HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

58th Report of Session 2017–19

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

Drawn to the special attention of the House:

Draft Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

Damages (Personal Injury) Order 2019

Includes information paragraphs on:

Draft Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019

Draft Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Notification of Deaths Regulations 2019

Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) 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.

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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 Eighth Report

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

Proposed negatives about which no recommendation to upgrade is made

- Food and Drink (Amendment) (EU Exit) Regulations 2019

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

Date laid: 11 July 2019

Parliamentary procedure: affirmative

This instrument proposes to remove rights which currently guarantee that EU, European Economic Area, Swiss and Turkish nationals can be self-employed, own and manage a company and provide services in the UK without facing additional restrictions or barriers that may apply to nationals or businesses from other countries. The policy change is proposed as part of the Government's planning for a possible 'no deal' exit from the EU and seeks to ensure that the UK is compliant with the World Trade Organisation's 'most favoured nation' principle. The Committee notes that removing these rights will mean that the people and businesses affected will not be able to use the rights to challenge possible new policies or regulations which place restrictions on their access to the UK Internal Market after exit. The Committee also notes a link between this instrument and the Immigration and Social Security Coordination (EU Withdrawal) Bill which is currently on hold at Report Stage in the House of Commons. Changes proposed by the instrument would also make it an offence to use legitimate satellite decoder cards from the EU to avoid a charge for receiving a programme broadcast from the UK.

The draft Regulations 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.

1. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations before Parliament alongside an Explanatory Memorandum (EM). The instrument proposes to remove provisions on freedom of establishment and the free movement of services for nationals from the EU, European Economic Area (EEA), Switzerland and Turkey which would otherwise continue as directly effective rights in UK domestic law after the UK's withdrawal from the EU. BEIS says that the instrument forms part of its planning for a possible 'no deal' scenario.

Removal of treaty rights

2. The European Union (Withdrawal) Act 2018 converts direct EU law, including directly effective treaty rights, into UK law, and empowers Ministers to prevent, remedy or mitigate any failure of EU law to operate effectively after EU exit. BEIS says that this instrument seeks to ensure that people and businesses benefitting from directly effective rights of establishment and free movement of services derived from several bilateral and multilateral EU agreements[1] do not continue to have these rights in the UK in a 'no deal' scenario. According to BEIS, these treaty rights are based on reciprocity and currently guarantee that EU, EEA, Swiss and Turkish nationals can be

1 According to BEIS, these agreements include the Treaty on the Functioning of the European Union (TFEU), the Agreement on the European Economic Area (the EEA Agreement); the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons (FMOPA) and the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara (the Ankara Agreement) and subsequent Protocols.

self-employed, own and manage a company, and provide services in the UK without facing additional restrictions or barriers that may apply to national and businesses from other countries. BEIS says that the instrument removes these treaty rights as reciprocity would be lost in a 'no deal' scenario, and that the changes seek to ensure the UK's compliance with the World Trade Organisation's (WTO) 'most favoured nation' principle.[2]

3. The Department explains that the purpose of the changes is to reflect the UK's new status as a third country in relation to the remaining EU Member States in a possible 'no deal' scenario and to provide individuals and businesses with legal clarity. BEIS highlights that the instrument does not introduce any new powers, enforcement powers, jurisdictions, penalties or appeal rights in UK courts; enforce any restrictions on the establishment of EU, EEA, Swiss and Turkish nationals or businesses; or subject such businesses to any new regulatory measures. BEIS also says that the practical impact of the changes will be limited as EU, EEA, Swiss and Turkish nationals or businesses are expected to be able to continue operating businesses or providing services after exit as they did before exit and as, in practice, barriers to establishment and services provision in the UK for third countries are low.

4. The Department makes clear, however, that while the instrument does not prevent BEIS from continuing the current approach in specific policy areas, it does enable the Department to introduce new policies and regulations that depart from this approach, for example by introducing new restrictions on EEA, Swiss and Turkish nationals or businesses after exit. Removing the treaty rights means that EU, EEA, Swiss and Turkish will no longer be able to use these rights to challenge such new restrictions legally.

5. We asked the Department for further explanation of what appears to be a significant reduction of rights. BEIS told us that:

> "The Instrument … does not in itself involve a significant direct reduction in the ability of EU/EEA/Swiss/Turkish nationals to establish or provide services into the UK post-exit, but it does remove the guarantee of preferential treatment (relying on these rights of establishment and free movement of services) for these nationals, compared to nationals from other countries, from the point at which we leave the EU. This will facilitate the UK's compliance with international trade law, notably the World Trade Organisation's (WTO's) General Agreement on Trade in Services (GATS). By disapplying the rights provided for by Article 49 TFEU and Articles 56 and 57 TFEU, in a 'no deal' scenario, this Instrument ensures the UK is not in violation of the World Trade Organisation's (WTO) 'most favoured nation' principle."

Use of satellite decoder cards

6. According to BEIS, the instrument also changes the interpretation of section 297 of the Copyright, Designs and Patents Act 1988 (CDPA), which makes it an offence to receive a programme included in a broadcast made from the UK with the intention of avoiding a charge, for example by accessing the programme via a cheaper service intended for a non-UK audience. BEIS says that case law by the Court of Justice of the European Union (CJEU) on

2 Under the WTO agreements, countries cannot normally discriminate between their trading partners. For example, if they grant a country a lower customs duty rate for one of their products, they have to do the same for all other WTO members.

free movement of services[3] currently provides an exemption which permits the import and use of legitimate satellite decoder cards from the EU, even if this is done to avoid a charge. This instrument proposes to remove this exemption in relation to EU Member States, so that the use of legitimate satellite decoder cards from the EU would be considered an offence where they are used to avoid a charge. BEIS says that this change returns the approach to how it was before the CJEU's ruling and aligns the rules with those for non-EU satellite decoder devices and illegal satellite decoder devices.

7. The Department says that it is not possible to estimate the practical impact of the change as it will depend on how many, and which, programmes are accessed dishonestly by UK consumers at present, and their awareness of and willingness to take a legal risk. BEIS says that while there does not appear to be data for the number of foreign satellite decoder devices used by UK consumers, evidence suggests that UK consumers prefer to use other services to view television programmes. The Department therefore expects the policy change to have a limited impact. With regard to enforcement of the new rules, BEIS told us that:

> "Persons in the UK who currently access satellite broadcasts intended for EU audiences for this purpose will need to cease those activities or risk prosecution for committing an offence under section 297. Those persons may instead wish to purchase the relevant UK satellite broadcast package. Disapplication of directly effective rights will not affect those who use EU satellite decoder cards to access programmes included in UK broadcasts for purposes other than the avoidance of a charge. … EU expats living in the UK who use decoder devices intended for EU audiences to view programmes in their native language are not, nor will they be, covered by the offence of section 297, provided there is no intent to avoid any charge associated with the programmes.
>
> As for all [Intellectual Property]-infringing goods, enforcement against importation would usually be carried out by UK Border Force following an Application for Action lodged by the right holder(s) affected. Sanction would be as listed in section 297A 'Unauthorised decoders'. This is imprisonment for up to 6 months for cases on summary conviction and up to 10 years on indictment or, an unlimited fine.
>
> The Government is planning to publish guidance informing stakeholders of the change in law, in advance of the change coming into effect."

8. **The Committee notes the Department's intention to publish guidance. This should be done in good time to ensure that individuals have the chance to learn about the changes and make alternative arrangements.**

Interaction with the immigration system

9. The Department explains in the EM that rights of establishment and free movement of services in the Swiss Free Movement of People Act (FMOPA)

3 The CJEU ruled in 2011 that section 297 of the CDPA should not apply where it prevents persons in the UK from using legitimate decoder devices intended for use elsewhere in the EU, even where they do so to avoid a charge for the relevant UK broadcasting service, as such a restriction is inconsistent with Article 56 (free movement of services) of the TFEU. See joined cases of *FA Premier League and Others v QC Leisure and Others* and *Karen Murphy v Media Protection Services Limited* (C-403/08).

and in the Ankara Agreement and the Additional Protocol have an impact on the immigration regime applied to Swiss nationals and Turkish nationals in the UK. FMOPA gives rise to rights of residence and entry in the UK to Swiss nationals who are carrying out an economic service or providing services in the UK. The Ankara Agreement and Additional Protocol have an impact on the immigration regime applied to Turkish nationals in the UK, providing the legal basis for their preferential treatment, as compared to non-EU/EEA nationals.

10. The Department says that while this instrument proposes to remove the treaty rights, it also proposes to exempt any immigration related aspects, to ensure that the residence rights of Swiss and Turkish nationals running businesses or providing services in the UK immediately before exit day are not affected. The intention is to deal with any immigration related aspects through the Immigration and Social Security Coordination (EU Withdrawal) Bill, which is seen as a more appropriate vehicle and which is currently at Report Stage in the House of Commons, and through subsequent regulations and the Immigration Rules.

Conclusion

11. This instrument proposes to remove treaty rights which are derived from several bilateral and multilateral EU agreements and which currently guarantee preferential treatment for EU, EEA, Swiss and Turkish nationals with regard to self-employment, owning and managing a company and providing services in the UK, as compared to nationals of other countries. This policy change is proposed as part of the Government's planning for a possible 'no deal' exit from the EU and seeks to ensure the UK is compliant with the WTO's 'most favoured nation' principle. The Committee notes that removing the treaty rights will mean that the people and businesses affected will not be able to use the rights to challenge possible new policies or regulations in the UK which place restrictions on their access to the UK Internal Market after exit. The Committee also notes the link between this instrument and the Immigration and Social Security Coordination (EU Withdrawal) Bill which is currently on hold at Report Stage in the House of Commons, and that the instrument would also make it an offence to use legitimate satellite decoder cards from the EU to avoid a charge for receiving a programme made in the UK. **We draw the draft Regulations 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.**

Damages (Personal Injury) Order 2019 (SI 2019/1126)

Date laid: 15 July 2019

Parliamentary procedure: negative

Because it is expected that the compensation to people who have suffered life-changing injuries as a result of an accident will be paid as a lump sum which will be invested to provide for the person's long-term needs, that amount has to be adjusted to allow for the interest that it would be expected to accrue: that "multiplier" is the Ogden Discount Rate. This Order revises that Rate to -0.25%. The level set has received mixed reviews in the media but we commend the Ministry of Justice for the transparent way in which the process has been conducted.

This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

12. After an accident, insurance companies or courts decide how much money should be paid as compensation to people who have suffered life-changing injuries, to cover all their predicted future losses, as well as any care costs. However, because this compensation is paid as a lump sum which is expected will be invested to provide for the person's long-term needs, the amount has to be adjusted to allow for the interest that it would be expected to accrue: that "multiplier" is the Ogden Discount Rate ("the Ogden Rate"). The intention is always that the Ogden Rate should not over or undercompensate the victims.

13. This Order revises the Ogden Rate: it has been laid by the Ministry of Justice with an Explanatory Memorandum, Impact Assessment (IA), and a statement that explains in detail the assumptions made and why, in the Government's view, alternative rates would not achieve the necessary protections.

Background

14. The Ogden Rate was last set in 2017, by the then Lord Chancellor, with reference to the real yields from Index Linked Government Securities and using the legal principles governing the setting of the rate as originally laid down by the House of Lords in the case of Wells v Wells [1999] 1 AC 345. In our 29th Report of Session 2016-17,[4] with reference to a previous instrument setting the Ogden Rate, we explained: "This instrument provides that, from 20 March 2017, the discount rate for this purpose will be -0.75% (that means that the money paid will need to be slightly more than the sum awarded by the court). This reflects the current low yield of Index-Linked Gilts." In that Report we also expressed our disappointment that the Government had not more clearly set out the grounds for the decision.

15. Because the methodology used at that time was widely considered to produce a Ogden Rate that was too favourable to claimants, changes were introduced in the Civil Liability Act 2018 ("the 2018 Act"). The 2018 Act introduced a requirement that the Lord Chancellor, having consulted the Government Actuary and HM Treasury, use the new methodology to review the discount rate within 140 days of the coming into force of the 2018 Act. (That period expires on 5 August 2019, the date on which the new Order comes into force).

16. From 6 December 2018 to 30 January 2019 the Ministry of Justice published Setting the Personal Injury Discount Rate: A Call for Evidence, which asked a series of questions to gather new data, information and evidence to inform the first review under the Act. 40 responses were received. The information provided informed the new personal injury Ogden Discount Rate, which this instrument sets at -0.25%. The Government has on this occasion published a full IA that sets out the method and assumptions used and estimates savings to insurers of £220 million to £320 million a year and of £80 million a year to the NHS.[5]

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4 Damages (Personal Injury) Order 2017 (SI 2017/206), 29th Report, Session 2016-17(HL Paper 145).

5 Ministry of Justice, *Setting the Personal Injury Discount Rate: Call for evidence (Consultation Outcome)* (6 December 2018): https://www.gov.uk/government/consultations/setting-the-personal-injury-discount-rate-call-for-evidence [accessed 19 July 2019].

Reaction

17. The media again reflects mixed reactions to the new rate. The Daily Mirror's Money page, for example, reported the change as likely to reduce insurance costs for drivers, at an average of about £15 per person, with young drivers being likely to benefit most due to their higher premiums. The article also quotes PricewaterhouseCoopers (PwC), who argue the reverse, saying that premiums will rise as a result.[6] The Director General of the Association of British Insurers (ABI) is widely quoted as saying that the decision was "a bad outcome for insurance customers and taxpayers that will add costs rather than save customers money". The ABI also states that the change will add considerable costs to the NHS in relation to the settlement of clinical negligence claims.

18. The media more generally quotes a number of insurance companies and PwC expressing disappointment that the discount was not set in the region of 0% to +1% expected by analysts. A statement placed by the Lord Chancellor in the Libraries of the House on the day the instrument was laid explains in some detail why the current rate was chosen and provides an analysis of why the other options considered were deemed less suitable.[7] **We commend this transparency.**

19. The ABI has sent the Committee a document which expresses strong concern about the Lord Chancellor's decision not to accept the Government Actuary's proposal of +0.25% which modelling indicates will produce a 50% chance of the claimant being fully compensated by the end of the investment period.[8] The Lord Chancellor's statement, however, explains in some detail the basis for deviating from that figure to -0.25% (see paragraphs 16-22 of the statement), which gives the claimant a 66.6% chance of being fully compensated.[9] The Lord Chancellor regards this as "a reasonable additional margin of prudence which reflects the sensitivities of the rate to the baseline assumptions on which the Government Actuary's calculations were made."[10]

20. In a letter to the Lord Chancellor dated 18 July 2018,[11] the ABI has also raised concerns that the IA that accompanies this legislation is inaccurate because it:

> "…completely misrepresents insurance market pricing … in response to the setting of the previous minus 0.75% rate, and omits to mention Ministerial decisions since 2017 designed to ensure that the minus 0.75% rate was not widely adopted. … No mention is made of the Ministry of Justice's guidance to the Stock Market in September 2017 that it expected a new rate to be set at between 0% - 1%."

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6 'Car insurance to get cheaper for millions thanks to new discount rate', *The Mirror* (15 July 2019): https://www.mirror.co.uk/money/car-insurance-cheaper-millions-thanks-18211748 [accessed 22 July 2019].

7 Lord Chancellor, *Personal Injury Discount Rate – Outcome of Review* (15 July 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816819/statement-of-reasons.pdf [accessed 19 July 2019].

8 Secondary Legislation Scrutiny Committee publications page: https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-a/publications/

9 Lord Chancellor, *Personal Injury Discount Rate – Outcome of Review*, paras 16–22.

10 *Ibid*, para 20.

11 Association of British Insurers, *Letter to the Lord Chancellor*, (18 July 2019): https://www.abi.org.uk/globalassets/files/subject/public/personal-injury/david-gauke-mp-moj-18-july19.pdf [accessed 22 July 2019].

The letter goes on to state that, because the industry has generally been making settlements based on the assumed 0-1% rate, the savings to insurers set out in the IA do not exist.

21. The Ministry of Justice has provided a response for this Committee:

> "The reference to a 0-1% discount rate was made in a Command Paper which the Ministry published in March 2017,[12] seeking views on the Government's draft legislation. It is important to read the reference in the full context in which it was given, as follows:
>
> 'The first review of the rate under the proposed new law will not occur until the legislation has been enacted. It is not possible to predict what specific rate a review under the new approach would produce.
>
> *27.* Nonetheless, broadly speaking, based on the evidence currently available and without fettering the exercise of the Lord Chancellor's discretion in the future, the Government would expect that if a single rate were set today under the new approach the real rate might fall within the range of 0% to 1%.
>
> *28.* This estimate of what the range of rates might be under the proposed law is primarily based on the expected returns over longer award periods, contained in the report from the Government Actuary's Department published alongside this paper, and has been reached by making illustrative assumptions as to appropriate allowances for investment expenses and taxation. If return expectations reduce or the assumptions for investment expenses and taxation turn out to be under-estimates, the rate may be lower; or, if return expectations increase or the assumptions turn out to be over-estimates, higher …'"

22. In its pre-legislative scrutiny report on the Civil Liability Bill, the House of Commons Justice Committee looked at the question of quantifying the costs and benefits of the legislation, and questioned whether the Government should have provided an indicative figure of the likely rate after the reforms had taken effect, of say 0-1%. In a document published in March 2018, the Ministry of Justice provided the following response:

> "The 0% to 1% estimate was intended to be a helpful indication of the potential scale of the change in the rate, relative to the rate of minus 0.75% set in March 2017, that the new legal framework might produce. The publication of the figure was not intended to represent the actual outcome of a review. Creating estimates of the costs and benefits that would flow from rates in the region of 0% or 1% would be potentially misleading. The Government does not consider that it would be appropriate to speculate on the outcome of the first review of the rate under the new law."[13]

23. The Committee notes that, even if the status of the original indicative illustrative rate was misinterpreted, the statement in March 2018 should

12 MoJ, The Personal Injury Discount Rate: How it should be set in future – draft legislation" (September 2017): https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/personal-injury-discount-rate-command-paper-web.pdf [accessed 22 July 2019].

13 MoJ, Government Response to the Report of the Commons Justice Committee (March 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/689413/personal-injury-discount-rate-jsc-govt-response-web.pdf [accessed 22 July 2019], para 54.

have made the position that the Government was not committeed to 0%–1% absolutely clear.

Next Steps

24. For the future, the 2018 Act introduced a new system for reviews that requires the Lord Chancellor to be advised by an expert panel. The 2018 Act specifies that the panel must be chaired by the Government Actuary with four other members with expertise as an actuary, an investment manager, an economist and in consumer matters relating to investments.

25. Although a review within five years is made mandatory by the 2018 Act, the Rate is sensitive to conditions in the wider economy and any major fluctuations in investment returns, so if the discount rate were considered to be out of alignment with investment returns due significant economic changes, that might trigger an earlier review.

INSTRUMENTS OF INTEREST

Draft Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019

26. These Regulations are the third time HM Treasury (HMT) has made changes to existing financial services legislation, and the Committee hopes that HM Treasury has not under-estimated the challenge which is posed to financial services firms in taking on board so many amendments to the core legislation for the sector. In the first instrument, the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019, the Committee drew attention to the number and significance of the Acts and instruments being amended.[14] The "No. 2" instrument addressed errors and omissions in earlier EU exit legislation. However, HMT has now laid this instrument as the "No. 3" Regulations, and states in the accompanying Explanatory Memorandum that it "addresses deficiencies in UK domestic law and retained EU law arising from the UK's withdrawal from the EU … [and] makes amendments to a number of financial services EU exit statutory instruments, correcting minor errors identified in legislation after it was laid before Parliament, and updating certain references to account for the Article 50 process extension." However, the range and magnitude of the changes are significant: the Regulations make changes to 15 items of legislation and include a sub-delegation of powers to UK regulators and extend a ministerial power of direction. The Committee reiterates its concern about the scale of the challenge facing financial services firms in adjusting to these changes.

Draft Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

27. This instrument proposes changes to earlier Northern Ireland EU exit-related statutory instruments and one piece of Northern Ireland primary legislation on waste management. According to Northern Ireland's Department of Agriculture, Environment and Rural Affairs (DAERA), the amendments are needed to correct deficiencies arising from the UK's withdrawal from the EU and to ensure that the objectives relating to the principles of self-sufficiency and proximity[15] in national waste management plans, which emanate from Article 16 of the EU's Waste Framework Directive continue to apply and are fully operable at UK level after exit. The instrument also seeks to ensure that there is a consistent approach to this policy area in UK domestic legislation after exit. One of the proposed amendments would remove from Northern Ireland legislation references to so-called Best Available Techniques (BAT) in relation to the treatment of waste. BAT are currently set out in EU legislation and specify the best available techniques for preventing or minimising emissions and impacts on the environment. DAERA told the Committee that the UK has committed to maintaining environmental standards and to ensuring that current BAT requirements will continue to apply in UK law after EU exit. This instrument proposes to remove generic references to BAT in relation to the Waste Framework Directive as, without this change, Northern Ireland/the UK may commit to complying with any changes to BAT at EU level after exit. DAERA says that such ongoing commitment to EU processes would be inappropriate and

14 19th Report (Sub-Committee A), Session 2017-19 (HL Paper 302).

15 The principles of self-sufficiency and proximity require EU Member States to establish, in co-operation with other Member States, an integrated and adequate network of waste disposal facilities and to dispose of waste as close to the source as possible.

that the UK will establish its own process for developing BAT requirements after exit. The Committee has received a submission from Green Alliance raising concerns about this proposal. We are publishing the submission and DAERA's response on our website.[16]

Notification of Deaths Regulations 2019 (SI 2019/1112)

28. In her third report on the Shipman Inquiry,[17] Dame Janet Smith identified how Harold Shipman had been able to exploit weaknesses in the death certification system. The Government introduced reforms to death certification and coroner investigations through the Coroners and Justice Act 2009 ("the 2009 Act") which were substantially implemented in July 2013. The 2009 Act also included provisions to introduce a medical examiner to review death certificates to ensure that GPs were reporting correctly. Pilots of the medical examiner scrutiny system have identified some inconsistencies and uncertainty about when it is appropriate to report a death to the coroner as suspicious: these Regulations therefore make it clearer by including a list of the circumstances in which notification is required.

29. In the Explanatory Memorandum, the Ministry of Justice explains the Government's intention to begin implementing a non-statutory medical examiner system from April 2019. This will be undertaken by the Department for Health and Social Care which is currently aiming for the statutory system as provided for in the 2009 Act to be implemented in April 2021, subject to amendments to primary legislation and the introduction of secondary legislation. **We note that it has already been 10 years since Parliament agreed to the original provisions for medical examiners and are concerned that their implementation has been so slow**.

Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (SI 2019/1152)

30. The Department for Work and Pensions (DWP) yesterday withdrew its draft affirmative regulations on the Managed Migration of Universal Credit claimants, on which policy this Committee has commented in some detail in the past.[18] The withdrawal is, in part, in response to a High Court judgement which found unlawful the differential treatment of Severe Disability Premium claimants, depending on when they claimed Universal Credit.[19] While acknowledging the need for DWP to respond to the court's decision quickly, we are concerned that these replacement Regulations are subject to the negative procedure only, rather than the affirmative procedure which would have automatically required a debate. This has been achieved by removing one provision, which clarified appeal rights, from the previous version which clarified appeal rights: this appears to us to be a tactical ploy by the Department. Although the replacement Regulations are still restricted to a 10,000-claimant pilot phase, a number of concerns about the proposed mechanism have been raised. We are therefore both surprised and

16 Secondary Legislation Scrutiny Committee publications page: https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-a/publications/.

17 The Shipman Inquiry, *Death Certification and the Investigation of Deaths by Coroners* (14 July 2003): https://www.gov.uk/government/publications/the-shipman-inquiry-third-report-death-certification-and-the-investigation-of-deaths-by-coroners [accessed 19 July 2019].

18 8th Report of Sub-Committee B (HL Paper 244), 14th Report of Sub-Committee B (HL Paper 273); both Session 2017-19.

19 High Court, R (TP AR & SXC) v SSWP & Anor, EWHC 1116 (QB) (3 March 2019).

disappointed that, having allowed the version laid on 14 January 2019 to remain undebated for six months, the negative procedure is being used to bring these changes into immediate effect on the cusp of the parliamentary recess; this means the Regulations will have been in operation for nearly six weeks before Parliament has any opportunity to scrutinise them .

31. These are our preliminary views, and we will give our considered response in September.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019

Gas Tariffs Code (Amendment) (EU Exit) Regulations 2019

Government of Wales Act 2006 (Amendment) Order 2019

Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Instruments subject to annulment

SI 2019/1086	Private Security Industry Act 2001 (Licences) (Amendment) Regulations 2019
SI 2019/1094	Children and Social Work Act (Consequential Amendments) (Social Workers) Regulations 2019
SI 2019/1098	Aviation Safety (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
SI 2019/1099	Persistent Organic Pollutants (Various Amendments) Regulations 2019
SI 2019/1101	Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
SI 2019/1104	Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
SI 2019/1107	Police Act 1997 (Criminal Records) (Fees) (Amendment) Regulations 2019
SI 2019/1112	Notification of Deaths Regulations 2019
SI 2019/1116	Safety of Sports Grounds (Designation) (Amendment) Order 2019
SI 2019/1117	Home Loss Payments (Prescribed Amounts) (England) Regulations 2019
SI 2019/1119	Criminal Procedure (Amendment No. 2) Rules 2019
SI 2019/1128	Plant Health (Amendment) (England) Order 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 23 July 2019, Members declared the following interests:

Draft Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Lord Chartres

Associated with Green Alliance

Attendance:

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Viscount Hanworth, Lord Hodgson of Astley Abbotts, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.