Secondary Legislation Scrutiny Committee
57th Report of Session 2017–19

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

Includes information paragraphs on:
- Draft Northern Ireland (Ministerial Appointment Functions) (No. 2) Regulations 2019
- Motor Vehicles (Compulsory Insurance) (Miscellaneous Amendments) Regulations 2019
- Social Fund (Children’s Funeral Fund for England) Regulations 2019
- Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 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

Baroness Bakewell of Hardington Mandeville
Viscount Hanworth
The Earl of Lindsay
Rt Hon. Lord Chartres
Lord Hodgson of Astley Abbotts
Lord Lisvane
Rt Hon. Lord Cunningham of Felling
(Chairman)
Lord Kirkwood of Kirkhope
Baroness Watkins of Tavistock
Lord Faulkner of Worcester

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](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/](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](https://beta.parliament.uk/find-a-statutory-instrument)


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 Seventh Report

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

Proposed negatives about which no recommendation to upgrade is made

- Animal Health, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019

- European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals) (EU Exit) Regulations 2019

- Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) (No. 3) Regulations 2019
INSTRUMENTS OF INTEREST

Draft Northern Ireland (Ministerial Appointment Functions) (No. 2) Regulations 2019

1. In the absence of devolved government, section 5 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 ("the 2018 Act") enables a relevant Minister of the Crown to make necessary appointments to specified offices. Five offices were included in the 2018 Act and a further six were added earlier this year. The 11 offices set out in these Regulations have been drawn up in consultation with both the Northern Irish Civil Service and Northern Irish political parties. They are all considered to be appointments needed to maintain good governance in the organisations named, and relate to Board Members or Chairs of institutions in the agricultural, consumer welfare, education, transport and cultural sectors.

Motor Vehicles (Compulsory Insurance) (Miscellaneous Amendments) Regulations 2019 (SI 2019/1047)

2. In the accompanying Explanatory Memorandum (EM), the Department for Transport (DfT) states that these Regulations make legislative changes in three areas. First, the instrument removes the options of a deposit or security under section 144(1) and section 146 of the Road Traffic Act 1988 (RTA), as alternatives to conventional motor insurance. The Department states that these are being removed because the deposits and securities regimes may not be compatible with EU law; place an unfair burden on premium paying motorists; and may not be sufficient to meet all third-party liabilities. Therefore, those who presently have a deposit or a security will be required to purchase mandatory motor insurance for third party risks.\(^1\) DfT notes that only a small number of organisations have made a deposit or taken out a security.\(^2\) The second change relates to amendments to section 152 of the RTA and Article 98A of the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154 (N.I. 1)) (RTO). DfT states that:

“In the RoadPeace Judicial Review (Roadpeace v Secretary of State for Transport (2017) EWCH 2725) we informed the court that we would amend s152 of the RTA because it is incompatible with EU law. This concerns an insurer’s ability to rely on having voided a policy after an accident (if a policyholder deliberately misrepresented information when their policy was purchased, e.g. age or driving record) to deny compensation under the RTA to third party victims. Article 98A of the RTO contains an equivalent provision to s152 RTA and this provision is therefore also incompatible with EU law.”

3. The third change is a technical amendment to the Motor Vehicles (Insurance Requirements) Regulations 2011 (SI 2011/20), concerning the Statutory Off Road Notification (SORN) procedure (under which a vehicle need not have Road Tax or insurance if it is declared off road). DfT states: “In 2013 regulations provided that a SORN declaration can be made for an indefinite period and not need annual renewal. However, a consequential amendment was not made to the 2011 Regulations to reflect this change.”\(^3\)

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1 Explanatory Memorandum to the Motor Vehicles (Compulsory Insurance) (Miscellaneous Amendments) Regulations 2019 (SI 2019/1047), para 6.1.
2 Ibid., para 7.3.
3 Ibid., para 6.4.
4. This instrument establishes the Children’s Funeral Fund for England (“the CFF”) under which bereaved parents, guardians or carers will not pay the fees charged for the cremation or burial of a child aged under 18 at the time of death. The specified goods and services will be provided free at the point of need, regardless of the bereaved’s means, to minimise the emotional and financial burden on them. Regulations 4 and 5 allow providers of these goods and services (burial authorities, cremation authorities and funeral directors) to apply to the CFF for reimbursement of the costs involved. It should be noted that costs such as maintenance fees for the burial plot are only covered up to the point where the deceased would have turned 18. Annually, in England there are approximately 3,800 deaths of children from birth up to and including age 17, and approximately 2,700 post-24-week stillbirths. The costs of the CFF will be paid by the Government: estimates range from £7–12.5 million a year to cover burial or cremation fees and around £1.5 million a year in administration costs.


5. The purpose of this instrument, laid by HM Treasury (HMT), is to allow registered social landlords (RSLs) and housing associations to signpost tenants who wish to enter into a credit agreement to social and community lenders, without requiring authorisation by the Financial Conduct Authority (FCA), where the referral takes place on a fee-free basis. According to HMT, this policy was announced in the Autumn Budget 2018 and aims to raise awareness of alternatives to high-cost mainstream credit and make it easier for low-income tenants of RSLs to access such alternatives. HMT explains that, under the current rules, referring an individual to a social or community lender can be considered a type of credit broking and require FCA authorisation. Without such authorisation, any credit agreement may become unenforceable and the referring RSL may be subject to criminal sanctions for carrying out a regulated activity without appropriate authorisation. This instrument therefore exempts RSLs from FCA authorisation where they signpost their tenants to social and community lenders on a fee-free basis. HMT says that while there was no public consultation, relevant stakeholders, such as the affordable lending and housing sectors, consumer groups, industry trade bodies and the FCA, were consulted informally and expressed support for the policy. An alternative proposal for a fast-track authorisation system for RSLs was considered not to be as effective as the exemption from FCA authorisation, as the key barriers to RSLs applying for authorisation are their limited resources and interest in seeking authorisation. HMT estimates that there are 1,884 RSLs and housing associations which will benefit from the exemption. HMT told the Committee that to monitor the effectiveness of the new policy, it will maintain regular contact with stakeholders to monitor whether referrals to social and community lenders increase. In relation to preventing abuse of the new rules, HMT points to the narrow scope of the instrument and the exemption from FCA authorisation which only applies where a referral is fee-free. HMT told the Committee that the criteria for

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4 Social and community lenders include credit unions, community benefit societies, community interest companies limited by guarantee, registered charities, subsidiaries of registered charities and subsidiaries of RSLs.
social and community lenders defined in this legislation was narrow and intentionally excluded high-cost lenders, such as payday or doorstep lenders.


6. The purpose of this instrument, laid by the Department for Environment, Food and Rural Affairs (Defra), is to extend the deadline for a review of so-called conclusive maps which show all open country, including mountains, moors, heaths and downs, and registered common land in England, with the exception of inner London. Defra explains that the Countryside and Rights of Way Act 2000 prescribes the time limits by when Natural England, as the regulator, is required to review the conclusive maps. At present, the first review in England needs to be undertaken not more than 15 years after the first of the conclusive maps was issued in 2004. This 15-year timeframe includes a five-year extension implemented in 2013, which extended the initial period from 10 years to 15 years and, according to Defra, was introduced because of other priorities and the budgetary situation at the time. This instrument extends the review period by a further five years, changing the deadline to not more than 20 years. Defra explains that the extension will enable the Department to align the review of the conclusive maps with the delivery of the England Coast Path (ECP), thereby avoiding potential duplication of work on areas that are already covered by the newly created Coastal Margin. Defra says that while it did not consult publicly on the extension, discussions were held with the British Mountaineering Council, the Country Land and Business Association, the National Farmers Union, the Ramblers and the Open Spaces Society. According to Defra, these organisations accepted the decision to delay the review in order to avoid duplication of work and to allow for a detailed examination of the approach and the development of a mapping methodology.

5. The Coastal Margin is the land to the seaward side of the England Coast Path. It provides people with a new right of access to cliff tops and beaches.
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

- Cableway Installations (Amendment) (EU Exit) Regulations 2019
- Northern Ireland (Ministerial Appointment Functions) (No.2) Regulations 2019

Instruments subject to annulment

- SI 2019/1047 Motor Vehicles (Compulsory Insurance) (Miscellaneous Amendments) Regulations 2019
- SI 2019/1065 Netherton Park Instrument of Management (Variation) Order 2019
- SI 2019/1070 Plant Health (England) (Amendment) Order 2019
- SI 2019/1075 Plant Health (Forestry) (Amendment) (England) Order 2019
- SI 2019/1059 Insolvency (Scotland) Rules 2018 (Miscellaneous Amendments) Rules 2019
- SI 2019/1060 Social Security (Scotland) Act 2018 (Funeral Expense Assistance and Early Years Assistance) (Consequential Modifications and Savings) Order 2019
- SI 2019/1063 Court Fees (Miscellaneous Amendments) Order 2019
- SI 2019/1068 Protection of Wrecks (Designation) (England) Order 2019
- SI 2019/1078 Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019
- SI 2019/1085 Food and Feed Hygiene and Safety (Amendment No.2) (Northern Ireland) (EU Exit) 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](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 16 July 2019, Members declared the following interests:

**Cableway Installations (Amendment) (EU Exit) Regulations 2019**

Lord Faulkner of Worcester  
*President, Heritage Railway Association (a company limited by guarantee)*

**Attendance:**

The meeting was attended by Lord Chartres, Lord Faulkner of Worcester, Viscount Hanworth, Lord Hodgson of Astley Abbotts, Lord Kirkwood of Kirkhope, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.