HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

61st Report of Session 2017–19

Drawn to the special attention of the House:

Draft Heavy Commercial Vehicles in Kent (No. 1) Order 2019 and two related Orders

Town and Country Planning (Waterbrook Ashford) (EU Exit) Special Development Order 2019 and two related Orders

Food Information (Amendment) (England) Regulations 2019

Includes information paragraphs on:

Draft Code of Practice for the Welfare of Pigs

Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019

Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019

Air Services (Competition) (Amendment and Revocation) (EU Exit) Regulations 2019

Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019

Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019

Capital Requirements (Amendment) (EU Exit) Regulations 2019

Prospectus (Amendment etc.) (EU Exit) Regulations 2019

Competition (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Ecodesign for Energy-Related Products and Energy Information (Amendment) 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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Information about interests of Committee Members can be found in the last Appendix to this report.

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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

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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.

Sixty First Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Heavy Commercial Vehicles in Kent (No.1) Order 2019

Date laid: 4 September 2019

Parliamentary procedure: affirmative

Heavy Commercial Vehicles in Kent (No.2) Order 2019

Date made: 4 September 2019

Parliamentary procedure: made affirmative

Heavy Commercial Vehicles in Kent (No.3) Order 2019 (SI 2019/1210)

Date laid: 4 September 2019

Parliamentary procedure: negative

These three instruments form a package which allows for the movement of cross-Channel heavy goods vehicles in Kent to be regulated during periods of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover. In the accompanying Explanatory Memoranda, the Department for Transport states that it has worked closely with the Kent Resilience Forum on developing traffic management plans, known as Operation Brock, to be used as a contingency in the event of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover. These instruments support Operation Brock. The "Draft No.1 Order" confers new powers on traffic officers that will enable them to identify cross-Channel heavy goods vehicles and control their movements in Kent. It also makes ancillary provision relating to enforcement. The "No.2 Order" allows for the use of such vehicles to be restricted to the motorway network and other approved routes by prohibiting access to local roads in Kent. The "No.3 Order" allows for the use of such vehicles on the M20 motorway in Kent (the primary route to the Channel Tunnel and the Port of Dover) to be restricted and makes other provision to facilitate more effective enforcement. The Department notes that the measures would only be used during temporary activations of Operation Brock. The powers conferred on traffic officers by the Draft No.1 Order cannot be exercised after 31 December 2020 and the traffic restrictions in the No. 2 and No. 3 Orders cannot be imposed after the same date.

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

Background

1. The Department for Transport (DfT) has laid three instruments each with an Explanatory Memorandum (EM):

    (i) Draft Heavy Commercial Vehicles in Kent (No.1) Order 2019 ("Draft No.1 Order"). This is a draft affirmative instrument and confers new powers on traffic officers that will enable them to

identify cross-Channel heavy goods vehicles and control their movements in Kent. It also makes ancillary provision relating to enforcement.

(ii) Heavy Commercial Vehicles in Kent (No.2) Order 2019 ("No.2 Order"). This is an 'affirmative class ii' instrument and allows for the use of such vehicles to be restricted to the motorway network and other approved routes by prohibiting access to local roads in Kent

(iii) Heavy Commercial Vehicles in Kent (No.3) Order 2019 – ("No.3 Order") This instrument follows the negative procedure and allows for the use of such vehicles on the M20 motorway in Kent to be restricted and makes other provision to facilitate more effective enforcement.

2. These three instruments form a package which allows for the movement of cross-Channel heavy goods vehicles in Kent to be regulated during periods of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover. In the accompanying Explanatory Memoranda, DfT states that it has worked closely with the Kent Resilience Forum on developing traffic management plans, known as Operation Brock, to be used as a contingency in the event of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover. These instruments support Operation Brock.

Operation Brock

3. The Department explains that Operation Brock has been designed to ensure that the M20 motorway in Kent (the primary route to the Channel Tunnel and Port of Dover) will be kept open and traffic will continue to flow in both directions. It consists of three elements: a contraflow queuing system on the M20 motorway between Junction 8 (Maidstone) and Junction 9 (Ashford); heavy goods vehicles parking at Manston Airfield; and, if necessary, temporary holding areas on the M26 motorway. The M20 contraflow provides a queuing area for cross-Channel heavy goods vehicles on the coastbound carriageway and splits the London-bound carriageway so that it can be used by all London-bound traffic and all other coastbound traffic. DfT states that: "These measures are designed to mitigate the effects of disruption to journeys via the Channel Tunnel and Port of Dover, whatever the cause, be it severe weather, industrial action or any disruption that may occur during the United Kingdom leaving the European Union".

Operation Stack

4. The Department states that Operation Brock is intended as a replacement for Operation Stack during periods of severe and protracted disruption. Operation Stack involved closing junctions and carriageways on the M20 motorway to hold freight traffic in several locations. In 2015, Operation Stack was active for 31 days to address disruption at the border and parts of both carriageways of the M20 were used to store heavy goods vehicles. DfT notes that the unprecedented duration of this disruption and the closure of the carriageways led to considerable congestion on the roads in Kent.

5. The Department explains that this situation was exacerbated by high levels of non-compliance with the traffic management system:

> "Almost a third of cross-Channel heavy goods vehicles avoided the queuing system on the M20 motorway and caused gridlock on local roads. This had consequential impacts on the local economy, tourism and the haulage industry. There were also costs associated with policing and managing the disruption."[1]

6. The Department notes that:

> "The Government's priority is to avoid a repeat of this experience. As well as keeping the M20 motorway open in both directions, it is also crucial to ensure that heavy goods vehicles comply with the traffic management system to reduce the risk of significant traffic disruption on the Kent road network. Should new customs processes be introduced by the European Union when the United Kingdom leaves the European Union, ensuring that heavy goods vehicles arrive at the Channel Tunnel and Port of Dover with the correct border documentation would further reduce the risk of significant disruption at ports."

Summary of the Draft No.1 Order

7. This Order enables the movement of cross-Channel heavy goods vehicles in Kent to be more effectively controlled during periods of severe traffic disruption by conferring new powers on traffic officers.[2] The Department notes that: "At present, no public official could effectively identify and direct a cross-Channel heavy goods vehicle circumventing the traffic management scheme for cross-Channel disruption known as Operation Brock" and that: "The new powers will be used to tackle non-compliance with the scheme, which would cause or contribute to severe traffic congestion, and cannot be exercised outside Kent". The new powers are conferred under section 8 of the Traffic Management Act 2004 ("the 2004 Act"). The Delegated Powers and Regulatory Reform Committee, when reporting on the Bill that became the 2004 Act, described the provision in section 8 as "significant" and drew it to the attention of the House because of the width of the power.[3] The Draft No.1 Order is the first use of the section 8 power.

8. The Department notes that these powers will enable traffic officers to detect and direct vehicles that are not compliant with the traffic restrictions imposed by the No. 2 and No. 3 Orders. The accompanying EM notes that, in particular, traffic officers will be able to require the production of documents to establish a vehicle's destination and to demonstrate readiness to export goods. Powers to direct the driver of a heavy goods vehicle in Kent to proceed to a specified motorway in Kent, or to direct such a driver not to proceed to the Channel Tunnel or Port of Dover except via a specified road or route, are also provided to traffic officers. DfT states that these powers will be used to remove vehicles from the local road network and require drivers to use an approved route to continue a cross-Channel journey. This Order creates an offence of failing to comply with a traffic officer exercising such powers (set out in Article 2(6) of the Order).

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1 Para 7.4 of the EM for the Draft No.1 Order.

2 Para 7.6 of the EM for Draft No.1 Order states that traffic officers in England are individuals designated as such by Highways England or the Secretary of State and tasked with maintaining the flow of traffic on the strategic road network. In Kent, this has included working with the police to regulate cross-Channel traffic during periods of disruption.

3 Delegated Powers and Regulatory Reform Committee, 13th Report, Session 2003-04 (HL Paper 70), para 6.

9. Traffic officers deployed to ensure compliance with Operation Brock will rely on their existing power to stop vehicles (conferred by section 6 of the 2004 Act) before carrying out document checks or issuing directions. The Department states that it would not be an offence for a driver to fail to produce documents if such documents were not carried, which would be a common occurrence as many vehicles leaving the UK on the 'return leg' of a journey do not carry goods. DfT notes that in circumstances where a driver denied carrying any documents but there was a reasonable basis for believing otherwise, roadside enforcement action for failing to comply could still take place (and the driver could contest this action through the magistrates' court if desired).

10. The Department additionally notes that the amount of the financial penalty deposit for failing to comply with a traffic officer exercising the new powers conferred by this Order, or for breaching the traffic restrictions imposed by the No. 2 and No. 3 Orders (described below), is set at £300.

11. The No. 2 and No. 3 Orders complement this Order by restricting the movement of cross-Channel heavy goods vehicles on the local road network in Kent and the M20 motorway and making other provision to facilitate more effective enforcement. In particular, the No. 2 Order prohibits heavy goods vehicles leaving the UK via the Channel Tunnel at Folkestone or the Port of Dover from using local roads other than those on approved Operation Brock routes. The No. 3 Order prohibits such vehicles from accessing the coastbound carriageway of the M20 motorway between Junction 9 and Junction 13—the primary route to the ports—unless the driver has complied with checks of border documents and is displaying a permit issued after using an approved route.

12. DfT states that the traffic restrictions imposed by the No. 2 and No. 3 Orders would be activated through the placing of signage (giving notice of the restrictions) on the coastbound M20 motorway between Junction 7 and Junction 8. This would be done following a decision by Gold Command, in consultation with the Kent Resilience Forum, to activate Operation Brock in response to congestion (or likelihood of congestion) involving cross-Channel heavy goods vehicles on the M20 motorway and/or the A20 approach to the Port of Dover.

13. The powers conferred on traffic officers by this Order cannot be exercised after 31 December 2020 and the traffic restrictions in the No. 2 and No. 3 Orders cannot be imposed after the same date.

Summary of the No.2 Order

14. DfT states that this Order supports Operation Brock by restricting access to the local road network. Specifically, heavy goods vehicles that are leaving the UK via the Channel Tunnel or the Port of Dover will not be permitted to use any road in Kent maintained by Highways England, Kent County Council or Medway Council other than:

- motorways, save for parts of the M20 motorway;
- the A2 and A20 between Kent's boundary with Greater London and where those roads join the motorway network in Kent;
- the A249 between the M2 and M20 motorways; and

- the A299 route from the M2 motorway to Manston Airfield.

15. The Department notes that this restriction will be activated by displaying notices on the M20 motorway between Junction 7 and Junction 8. It will not apply to vehicles:

    - already on a local road or nearby premises when the restriction is activated;
    - being used on the route between Manston Airfield and the Port of Dover while displaying a permit (issued to demonstrate compliance with Operation Brock);
    - if the driver is acting at the direction, or with the permission, of officials or in compliance with a traffic sign;
    - making local collections or deliveries of goods, provided the driver can supply information sufficient to establish this;
    - during incidental and necessary tasks, such as refuelling the vehicle; or
    - operated by local hauliers, provided the driver can produce a local haulier permit issued by Kent County Council.

16. DfT notes that where the use of local roads is permitted, in order to facilitate the flow of traffic, such vehicles must remain in the nearside (left-hand) lane of specified dual carriageways so that the offside lane is reserved for other traffic.

17. The No.3 Order complements this Order by restricting the movement of cross-Channel heavy goods vehicles on the M20 motorway between Junction 8 and Junction 13 (the primary route to the ports) and making other provision to facilitate more effective enforcement.

Summary of No.3 Order

18. The Department states that this Order supports Operation Brock by regulating access to the M20 motorway between Junctions 8 and 13. Specifically, this Order prohibits cross-Channel heavy goods vehicles from accessing the coastbound carriageway of the M20 motorway between Junction 9 (Ashford) and Junction 13 (Folkestone) unless the driver has complied with any request to produce border documents and is displaying a permit issued after using the queuing area for cross-Channel heavy goods vehicles on the M20 motorway.

19. Border documents – those relating to goods that are being exported - will be inspected to ascertain readiness to bring goods into a foreign country. DfT states that unready vehicles would be held at foreign ports, which would cause or exacerbate congestion in Kent as the holding capacity at those ports is limited and they would quickly stop accepting additional vehicles.

20. This Order also prohibits cross-Channel heavy goods vehicles:

    - using the contraflow on the London-bound carriageway between Junction 8 and Junction 9, which is reserved for other coastbound traffic when Operation Brock is deployed; or

- joining the queueing area on the M20 motorway without a permit when a 'feeder queue' on the M26 motorway is in use.

21. DfT states that these measures will reduce the risk of cross-Channel heavy goods vehicles attempting to circumvent Operation Brock or arriving at ports without the correct documentation for continuing their journey, mitigating potentially significant disruption at ports and on the Kent road network.

22. The Department also states that this instrument facilitates more effective enforcement action against non-compliant drivers and that:

- evidence from prescribed devices (such as Automatic Number Plate Recognition cameras) relating to breaches of traffic restrictions or directions imposed under this series of instruments is made more readily admissible in court;

- the offence created by the No. 1 Order of failing to comply with a direction or requirement imposed by a traffic officer is designated as a fixed penalty and financial penalty deposit offence; and

- the amount of the fixed penalty for the relevant offences is set at £300.

Consultation

23. DfT consulted the Kent Resilience Forum, the haulage industry and other key stakeholders over the past several months on Operation Brock and the proposed enforcement strategy, including on checks to establish a vehicle's readiness to cross the border. A final two-week consultation on the package of measures contained within the three Orders was undertaken in the summer. DfT states that: "The consultation was targeted to affected stakeholders in Kent, such as Kent County Council, the Port of Dover and Eurotunnel, and freight associations".

24. The Department states that: "A good level of response was received" and that responses were broadly supportive of the proposals to provide additional powers and traffic restrictions to ensure compliance with Operation Brock and to make it possible for access to the roads leading into the Channel Tunnel terminal at Folkestone and the Port of Dover to be made conditional on compliance with 'border readiness' checks.

25. However, the Department notes that concerns were expressed as to the need to provide clarity on what being 'border ready' involves so that hauliers are not unfairly penalised; and states that: "The Government will clarify this in the development of communications in preparation for the United Kingdom's departure from the European Union on 31st October".[4]

Communications

26. Paragraph 3.1 of the EM accompanying Draft No.1 Order notes that the Department will undertake extensive communications activity from September onwards to make persons who could be affected by this series of instruments aware of their impact before they come into force. The Department also notes that: "The vast majority of hauliers travelling via the Channel Tunnel and Port of Dover are foreign hauliers, although there are a small number of small and medium-sized businesses in the United Kingdom

4 Para 10.3 of the EM accompanying the Draft No.1 Order.

that undertake this activity".[5] We asked DfT how the Department will ensure that UK and non-UK hauliers, or persons affected by these instruments, will be made aware of their impact before they come into force. In response, DfT stated that:

> "The Department will be producing guidance for hauliers setting out what the legislation entails and what happens if they fail to comply. The guidance will be made available in 11 languages and will be published on gov.uk as soon as possible before 31st October. Once the guidance is uploaded to gov.uk, we will email hauliers via the Driver and Vehicle Standards Agency, setting out the guidance and will direct them to gov.uk for more information. We will also work with other key stakeholders such as the Road Haulage Association and Freight Transport Association to help them disseminate the guidance to their members. When ready, the guidance will also be available at the relevant pop-up sites which will be based all over the UK, and will be equipped with trained multi-lingual staff to help hauliers prepare for Brexit."[6]

Conclusion

27. These Orders form a package of measures supporting Operation Brock. **The three instruments are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

5 Noted in all three EMs at para 13.2.
6 Response provided by DfT on 26 September 2019.

Town and Country Planning (North Weald Airfield) (EU Exit) Special Development Order 2019 (SI 2019/1228)

Town and Country Planning (Waterbrook Ashford) (EU Exit) Special Development Order 2019 (SI 2019/1230)

Town and Country Planning (Car Park D Ebbsfleet International Station) (EU Exit) Special Development Order 2019 (SI 2019/1231)

Date laid: 5 September 2019

Parliamentary procedure: negative

The Ministry of Housing, Communities and Local Government (MHCLG) has laid three Special Development Orders and states that the measures are "part of the Government's preparations to mitigate the effects of cross-Channel travel disruption on the Kent and wider road network in the event of a 'no deal' departure from the EU on 31 October 2019". These Orders grant temporary planning permissions, until 31 December 2020, for: North Weald Airfield Lorry Facility at the North Weald Airfield, Essex; use of land at Waterbrook, Sevington, Kent; and use of land at Car Park D, Ebbsfleet International Station, Kent. The instruments allow the sites to be used for stationing and processing of vehicles and the installation and siting of temporary facilities, services, structures and infrastructure that are ancillary to this use. MHCLG states that if the UK leaves the EU without a deal, there will be immediate changes to the procedures that apply to businesses trading with the EU. Hauliers who arrive at the border without the required paperwork risk not being able to proceed across the Channel and may create disruption to the transport network in Kent. The Ministry states that "The planning permission allows regulatory checks to be carried out away from areas that have a high existing demand and are close to capacity in the event of EU Exit …".

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

Background

28. The Ministry of Housing, Communities and Local Government (MHCLG) has laid three Special Development Orders (SDOs) each with an Explanatory Memorandum (EM). The EMs state that the measures are "part of the Government's preparations to mitigate the effects of cross-Channel travel disruption on the Kent and wider road network in the event of a 'no deal' departure from the EU on 31 October 2019". Paragraph 7.2 of all three EMs notes that: "The Dover strait ports (Dover and Eurotunnel) have the majority of EU goods entering and leaving the UK …" and that "… the ports are designed to have limited customs and lorry space as lorries roll on and off the ferries/shuttle …".

29. In the event of a 'no deal' departure from the EU, the Ministry notes that there will be immediate changes to the procedures that apply to businesses trading with the EU. Hauliers who arrive at the border without the required paperwork risk not being able to proceed across the Channel and may create disruption to the transport network in Kent. MHCLG states that: "Therefore, in preparation for the UK leaving the EU on 31 October, Her Majesty's Government are working closely with local agencies to expand capacity with the creation of temporary holding and facilities for government services, particularly customs".

Summary of the three instruments

30. The instruments grant temporary planning permissions for two sites in Kent and one site in Essex to be used for stationing and processing of vehicles and the installation and siting of temporary facilities, services, structures and infrastructure that are ancillary to this use. These are temporary permissions which expire on 31 December 2020. The EMs note that with the exception of any structures, works, plants or machinery which the Secretary of state gives approval to remaining, the land must be restored to its original condition by 31 March 2021.

31. The Ministry states that: "The planning permission allows regulatory checks to be carried out away from areas that have a high existing demand and are close to capacity in the event of EU Exit …"[7] Paragraph 7.6 of all three EMs states that by providing this additional capacity the sites will help facilitate the flow of trade and support strategic traffic management in the Dover Straits area.

32. The Town and Country Planning (North Weald Airfield) (EU Exit) Special Development Order 2019 grants planning permission for North Weald Airfield Lorry Facility at the North Weald Airfield, North Weald Bassett in Epping Forest, Essex. The Town and Country Planning (Waterbrook Ashford) (EU Exit) Special Development Order 2019 ("Waterbrook Ashford SDO") grants planning permission for the use of land at Waterbrook, Sevington, Kent. The Town and Country Planning (Car Park D Ebbsfleet International Station) (EU Exit) Special Development Order 2019 ("Car Park D Ebbsfleet International Station SDO") grants planning permission for the use of land at Car Park D, Ebbsfleet International Station at International Way, Ebbsfleet, Kent.

33. All three EMs note that the sites will act as an office for starting and ending transit movements of goods to and from the UK, allowing goods to be presented under the operational arrangements of the Common Transit Convention (CTC). They will also accommodate the 'wet stamping' on Admission Temporaire/Temporary Admission (ATA) Carnet documentation.

34. In addition, the EM for the Waterbrook Ashford SDO notes that areas of this site will be used as holding facilities, known as turnaround locations, for HGVs with incomplete customs documents, allowing them a period of time to obtain the correct documentation. This EM goes on to note that a small number of spaces will be used by the Driver and Vehicle Standards Agency to impound unroadworthy vehicles that are unable to continue their journeys safely.

35. In the EM for the Waterbrook Ashford SDO and the EM for the Car Park D Ebbsfleet International Station SDO, the Ministry additionally notes that a low volume of checks on specimens of species included in the Annex to Council Regulation (EC) No 338/97[8] will be handled at these locations.

36. **The House may wish to press the Minister on what capacity these sites have and to what extent the government anticipates that they would be used.**

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7 Para 7.4 of all three EMs.

8 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is implemented in the EU through a set of regulations knows as the EU Wildlife Trade Regulations. Regulation (EC) No 338/97 is the principle regulation.

Conditions and limitations

37. The Ministry notes that sections 59 and 60 of the Town and Country Planning Act 1990 give the Secretary of State the power to grant planning permission in relation to specific sites under an SDO. Such planning permission may be made unconditionally or subject to conditions or limitations.

38. The instruments grant planning permission subject to a number of conditions and limitations. The SDOs limit the number of vehicles that can be stationed on the land at any one time and only vehicles that are directed by site officials to be stationed on the site may do so. The SDOs do not allow certain activity to take place on the land, including not permitting goods vehicles to be stationed anywhere other than areas of hard standing. The SDOs also apply several conditions including regular monitoring and reporting of the effects of the use on neighbouring roads. Details about the conditions and limitations relating to each instrument are set out in section 7 of each EM.

39. **The House may wish to ask the Minister about any inspection regime relating to the conditions and limitations that the planning permissions are subject to.**

Consultation

40. Section 10 of all three EMs provides details of the consultation carried out by the Ministry and the outcomes. In the summary of consultation at paragraph 10.2 of the EM accompanying the Car Park D Ebbsfleet International Station SDO the Ministry notes that the relationship between the operational site and proposed works to the A2 at both the Bean and Ebbsfleet Junctions were raised by stakeholders and that Dartford Borough Council objected on the ground of the potential impact on these Junctions and on residents relating to noise, air quality and traffic congestion. The Ministry states that "These concerns have been assessed and potential impacts addressed by suitable limitations and conditions such as requiring regular monitoring and reporting of the effects of the use on neighbouring roads". This EM goes on to note that South Eastern Railways objected to the proposal on the grounds that the scheme would limit passenger access to Ebbsfleet International. The Ministry states that "While station users may be inconvenienced by reduced access to the station from the south, this will not materially impede the continuation of the use of Ebbsfleet International Station during the temporary operation of the lorry park."

Coming into force dates

41. The instruments were laid on 5 September 2019 and came into force on 9 September 2019. The Ministry expressed regret that it was unable to observe the 21-day rule for negative statutory instruments; this was also expressed in a letter received from the Minister of State for Housing (see Appendix 1). All three EMs note that:

> "This reflects, however, the rapidly moving work on the 'no deal' EU Exit preparations. Moreover, prior to making the SDO, a range of environmental and other analysis needed to be undertaken before the Ministry could consider the potential impact of the proposed development and undertake targeted engagement with relevant stakeholders. The urgent need to ensure the site has planning permission to provide the

new use in time for preparatory works to be completed prior to the UK's exit from the EU, taken with the detailed work needed before the SDO could be made, we consider the breach of the 21-day rule for this SDO is justified."

Conclusion

42. MHCLG states that the measures in these SDOs are "part of the Government's preparations to mitigate the effect of cross-Channel travel disruption on the Kent and wider road network in the event of a 'no deal' departure from the EU on 31 October 2019". **The three instruments are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

Food Information (Amendment) (England) Regulations 2019 (SI 2019/1218)

Date laid: 5 September 2019

Parliamentary procedure: negative

These Regulations introduce a new duty on businesses to label food that is Prepacked for Direct Sale (PPDS) to improve the information that is provided to consumers about food allergens. The instrument draws on the findings of a government review and the conclusion of an inquest into the death of a 15-year old who died after eating a PPDS sandwich. Having decided in favour of the most comprehensive information requirement consulted on, the Department for Environment, Food and Rural Affairs expects costs for business between £140 million and £450 million over a 10-year period as a result of the new requirements. There are plans for guidance and engagement to support the sector, including small and micro businesses, in understanding and implementing the new duty.

The 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.

43. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM) and an Impact Assessment (IA). The instrument places a new duty on businesses to label any food that has been packed on the same premises from which it will be sold (Prepacked for Direct Sale - PPDS) with the name of the food and full list of ingredients, with allergens emphasised. According to Defra, this brings the provision of allergen information for PPDS foods in line with the labelling requirements that already exist for prepacked food.[9]

Background

44. The EM states that approximately two million people in the UK have a food allergy, not including those with food intolerances and an estimated 1% of the population who have coeliac disease, an auto-immune condition which causes damage to the gut lining when gluten is consumed. Around 10 people die from allergic reactions to food in the UK every year.

45. Defra explains that the EU's Food Information to Consumers Regulation 1169/2011[10] (FIC) provides the legislative framework around the provision of food allergen information (See Appendix 2). The Food Information Regulations 2014 and equivalent regulations in Wales, Scotland and Northern Ireland are the domestic regulations that establish the enforcement measures for FIC in the UK. While under the current provisions prepacked foods must be labelled with full ingredients and with any of 14 specific food allergens in the ingredients emphasised,[11] businesses can provide allergen information for PPDS foods "by any means that they choose". This includes

9 The Food Standards Agency says that while there is no legal definition of PPDS foods, its current interpretation is that it applies to foods that have been packed on the same premises from which they are being sold. Food that falls into this category may include, for example, sandwiches which are prepared by staff and sold on the same premises and which are prepacked before the customer chooses them. It is expected that customers are able to speak with the person who made or packed the product to ask about ingredients. In contrast, prepacked foods are foods put into packaging before being offered for sale, such as a ready meal sold in a supermarket.

10 Regulation (EU) No 1169/2011.

11 The 14 allergens are listed in Annex II of FIC.

staff telling customers about any allergens. According to Defra, anecdotal evidence suggests that consumers often find it difficult to distinguish between prepacked and PPDS foods and assume that the absence of allergen information on PPDS foods means that food allergens are not contained in the product, when this is not necessarily the case.

46. The Government carried out a review of allergen information provision for PPDS food, following an inquest into the death of a 15-year old who died in July 2016 from a severe allergic reaction after eating a PPDS sandwich. The coroner's report noted that PPDS products were not labelled adequately or clearly.

What is changing

47. According to Defra, the objective of the instrument is to improve the information that is provided to consumers about food allergens present in PPDS foods. The instrument therefore places a new duty on businesses to label PPDS foods on the packaging with the name of the food and a full list of ingredients, with allergens emphasised. This is the most comprehensive of the information requirements that Defra consulted on (see paragraph 50). The new duty will come into force on 1 October 2021 to give businesses enough time to prepare. Defra says that the length of the implementation period has been informed by feedback obtained during consultation and is in line with advice by the Food Standards Agency (FSA).

48. Defra also explains that, while the instrument brings the allergen provisions for PPDS foods in line with those for prepacked foods, provisions regarding allergen information for non-prepacked food, such as loose food and food which is packed at the consumer's request, remain unchanged.

49. Defra says that the Devolved Administrations in Northern Ireland, Scotland and Wales have committed to introducing equivalent provisions and bringing these into effect by Autumn 2021.

Consultation

50. Defra, the FSA and Food Standards Scotland carried out a nine-week consultation on the proposals between January and March 2019. Four policy options were consulted on: promoting best practice; "ask the staff" labelling on packaging; naming of food and allergen labelling; and full ingredient labelling. Defra says that a total of 1,887 responses were received, with 73% of individuals but only 13% of businesses supporting the full ingredient labelling option that is being taken forward by this instrument. While individual respondents considered this option the safest for consumers, businesses raised concerns about the cost, the risk of mislabelling[12] and difficulties of implementing the option, such as the complexities involved in updating frequently and communicating clearly accurate ingredient information throughout the supply chain.

Guidance

51. The FSA has developed an interpretation of the types of food to which the new requirements apply to support businesses and local authorities which will be responsible for enforcing the new duty. The IA recognises that

12 Mislabelling may occur, for example, in busy kitchen environments where products containing different allergens are made simultaneously.

while large businesses dominate the supermarket and institutional catering sectors, small and micro businesses (that is businesses with between 10 and 50 employees and with fewer than 10 employees respectively) account for almost two thirds of specialised food retailers and quick service restaurant. Defra says that the FSA will support the sharing of best practice and update online training tools and training material to support these businesses.

52. Given the practical difficulty in distinguishing between prepacked foods and PPDS foods, we asked the Department about its engagement with small and micro businesses to help them understand the new duty. Defra told the Committee that:

> "In addition to publishing an information note on the new allergen labelling rules to support food businesses with implementation, the Food Standards Agency (FSA) will update the Safer Food Better Business packs to help small businesses. A revised working interpretation on prepacked for direct sale food will also be published on 1st October 2019. Additionally, e-learning modules on allergens legislative requirements will be refreshed.
>
> The FSA is continuing to work with businesses and representative organisations and this will remain the case during the implementation period in order to support the sharing of best practice."

Impact

53. Defra says that the main impact on business will be familiarisation costs, the initial transitional cost of introducing new labelling and the ongoing cost of labelling. Defra estimates the total cost to be between £140 million and £450 million over a 10-year period. Defra also expects one-off familiarisation costs of around £1.58 million for the FSA and local authorities and additional annual enforcement costs of around £1.65 million for local authorities from 2021.

54. Defra explains that businesses may seek to pass any increase in costs on to consumers or may remove certain foods from their menu to avoid the costs of extra labelling, potentially reducing consumer choice, but that these impacts have not been quantified, given the uncertainty about future factors of supply and demand in relation to PPDS foods.

Conclusion

55. These Regulations introduce a new duty on businesses to label PPDS foods to improve the information that is provided to consumers about food allergens. Having decided in favour of the most comprehensive information requirement consulted on, the Department expects considerable costs to industry and has committed to engage with the sector to support understanding and implementation of the new duty. The Committee notes that businesses may pass on the additional costs to consumers or may remove foods from their menu to avoid the costs of extra labelling.

56. As food allergies are widespread in the UK population and the instrument draws on the findings of an inquest into a fatal case of food allergy, the House may welcome an opportunity to debate the approach the Government have taken with this instrument. **We draw the 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.**

INSTRUMENTS OF INTEREST

Draft Code of Practice for the Welfare of Pigs

57. The draft Code of Practice for the Welfare of Pigs aims to replace the existing Code, which was issued in 2003, and to promote the welfare of animals by providing updated guidance on relevant farm animal welfare legislation and good standards of stockmanship. The Department for Environment, Food and Rural Affairs (Defra) explains that the draft Code reflects the most recent scientific, veterinary and husbandry advice and legislative changes, and will be the third of 10 existing farm animal welfare codes to be updated.[13] The Codes for other livestock species will be updated in due course. The draft Code addresses key pig welfare issues and sets out improved practices, including on how to prevent tail biting and avoid the need to dock pigs' tails routinely. It also provides updated and detailed advice on biosecurity and contingency planning. Defra held a six-week public consultation between January and March 2018 which received 30 responses, mostly from animal welfare organisations, the veterinary profession, members of the public and the livestock sector. According to Defra, most respondents agreed that the draft Code provides improved and up-to-date guidance. The draft Code has been scrutinised by the independent Farm Animal Welfare Committee which will also review any proposals by the Scottish and Welsh Governments for updated Codes to ensure consistency. Defra expects some limited familiarisation costs for the livestock sector.

Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/1212)

58. Building on earlier EU exit instruments, these Regulations make further changes to retained EU law on different aspects of the regulation of financial services. The Regulations have been laid under the urgent 'made affirmative' procedure to ensure that they come into force by exit day. HM Treasury (HMT) explains that, among other changes, the instrument clarifies and supplements transitional provisions for third country benchmarks to address the risk of disruption to businesses and consumers after EU exit. According to HMT, financial benchmarks are standards used in a wide range of markets to help set prices, measure performance or determine amounts payable under financial contracts. Current EU arrangements include an oversight regime and EU register for benchmarks that are administered outside of the EU. From 1 January 2020, such third country benchmarks may only be used for new contracts or products in the EU if they appear on the EU register. In the UK, the Financial Conduct Authority (FCA) will maintain an equivalent UK register of approved third country benchmarks after exit. Under the current arrangements, third country benchmarks that do not appear on the FCA register by 31 December 2019 may not be used in new contracts or products in the UK after this time. Third country benchmarks which appear on the EU register on exit day will be added to the FCA register for a period of two years. HMT says that in a 'no deal' scenario these transition periods would be insufficient: there would be a damaging cliff-edge risk when the UK's third country transitional period ends at the end of 2019, as many third country benchmarks would not be on the EU or FCA register at that

13 The other Codes that have been updated are the new Code of Practice for the Welfare of Meat Chickens and Meat Breeding Chickens (March 2018) and the new Code of Practice for the Welfare of Laying Hens (August 2018).

time and could no longer be used in the UK for new contracts and products, causing considerable market disruption. This instrument extends the transitional regime for third country benchmarks by three years, enabling UK firms to use these benchmarks until the end of 2022. HMT says that this will provide business with certainty and give administrators of third country benchmarks time to enter their benchmarks onto the FCA register. Asked about the number of third country benchmarks that are at risk of not being on the FCA register by the end of 2019, HMT said that it was not possible to quantify this. We are publishing HMT's full response at Appendix 3.

Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019 (SI 2019/1219)

59. This instrument introduces changes to the customs safety and security regime that will apply in the UK after EU exit. It has been laid under the urgent 'made affirmative' procedure to ensure that it comes into force by exit day. HM Revenue & Customs (HMRC) explains that the current EU regime requires information on goods to be shared and risk assessed before they either arrive in or leave the EU. No declarations are required on goods moving between the UK and the rest of the EU, but goods arriving from non-EU countries require safety and security entry summary declarations and goods moving from the EU to non-EU countries require exit summary declarations. If the UK leaves the EU without a deal, UK businesses exporting to the EU will have to complete exit summary declarations and goods imported to the UK from the EU will require an entry summary declaration. HMRC says that stakeholders such as the haulage industry and ferry operators will not able to meet the new requirements from exit day. This instrument introduces measures to give UK businesses more time to adapt their systems, to assist the movement of goods and to help ease traffic at the UK-EU border. Amongst other changes, the instrument provides HMRC with a discretionary power for a period of 12 months to allow businesses more time to submit safety and security declarations for certain exports; clarifies that businesses may use combined, rather than separate, export and safety and security declarations; and introduces a 12-month transition period during which no entry summary declarations will be required for goods imported from territories where the UK currently does not require such declarations. HMRC says that the changes will not increase the security risk to the UK and will not have effect in relation to the trade in goods between Ireland and Northern Ireland which will be subject to different arrangements. HMRC plans to publish an updated assessment of the impact of a 'no deal' on the movement of goods shortly and is continuing to review its evidence and analysis of the impact of the end of any transition periods in this area. The Committee notes that while the Explanatory Memorandum states that there will be no significant impact on the public sector as a result of the new safety and security documentation requirements, there will be a significant wider impact, including in relation to the cost of an additional 900 staff that Border Force has recruited to prepare for EU exit.

Air Services (Competition) (Amendment and Revocation) (EU Exit) Regulations 2019 (SI 2019/1224)

60. These Regulations have been laid by the Department for Transport (DfT) using the 'made affirmative' procedure. In the accompanying Explanatory Memorandum (EM), DfT states that this instrument is an important part of the Government's 'no-deal' preparations for aviation. Amongst other

things, the instrument makes technical changes to the version of Regulation (EU) 2019/712, on safeguarding competition in air transport, retained by the European Union (Withdrawal) Act 2018 so that it continues to function after the UK has left the EU. The EM notes that: "The policy content of the retained Regulation (EU) 2019/712 will remain substantially unchanged. The effect of the changes made is that the Regulation will apply where practices distorting competition by countries other than the UK cause injury to the UK aviation industry".[14] Regulation (EU) 2019/712 provides the European Commission with the power to conduct an investigation where there is prima facie evidence of practices causing or threatening to cause injury to Union air carriers, and to adopt redressive measures where necessary. By virtue of changes in this instrument, it is the UK's Civil Aviation Authority ("CAA") which will examine the complaint. Paragraph 7.8 of the EM notes that the CAA will make a recommendation to the Secretary of State following its investigation, and the Secretary of State may then decide to adopt redressive measures. DfT additionally states that that "while the investigatory power of the instrument will lie with the CAA, it is possible that the Department for Transport will play a supporting role".

Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 (SI 2019/1225)

Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 (SI 2019/1229)

61. These two sets of Regulations make changes to retained EU law in relation to the import of animals and animal products, the control of Transmissible Spongiform Encephalopathies and the release of Genetically Modified Organisms. Both instruments have been laid under the urgent 'made affirmative' procedure to ensure that they come into force by exit day. The Department for Environment, Food and Rural Affairs (Defra) explains that this approach ensures that the instruments will be on the statute book when the EU will vote in October on the UK's request to be approved as a third country for the purpose of trade in animals and animal products after exit. Defra told the Committee that EU 'no deal' communications from June suggest that the European Commission intends to list the UK again as a third country, following an earlier listing in preparation of the 12 April 2019 exit date which became obsolete following the extension of the Article 50 period.[15] SI 2019/1225 replaces an earlier instrument of the same title which was laid as a draft affirmative instrument but was withdrawn before Parliament debated and approved it. The Committee reported on the earlier instrument in July.[16] SI 2019/1229, amongst other changes, updates references to the Trade Control and Export System (TRACES), the EU's online tool for managing sanitary requirements for intra-EU trade and the import of animals and animal products. We asked Defra whether the UK system that is to replace TRACES will be operational on EU exit. The Department told us that a pre-final version of the UK's new 'Import of products, animals, food and feed system' went live on 30 September 2019. We are publishing the Department's full response at Appendix 4.

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14 EM, para 2.4.

15 See: EU Communication on the state of play of preparations of contingency measures for the withdrawal of the United Kingdom from the European Union, 12 June 2019.

16 56th Report, Session 2017-19 (HL Paper 400).

Capital Requirements (Amendment) (EU Exit) Regulations 2019 (SI 2019/1232)

62. These Regulations make changes to retained EU law on capital requirements, a key aspect of the EU's prudential regulatory regime for banks, building societies and investment firms.[17] The Regulations have been laid under the urgent 'made affirmative' procedure to ensure that they come into force by exit day. HM Treasury (HMT) explains that the instrument addresses deficiencies arising from recent changes to the EU's regulatory regime which will apply in the UK by 31 October 2019. Amongst other changes, the instrument adjusts the geographical scope to reflect the fact that after EU exit, the new arrangements for capital requirements will apply in a UK-only context. The instrument transfers functions, such as the drafting of Binding Technical Standards, from the EU to the appropriate UK supervisory authorities. The instrument also removes references to new EU arrangements which will deal with failing banks that cannot go through normal insolvency proceedings without harming public interest and causing financial instability. Member States are required to implement these requirements by December 2020, but as this deadline falls after EU exit, the UK will not adopt the arrangements. HMT expects the impact to be limited, as UK authorities will continue to participate in cross-border cooperation on resolution issues through international Crisis Management Groups for Global Systemically Important Institutions (G-SIIs). The instrument also amends technical rules regarding how much capital and liquidity firms must hold against different types of exposures, such as exposure to central banks. The instrument removes the automatic preferential treatment for EU firms in this area and transfers functions to decide on the equivalence of third country exposures and prudential rules from the EU to HMT. The instrument also removes preferential treatment for EU firms in relation to loss absorbing equity and debt, known as the Minimum Requirement for Own Funds and Eligible Liabilities (MREL). According to HMT, this will increase the amount of MREL that some subsidiaries of EU G-SIIs operating in the UK will need to issue after EU exit. The Bank of England intends to introduce transitional arrangements to delay the impact of this change until 31 December 2020, giving firms time to adjust to the new obligations. We asked HMT for further information on the expected impact of the changes and are publishing the response at Appendix 5.

Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1234)

63. Building on an earlier EU Exit instrument,[18] these Regulations make further changes to retained EU law in relation to the regulation of prospectuses. A prospectus contains information that investors use to decide whether to invest in a company's securities; it needs to be published when securities, such as shares and bonds, are offered to the public or admitted to trading on a regulated market. The Regulations have been laid under the urgent 'made affirmative' procedure to ensure that they come into force by exit day. HM Treasury (HMT) explains that, amongst other changes, the instrument transfers functions that currently sit with EU authorities to the appropriate

17 Prudential regulation requires financial firms to control risks and hold adequate capital as defined by capital requirements.

18 Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/707), as reported by SLSC Sub-Committee A, 15th Report, Session 2017-19 (HL Paper 280).

UK authorities: the function of developing Binding Technical Standards, for example, is transferred to the Financial Conduct Authority (FCA), while functions of the European Commission in relation to making delegated legislation and making decisions on the equivalence of prospectus rules in third countries are transferred to HMT. The instrument also clarifies the situation regarding prospectuses that have been passported into the UK. HMT explains that under current EU law a prospectus must be approved by the national regulator of a European Economic Area (EEA) country before it can be used. Once it has been approved, it is valid for a period of 12 months and can be passported for use in any other EEA country, without the need for further approval from that country's national regulator. After exit, EEA firms will no longer be able to issue securities in the UK via an EEA passport and, instead, will have to secure approval of their prospectus from the FCA. As approved prospectuses are valid for a period of 12 months, however, some prospectuses may be passported into the UK with a period of validity that extends past exit day. This instrument clarifies that valid prospectuses passported into the UK will continue to be valid up to the end of their 12 months period of validity, even where this extends past exit day, and will be treated as if they had been approved originally by the FCA. HMT says that this will ensure a smooth transition for issuers of securities in the UK.

Competition (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (SI 2019/1245)

64. These Regulations address deficiencies in retained EU competition law. The Committee reported on an earlier EU exit instrument that sought to prepare the UK's competition regime for the time after EU exit.[19] The report concluded that "there remains uncertainty about the final parameters of he future UK competition regime, as many of the provisions put forward … may need to change, depending on the terms of the UK's withdrawal from the EU and the nature of any future partnership agreement". This new instrument addresses, amongst other issues, possible enforcement gaps which have arisen since the earlier instrument was debated and approved by Parliament. The Department for Business, Energy and Industrial Strategy (BEIS) explains that it was thought previously that the European Commission would continue to enforce merger commitments related to the UK which had been accepted before EU exit. In March 2019, however, the Commission published guidance indicating that after exit "parties may in certain circumstances consider requesting the Commission to waive, modify or substitute" merger commitments that address issues in UK markets. BEIS says that any change to or waiving of merger commitments could lead to an enforcement gap and damage UK consumers and businesses: UK authorities would be unable to enforce the original commitments or put in place new commitments to remedy the harm, as doing so would require them to consider retrospectively mergers that were cleared when the UK was a member of the EU. According to BEIS, this instrument addresses the enforcement gap by preserving in UK law EU decisions that include commitments that "relate to the supply or acquisition of goods or services" in the UK and by empowering the UK competition authorities to monitor and enforce these commitments. The instrument specifies a list of relevant EU decisions, including 12 anti-trust cases and 31 merger clearance cases. The instrument also ensures that

19 Competition (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/93), as reported by SLSC Sub-Committee A, 5th Report, Session 2017-19 (HL Paper 221).

any new EU decisions made between 15 August 2019 and exit day will be preserved if they contain relevant commitments. The powers granted to UK competition authorities to monitor and enforce the commitments will broadly mirror those available under the UK competition regime. The Regulations have been laid under the urgent 'made affirmative' procedure to ensure that they come into force by exit day.

Ecodesign for Energy-Related Products and Energy Information (Amendment) Regulations 2019 (SI 2019/1253)

65. This instrument amends UK legislation to reflect changes to EU law in relation to ecodesign requirements for servers and data storage products and energy labelling requirements for vacuum cleaners. The Department for Business, Energy and Industrial Strategy (BEIS) explains that, with effect from 1 March 2020, industry will have to meet new minimum energy performance and resource efficiency requirements for servers and data storage products. While the new requirements are set out in EU Regulations which apply directly in all Member States, this instrument updates the existing enforcement regime to ensure that the new requirements can be enforced. The instrument also deals with the annulment in EU law of energy labelling requirements for vacuum cleaners. This follows an application by Dyson Ltd to the General Court of the European Union in October 2013 which argued that energy labels for vacuum cleaners did not reflect real life conditions and therefore misled customers. The General Court ruled in favour of Dyson Ltd and annulled the relevant EU legislation with effect from 18 January 2019.[20] BEIS explains that while the annulment has direct effect in the UK, this instrument ensures that the existing enforcement regime for energy labelling no longer refers to vacuum cleaners.

20 See: Judgment of the General Court (Fifth Chamber) of 8 November 2018, Dyson Ltd v European Commission, Case T-544/13 RENV.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2019

Draft instruments subject to annulment

Code of Practice for the Welfare of Pigs

Instruments subject to affirmative approval

SI 2019/1212	Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019
SI 2019/1219	Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019
SI 2019/1224	Air Services (Competition) (Amendment and Revocation) (EU Exit) Regulations 2019
SI 2019/1225	Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019
SI 2019/1229	Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019
SI 2019/1232	Capital Requirements (Amendment) (EU Exit) Regulations 2019
SI 2019/1233	Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019
SI 2019/1234	Prospectus (Amendment etc.) (EU Exit) Regulations 2019
SI 2019/1245	Competition (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
SI 2019/1246	Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019
SI 2019/1247	Specific Food Hygiene (Regulation (EC) No. 853/2004) (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

HC 2631	Statement of Changes in Immigration Rules
SI 2019/1211	Weights and Measures Act 1985 (Amendment) and Units of Measurement Regulations 1986 (Amendment) Regulations 2019
SI 2019/1213	Invasive Alien Species (Enforcement and Permitting) (Amendment) Order 2019
SI 2019/1220	Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019

SI 2019/1223	Southern Inshore Fisheries and Conservation (Amendment) Order 2019
SI 2019/1236	Export Control (Sanctions) (Amendment) Order 2019
SI 2019/1239	North Western Inshore Fisheries and Conservation (Amendment) Order 2019
SI 2019/1241	Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2019
SI 2019/1242	British Nationality (General) (Amendment) Regulations 2019
SI 2019/1243	Income-related Benefits (Subsidy to Authorities) Amendment Order 2019
SI 2019/1249	Universal Credit (Childcare Costs and Minimum Income Floor) (Amendment) Regulations 2019
SI 2019/1252	Genetically Modified Organisms (Deliberate Release) (Amendment) (England) Regulations 2019
SI 2019/1253	Ecodesign for Energy-Related Products and Energy Information (Amendment) Regulations 2019
SI 2019/1256	Financial Services and Markets Act 2000 (Benchmarks) (Amendment) Regulations 2019
SI 2019/1257	Plant Health etc. (Miscellaneous Fees) (England) (Amendment) Regulations 2019
SI 2019/1259	Isles of Scilly (Application of Water Legislation) Order 2019
SI 2019/1260	Houses in Multiple Occupation (Specified Educational Establishments) (England) (Amendment) Regulations 2019
SI 2019/1264	Appeals to Traffic Commissioners (Procedure) (England) Regulations 2019
SI 2019/1265	Public Service Vehicles (Registration of Local Services in Enhanced Partnership Areas) (England) Regulations 2019
SR 2019/173	Universal Credit (Childcare Costs and Minimum Income Floor) (Amendment) Regulations (Northern Ireland) 2019

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

CP 173	Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Montenegro on International Road Transport

APPENDIX 1: TOWN AND COUNTRY PLANNING (WATERBROOK ASHFORD) (EU EXIT) SPECIAL DEVELOPMENT ORDER 2019 AND TWO RELATED ORDERS

Letter from the Rt Hon. Esther McVey MP, Minister of State for Housing, to Lord Hodgson of Astley Abbotts, Chairman of the Secondary Legislation Scrutiny Committee, on The Town and Country Planning Act 1990 - Special Development Orders

I am writing to inform you that I am proposing to lay three Special Development Orders. These are:

- Town and Country Planning (Car Park D Ebbsfleet International Station) (Special Development) (EU Exit) Order 2019
- Town and Country Planning (North Weald Airfield) (Special Development) (EU Exit) Order 2019
- Town and Country Planning (Waterbrook Ashford) (Special Development) (EU Exit) Order 2019

These Orders are part of the Government's preparations to mitigate the effects of cross-Channel travel disruption on the road network leading to the Dover Straits Ports in the event of a 'no deal' departure from the EU at the end of October.

Her Majesty's Revenue and Customs (HMRC) are working closely with the Department for Transport and local agencies to create temporary customs transit and lorry parking facilities. The planning applications are to provide some of this additional capacity at three sites in Kent and Essex. The use of these three sites, two in Kent (Car Park D at Ebbsfleet International Station and Waterbrook in Ashford) and one in Essex (North Weald Airfield), will help facilitate the flow of trade and support strategic traffic management in the Dover Straits area.

I have taken the decisions to grant temporary planning permission for use of these sites until 31 December 2020 and confirm this by making three Special Development Orders under the powers in sections 59 and 60 of the Town and Country Planning Act 1990.

It has not been possible to lay the Orders earlier because a range of environmental and other analysis needed to be undertaken before I could consider the potential impact of the proposed development and my officials also undertook targeted engagement with relevant stakeholders. We have only just come to the point where all this has been completed.

On that basis, I regret to say that the Orders need to come into force on 9 September 2019 to enable relevant infrastructure works to take place at the three sites before the UK leaves the European Union on 31 October 2019. It is therefore not possible to comply with the procedure for negative statutory instruments, whereby the instrument would not come into force earlier than 21 days after it is laid.

This is highly regrettable, and I want to reassure you that no disrespect at all is meant to the Committee. I hope you understand these reasons and I would of course be very willing to discuss them further with you.

5 September 2019

APPENDIX 2: FOOD INFORMATION (AMENDMENT) (ENGLAND) REGULATIONS 2019 (SI 2019/1218)

Additional information from the Department for Environment, Food and Rural Affairs

Q1: It is not entirely clear about what qualifies as PPDS foods. The IA states that on p. 9 that "Food ordered and collected in person by a consumer in a takeaway, may be PPDS if it was packed before it was offered for sale, for example, a wrapped burger, boxed fried chicken or wedges under a hot lamp". Would a burger or other food (pizza etc) that is not collected by the consumer but delivered by the take away to the consumer instead, also qualify as PPDS?

A1: Food that is delivered does not qualify as PPDS. Different rules apply to how allergen information is provided for food ordered over the telephone or via a website (known as distance selling). Under EU Regulation 1169/2011 Food Information to Consumers (FIC), mandatory allergen information for non-prepacked food sold via distance selling must be provided to the consumer, at the time of ordering, in the material supporting the distance selling or through other appropriate means (for example a menu or website), and at the time the food is delivered (for example, on a menu).

Q2: There were recent reports about an inquest into the death of a teenager who died of an allergic reaction to an unlisted ingredient in a burger. Will SI 2019/1218 change the labelling requirements in the scenario of a customer ordering and consuming a burger on the premises of the restaurant? Or does this instrument not apply in such a situation, as, presumably, the burger would not be wrapped?

A2: This instrument does not apply to such a situation as the burger was not packed. If the burger was purchased at a restaurant and the restaurant was then asked by the consumer for this to be packed, this would be packed at the consumers request and not in scope of this instrument.

Under the Food Information Regulations 2014, restaurants and takeaways are required to let customers know if any of the 14 priority allergens are used as ingredients in food which is packed at the consumer's request and loose food. This can done be via a menu or information provided by a member of staff as long as there is signage notifying customers that they can ask.

Consumers are encouraged to talk to staff about their allergy requirements so that they can make safe food choices and be provided with the accurate information.

Q3: There will be a 2-year implementation period. Given the large number of small and micro businesses in particular that will be affected by the new requirements, what plans are in place to communicate the changes to relevant businesses, especially small and micro businesses?

A3: In addition to publishing an information note on the new allergen labelling rules to support food businesses with implementation, the Food Standards Agency (FSA) will update the Safer Food Better Business packs to help small businesses. A revised working interpretation on prepacked for direct sale food will also be published on 1st October 2019. Additionally, e-learning modules on allergens legislative requirements will be refreshed.

The FSA is continuing to work with businesses and representative organisations and this will remain the case during the implementation period in order to support the sharing of best practice.

19 September 2019

APPENDIX 3: FINANCIAL SERVICES (ELECTRONIC MONEY, PAYMENT SERVICES AND MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019 (SI 2019/1212)

Additional information from HM Treasury

Q: Para. 2.25 of the EM refers to a potentially damaging cliff-edge risk of third country benchmark administrators not having had sufficient time to make an application under the UK's new benchmark regime by 31 December 2019. The EM states that "very few third country administrators have made applications under the EU BMR, and only two equivalence determinations have been made, covering seven benchmarks", suggesting that there is a high risk that a "significant number of third country benchmarks will not be on the FCA register by the end of 2019, either as a result of an application in the UK after exit, or by making use of the additional transitional period for EU registered benchmarks". Is it possible to quantify this risk? How many third country benchmarks are at risk of not being on the FCA register by the end of 2019?

A: The UK is a global hub for trading in financial markets and the use of benchmarks is prevalent in contracts throughout the financial system. Investors, both retail and institutional (including corporations, insurance companies, pension funds, investment funds and banks) use third country benchmarks for a wide range of commercial purposes including hedging currency risk, converting currencies, repatriating funds, and making investments in other jurisdictions and a range of other purposes. There is no publicly available data to quantify the precise number of third country benchmarks that are currently being used by UK market participants under the BMR's transitional provisions, nor the level of exposure held by UK firms to such benchmarks. Their widespread use makes this extremely difficult to quantify.

While it is clear that the use of third country benchmarks is widespread, these benchmarks are not currently regulated so there is no way of quantifying how many benchmarks are not on course to qualify for use in the UK by the end of 2019. However, given their use is integral across international financial markets it seems likely to be a significant number, and this is reflected in the views from industry. For example, we have received estimates from the trade body, ASIFMA (the Asian Securities Industry & Financial Markets Association) that over 100 benchmarks that are administered in the Asia-Pacific region alone are at risk of becoming unavailable to UK users.

As of 13 September, only five third country administrators have successfully applied under the recognition and endorsement routes contained in the EU BMR (by comparison, 48 EU firms have applied under authorisation and registration, with more approvals expected by the end of the year). Without the amendments introduced in this SI, these are currently the only non-EU administrators who will be permitted to provide benchmarks in the UK after 2019. This will certainly not be sufficient to facilitate the full range of usage which benchmarks users currently benefit from, with such loss of market access potentially posing a threat of market and economic disruption to institutions.

17 September 2019

APPENDIX 4: TRADE IN ANIMALS AND ANIMAL PRODUCTS (LEGISLATIVE FUNCTIONS) AND VETERINARY SURGEONS (AMENDMENT) (EU EXIT) REGULATIONS 2019 (SI 2019/1225) AND RELATED REGULATIONS

Additional information from the Department for Environment, Food and Rural Affairs

Q1: In para. 2.8, the EM refers to a system in the UK that is to replace the EU's TRACES system. Is this UK system in place and fully operational?

A1: If the UK leaves the EU without a deal on October 31st, importers will no longer have access to the EU's import system TRACES (Trade Control and Expert System) for importing into the UK.

To ensure imports of live animals, products of animal origin, animal by-products, germplasm and high-risk food and feed not of animal origin can continue after exit, the UK is launching a new system called the 'Import of products, animals, food and feed system' (IPAFFS).

IPAFFS was live (at a post Public Beta development stage) in advance of the last no deal exit date of April 12. Following the extension of the EU Exit date to 31 October public access to the IPAFFS system was removed to allow for further improvements. Work has continued at pace and priority was given to focus resources on stabilising the IPAFFS system, improving the user experience and increasing functionality for imports from countries outside the EU, specifically developing:

- Re-Enforced Checks
- Border Notifications
- Certificate Generation enhancement
- Lab Tests enhancement
- Integration with Reference Data
- Dashboard Enhancements and Alerts

IPAFFS is currently in the private Beta stage and is expected to go to public Beta on 30 September. We will tell importers when they can register for IPAFFS. Guidance on using IPAFFS will be released when we encourage importers to register for the system.

Background information

- The Department for Environment, Food and Rural Affairs (Defra) is releasing IPAFFS in phases.
- From the date we leave the EU, importers can use IPAFFS if importing live animals, animal products and high-risk food and feed not of animal origin from non-EU countries.

Direct imports from EU countries to the UK:

- Because IPAFFS will be released in phases, initially those importing from the EU will follow a separate process to notify of their import to the UK. Information on the EU import process will be announced during September, to allow plenty of time for businesses to prepare.
- Importers should still notify the Animal and Plant Health Agency (APHA) separately under Trade in Animals and Related Products regulations (TARP) for the following live animals and germinal products:
    - live animals or germplasm - importers must notify APHA at least 24 hours before the consignment arrives
    - equines and certain animal by-product (ABP) consignments that will continue to travel under a Commercial Document (DOCOM) - importers who confirm receipt of certain ABP products via TRACES will now have to notify APHA the consignment has arrived
    - live animals that do not need a health certificate or official documentation but do have to be notified under TARP, for example insects, reptiles and amphibians.

Q2: The urgency statement on p. 9 of the EM says at para 5.4 that the changes are needed because of the EU's vote regarding the UK's expedited request to be approved as a third country for the purpose of trade in animals and animal products after EU exit. Was the UK previously granted third country status in preparation for the earlier exit date of 29 March and has this approval expired, thus requiring a new approval? When do you expect this vote to be taken in October?

A2: The relevant committee (the Standing Committee on Plants, Animals, Food and Feed (SCOPAFF)) voted unanimously to support the UK's listing ahead of the April 2019 Brexit date. However, as a result of the Article 50 extension in April a further vote is required to ensure third country listing is granted to the UK ahead of 31 October for live animal and products of animal origin.

- The Committee is expected to be scheduled and meet ahead of exit date. We believe this may take place on 11 October, but the exact date is scheduled by the Commission and may be subject to change.
- It may be helpful to know that the Commission published a no deal communication on 12 June, which re-iterates their desire to list the UK again ahead of a potential no deal exit in the future as long as we can give the required assurances
- Moreover, the Commission adopted 16 non-legislative contingency acts under the EU sanitary and phytosanitary legislation in view of the previous withdrawal date of 12 April 2019 on the basis of assurances given by the United Kingdom. These measures are now obsolete due to the extension. However, if the United Kingdom continues to provide the necessary assurances, the measures will be re-adopted to apply as of 1 November 2019.
- https://ec.europa.eu/info/publications/communication-12-june-2019-state-play-preparations-contingency-measures-withdrawal-united-kingdom-european-union_en

18 September 2019

APPENDIX 5: CAPITAL REQUIREMENTS (AMENDMENT) (EU EXIT) REGULATIONS 2019 (SI 2019/1232)

Additional information from HM Treasury

Q1: Para. 2.10 states that the impact of the UK no longer taking part in the EU resolution colleges will be "limited". The EM subsequently explains that the UK will continue to host and take part in Crisis Management Groups, but could you provide further information on what the limited impact could be?

A1: As paragraph 2.10 states, the impact of the UK no longer participating in EU resolution colleges will be limited. Crisis Management Groups (CMGs), which are international fora established by the Financial Stability Board for Globally Systemically Important Bank (G-SIBs), consist of resolution authorities and regulators in jurisdictions where the G-SIB has a material entity, including, from the UK, the Bank of England and the Prudential Regulation Authority (PRA). Even without UK attendance at resolution colleges, the impact on the UK will be limited because the Bank and PRA will continue to engage with overseas resolution authorities and regulators on the resolvability of firms with material UK presence through CMGs. In practice, representation from a number of non-EU countries may be invited to attend resolution colleges as a result of the presence of certain firms in those countries. The end of UK attendance at resolution colleges will therefore be limited and have no substantive impact on UK engagement on the resolvability of cross-border firms.

Q2: Para. 2.15 refers to the end of preferential capital treatment for EU exposures. Has the impact of this been looked at, for example in terms of the additional levels of UK supervision for EU firms operating in the UK and the need for those firms to hold additional capital? Can this impact be quantified and could these additional requirements impact negatively on the UK as an international financial centre?

A2: As paragraph 2.15 states, this instrument takes a consistent approach to that taken in The Capital Requirements (Amendment) (EU Exit) Regulations 2018 ('the CRRI SI'), which also removes the preferential treatment of EU exposures. An Impact Assessment published alongside that instrument details the impact of these changes (see p.34-35 of here http://www.legislation.gov.uk/ukia/2018/192/pdfs/ukia_20180192_en.pdf). We recognise there could be implications for the UK, which are difficult to quantify accurately. As the Impact Assessment notes the impact will depend on a range of factors such as whether there is a determination of equivalence by the Commission under EU law and by HM Treasury under UK law, and whether firms use the Standardised Approach or the Internal Ratings Based Approach (the latter will not be affected and HMT does not collect information on which approach firms use). HMT has set out to mitigate against any negative implications by providing UK regulators with ability to apply transitional relief.

The purpose of the Treasury's overall programme of legislation to prepare the UK statute book for a no deal scenario is to ensure that legislation continues to support the UK's position as a leading international financial centre.

Q3: Para. 2.16 also deals with the end of preferential treatment for the EU 27 in relation to MREL. The EM states that, as a result, some subsidiaries of relevant EU firms in the UK will need to issue more internal MREL after exit to meet their requirements under CRRII and that, likewise, in the EU27, subsidiaries of UK firms will be treated as third

country subsidiaries and will be required to meet the higher internal MREL requirements. Has this impact on EU and UK companies been quantified?

A3: As stated in paragraph 2.16, EU subsidiaries operating in the UK will be given 'third country status' and could potentially need to issue more internal MREL, after exit, to meet CRRII requirements. Likewise, UK firms operating in the EU will potentially be subject to higher requirements.

No quantitative analysis has yet been done on the possible impact of this change. This is because the Bank of England (the Bank), supported by HM Treasury, has proposed to apply its transitional powers to delay any potential impact that may result from this change until 31 December 2020. These transitional relief powers will apply to relevant subsidiaries of EU firms operating in the UK. This change would therefore not take effect until 1 January 2021 and, in the interim, potentially affected EU firms may choose to take steps that would minimise the impact and cost of any potential change. The Bank may consider (if it deems necessary) undertaking quantitative analysis on the impact of this change closer to the date of its application on 1 January 2021 and when information on relevant firms' resources will be more quantifiable.

This application of the transitional power is consistent with paragraph 7 of the Bank's Transitional Direction, which applies to all relevant obligations that begin to apply or apply differently as a result of an exit instrument (in this case, the CRR II Statutory Instrument).

Q4: Para. 2.16 also states that the Bank, supported by HMT, has "proposed to apply its transitional powers to delay the impact of this change until 31 December 2020". Is this proposal for a transition period until the end of 2020 part of this instrument?

A5: The proposal for a transition to the new requirements is not part of this instrument but instead relates to proposals made by the Bank of England to use the transitional powers granted to it under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632) which allows the financial regulators to issue directions to delay changes resulting from retained direct EU legislation. In October 2018 the Bank published a Policy Statement stating their intention to provide broad transitional relief with respect to changes in firms' regulatory obligations for 15 months from 31 March 2019. This position was affirmed in the latest Bank of England Policy Statement in June 2019 (see Statement 5/19 found at: https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018). The proposed transitional relief would capture the changes to MREL requirements referred to in Paragraph 2.16 of the EM.

17 September 2019

APPENDIX 6: 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 1 October 2019, Members declared the following interests:

Weights and Measures Act 1985 (Amendment) and Units of Measurement Regulations 1986 (Amendment) Regulations 2019 (SI 2019/1211)

Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019 (SI 2019/1246)

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Attendance:

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