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

Drawn to the special attention of the House:

Smart Export Guarantee Order 2019

Draft Modifications to Standard Conditions 57 and 58 of the Electricity Supply Licences: Smart Export Guarantee arrangements

Correspondence:
Backlog of maritime legislation

Ordered to be printed 25 June 2019 and published 27 June 2019
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
Rt Hon. Lord Cunningham of Felling
Lord Faulkner of Worcester
Baroness Finn
Lord Goddard of Stockport
Lord Haskel
Rt Hon. Lord Janvrin
Lord Kirkwood of Kirkhope
Baroness O’Loan
Lord Sherbourne of Didsbury
Rt Hon. Lord Trefgarne (Chairman)

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 Forth Report

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

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

*Food and Feed Hygiene and Safety (Amendment No.2) (Northern Ireland) (EU Exit) Regulations 2019*

1. The content of this instrument has previously been approved as appropriate for the negative procedure; this new instrument is required solely because the Department made the wrong version of the previous instrument, which this one will therefore revoke and replace. We regard this as poor practice.
INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Smart Export Guarantee Order 2019 (SI 2019/1005)
Draft Modifications to Standard Conditions 57 and 58 of the Electricity Supply Licences: Smart Export Guarantee arrangements

Date laid: 10 June 2019
Parliamentary procedure: negative

These two instruments together establish the Smart Export Guarantee (SEG) scheme which will require electricity suppliers in Great Britain to pay small-scale low-carbon generators for the electricity they export to the grid. The SEG will replace the Feed-In Tariffs scheme, which closed to new applicants on 31 March 2019, marking a shift from a consumer-funded subsidy model to a competitive market-based system. While acknowledging the concerns expressed during consultation about a lack of long-term financial certainty, the Department has concluded that the SEG should not make use of guaranteed long-term minimum tariffs, leaving electricity suppliers to determine tariff rates and contract lengths. The House may wish to explore how the Department intends to monitor the development of the new scheme and its potential impact on the deployment of small-scale low carbon electricity generation and the UK’s ability to meet its carbon targets.

These instruments 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.

2. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these instruments with an Explanatory Memorandum (EM) and Impact Assessment (IA). The two instruments together form the legal basis for the introduction of the Smart Export Guarantee (SEG) which will replace Feed-In Tariffs (FIT) as the support scheme for small-scale low carbon electricity generation in Great Britain, following the closure of the FIT scheme to new applicants on 31 March 2019.

Background

3. BEIS explains that electricity generation accounts for over 20% of UK greenhouse gas emissions and that, historically, market incentives have not been sufficient to meet the UK’s climate change commitments. The FIT scheme was introduced in 2010 to support small-scale low-carbon generation (up to 5MW) through levies placed on the electricity bills of households and businesses. The Department says that the scheme has supported over 850,000 installations, 99% of which are domestic-scale solar photovoltaic generators. Sub-Committee A of the Secondary Legislation Scrutiny Committee reported in January 2019 on the closure of the FIT scheme to new applicants, highlighting concerns about the impact which were also raised during debate. The closure of the FIT scheme will not impact on existing installations which will continue to receive payments for the duration of their contracts.

1 Secondary Legislation Scrutiny Committee Sub-Committee A, 12th Report, (Session 2017–19, HL Paper 263).
2 HL Deb, 4 March 2019, cols 508–520.
4. While the SEG marks a shift from a consumer-funded subsidy model to a competitive market-based system, BEIS explains in the IA that the current underdeveloped market remains a “significant barrier to small-scale low-carbon generators being able to capture the value of the electricity they export”, and that without government intervention “it is unlikely that competition with larger generators will take place on a level playing field”. The aim of these instruments, according to BEIS, is to ensure that small-scale low carbon generators receive payment for the electricity they export while “allowing the space for market competition and innovation”. The Department says that “as the electricity system becomes smarter and more flexible, the market will grow, and consumers will be offered an increasing range of innovative services and bundled smart products”, and that as “these solutions are still at a relatively early stage of development and until markets become more established intervention is needed to ensure that small-scale low carbon generators are able to access the export market”.

How the SEG will operate

5. Under the new scheme, electricity suppliers with more than 150,000 domestic electricity customers will be required from 1 January 2020 to offer at least one tariff to small-scale low-carbon generators for electricity they export to the grid. Eligible technologies under the SEG will be the same as under the FIT scheme: anaerobic digestion (biomass), hydro, combined heat and power, solar photovoltaic and wind generation. Under the SEG, electricity suppliers will be able to purchase power from other systems, such as small-scale storage, including where electricity exported to the grid from a storage device was originally charged from the grid, rather than by using renewable electricity generated by low-carbon technology.

6. The SEG does not set any tariffs. Electricity suppliers will be required, however, to pay a price above zero pence per kWh of exported electricity to small-scale low carbon generators, including when wholesale prices are negative. BEIS explains that the details of the tariffs, such as their length or level or whether a flat rate or varying rate is used according to the time of day electricity is generated, will be for electricity suppliers to decide. The Department says that this is to “provide space for the small-scale export market to develop in an innovative and flexible way”, and that by allowing electricity suppliers to set their own export tariff, “simple offerings will be able to be implemented quickly (e.g. fixed rate tariffs), with expectations that smarter approaches follow (e.g. tracking wholesale prices on a half-hourly basis)”.

7. BEIS explains that the exported electricity will need to be metered on a half-hourly basis, by smart meters or similar devices, and will have to be registered for settlement in accordance with the Balancing and Settlement Code. The Department says that the purpose of these requirements is to support the development of a “smarter energy system, where consumers can benefit from location and time-specific electricity prices” and to ensure that export tariffs are paid on the basis of the actual rather than estimated volumes of exported electricity.

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3 This process allows each unit of electricity that is exported to the grid from an eligible SEG installation to be linked to its relevant supplier, allowing the electricity supplier to use the generated electricity in their balancing position (generation vs. supply for a given day) with National Grid.
8. To qualify for the SEG, low-carbon electricity generators will have to be certified as safe under the Microgeneration Certification Scheme or equivalent standards. Installations using anaerobic digestion will also have to meet certain sustainability criteria and feedstock requirements. BEIS says that these requirements are consistent with those under the FIT scheme.

**Impact**

9. BEIS says that it expects the tariff levels set by electricity suppliers to reflect the value of the exported electricity and to take account of any costs to the suppliers of managing the SEG. The Department does not expect therefore any additional costs to be passed on to consumers.

10. In the IA, the Department highlights considerable uncertainty regarding the overall economic impact of the SEG, especially with regard to the cost of small-scale low carbon generation, and concludes that the SEG is unlikely to have a significant economic impact. We asked the Department about the expected deployment of new small-scale low carbon electricity generating capacity under the SEG, as compared to the FIT scheme. BEIS told us that:

“[C]ontinuation of the FITs scheme would have had a greater impact on deployment compared to the SEG, however determining the levels of deployment that the SEG could bring forward is inherently uncertain. The main driver of this uncertainty is that the export market for low-carbon small-scale generators is still developing and therefore the SEG’s impact on financial viability across the range of technologies and business models in the sector remains unclear. [...] As such we do not have a central view on whether total deployment under the SEG will be lower than the levels seen during the FITS scheme.”

11. The Department says that it will “keep the SEG under review to ensure that small generators are able to access a competitive range of export tariff options and will assess its outcomes in line with our objectives for a smarter, competitive export market over time”. Ofgem, as the regulator, will report annually on the scheme, including the range, nature and uptake of the tariffs offered.

12. Given the potential for lower deployment of new small-scale low carbon electricity generating capacity under the SEG, monitoring the development of the scheme will be important, particularly in the context of the UK’s new target of net zero greenhouse gas emissions by 2050, relative to 1990 levels. According to the independent Committee on Climate Change, meeting this target will require, in addition to other far-reaching changes to the economy and wider society, a fourfold increase in the supply of low-carbon electricity by 2050.4

**Consultation**

13. The Department says that an eight-week consultation between January and March 2019 on proposals for the SEG received 3,360 written responses from a range of stakeholders, including a very large number of similar campaign

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responses which broadly welcomed the introduction of an export tariff but suggested a guaranteed market rate.5

14. Concerns were raised that the SEG would not be sufficient to encourage future growth in the small-scale low carbon electricity sector, and that generators and households would not be fairly compensated for the market value of their exported electricity unless the SEG provided minimum tariff that would be guaranteed over a long term. It was suggested that this could impact on the UK’s ability to meet carbon targets, and that the proposed approach would not be an effective driver of employment or investment. There was also concern that the time gap between the closure of the FIT scheme and the introduction of the SEG could impact negatively on the sector.

15. The Department’s view is that while the “FIT scheme has been successful in bringing forward deployment of small-scale installations […] this has come at a cost to consumers, who fund the scheme through their electricity bills.” BEIS argues that as the costs of renewable technologies have reduced, particularly for solar PV and onshore wind, the UK needs to “move from a consumer-funded subsidy model to a competitive market-based system with cost-reflective pricing in line with the vision to meet our climate change commitments at the lowest net cost to UK taxpayers, consumers and businesses.” Under the SEG, therefore, tariff rates and contract lengths will be determined by suppliers.

16. The Department acknowledges that this market-led approach “is unlikely to provide the same level of long-term income certainty offered by previous subsidy schemes such as the FIT” and that “the move from subsidy schemes to a competitive market will be a significant change for the small-scale low-carbon generation sector”. BEIS has committed to actively monitor the development of this market, adding that it will “consider reviewing these tariff setting arrangements, if it becomes clear that small generators are not able to access a competitive range of export tariff options”. The Committee notes the lack of long-term income certainty under the new SEG scheme. The House may wish to explore further how the Department will monitor the development of the SEG and how it will ensure that the new scheme does not negatively impact on the deployment of small-scale low carbon electricity generation and the UK’s ability to meet its carbon targets.

Conclusion

17. While acknowledging the concerns expressed during consultation, the Department has concluded that the new market-based SEG scheme should not make use of guaranteed long-term minimum tariffs, leaving electricity suppliers to determine tariff rates and contract lengths. The Committee is clear that it is for Government to decide on policy development after having considered the views expressed during consultation and notes that the Department is unable to forecast the impact of the new policy, especially due to uncertainty about future deployment levels under the SEG. The House may nevertheless wish to explore further the approach the Government

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have taken and how the Department will monitor the development of the SEG and its impact, in particular in relation to the lack of long-term income certainty, the deployment of small-scale low carbon electricity generation and the UK’s ability to meet its carbon targets. **We draw the instruments 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.**
Backlog of maritime legislation

18. The Committee has previously expressed concern about the Department for Transport’s backlog in maritime legislation and has had previous correspondence with the Minister about the extent of the current backlog. Prompted by concerns over the Merchant Shipping (Prevention of Air Pollution from Ships) (Miscellaneous Amendments) Regulations 2019, we wrote to the Minister again to ask further questions about the number of instruments that still need to be implemented and the Government’s intended programme to address the delay. This remains an area of concern. The correspondence is published at Appendix 1.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2019

Instruments subject to annulment

CP 121 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Space Agency concerning the European Space Agency’s Sites and Facilities in the United Kingdom

SI 2019/990 National Health Service (Amendments Relating to Serious Shortage Protocols) Regulations 2019

SI 2019/1006 Housing (Right to Buy) (Designated Rural Area and Designated Region) (England) Order 2019

SI 2019/1009 Social Security (Contributions) (Amendment No. 2) Regulations 2019

SI 2019/1011 Personal Independence Payment (Transitional Provisions) (Amendment) Regulations 2019

SI 2019/1012 Euratom Research and Training Programme (Revocation) (EU Exit) Regulations 2019

SR 2019/118 Personal Independence Payment (Transitional Provisions) (Amendment) Regulations (Northern Ireland) 2019
APPENDIX 1: CORRESPONDENCE ON BACKLOG OF MARITIME LEGISLATION

Letter from the Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Ms Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport

I am writing as Chairman of the Secondary Legislation Scrutiny Committee which considered these Regulations at its meeting yesterday. You will recall that in early 2018, I wrote to you to express the Committee’s concern about the backlog of maritime legislation. Your correspondence indicated that the Department for Transport was seeking to reduce the backlog as quickly as practicable.

We are aware that there are currently some 40 sets of maritime regulations outstanding and your Department have a programme in place to implement them by mid-2020.

The Committee remains concerned however about the extent of the backlog and would welcome further information on the following:

(1) Which regulations are currently outstanding?
(2) What risks, if any, are posed as a result of this legislative gap, for example, is there any detriment to the UK shipping industry due to the delay in bringing domestic law in line with international practice?
(3) In what way, if any, would the current deadline of mid-2020 be affected if the UK leaves the EU on 31 October 2019?

We would welcome your response to these points by 10am on Monday 24 June so that it may be considered at the Committee’s next meeting.

19 June 2019

Letter from Nusrat Ghani MP to Lord Trefgarne

Thank you for your letter of 19 June regarding the Committee’s concerns about upcoming maritime regulations.

As I indicated in my previous reply to you on this issue, the Department for Transport and the Maritime and Coastguard Agency (MCA) are seeking to process these regulations as quickly as practicable. In 2018, we reviewed all the international legislation and identified the measures required for implementation into our domestic regime by statutory instrument. We established a programme for implementing the measures which is closely monitored and overseen by the Department’s SI board. These measures are largely amendments that have been made to existing international instruments but not yet transposed into our domestic regime.

1. Which regulations are currently outstanding?

Please see the table in Annex 1, which lists all MCA regulatory work by title. The measures highlighted in yellow [Marked with an asterisk *] represent the work required under the IMO Instruments Implementation Code (IIIC) audit. The remainder indicate the business as usual SIns, including measures introducing ambulatory reference and new measures (highlighted in blue) [Marked with a dagger †] that have delivery deadlines between now and 2022.
2. What risks, if any, are posed as a result of this legislative gap, for example, is there any detriment to the UK shipping Industry due to the delay in bringing domestic law in line with international practice?

The risk for each outstanding measure has been assessed, with the more important and urgent measures having been prioritised for earlier delivery. None of the outstanding measures will adversely affect the ability of UK registered ships to receive the correct certificates or trade internationally.

We are still mindful of the deadline of the International Maritime Organization (IMO) flag state administration audit which is expected to take place in 2020 at the latest. The IMO programme of audits known as the IMO Instruments Implementation Code (IIIC) is in place and the MCA needed 22 Sis, of which 9 have been successfully transposed leaving 13 Sis required by 2020. Since the last report an additional regulatory measure has been included as part of the IIIC work, making the total 14. These will have, at the very least, a full draft SI for each by the time of the audit.

3. In what way, if any, would the current deadline of mid 2020 be affected if the UK leaves the EU on 31 October 2019.

The intended delivery of Sis was premised on, amongst other factors known at the time of the previous response, the UK exiting the EU on 29 March 2019. The impact of the delay to EU Exit has had a knock-on impact on our ability to implement all backlog regulations. Whilst the MCA has procured additional resource, the effect on Parliamentary scheduling of the UK now only exiting the EU on 31 October 2019 is more likely than not to delay implementation of at least some regulations, although the MCA is confident that IIIC draft regulations at least will be complete in time for 2020.

We are making good progress in delivering the programme. The additional legal resource, a new dedicated team of lawyers purely focused on the IIIC, which the MCA has recently put in place should consolidate progress and further accelerate this work. While I recognise that there are some risks, I will ensure the work is closely monitored and will let you know if the situation changes or if there are any significant further developments in this regard.

Finally, it is worth recalling that the Department and the MCA were successful in delivering all the key maritime regulations that were needed to exit the EU before 29 March 2019. This was an enormous undertaking, for which the Department and the Agency deserve huge credit.

A copy of this letter is being sent to other Committee Members for information, and copies are being placed in the libraries of both Houses.

24 June 2019
### Annex 1: Legal Priority Work: Statutory Instruments

<table>
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<tr>
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<th>Priority List</th>
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<tbody>
<tr>
<td>1</td>
<td>Amendments to Existing Passenger Ship Legislation (Implementation of the Grandfather Review)</td>
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<td>2</td>
<td>The Merchant Shipping (Safety of Navigation) Regulations 2018</td>
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<td>3</td>
<td>Merchant Shipping (Technical Requirements for Inland Waterways Vessels) Regulations 2020?</td>
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<td>4</td>
<td>Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) (Amendments?) Regulations 2007</td>
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<td>5</td>
<td>* Merchant Shipping (Radio Installation) Regulations 2019</td>
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<td>6</td>
<td>Working Title: The Merchant Shipping (Prevention of Pollution of Garbage from Ships) Regulations 2019</td>
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<tr>
<td>7</td>
<td>Working Title: The Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2019</td>
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<tr>
<td>8</td>
<td>* Implementation of parts of SOLAS (Ch III) Convention on Life Saving Appliances</td>
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<td>9</td>
<td>* Tonnage Convention</td>
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<td>10</td>
<td>Amendments to the Merchant Shipping (Entry into Dangerous Spaces) Regulations 1998 S.I. 1988/1638</td>
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<td>11</td>
<td>MAIB Rec 141/2009</td>
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<td></td>
<td>Merchant Shipping (Cargo Ship Construction and Survey) Regulations 1981</td>
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<td>12</td>
<td>The Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2019</td>
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<td>13</td>
<td>The Merchant Shipping (Safety Rules and Standards for Passenger Ships) (Miscellaneous Amendments) Regulations 2019</td>
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<td>14</td>
<td>The Merchant Shipping (Port State Control) Regulations 2011 (Amendments)</td>
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<td>15</td>
<td>The Merchant Shipping (Mandatory Surveys for Ro Ro Ferry and High-Speed Passenger Craft) Regulations 2011 (Amendments)</td>
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<td>16</td>
<td>The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Fishing vessels) Regulations</td>
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<tr>
<td>17</td>
<td>The Merchant Shipping (Control and Management of Ships’ Ballast Water and Sediments) Regulations [IMO Ballast Water Convention 2004]</td>
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<td>18</td>
<td>* SOLAS 11-2 (AR) (Fire Safety)</td>
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<td>19</td>
<td>* SOLAS Chapter X: Highspeed Craft</td>
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<td>20</td>
<td>* SOLAS Chapter VIII: Nuclear Ships</td>
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<td>21</td>
<td>* SOLAS Chapter XIV: Polar Code</td>
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<td>22</td>
<td>* SOLAS Chapter XI-1 Measures to enhance maritime safety</td>
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<td>23</td>
<td>* SOLAS Chapter XI-2 Measures to enhance maritime safety</td>
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<td>Priority List</td>
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| 24 * STCW Convention  
Amendment to existing regulations (Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (SI 2015/782). |
| 25 † Implementation of Small Passenger Ship Code including Transposition of amendments to passenger ship directive |
| 26 † HS — Offshore Service Craft Code |
| 27 * SOLAS Chapter VI: Carriage of cargoes and oil fuels |
| 28 Merchant Shipping Port Reception Facilities Regulations 2020 |
| 29 ILO 185 (Seafarers Identity Documents) |
| 30 SOLAS 11-1 |
| 31 * SOLAS Chapter VII: Dangerous goods |
| 32 * SOLAS Chapter XII: Bulk carriers |
| 33 * MARPOL: Annex VI: Air Pollution |
| 34 Merchant Shipping (Maritime Labour Convention) (2018 amendments) Regulations 2019 |
| 35 Amendments to IWWT regulations (young persons) |
| 36 † Ratification of IMO Cape Town Agreement 2012 |
| 37 † Red Ensign Group Yacht Code |
| 38 † Phase 2 Grandfather Review Small Seagoing Passenger ships |
| 39 † Merchant Shipping (Official Logbooks) Regulations 1981 |
| 40 † Merchant Shipping (Crew Agreements, list of crew and discharge of seamen) Regulations 1991 |
| 41 † Pleasure Vessel SI  
Linked to Cheeki Rafiki case |
| 42 † Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998  
(Linked to CHEEKI RAFIKI RECOMMENDATIONS) |
| 43 † MAIB Rec 2017/154  
Nortrader  
Merchant Shipping (Carriage of Cargoes) Regulations 1999 |
| 44 † Merchant Shipping (Fees) Regulations 2023 |

*Source: Department for Transport*
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 25 June 2019, Members declared the following interests:

Smart Export Guarantee Order 2019 (SI 2019/1005)

Draft Modifications to Standard Conditions 57 and 58 of the Electricity Supply Licences: Smart Export Guarantee arrangements

Lord Kirkwood of Kirkhope
   Has solar panels at home

Attendance:

The meeting was attended by Lord Chartres, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O’Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.