

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

59th Report of Session 2017–19

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

Drawn to the special attention of the House:

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

Includes information paragraphs on:

Draft Criminal Justice Act 2003 (Early Release on Licence) Order 2019

Draft Pesticides (Amendment) (EU Exit) Regulations 2019

Draft Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019

Draft Statement of Strategic Priorities for telecommunications, the management of radio spectrum and postal services

Preparatory Action on Defence Research and European Defence Industrial Development Programme (EU Exit) Regulations 2019

Air Navigation (Cosmic Radiation: Protection of Air Crew and Space Crew and Consequential Amendments) Order 2019

School Teachers' Incentive Payments (England) Order 2019

Teachers' Pensions Schemes (Amendment) Regulations 2019

REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019

Export Control (Amendment) (No. 2) Order 2019

Treaty between the Government of the United Kingdom and the Government of Belize concerning the Status of the United Kingdom Forces in Belize and Defence Cooperation

Convention Establishing the Square Kilometre Array Observatory

Ordered to be printed 5 September 2019 and published 6 September 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

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

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), 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 Ninth Report

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

Instruments recommended for upgrade to the affirmative procedure

Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

1. The purpose of these draft Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra) as a proposed negative instrument, is to make technical operability changes to parts of retained EU legislation that deal with the import of animals and animal products. While the instrument proposes extensive amendments in this policy area over more than 18 pages, including the copying-out of provisions from relevant EU legislation directly into UK legislation and the repeal of a piece of retained EU law, the Explanatory Memorandum provides limited explanation of the proposed changes, stating simply that “no change is being made to policy” and that the instrument is needed to “ensure continuity of the existing legal framework” after EU exit and to “improve legal clarity of retained EU legislation relevant to the import of animals and animal products”. Given that the arrangements for the import of live animals and animal products after EU exit are a politically significant aspect of the UK’s withdrawal from the EU, it would have been helpful for the Department to provide further explanation of the approach taken with this instrument. The Committee is of the view that the House may expect an opportunity to debate proposals for legislative change in this important policy area. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

Proposed negatives about which no recommendation to upgrade is made

- Fisheries, Aquaculture and Marine (Functions Exercisable in or as Regards Scotland) (Amendment) (EU Exit) (No. 2) Regulations 2019

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

Date laid: 22 July 2019

Parliamentary procedure: negative

These Regulations were laid on the cusp of the summer recess to bring into immediate effect the controversial Managed Migration pilot to move long-term claimants of existing state benefits into Universal Credit. In our 58th Report of this session, we published an information paragraph in which we criticised the timing of laying, which effectively prevented Parliament from debating the Regulations until they had been in operation for at least six weeks. We acknowledge the need for the Department for Work and Pensions (DWP) to respond to the High Court judgment, but it was delivered on 3 May 2019 almost three months before the replacement Regulations were laid. The debate following the Minister’s Statement on 23 July 2019 demonstrated a concern in the House that DWP’s handling of this legislation had been “disrespectful to Parliament”.

*This report incorporates additional material provided by DWP which provides further information about the design of the pilot to test out the viability of its migration plans. The information gathered during the pilot will be used in the formulation of the subsequent “roll out” regulations, which will come before this Committee in due course. **We look forward to scrutinising the “roll out” regulations, and examining the extent to which they provide convincing solutions in response to the concerns about the migration process that this and our previous reports have identified.***

These Regulations are drawn to the special attention of the House on the ground that that they give rise to issues of public policy likely to be of interest to the House.

Background

2. The Department for Work and Pensions’ (DWP) long-term policy under the Welfare Reform Act 2012 has been to amalgamate a variety of existing state benefits (“legacy benefits”) into one system of Universal Credit. By the end of 2018, DWP had established the system nationally for new claimants, but further legislation was required for the “managed migration” to Universal Credit for long-term claimants of those legacy benefits. The draft *Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019* (“the draft Managed Migration Regulations”) were laid on 14 January 2019 as a replacement for a previous version laid on 5 November 2018 that was heavily criticised by, amongst others, the SLSC’s Sub-Committee B in its 8th Report, because of doubt that DWP had the capacity to make so many changes at once.¹
3. Two sets of regulations were laid in January 2019: SI 2019/10 (“the SDP Gateway Regulations”) subject to the negative resolution,² which came into immediate effect, containing the more urgent provisions to prevent further

¹ [8th Report of Sub-Committee B](#), Session 2017–19 (HL Paper 244).

² Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 ([SI 2019/10](#)) also with equivalent Northern Irish provisions in [SR 2019/2](#).

claimants with Severe Disability Premiums (SDP) migrating to Universal Credit; and a draft affirmative instrument—the draft Managed Migration Regulations—which proposed a limited pilot exercise to test the migration system. Both instruments were addressed in Sub-Committee B’s 14th Report.³ The draft affirmative regulations remained undebated until they were withdrawn and replaced by the current Regulations (SI 2019/1152) on 22 July 2019. Similar regulations, SR 2019/152, laid at the same time, enable the same regime in Northern Ireland but do not include the pilot provisions.⁴ The Government made a Statement to the two Houses on 23 July 2019 about the new Regulations.⁵

High Court Judgment

4. The draft Managed Migration Regulations proposed to pay flat-rate sums of “transitional protection” to certain SDP claimants. A High Court judgment found that treating differently those SDP claimants who had already moved to Universal Credit from those prevented from doing so by the SDP Gateway (introduced by the SDP Gateway Regulations) resulted in a payment difference of about £100 per person per month.⁶ As a result the High Court concluded that provisions in both sets of regulations laid in January 2019 were discriminatory.
5. These new Regulations revoke the SDP Gateway Regulations from January 2021⁷ and increase the level of transitional payments that will be made available to eligible SDP claimants who have already moved to Universal Credit. Those claimants will be eligible for an ongoing monthly flat-rate payment according to their circumstances, and for an additional lump sum payment to cover the period since they moved to Universal Credit (provided there has not been a material change in their circumstances). **We note, however, that the Minister stated that DWP is continuing to appeal two of the three cases included in the judgment.**⁸
6. The new Regulations also give some other groups of claimants entitlement to backdated payments under the transitional scheme: those who are found to have been eligible following review, those whose Personal Independence Payment applications have taken a long time to be processed, those who have not received SDP due to error, and those who have either won an appeal or have inadvertently breached the SDP Gateway to claim Universal Credit. (This addresses the third of the individual cases considered by the High Court, which related to a person who had been misdirected to make a new claim and lost money in consequence.)

3 [14th Report](#) of Sub-Committee B, Session 2017-19 (HL Paper 273).

4 Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations (Northern Ireland) 2019 ([SR 2019/152](#)).

5 HL Deb, 23 July 2019, [col 680–691](#) [Lords Chamber].

6 High Court, *The Queen on the Application of TPAR & SXC v the Secretary of State for Work and Pensions*, [[2019\] EWHC 1116 \(QB\)](#), especially para 29.

7 DWP explained that these SDP transitional payments have to be calculated and paid manually; this includes the ongoing payments that will be made every month. This is highly labour intensive, and in consequence, the SDP Gateway cannot be removed until January 2021 because the Department needs to build a system to identify and automate the payments before it can cope with the ‘flow’ of claimants onto Universal Credit appropriately.

8 HL Deb, 23 July 2019, [col 686](#) [Lords Chamber].

Timetabling

7. We acknowledge the need for DWP to respond to the High Court judgment. However, the judgment was delivered on 3 May 2019, almost three months before the replacement Regulations were laid. In the information paragraph published in our last report, we expressed surprise and disappointment that these Regulations were laid on the cusp of the summer recess and brought into immediate effect. The debate following the Minister’s Statement on 23 July 2019 demonstrated a concern in the House that DWP’s handling of this legislation had been “disrespectful to Parliament”.⁹

Change in level of Parliamentary scrutiny

8. The draft Managed Migration Regulations were subject to the affirmative procedure. In contrast, these replacement Regulations are subject only to the negative procedure. Paragraphs 3.4 to 3.5 of the Explanatory Memorandum (EM) explain how this change in procedure was made possible by removing the one provision (on rights of appeal) from the draft Managed Migration Regulations which required the affirmative procedure. In our last report, we said that this appeared to us to be a tactical ploy by the Department to avoid the Regulations having to be debated in Parliament before they could come into effect. **We remain of this view: although the SDP provisions had to be changed following the High Court judgment, both Houses have raised broader questions about DWP’s plans for managed migration which they had been assured would be discussed in a debate on the regulations.**¹⁰

The content of these Regulations

9. In addition to the changes described above, the main provisions of these Regulations replicate the previous version and aim to:
- introduce the process that claimants of certain existing legacy benefits (Income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit and Tax Credits) will follow when they are issued with a notice to migrate to Universal Credit by DWP;
 - create a limited pilot so that once 10,000 awards of Universal Credit have been made to persons to whom a managed migration notice has been issued, no further migration may be undertaken by the Department until further regulations are made;
 - allow for a transitional element to be considered, calculated, paid and administered to provide protection for existing benefit claimants who, upon managed migration, would have a lower entitlement to Universal Credit than their total existing benefit awards;
 - introduce, from July 2019, Discretionary Hardship Payments that can be made to those who have gone through the managed migration process and appear to be in hardship as a result of the termination of their existing benefits or if any other issues related to managed migration have resulted in hardship; and

⁹ HL Deb, 23 July 2019, [col 680–691](#) [Lords Chamber].

¹⁰ HC Deb, 8 January 2019, [col 175](#) [Commons Chamber]: “We will also ensure that the start date for the July 2019 test phase involving 10,000 people is voted on ... Let me clarify once more that we will hold a debate on affirmative regulations in relation to the managed migration regulations”.

- introduce, from July 2020, a two-week run-on of Income Support, Income-based Jobseeker’s Allowance and Income-related Employment and Support Allowance for those whose awards of those benefits have terminated as a result of their claim for Universal Credit.
10. **Our previous reports expressed a number of concerns about how the legislation will operate in practice. These Regulations do not, in our view, resolve them:**
- **The “hard stop”:** The “hard stop” provision means that any claimant who has not reapplied for their benefits within three months of receiving notice to do so may have their benefits stopped (regulations 44 and 46). During the debate on 23 July 2019, the Minister said that the Department did not intend to stop the benefits of anyone participating in the pilot,¹¹ and the supplementary DWP material published on our website¹² reiterates the point. The “hard stop” provision nonetheless remains in the new Regulations.
 - **The potential for a gap in payments during the transitional period:** DWP’s plans for the handling of the changeover period did not, in our view, offer sufficient certainty that claimants would not be obliged to take out repayable hardship loans to survive until their first Universal Credit payment, which normally occurs five weeks after claiming. As well as concerns as to whether the two-week run-on provision would be sufficient for the gap period, there is additional evidence from the National Audit Office (NAO) that DWP are failing to meet processing deadlines.¹³
 - **Moving from fortnightly to monthly payments for some claimants:** The submissions we received in connection with our previous reports drew our attention to the 745,000 claimants on Employment and Support Allowance (ESA) who would also be required to move from fortnightly to monthly payments as part of their migration to Universal Credit, and who might struggle to adjust. Although DWP told us that Alternative Payment arrangements are available on Universal Credit for people who are struggling to adjust to monthly payments, we took the view that DWP should be proactive and offer relief *before* an individual got into difficulty. **The House may wish to ask the Minister how many of this type of claim will be included in the pilot.**
 - **Too many changes at once:** We question whether DWP may be attempting to make too many changes at once by combining a changeover from fortnightly to monthly payments for some, with a complete reassessment of all claimants’ needs and a data cleansing operation, plus reliance on certain IT programmes that have yet to be delivered. The NAO report has already raised concerns about DWP’s ability to run the programme as it currently stands.
11. DWP has responded to a number of these concerns in the additional material published on our website. For example, it states that:

11 HL Deb, 23 July 2019, [col 680](#) [Lords Chamber].

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

13 National Audit Office, *Rolling out Universal Credit* (15 June 2018): <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit-Summary.pdf> [accessed 4 September 2019].

“We are consistently paying around 80% of claimants in full and on time at the end of their first assessment period. Latest published statistics show performance at 84% of claims paid in full on time and 90% were paid in part on time at the end of their first assessment period.¹⁴ Over 90% of claimants consistently receive their full payment on time for all assessment periods. ... The most recent figures on the length of payment delays for new claims to Universal Credit are detailed in the table below.”

Claims due a payment in February 2019	Within 5 weeks of payment due date	6-10 weeks after payment due date	More than 10 weeks after payment due date
Received Payment in Full	96.2% (139,000 claims)	2.0% (3,000 claims)	1.7% (2,500 claims)
Received a Partial Payment	99.0% (142,000 claims)	0.6% (900 claims)	less than 0.1% (500 claims)

Source: DWP

12. DWP added:

“In many cases where payment is not paid in full at the end of the first assessment period, this is owing to unresolved issues such as: claimants not accepting their Claimant Commitment or passing identity checks, or having outstanding verification issues, such as providing evidence of housing costs and self-employed earnings. (Such verification is required by law for the claimant to provide such information before any payment can be made.) ... The payment would be calculated and paid once any outstanding issues are resolved ... however, the onus is on the claimant to provide all necessary information before they can receive any benefit. The introduction of the universal backdating provision mitigates this concern. The Department continues to engage extensively with stakeholders to ensure that claimants are supported in the best possible way. The Department has also stated that it does not intend to stop claimants’ benefits during the pilot. Instead, it intends to learn how to support people onto Universal Credit without stopping legacy benefits.”

“The Discretionary Hardship Payment, as with the income-related run on IS, ESA (income related) and JSA (income based) and the Transitional Housing payment, will be non-recoverable ... The power for the Payment is broad and the Department intends to use it to pay the equivalent of the two-week legacy run on to those who move as part of the pilot phase and who are in hardship on account of the absence of the run on. Because the power is discretionary, the Department will also be able to make payments if any other issues related to managed migration have resulted in hardship.”

13. **Whilst this information may provide a degree of assurance, we remain concerned that thousands of claimants may find themselves in financial difficulty during the changeover period. It is essential that any system of “managed migration” should include provision**

14 Department for Work and Pensions, *Universal Credit statistics: 29 April 2013 to 11 July 2019* (13 August 2019): <https://www.gov.uk/government/statistics/universal-credit-29-april-2013-to-11-july-2019> [accessed 4 September 2019].

which will ensure that claimants are not forced into debt because they have been given insufficient funds to match their calculated needs for the duration of the transfer period, or because assessment deadlines cannot be met.

The management of the pilot

14. In Sub-Committee B's 8th Report, the Sub-Committee recommended a separate pilot on the ground that the House had been given insufficient detail to make an informed decision about DWP's migration proposals, in the hope that a pilot would provide better information on DWP's ability to deliver the proposed system to an acceptable standard.
15. On 23 July 2019, the Minister said that the pilot would be based around Harrogate because it provided an appropriate mix of claims. DWP explained further:

“Harrogate has been live with Universal Credit since 2016, and, therefore, has a caseload that will be typical of other sites as we start to scale up. It also has a caseload with a mixture of urban and rural claimants, which will further aid our learning, and it is supported by a local Service Centre under the same management as the Jobcentre.

We have started the ‘*Move to UC*’ pilot in Harrogate. We are beginning with the ‘*Who knows me*’ model, which builds on the hypothesis that the organisation that has a relationship with the claimant are best placed to support them through the move to Universal Credit. This model has started with a DWP-led approach that builds on the relationship the claimant has with their Work Coach within the Jobcentre. Once we are confident that this approach works, we will pilot a Partner-led approach where an external organisation, such as a Local Authority instigates a conversation with the claimant to move them to Universal Credit.

The evaluation will examine the pilot processes and the claimant behaviours to ensure that we have a thorough understanding of both the successful aspects of the pilot and the ways in which we can improve our service. We will include learning through observations of the interactions between DWP staff and the claimants they support, interviews with claimants to understand their perspectives and experiences and monitoring of the claimant journey in its entirety, fully accounting for both short term and longer term outcomes.”

16. We welcome the pilot scheme. **We are, however, concerned that 10,000 claims are a small sample compared to the approximately two million households which will need to be migrated nationally. The pilot will provide useful data to inform DWP's approach to migration and claimants' areas of difficulty. However, the extent to which it can be extrapolated to form an assessment of DWP's capacity to deliver the migration programme nationally must be open to question.**
17. We assume that specialist training and resources will be provided to the staff in the pilot area. In a single small area, there is also likely to be a “word of mouth” effect among the population which will aid in claimants' familiarisation with the new requirements. The name of the project, the “*Who knows me*” model, also indicates a degree of intimacy that may not be capable of being replicated in every area. **We question whether a pilot**

based on a single area can provide a sufficiently robust evidence base from which to design a national “roll-out”. DWP has acknowledged this and states:

“The *Move to UC* pilot is currently focussed on a small and gradual approach to learning from the claimants that we are interacting with in Harrogate Jobcentre. As we move forward, we will consider if sufficient learning will be gathered from Harrogate Jobcentre; or if we need to consider a further jobcentre or location to further develop DWP face to face approach within the *Who Knows Me* model. We plan to test the other two aspects of the *Who Knows Me* model (Partner Led and HMRC led approaches) within the Harrogate area during 2020.”

Subsequent regulations

18. In the additional information, DWP states that the pilot will end in 2020 and full migration will be achieved by the end of 2023. The Department has not published a more specific plan because, it explains, the pilot is iterative and the direction of the pilot will depend on the evaluation of each phase. DWP will, however, publish an evaluation strategy by the end of 2019 and will publish the evaluation of the pilot before returning to Parliament with further legislation to continue migration activity.
19. To be able to continue managed migration after the pilot, the Department will need to revoke regulation 2. DWP does not currently have a target date for laying subsequent regulations but (as stated above) has committed to publishing an evaluation of the pilot before seeking to continuing managed migration. **We welcome the Secretary of State’s statement that she wants to be personally assured that the process is working before taking managed migration further.**
20. On 23 July 2019, the Minister confirmed that these Regulations will commence the pilot for no more than 10,000 claimants and that DWP must return to Parliament for approval to continue managed migration activity after the pilot has been evaluated. She also stated that the report would be available in full before further regulations were laid to roll out the entire managed migration programme.

Conclusion

21. We welcome the decision of DWP to undertake a separate pilot to test the viability of its plans. The information gathered during the pilot will be used in the formulation of the subsequent “roll out” regulations, which will come before this Committee in due course. **We look forward to scrutinising the “roll out” regulations, and examining the extent to they provide convincing solutions to the concerns about the migration process that this and our previous reports have identified.**

INSTRUMENTS OF INTEREST

Draft Criminal Justice Act 2003 (Early Release on Licence) Order 2019

22. Home detention curfew (HDC) is a discretionary power exercised by prison governors on behalf of the Secretary of State, subject to a risk assessment. This draft Order would extend the period that an eligible prisoner may be released on licence on an HDC by six weeks, from the current 135 days to 180 days (that is, six months), to manage the offender's transition on release from custody better. The Ministry of Justice states that, as well as having the added benefit of reducing prison population pressures, the HDC extension is supported by research published in 2018.¹⁵ This research indicates that, for some, the period of electronic monitoring can be an opportunity to break habits, enhance chances for employment and training, and help to develop or maintain positive relationships, each of which can be important in helping offenders' rehabilitation.

Draft Pesticides (Amendment) (EU Exit) Regulations 2019

23. The purpose of these draft Regulations is to amend retained direct EU legislation which underpins the regulatory regimes for plant protection products and maximum residue levels (MRLs),¹⁶ so that oversight can continue to operate effectively after the UK's withdrawal from the EU. The Department for Environment, Food and Rural Affairs (Defra) says that some of the amendments are needed following the change in the EU exit date to 31 October which impacts on several dates specified in the retained legislation. In addition, further new EU legislation has come into force during the Article 50 extension period, requiring amendments to correct deficiencies arising from EU exit. The instrument also proposes fixes to several errors in earlier EU exit instruments. The Committee first considered this instrument when it was laid before Parliament as a proposed negative instrument. At the time, the Committee noted that a proposed revocation of a fee charging provision would not impact on the UK's existing fee charging regime which would continue to operate under separate domestic legislation but that the revocation could be regarded as triggering the affirmative procedure under the broad provision of Schedule 7 paragraph 1(2)(b) of the European Union (Withdrawal) Act 2018.¹⁷ The Department has now laid the instrument for regular scrutiny under the affirmative procedure. The Committee has received a submission by Green Alliance, raising concerns about the instrument on behalf of the Pesticide Action Network UK and the Royal Society for the Protection of Birds, including about a potential loss of oversight and weakening of requirements to obtain scientific advice. We have put these concerns to Defra and are publishing the submission and the Department's response on our website.¹⁸

15 Ministry of Justice, *The experience of electronic monitoring and implications for practice: a qualitative research synthesis* (12 July 2018): <https://www.gov.uk/government/publications/the-experience-of-electronic-monitoring-and-implications-for-practice-a-qualitative-research-synthesis> [accessed 4 September 2019].

16 Residues are traces which pesticides leave in treated products. The maximum residue level (MRL) is the highest level of a pesticide residue that is legally tolerated in relation to food or feed.

17 According to Schedule 7 paragraph 1(2)(b) of the European Union (Withdrawal) Act 2018, 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.

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

Draft Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019

24. These draft Regulations propose amendments to ensure that current frameworks for the use of international accounting standards, and for regulatory oversight and professional recognition of statutory auditors and third country auditors, can continue to work effectively after the UK's withdrawal from the EU. Amongst other changes, the instrument proposes to correct an error in an earlier EU exit instrument¹⁹ to ensure that auditors of small or medium-sized Public Interest Entities (PIEs)²⁰ have to be inspected at least once every six years, rather than at least once every three years, as an earlier instrument required erroneously. Large auditors of PIEs would have to be inspected at least once every three years, instead of at least once every six years, as set out in the earlier instrument. The draft Regulations also propose to commence powers for setting out the framework for determining the equivalence and adequacy of third countries' oversight arrangements for auditors before rather than after exit day, to ensure that the framework can be put in place before exit and to provide certainty and clarity to those affected. In addition, the instrument seeks to clarify the requirements for the rules that Recognised Supervisory Bodies, such the Institute of Chartered Accountants in England and Wales (ICAEW), must make on the continued recognition of European Economic Area (EEA) auditors after exit, in response to a request from the ICAEW. The instrument also proposes to maintain after exit an audit exemption for companies and Limited Liability Partnerships that are subsidiaries of UK parent undertakings, while not maintaining this exemption for subsidiaries of parent undertakings in the EEA.
25. The Committee has previously referred to the review and reform of the Financial Reporting Council²¹ and notes that the draft Regulations should be seen in the context of these far-reaching changes in the sector.

Draft Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services

26. The draft Statement of the Government's Strategic Priorities for telecommunications, the management of radio spectrum, and postal services ("the Statement") was laid before Parliament by the Secretary of State for Digital, Culture, Media and Sport on 18 July 2019, pursuant to Section 2C of the Communications Act 2003.²² The accompanying Explanatory Memorandum (EM) notes that the purpose of this Statement is to give Ofcom context and guidance on the Government's policy priorities and desired outcomes in a number of areas.²³ This includes gigabit-capable broadband deployment, 5G, spectrum management, the security and resilience of telecoms infrastructure, and furthering the interests of telecoms consumers. The EM notes that Ofcom must have regard to the Statement when exercising its regulatory functions relating to telecommunications, the

19 [Draft Statutory Auditors and Third Country Auditors \(Amendment\) \(EU Exit\) Regulations 2018](#). See also SLSC (Sub-Committee B) [5th Report](#), Session 2017–19 (HL Paper 223).

20 PIEs include banks, building societies, insurers and undertakings with securities that are admitted to trading on a regulated market. PIEs are subject to enhanced audit requirements because of the public interest in those audits.

21 SLSC Sub-Committee B, [17th Report](#), Session 2017–19, [HL Paper 293](#).

22 Written Statement—[HLWS1708](#).

23 Explanatory Memorandum (EM), paragraph 2.1.

management of the radio spectrum, and postal services.²⁴ The statement follows a statutory consultation that ran between 15 February and 27 March 2019.²⁵ The EM notes that there were over 70 responses to the consultation from a range of stakeholders, including telecoms companies, trade bodies, consumer and rural groups, and local government.²⁶ The Department states that: “Overall, most respondents broadly supported many of the Government’s strategic priorities and desired outcomes”.²⁷ The Committee notes with disappointment that, at the time of writing, the EM provided by the Department on 20 August 2019 has not been published by DCMS.

Preparatory Action on Defence Research and European Defence Industrial Development Programme (EU Exit) Regulations 2019 (SI 2019/1114)

27. The purpose of this instrument is to revoke EU legislation on two EU programmes: the financing of the Preparatory Action on Defence Research (PADR) programme, a three-year programme that runs until 2019 with a budget of €90 million and is aimed at testing the feasibility of a potential EU defence research programme (European Defence Fund) under the EU’s next Multi-Annual Framework (2021-2027); and the European Defence Industrial Development Programme (EDIDP), a two-year programme established in March 2019 to support the competitiveness and innovation capacity of the EU’s defence industry. EDIDP has a budget of €500 million to co-finance the joint development of defence products and technologies. The Ministry of Defence (MoD) explains that the EU legislation that is being revoked by this instrument puts in place internal EU arrangements which will become redundant when the UK leaves the EU. The instrument also empowers the Secretary of State to provide financial assistance in case the EU ceases to provide funding to UK participants in PADR and EDIDP in a ‘no deal’ exit scenario, in line with the Government’s Guarantee that underwrites all successful UK bids for EU funding until the end of 2020. According to the MoD, the extent of financial assistance that may be required is difficult to estimate due to certain unknown factors, including whether UK companies will bid successfully for new PADR and EDIDP funding in 2019 and whether the EU would allow UK projects to continue after exit. Following engagement with the defence sector, the MoD estimates that the total financial assistance required would be less than £2.5 million. The MoD says that five UK companies took part in PADR in 2017 and 2018, and that it is continuing to engage with UK industry to understand their plans for new PADR and EDIDP funding bids. The MoD has committed to update Parliament should its estimate be exceeded.

Air Navigation (Cosmic Radiation: Protection of Air Crew and Space Crew and Consequential Amendments) Order 2019 (SI 2019/1115)

28. In the Explanatory Memorandum (EM) accompanying this Order, the Department for Transport (DfT) states that this instrument implements

24 EM, paragraph 2.3.

25 Department for Digital, Culture, Media and Sport (DCMS), *Statement of Strategic Priorities for telecommunications, the management of radio spectrum and postal services :Consultation* (15 February 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779226/SSP_Consultation_-_Publication_Version_2_.pdf [accessed 5 September 2019].

26 DCMS, *Government response to consultation* (July 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818099/SSP_Government_response_FINAL.pdf [accessed 5 September 2019].

27 EM, paragraph 10.3.

Council Directive 2013/59/Euratom, known as the Basic Safety Standards Directive (BSSD), in so far as it applies to basic safety standards for protection against the risks arising from air and space crew being exposed to cosmic radiation. It replaces provision currently contained in the Air Navigation Order 2016 (“ANO 2016”) implementing Council Directive 96/29/Euratom which has been superseded by the BSSD. The Department notes that the instrument applies to aircraft operators established or with a principal place for business in the UK. It also applies to operators of spacecraft launched from the UK. The Order requires operators to assess each crew member’s potential exposure to cosmic radiation. The Department notes that: “If crew will be exposed to more than 1 millisievert (mSv) of cosmic radiation in a calendar year the operator must be authorised.” The EM states that: “Crew members that will be exposed to more than 6 mSv in a calendar year (“classified crew members”) should be medically assessed and be fit under the task concerned. In addition, classified crew members should have their exposure monitored and be subject to medical surveillance.” Operators are required to provide crew members with information on their assessed exposure and, as far as reasonably practicable, to minimise their exposure to cosmic radiation. Paragraph 7.3 of the EM notes that: “We do not expect any aircraft crew to reach the 6 mSv threshold.” DfT has stated: “At this time there are no spacecraft affected by the Order”.²⁸ This instrument also establishes a number of offences and penalties. The EM notes that: “These penalties are in line with those applicable to existing cosmic radiation provisions in the ANO 2016 and to the equivalent offences set by the Ionising Radiation Regulations 2017 in relation to ground-based workers”.

School Teachers’ Incentive Payments (England) Order 2019 (SI 2019/1133)

29. In the Explanatory Memorandum (EM) accompanying this Order, the Department for Education (DfE) states that the purpose of this instrument is to ensure that incentive payments to school teachers under three schemes (the Mathematics Early-Career Payments Pilot; the Mathematics and Physics Teacher Retention Payments Pilot; and the Teachers’ Student Loan Reimbursement Pilot) are not to be treated as remuneration under the School Teachers’ Pay and Conditions Document (STPCD). The Department notes that this is necessary to make it clear that these incentive payments are not pensionable nor part of the statutory negotiation process provided for with regard to the STPCD under section 122(1) of the Education Act 2002. DfE is offering all three schemes to incentivise the retention of eligible teachers. Paragraph 7.5 of the EM states that:

“The schemes are targeted at priority subject teachers and weighted towards areas of high need, as determined by our published data covering standards and capacity to improve. The Department is completing evaluations of all three schemes to assess the impact of the payments on the retention of eligible teachers. The schemes may be expanded and offered to more teachers in future.”

Teachers’ Pensions Schemes (Amendment) Regulations 2019 (SI 2019/1134)

30. In the accompanying Explanatory Memorandum (EM), the Department for Education states that key changes implemented by this instrument

include: providing civil partners and same-sex spouses with the same survivor pension benefits as widows; removal of the requirement to nominate unmarried cohabiting partners for survivor benefits; and miscellaneous and consequential amendments to scheme rules to provide clarification where ambiguity exists and to ensure scheme regulations provide for the policy intention. Paragraph 10.1 of the EM sets out that the proposals and draft SI were published for consultation on 15 May 2019, with the consultation closing on 25 June 2019. The EM states that all respondents welcomed the equalisation of same-sex survivor benefits with those payable to widows and the removal of the nomination form requirement for an unmarried partner to be eligible to receive a survivor's pension. **The Committee would like, however, to draw the attention of the House to paragraph 10.3 of the EM which states that:**

“Several respondents stated that whilst they understood this consultation was about the [Teachers’ Pension Scheme] providing equal provision of survivor benefits to those in a same-sex relationship as those provided in an opposite-sex relationship, they felt it was appropriate to comment on what they feel is the continued unequal treatment of male survivors of opposite-sex marriages.”

The EM goes on to explain that the consultation response document made clear that this is a separate area of consideration for the Government.

REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019 (SI 2019/1144)

31. The Regulations introduce transitional provisions in relation to applications for authorisation of certain hazardous chemicals in response to concerns raised by industry and following the delay of EU exit. This is the second update of the original Regulations which sought to replicate the EU's regulatory regime for chemicals (REACH) in a UK domestic context. The Committee cleared this instrument when it was laid initially as a proposed negative instrument.²⁹ There are no concerns about the content of the instrument which does not propose new policies and, according to the Department for Environment, Food and Rural Affairs (Defra), extends the scope of transition arrangements to avoid the risk of disruption to chemical supply chains after EU exit. Defra has informed the Committee, however, that contrary to the Explanatory Memorandum, not all Devolved Administrations have consented to the instrument. While Wales has provided consent and, in the absence of a Northern Ireland Executive and Assembly, the Northern Ireland civil service has been consulted, consent from the Scottish Parliament has not yet been obtained. Defra has told the Committee that:

“The Scottish Government notified the Scottish Parliament on 18 June that it proposed giving its consent to the REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019. The Scottish Parliament went into recess on 30 June, which meant that the 28 days consideration period was still ongoing at the time the instrument was made and laid before Parliament on 18 July. The department has apologised for this oversight and is liaising closely with the Scottish Government, and through them with the Scottish Parliament, on how to rectify the situation. The

²⁹ See [55th Report](#), Session 2017–19 (HL Paper 394).

department has also put in place further safeguarding procedures to avoid any repetition in the future.”

32. The Committee welcomes that the Department has strengthened its oversight procedures: it is essential that, where appropriate, statutory instruments are made and laid before Parliament only once formal consent has been obtained from the Devolved Administrations.

Export Control (Amendment) (No. 2) Order 2019 (SI 2019/1159)

33. The purpose of this instrument is to introduce a new national export control for submersible vessels and related equipment, software, and technology intended for export to Russia. The Department for International Trade (DIT) explains that the new control means all exports of equipment that could help Russia develop, operate and maintain its underwater capability are prohibited unless a licence is granted, allowing the UK to assess on a case by case basis whether or not a proposed export will pose a threat to national security. According to DIT, the new control is needed in response to Russia’s development of unconventional warfare equipment and capabilities, such as tracking undersea communication cables which carry most of the world’s telecommunications data. The Department says that Russia’s activity could pose a potential threat to the UK’s national security and prosperity given the UK’s dependence on this infrastructure. DIT says that some 15,000 organisations and individuals who are registered with the Department’s Export Control Joint Unit will be notified of the changes.

Treaty between the United Kingdom and Belize concerning the status of United Kingdom Forces in Belize and Defence Cooperation (CP 132)

34. Belize is an important training location for the British Army and the renegotiation of this treaty provides a legal basis for British Army Training Support Unit Belize to continue supporting British Army training for the next 15 years. The relationship is mutually beneficial as Belize also benefits from the provision of training opportunities for the Belize Defence Force, Coastguard and other security forces in the region. The Ministry of Defence states that there are no direct financial implications for the UK, although some indirect financial implications may arise from an Implementing Arrangement to the Treaty, which has not yet been negotiated. This is intended to be a reciprocal arrangement at no additional cost.

Convention establishing the Square Kilometre Array Observatory (CP 154)

35. This Convention ratifies the formation of the Square Kilometre Array (SKA), an international science project to build the world’s largest and most sensitive radio telescope, which will allow scientists insight into the formation and evolution of the first stars and galaxies after the Big Bang, the role of cosmic magnetism, the nature of gravity, and possibly even life beyond Earth. The SKA will be a global facility, with telescopes in South Africa and Australia, and its headquarters in the UK at Jodrell Bank near Manchester. The UK Government have committed £100 million (16%) towards construction of phase 1 of the SKA which will provide an operational array of low and mid frequency antennas from 2023. The UK also plans to contribute around 16% of operating costs (around £85 million to 2025). The SKA will generate 35,000 DVDs-worth of data every second and, therefore, presents

unprecedented technology challenges.³⁰ The UK is leading consortiums for two SKA Work Packages—*Signal and Data Transport*, which handles the volume of data, and the *Science Data Processor* (SDP), led by Cambridge University, which is focusing on the technology that is needed to turn the data collected into useable science products. The Explanatory Memorandum laid by the Foreign and Commonwealth Office states that the changes that SKA will inspire in high-performance computing are expected to alter the computing landscape for generations, with huge potential for societal and economic benefit.

30 See for example House of Commons Science and Technology Committee, *The big data dilemma* (4th Report, Session 2015–16, HC Paper 468).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019

Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019

Criminal Justice Act 2003 (Early Release on Licence) Order 2019

Environment and Wildlife (Legislative Functions) (EU Exit) (Amendment) Regulations 2019

European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019

Human Medicines and Medical Devices (Amendment etc.) (EU Exit) Regulations 2019

Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019

Insolvency (Amendment) (EU Exit) (No 2) Regulations 2019

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019

Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority (Adult Education Functions) Order 2019

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019

Passenger and Goods Vehicles (Tachographs) (Amendment etc.) Regulations 2019

Pesticides (Amendment) (EU Exit) Regulations 2019

Plant Health (Amendment etc.) (EU Exit) Regulations 2019

Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019

Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2019

Draft instruments subject to annulment

Statement of Strategic Priorities for telecommunications, the management of radio spectrum and postal services

Instruments subject to affirmative approval

SI 2019/1142 Burundi (Sanctions) (EU Exit) Regulations 2019

SI 2019/1145 Guinea (Sanctions) (EU Exit) Regulations 2019

Instruments subject to annulment

SI 2019/1106 Single Source Contract (Amendment) Regulations 2019

SI 2019/1109 Merchant Shipping (Falkland Islands) (Amendment) Order 2019

SI 2019/1114 Preparatory Action on Defence Research and European Defence Industrial Development Programme (EU Exit) Regulations 2019

SI 2019/1115 Air Navigation (Cosmic Radiation: Protection of Air Crew and Space Crew and Consequential Amendments) Order 2019

SI 2019/1118 Civil Procedure (Amendment No. 3) Rules 2019

SI 2019/1130 Air Traffic Services (Exemption) Order 2019

SI 2019/1133 School Teachers' Incentive Payments (England) Order 2019

SI 2019/1134 Teachers' Pensions Schemes (Amendment) Regulations 2019

SI 2019/1137 National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2019

SI 2019/1144 REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019

SI 2019/1155 Immigration (European Economic Area) (Amendment) Regulations 2019

SI 2019/1156 Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) (No. 3) Regulations 2019

SI 2019/1158 M20 Motorway (Junctions 3 to 5) (Variable Speed Limits) Regulations 2019

SI 2019/1159 Export Control (Amendment) (No. 2) Order 2019

SI 2019/1169 Firearms (Fees) Regulations 2019

SR 2019/152 Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations (Northern Ireland) 2019

SR 2019/154 Safeguarding Vulnerable Groups (Specified Scottish Authority and Barred Lists) Order (Northern Ireland) 2019

Treaties subject to scrutiny under the Constitutional Reform and Governance Act 2010

- | | |
|--------|---|
| CP 132 | Treaty between the Government of the United Kingdom and the Government of Belize concerning the Status of the United Kingdom Forces in Belize and Defence Cooperation |
| CP 153 | Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) Concerning the Electronic Consignment Note |
| CP 154 | Convention Establishing the Square Kilometre Array Observatory |
| CP 166 | Treaty between the Government of the United Kingdom and the Government of Montenegro supplementing the European Convention on Extradition |

APPENDIX 1: AIR NAVIGATION (COSMIC RADIATION: PROTECTION OF AIR CREW AND SPACE CREW AND CONSEQUENTIAL AMENDMENTS) ORDER 2019 (SI 2019/1115)

Additional Information from the Department for Transport

Q1: Is there any data available about how many people are expected to fall within the protections in this Order?

A1: According to Transport Statistic GB 2018, in 2017 there were 12,354 pilots and 34,286 cabin crew employed by UK airlines. There will also be an additional, but very much smaller, number of pilots and cabin crew employed by UK based operators of corporate aircraft. At this time there are no spacecraft affected by the Order. Of these employees none will fall within the “classified” category that is subject to the higher protections.

Q2: What is the definition of an Operator for the purpose of this Order?

A2: Article 4(1) defines operator as the person who at the relevant time has management of the aircraft or spacecraft.

Q3: Is there an indication of when the guidance mentioned in paragraph 11.1 of the Explanatory Memorandum would be available?

A3: The CAA is working on the guidance and will issue it as soon as possible. The CAA will also advise operators when the Order comes into force. As there will be no “classified” crew members, operators will not be required to take any immediate actions to comply with the Order.

Q4: When does Council Directive 2013/59/Euratom need to be implemented by?

A4: The transposition deadline for the Directive was 6 February 2018. This is the last element of the Directive to be transposed.

26 July 2019

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 5 September 2019, Members declared the following interests:

Draft Pesticides (Amendment) (EU Exit) Regulations 2019

Lord Chartres

Associated with Green Alliance

Teachers' Pensions Schemes (Amendment) Regulations 2019

Baroness Watkins of Tavistock

Recipient of Teacher's Pension

Attendance:

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