House may wish to monitor developments.

**Cyber-Attacks (Asset-Freezing) Regulations 2019 (SI 2019/956)**

6. An EU Council Regulation,7 which came into force on 17 May 2019, establishes a new EU sanctions regime to deter and respond to cyber-attacks threatening the EU or its Member States. It introduces a framework for targeted restrictive measures, and an Annex to the Council Regulation will contain a list of designated persons to whom the new financial sanctions provisions apply. These include the freezing of funds and economic resources of persons responsible for, or otherwise providing financial, technical or material support to cyber-attacks or attempted cyber-attacks. These Regulations, laid by HM Treasury, put enforcement provisions in place for breaches of the financial sanctions contained in the Council Regulation and come into force on 11 June 2019.

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7 *Council Regulation (EU) 2019/796*. 

7. In the accompanying Explanatory Memorandum (EM), the Department for Education (DfE) states that these Regulations make changes relating to the information which head teachers in maintained primary schools are required to include in the common transfer file (CTF), the purpose of which is to record information for transmission to a new school in the event that a pupil were to move school.\(^8\) The Department states that there is an existing requirement for schools and local authorities to use the CTF to send pupil data when a pupil transfers from one school to another, and that includes information about the pupil’s achievements to date. The Education (Pupil Information) (England) Regulations 2005 (“the 2005 Regulations”) require the CTF to include the results of national curriculum assessments taken by pupils at the end of any key stage completed. The Department states that it is amending the 2005 Regulations to add a requirement for the CTF to include the results of assessments which are taken at times other than the end of a key stage. The EM states that, in practice, this means that the CTF will include the results of the phonics screening check, which takes place during the first year of key stage one, and the multiplication tables check, which takes place during the second year of key stage two.\(^9\) The Department states that the purpose of this change is to ensure that teachers working in schools receiving pupils have access to important information that will help them to support pupils’ education in the future.\(^10\) The EM notes that consultation was carried out, including that the Department consulted with the Information Commissioner’s Office as required under Article 36(4) of the General Data Protection Regulation.\(^11\) Additional information provided by DfE (published at Appendix 1) notes that:

“The effect of the amendments made by these Regulations is to require the results of any statutory national curriculum assessment, as defined in the relevant Regulations, to be included in the CTF. This includes existing national curriculum assessments and will capture any new national curriculum assessments that may be introduced in the future. The introduction of any additional assessments would be subject to further legislation and consultation.”\(^12\)

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\(^8\) Explanatory Memorandum (EM), para 2.1.
\(^9\) EM, para 7.2.
\(^10\) EM, para 7.3.
\(^11\) EM, para 10.3.
\(^12\) Additional Information, Appendix 1, answer to Q 3.
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Animal Welfare (Licensing of Activities Involving Animals) (England) (Amendment) Regulations 2019
Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2019
Victims and Witnesses (Scotland) Act 2014 (Consequential Modification) Order 2019

Draft instruments subject to annulment

Basingstoke and Deane (Electoral Changes) Order 2019
Cambridge (Electoral Changes) Order 2019
Chorley (Electoral Changes) Order 2019
Modifications to the Standard Conditions of Electricity and Gas Supply Licences, The Smart Meter Communication Licences and the Smart Energy Code (Smart Meters No.2 of 2019)
Oxford (Electoral Changes) Order 2019

Instruments subject to annulment

SI 2019/920 Road Traffic Offenders (Prescribed Devices) Order 2019
SI 2019/926 Proxy Advisors (Shareholders’ Rights) Regulations 2019
SI 2019/927 Meteorological Office Trading Fund (Maximum Borrowing) Order 2019
SI 2019/930 Electricity (Individual Exemptions from the Requirement for a Generation Licence) Order 2019
SI 2019/931 Utilities Act 2000 (Amendment of Section 105) Order 2019
SI 2019/934 Competitiveness of Enterprises and Small and Medium-Sized Enterprises (Revocation) (EU Exit) Regulations 2019
SI 2019/945 Cattle Compensation (England) Order 2019
SI 2019/956 Cyber-Attacks (Asset-Freezing) Regulations 2019
SI 2019/959 Education (Pupil Information) (England) (Amendment) Regulations 2019
APPENDIX 1: EDUCATION (PUPIL INFORMATION) (ENGLAND) (AMENDMENT) REGULATIONS 2019 (SI 2019/959)

Additional Information from the Department for Education

Q1: What is the Common Transfer File? Is it an electronic portal?

A1: Under Regulation 9 of the Education (Pupil Information) Regulations 2005, when a pupil ceases to be registered at a maintained school, and becomes a registered pupil at another school, the governing body of the old school or, where agreed, the local authority, is required to transfer the pupil’s “Common Transfer File” (CTF) (see paragraph (1) of Regulation 9) to the new school. As set out in paragraph 6.1 of the Explanatory Memorandum, Schedule 2 to the 2005 Regulations makes provision in relation to the information to be included in a CTF.

In practice, the CTF is a file format made available by the Department for Education (DfE). All schools maintained by a local authority in England use the CTF to send pupil data when a pupil transfers from one school to another, when a pupil ceases to be registered at their school and becomes a registered pupil at another school in England, Wales, Northern Ireland or Scotland. This could be done during or at the end of an academic year or a phase of education and could involve a whole cohort of pupils or a single pupil.

DfE provides a service called School to School (S2S) to facilitate the transfer of electronic CTFs. S2S could be described as an electronic portal. CTFs may also be transferred using local authority secure systems or even—though this is rare—in paper form.

Q2: Paragraphs 10.1–10.3 of the Explanatory Memorandum refer to consultation—were there any published consultation documents or response documents?

A2: The consultations referred to in paragraphs 10.1 and 10.2 of the Explanatory Memorandum were statutory consultations under section 408(5) of the Education Act 1996, rather than public consultations. The ICO consultation referred to in paragraph 10.3 of the Explanatory Memorandum was carried out under Article 36(4) of the General Data Protection Regulation. There are no published consultation documents or response documents to the consultations. Paragraphs 10.1-10.3 of the Explanatory Memorandum set out who was consulted and provide a summary of the responses received.

Q3: Is it solely the results of the multiplication tables check and the phonics screening check that will now additionally be included in the CTF? Or could other assessments also be included in future through the amendments made by these Regulations?

A3: The effect of the amendments made by these Regulations is to require the results of any statutory national curriculum assessment, as defined in the relevant Regulations, to be included in the CTF. This includes existing national curriculum assessments and will capture any new national curriculum assessments that may be introduced in the future. The introduction of any additional assessments would be subject to further legislation and consultation.

The existing national curriculum assessments are the end-of-key stage 1 national curriculum assessments; end-of-key stage 2 national curriculum assessments and tests; and the phonics screening check. The multiplication tables check will also be a national curriculum assessment when the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) (Amendment) Order 2019 comes into force.
Q4: Is the requirement just related to transfers of pupils between maintained primary schools?

A4: All schools maintained by a local authority in England are required, when a pupil ceases to be registered at their school and becomes a registered pupil at another school in England, Scotland, Northern Ireland or Wales, to send a CTF to the new school. Schools maintained by a local authority include all phases–for example, nursery, primary, secondary–and types of schools–such as special schools and pupil referral units (PRUs). Academies (including free schools) are also strongly encouraged to send CTFs when a pupil leaves to attend another school.

The CTF should include the pupil’s cumulative achievements at the end of each key stage, where these are available.

30 May 2019
APPENDIX 2: INTERESTS AND ATTENDANCE

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 11 June 2019, 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 Kirkwood of Kirkhope, Lord Sherbourne of Didsbury and Lord Trefgarne.