

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

55th Report of Session 2017–19

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

Includes information paragraphs on:

Merchant Shipping (Bridge Visibility) (Small
Passenger Ships) Regulations 2019

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HL Paper 394

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

[Baroness Bakewell of](#)

[Hardington Mandeville](#)

[Rt Hon. Lord Chartres](#)

[Rt Hon. Lord Cunningham of Felling](#)

[Lord Faulkner of Worcester](#)

[Lord Hodgson of](#)

[Astley Abbots](#) (Chairman)

[Lord Kirkwood of Kirkhope](#)

[The Earl of Lindsay](#)

[Lord Lisvane](#)

[Lord Sherbourne of Didsbury](#)

[Baroness Watkins of Tavistock](#)

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>

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).

Further Information

Further information about the Committee is available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://beta.parliament.uk/find-a-statutory-instrument>

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

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 Fifth Report

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

Instruments recommended for upgrade to the affirmative procedure

Human Medicines (Amendment etc.) (EU Exit) (No. 2) and the Medical Devices (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Date laid: 18 June 2019

Sifting period ends: 4 July 2019

1. The two instruments which these Regulations amend were considered by Sub-Committee B when they were laid by the Department for Health and Social Care (DHSC) as draft affirmative instruments.¹ DHSC says that this proposed negative instrument is made to “correct drafting defects and omissions” in the original regulations. However, it makes substantive amendments, including inserting provisions to provide a mechanism for companies affected by proposed decisions of the licensing authority in relation to rare diseases medicines (orphan) and paediatric matters to have those decisions reviewed by the Commission on Human Medicines, and creating a transitional period relating to the pharmacovigilance system master file. These amendments are sufficient to indicate that the amending instruments should also be made using the affirmative procedure. **As such, the Committee recommends that this proposed negative instrument should be upgraded to the affirmative resolution procedure.**

Proposed negatives about which no recommendation to upgrade is made

Pesticides (Amendment) (EU Exit) Regulations 2019

2. The purpose of this proposed negative instrument, laid by the Department for Environment, Food and Rural Affairs (Defra), is to amend retained direct EU legislation which underpins the regulatory regimes for plant protection products and maximum residue levels, so that oversight can continue to operate effectively after the UK’s withdrawal from the EU. Defra explains that the technical amendments are needed following the change in the EU exit date to 31 October, as further new EU legislation has come into force during the Article 50 extension and due to a number of errors in earlier EU exit instruments. One of the proposed changes would revoke a provision which currently allows Member States to require the payment of fees or charges to recover the costs of any work they carry out when dealing with applications for the renewal of approvals for active substances used in pesticides. Asked about the impact of this proposal, Defra told us that the fee charging provision will be “redundant post-exit [...] as the UK will no longer need permission in order to make provision for the charging of fees and charges” and that, with regard to potential costs arising from the renewal of active substance approvals, “the existing fee system which operates under

¹ Secondary Legislation Scrutiny Committee (Sub-Committee B), [16th Report](#), Session 2017-19 (HL 286).

the [Plant Protection Product (Fees and Charges) Regulations 2011 (SI 2011/2132)] will continue to operate without any practical impact.”

3. The Committee notes that, in practice, the proposed revocation of a fee charging provision does not appear to impact on the UK’s existing fee charging regime, which will continue to operate under separate domestic legislation. At the same time, the Committee is of the view that the revocation may be regarded as triggering the affirmative procedure under the broad provision of Schedule 7 paragraph1(2)(b) of the European Union (Withdrawal) Act 2018 (“the EUWA”), according to which a statutory instrument should be subject to the affirmative procedure if it “relates to a fee in respect of a function exercisable by a public authority” in the UK. **While, in line with the Committee’s policy remit, we do not express a definitive view on what is essentially a legal issue, it is arguable that the effect of the proposed revocation of the fee charging provision is to trigger the requirement under the EUWA for the affirmative resolution procedure to apply.**
- Aviation Safety (Amendment etc.) (EU Exit) (No.2) Regulations 2019
 - European Grouping of Territorial Cooperation (EU Exit) Regulations 2019
 - REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019

INSTRUMENTS OF INTEREST

Merchant Shipping (Bridge Visibility) (Small Passenger Ships) Regulations 2019 (SI 2019/1025)

4. These Regulations deal with “bridge visibility” — namely, the need for operators of small passenger ships to maintain a good standard of visibility, so as to reduce the risk of collision or grounding. They address a regulatory anomaly which has existed since 2005. Regulations introduced in 2005, prompted by lessons learned from the Marchioness disaster, made provision for bridge visibility for ships of under 45 metres in length. Regulations previously introduced in 2002 related to ships of over 55 metres in length. This left a “regulatory gap” with respect to ships which were 45 metres or more but less than 55 metres in length. We asked the Department for Transport (DfT) if any detriment had been caused by this gap. DfT told us that “[a]s no UK passenger ships on tidal waters (and thus in scope of the Regulations) have been identified as falling between the application length cut off points it is not considered that there has been any detriment as a result of this gap in the law.” These Regulations also address a lack of clarity within the definition of “enclosed passenger deck” and the use of visual aids when determining sight lines. DfT explains that the Regulations are anticipated to increase costs for only one company, with a best estimate of increased annual costs of around £0.4 million. However, the Impact Assessment states that “whilst efforts have been made, through promulgating the consultation and liaising with the MCA [Maritime and Coastguard Agency] marine offices, to verify that only one company would be affected there is a possibility, albeit low, that there are other ships affected that the MCA haven’t been able to identify.”

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Small-scale Radio Multiplex and Community Digital Radio
Order 2019

Instruments subject to annulment

- | | |
|--------------|--|
| CP 123 | Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of the Bahamas concerning Air Services |
| CP 124 | Air Services Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Kuwait |
| SI 2019/1025 | Merchant Shipping (Bridge Visibility) (Small Passenger Ships) Regulations 2019 |
| SI 2019/1031 | Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2019 |

APPENDIX 1: 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 2 July 2019, Members declared the following interests:

Pesticides (Amendment) (EU Exit) Regulations 2019

The Earl of Lindsay

Farmer

Attendance:

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Lord Hodgson of Astley Abbots, the Earl of Lindsay, Lord Kirkwood of Kirkhope and Lord Sherbourne of Didsbury.