

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

14th Report of Session 2017–19

**Draft Higher Education (Access
and Participation Plans) (England)
Regulations 2018 and three related
instruments**

**Draft Transfer of Responsibility for
Relevant Children (Extension to
Wales, Scotland and Northern Ireland)
Regulations 2017**

**Greenhouse Gas Emissions Trading
Scheme (Amendment) Regulations 2017**

Includes 3 Information Paragraphs on 3 Instruments

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Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, 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 these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

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Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

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

Information and 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 hseclegscrutiny@parliament.uk.

Fourteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Higher Education (Access and Participation Plans) (England) Regulations 2018

Date laid: 4 December 2017

Parliamentary procedure: affirmative

Higher Education and Research Act 2017 (Transitory Provisions) Regulations 2017 (SI 2017/1145)

Date laid: 27 November 2017

Parliamentary procedure: negative

Higher Education (Fee Limit Condition) (England) Regulations 2017 (SI 2017/1189)

Date laid: 4 December 2017

Parliamentary procedure: negative

Office for Students (Register of English Higher Education Providers) Regulations 2017 (SI 2017/1196)

Date laid: 4 December 2017

Parliamentary procedure: negative

Summary: Under the Higher Education and Research Act 2017, the Office for Students, the new regulator of higher education providers, will replace both the Higher Education Funding Council for England and the Office of the Director of Fair Access to Higher Education from 1 April 2018. All these instruments relate to the establishment and operation of the Office for Students, including its register of higher education providers. The Department for Education has told us that it is consulting on behalf of the Office for Students on a condition of registration that would require providers to publish the number of staff paid over £100,000 per annum; no secondary legislation is required to implement such a requirement.

We draw these instruments to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

1. The Department for Education (DfE) has laid these four sets of Regulations, each with an Explanatory Memorandum (EM). DfE intends that, under the Higher Education and Research Act 2017 (“the 2017 Act”), the Office for Students (OfS), the new regulator of higher education (HE) providers, will replace both the Higher Education Funding Council for England (HEFCE) and the Office of the Director of Fair Access (DFA) to Higher Education from 1 April 2018. All these instruments relate to the establishment and operation of the OfS. The Department intends to lay a further instrument to provide that, from 1 April 2018, HEFCE and the DFA will cease to exist, and the OfS will take on their statutory functions during the rest of academic year 2017-18 and the whole of academic year 2018-19.

Higher Education and Research Act 2017 (Transitory Provisions) Regulations 2017 (SI 2017/1145)

2. A key activity for the OfS before April 2018 will be to publish its regulatory framework and guidance for providers (including guidance on access and participation) following consultation. Before April 2018, the OfS must also make statutory designations of the quality and data bodies to perform functions set out in the 2017 Act. The quality body will carry out the teaching quality and academic standards assessment functions described in the 2017 Act, while the data body will perform data-related functions on behalf of the OfS. These Regulations make transitional and transitory provision to enable the OfS to publish the regulatory framework and to designate the quality and data bodies before April 2018.

Office for Students (Register of English Higher Education Providers) Regulations 2017 (SI 2017/1196)

Higher Education (Fee Limit Condition) (England) Regulations 2017 (SI 2017/1189)

3. The OfS will maintain a register, providing details on the English Higher Education (HE) providers that have satisfied the OfS's initial registration requirements. SI 2017/1196 enables the OfS to set up and operate the register, and to ensure that some key information is included.
4. DfE says that guidance is to be published setting out how HE providers can register with the OfS, and specifying the full list of information to be published on its register. In the EM to SI 2017/1189, DfE says that the policy intention is that the OfS register will be divided into three parts: (i) Registered Basic; (ii) Approved; and (iii) Approved (fee cap). The provisions of SI 2017/1189 pave the way for the register by providing that tuition fees payable in respect of certain qualifying HE courses do not exceed a limit (which is to be set out in separate regulations).

Draft Higher Education (Access and Participation Plans) (England) Regulations 2018

5. Currently, the DFA is responsible for approving access agreements from HEFCE-funded institutions and further education colleges, enabling them to charge fees up to the higher amount. The intention underlying the draft Higher Education (Access and Participation Plans) (England) Regulations 2018 is that, alongside receiving initial applications from providers to register, the OfS will invite providers to submit their access and participation plans for the 2019-20 academic year for approval in summer 2018. Access agreements were originally introduced in 2004 in response to concerns that the introduction of higher variable fees might deter students from disadvantaged backgrounds and under-represented groups from applying to HE. The 2017 Act replaces the existing system with new arrangements which largely replicate the existing position. DfE says that the main changes are to ensure that plans should cover not only access to HE, but also participation activities (ensuring that students are supported to progress to good outcomes).

Remuneration issues

6. We sought additional information from DfE about whether the OfS would have any function of oversight over the remuneration of university vice-chancellors, and, if so, whether further secondary legislation would be required to enable it to carry out such oversight. DfE has told us that “The Office for Students will have a role in relation to remuneration of vice-chancellors. We are consulting on behalf of the OfS on a condition of registration that would require providers to publish the number of staff paid over £100,000 per annum. For pay above £150,000, it is proposed that providers be required to publish the role descriptions and full remuneration packages of staff members, along with the provider’s justifications of these salaries. No secondary legislation is required. The Higher Education and Research Act 2017 (section 5) provides the OfS with the power to determine conditions of registration. Where there are concerns about effectiveness, efficiency or economy, for example in relation to senior staff pay, the OfS will be able to arrange for efficiency reviews into a provider. This is provided for under section 69 of HERA.”

Draft Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2017*Date laid: 7 December 2017**Parliamentary procedure: affirmative*

Summary: Unaccompanied migrant children arriving in the UK place a disproportionate burden on the authorities in Kent and Croydon. There are already provisions to allow them to be transferred to other English authorities. These Regulations extend the scheme so that the responsibility can be transferred not only from an English local authority to the relevant authority in Northern Ireland, Scotland or Wales, but also from a local authority (or equivalent body) in one of the devolved territories to another authority in the same territory. The scheme remains voluntary but the Home Office states that these Regulations will ensure that the National Transfer Scheme is able to respond to any future changes in migratory patterns and trends.

These 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.

7. These Regulations have been laid by the Home Office under provisions in the Immigration Act 2016 (“the 2016 Act”) and are accompanied by an Explanatory Memorandum (EM).

Background

8. Since 2014 there has been a significant increase in the number of unaccompanied children claiming asylum in the UK. The most recent Department for Education statistics state that, on 31 March 2017, there were 4,560 in local authority care in England alone – a rise of 134% since 2013. This places a disproportionate burden on the authorities in Kent and Croydon, which are currently the main points of entry.

9. Working with the Local Government Association and the Association of Directors of Children's Services, the Government have, since 1 July 2016, been running a voluntary transfer scheme to ensure a more equitable distribution of caring responsibilities for unaccompanied asylum-seeking children. Section 69 of the 2016 Act underpins those voluntary arrangements by making it easier to transfer such children from one local authority in England to another. By 1 October 2017 555 asylum-seeking children had been transferred under the scheme.
10. With the assent and cooperation of the Devolved Administrations, these Regulations extend that provision so that local authorities in any part of the United Kingdom may transfer responsibility for such children to local authorities in any part of the United Kingdom. That means the responsibility for unaccompanied migrant children can be transferred not only from an English local authority to the relevant authority in Northern Ireland, Scotland or Wales, but also from a local authority (or equivalent body) in one of the devolved territories to another authority in the same territory. The scheme remains voluntary but the Home Office states that these Regulations will ensure that the National Transfer Scheme is able to respond to any future changes in migratory patterns and trends.

Funding review

11. To help local authorities provide appropriate care and support for unaccompanied asylum-seeking children, on 1 July 2016 the Government increased the funding available; by 20% for local authorities caring for migrant children aged 16 and under, by 28% for local authorities caring for those aged 16 and 17, and by 33% for local authorities with responsibility for former migrants who left care. The Government are currently undertaking a review of the funding provided to local authorities looking after unaccompanied asylum-seeking children.

Conclusion

12. The Committee welcomes this extension of the transfer scheme, not only to assist the local authorities but also to allow for the children's best interests to be catered for – there are circumstances in which children need to be moved out of a particular area, for example to remove them from the influence of traffickers. The scheme's objectives are spelled out more fully in the Government's Safeguarding Strategy.¹

¹ *Safeguarding Strategy: Unaccompanied asylum seeking and refugee children*, November 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656425/UASC_Safeguarding_Strategy_2017.pdf [accessed 19 December 2017]

Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2017 (SI 2017/1207)

Date laid: 6 December

Parliamentary procedure: negative

Summary: These Regulations amend the compliance deadlines under the EU Emissions Trading Scheme for stationary installations and aviation operators regulated by the UK, so that they are obliged to verify and report 2018 emissions and surrender allowances for those emissions in 2019 before the date when the UK will leave the EU, 29 March 2019. It is striking that, as exemplified by these Regulations, anticipation of the UK's exit from the EU is already affecting policy areas such as the control of greenhouse gas emissions and leading to the need for secondary legislation under existing Acts.

We draw these Regulations to the special attention of the House on the ground that they are politically and legally important and give rise to issues of public policy likely to be of interest to the House.

13. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these Regulations with an Explanatory Memorandum (EM). In amending an earlier instrument,² which transposed the provisions of the EU Emissions Trading Scheme (EU ETS) Directive,³ these Regulations amend the EU ETS 2018 compliance deadlines for stationary installations and aviation operators regulated by the UK. BEIS says that the effect of the amendments is that such operators are obliged to verify and report 2018 emissions and surrender allowances for those emissions in 2019 before the date when the UK will leave the EU, 29 March 2019.

EU Emissions Trading Scheme (EU ETS)

14. BEIS explains that the EU ETS is a “cap and trade” scheme that limits emissions of carbon dioxide (CO₂) from the EU’s power and heavy industrial sectors and aviation operators: there is a cap on all greenhouse gas emissions from covered operators of installations and aviation operators, and within this cap operators can buy, sell or trade allowances. The limit on the total number of allowances available ensures that they have a value. The scheme covers more than 10,000 installations across the EU, mainly large emitters such as fossil fuel power stations, steel plants and refineries. Operators of installations and aviation operators are required to monitor and report their emissions each year and to surrender EU ETS allowances against these emissions (one allowance equates to one tonne of CO₂).
15. EU ETS compliance obligations require operators to monitor their emissions during a calendar year, and report emissions and surrender allowances for those emissions by 31 March and 30 April respectively of the following year. Allowances are issued by Member States, with a share allocated for free to participants considered at risk of “carbon leakage”, and the rest auctioned. Revenue from UK auctions returns to the Exchequer. The UK Government are due to issue approximately 150 million allowances in 2018. BEIS states that the Government expect to raise about £400 million per annum in revenue through auctioning ETS allowances in 2018 (though due to a recent rise in the EU ETS price this figure could increase significantly).

² The Greenhouse Gas Emissions Trading Scheme Regulations 2012 ([SI 2012/3038](#)).

³ Directive [2003/87/EC](#) establishing a scheme for greenhouse gas emission allowance trading within the Community.

Concern among EU institutions over implications of Brexit for EU ETS

16. BEIS explains that, in 2017, there has been concern among the EU institutions that, if there was no agreed implementation period and an abrupt UK exit from the EU ETS in March 2019, there would be no requirement in EU law for UK regulated operators and aviation operators to comply with their EU ETS obligations for the 2018 calendar year (as the compliance obligations would fall after Brexit). This would mean that UK operators could sell their allowances, which would damage the environmental integrity of the system by artificially inflating the cap on greenhouse gas emissions. As a result, in October 2017, the European Parliament and Council agreed an amendment to the EU ETS Directive to protect the EU ETS against a UK departure in March 2019. The amendment would have made UK-issued 2018 allowances invalid for compliance by operators.
17. A European Commission proposal of October 2017 to implement the powers prescribed through the amendment to the EU ETS Directive was voted on by Member State officials at the Climate Change Committee, when, contrary to the proposal, it was agreed that from 1 January 2018 UK-issued 2018 allowances will be able to be used for compliance. This agreement was subject either to an obligation on UK operators to surrender allowances by 15 March 2019 at the latest, in a legally enforceable manner before the Treaties cease to apply, or to the continued application of EU law after the EU Treaties cease to apply (that is, if an implementation period is agreed). The UK will be required to report to the Commission and Member States on compliance by operators immediately after 15 March 2019, and has committed to enforce any non-compliance with the earlier deadlines, after Brexit.
18. In amending an earlier instrument, these Regulations bring forward the 2018 deadlines to report emissions and surrender allowances for those emissions, from 30 March 2019 to 11 March 2019, and from 30 April 2019 to 15 March 2019, respectively.

BEIS consultation

19. BEIS explains that it carried out a public consultation on the proposal to bring forward the 2018 compliance deadlines, over a three-week period to 24 November 2017. There were 94 responses, showing near-unanimous support for the view that bringing forward the deadlines was a proportionate response to the alternative, that UK-issued allowances would be identified with a country code from 1 January 2018 (which would render them unusable for compliance).
20. BEIS states that the Government's response to this consultation will be published after the laying of the Regulations. We normally look to Departments to publish such responses at the same time as statutory instrument are laid: in these circumstances, we understand that the urgency of settling the policy has made this impossible.

Conclusion

21. There is a good deal of interest at present, within and outside Parliament, in the scrutiny of Brexit-related secondary legislation that is expected to flow from the EU (Withdrawal) Bill once enacted. **It is striking, however, that, as exemplified by these Regulations, anticipation of the UK's exit from the EU is already affecting policy areas such as the control of greenhouse gas emissions and leading to the need for secondary legislation under existing Acts.**

INSTRUMENTS OF INTEREST

Draft Modifications to the Smart Energy Code (Smart Meters No. 5 of 2017)

22. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft modifications with an Explanatory Memorandum (EM). In the EM, BEIS restates the Government’s policy aim for every home and smaller business in Great Britain to be offered a smart meter by the end of 2020. The roll-out of smart meters in Great Britain is happening in two stages: the first began in 2011; the second started in November 2016, and will run until the completion of the roll-out. Smart meters installed in the first stage are known as “SMETS1 meters”.⁴ BEIS says that these meters provide the same benefits as the second version of smart meters, “SMETS2 meters”, in terms of accurate bills and near real-time energy consumption information. However, SMETS2 meters also provide interoperability for customers, allowing them to maintain their smart service when they switch energy supplier.
23. The Government have set an end-date for the installation of SMETS1 meters, currently expected to be 13 July 2018. These modifications provide for an energy supplier, on application, to be granted a derogation from the SMETS1 end-date, if they meet certain eligibility criteria, and subject to specified conditions. BEIS says that it consulted on the modifications between 9 October and 10 November 2017. A total of 43 responses were received: most agreed that a change in approach was appropriate.
24. BEIS has published the Government response to the consultation.⁵ This shows that 39 of the responses came from energy or metering organisations, and only one from a consumer group. Citizens Advice has separately published its response,⁶ in which it states that it does not favour any extension to the current SMETS1 end-date, stating that “SMETS1 meters do not offer the same consumer benefits as forthcoming SMETS2 meters, with significant limitations associated with loss of smart functionality on change of supplier...” As BEIS acknowledges, this “interoperability” is a feature only of SMETS2 meters. **In the light of these comments, and given the profile of respondents to the consultation, we question whether BEIS has taken sufficient account of the consumer perspective in finalising these draft modifications.**

4 SMETS is an abbreviation of Smart Metering Equipment Technical Specification.

5 See BEIS, *Smart Metering Implementation Programme*, 4 December 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/664216/Government_Response_to_consultation_on_the_operational_transition_of_sma...pdf

6 See Citizens Advice, *Response to Consultation on the operational transition of Smart Meters*, November 2017: [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Energy%20Consultation%20responses/-Citizens%20Advice%20Response%20to%20Consultation%20on%20the%20operational%20transition%20of%20smart%20meters,%20including%20draft%20legal%20text%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Energy%20Consultation%20responses/-Citizens%20Advice%20Response%20to%20Consultation%20on%20the%20operational%20transition%20of%20smart%20meters,%20including%20draft%20legal%20text%20(1).pdf)

Radio Equipment Regulations 2017 (SI 2017/1206)

25. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these Regulations with an Explanatory Memorandum (EM) and Transposition Note. BEIS says that the instrument serves to implement an EU Directive⁷ (“the radio equipment Directive”), and will require economic operators (manufacturers, importers and distributors) to ensure that radio equipment products placed on the market or put into service in the UK meet the essential safety requirements set out in the Regulations.⁸ BEIS says that the radio equipment Directive entered into force on 13 June 2016: “the implementation of the Directive was delayed for reasons beyond the control of BEIS, however, the European Commission has granted an extension to 14 December 2017.”
26. BEIS consulted on the proposed Regulations over four weeks, from 14 July to 14 August 2017. It says that so short a period was set so as to progress the Regulations as quickly as possible, “in order to minimise the risk of the EU infraction proceedings progressing to a judgment against the UK for non-implementation and a potentially large fine.” There were 14 responses, showing broad support for the clarification the proposed Regulations bring. BEIS says that the information received was varied and not comprehensive enough to infer an accurate picture.
27. We obtained further information from BEIS, about the delays that occurred in implementing the radio equipment Directive, and about the consultation, which we are publishing at Appendix 1. **We are surprised that the Department was unable to make better progress during the three years since the adoption of the Directive. We also regard it as poor practice to hold consultation exercises over a period shorter than six weeks, particularly if the period chosen coincides with holidays, as in this case. BEIS doubts that a lengthier consultation period would have produced more responses: we beg to differ.**

Ringling of Certain Captive-bred Birds (England and Wales) Regulations 2017 (SI 2017/1213)

28. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment. The Regulations provide for the ringling of certain birds bred in captivity,⁹ and set out the requirements for ringling those birds depending upon where the bird is hatched. Defra says that the main objective is to create a simpler means of regulating the trade in captive-bred birds which is easier for those wishing to trade imported birds to comply with, whilst continuing to protect wild birds from being unlawfully traded. The Department explains that in 2011 the European Commission raised concerns regarding an alleged restriction on the free movement of goods by the UK¹⁰ in respect of the trade in captive-bred wild birds. It says that a simpler regime for the trade in captive birds will make it easier for those who wish to do this.

7 Directive [2014/53/EU](#) of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC.

8 The Regulations cover items which emit or receive radio waves and include items such as televisions and radio receivers; hearing aids; radar; satellite dishes; small drones; mobile phones; Wi-Fi, Bluetooth and GPS or other satellite transceivers; wireless alarms and medical implants.

9 Namely, birds included in Part 1 of Schedule 3 to the Wildlife and Countryside Act 1981.

10 Contrary to Articles 34-36 of the Treaty on the Functioning of the European Union.

29. We found the EM insufficiently informative: Defra has undertaken to lay a revised, clearer EM. We obtained additional information from the Department, which we are publishing at Appendix 2. We were concerned in particular that too little was said about the views of those who did not agree with the measures proposed in the consultation held in early 2015,¹¹ and also that no explanation was offered for the delay between the completion of that consultation and the laying of the instrument. It is clear that political developments since early 2015 have significantly impeded progress with the Regulations.

11 See Defra, *Consultation on captive-bred birds; changing how we regulate trading in England, Scotland and Wales: Summary of responses and the government response*, March 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509610/captive-bred-birds-consult-sum-resp.pdf [accessed 18 December 2017]

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

- Draft Co-operative and Community Benefit Societies Act 2014 (Amendments to Audit Requirements) Order 2017
- Draft European Parliamentary Elections Act 2002 (Amendment) Regulations 2018
- Draft European Parliamentary Elections (Amendment) Regulations 2018
- Draft Modifications to the Smart Energy Code (Smart Meters No. 5 of 2017)
- Draft Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2017
- Draft Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2017

Instruments subject to annulment

- | | |
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| HC 309 | Statement of Changes in Immigration Rules |
| SI 2017/1127 | Packaged Retail and Insurance-based Investment Products Regulations 2017 |
| SI 2017/1188 | Maritime Enforcement Powers (Persons of a Specified Description) Regulations 2017 |
| SI 2017/1198 | Common Agricultural Policy Basic Payment and Support Schemes (England) (Amendment) Regulations 2017 |
| SI 2017/1199 | Magistrates' Courts (Adult Protection and Support Orders) Rules 2017 |
| SI 2017/1200 | Control of Mercury (Enforcement) Regulations 2017 |
| SI 2017/1205 | Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 |
| SI 2017/1206 | Radio Equipment Regulations 2017 |
| SI 2017/1208 | Motor Vehicles (Driving Licences) (Amendment) Regulations 2017 |
| SI 2017/1211 | West Northamptonshire Joint Committee (Revocation) Order 2017 |
| SI 2017/1213 | Ringling of Certain Captive-bred Birds (England and Wales) Regulations 2017 |
| SI 2017/1219 | Fishing Boats Designation (England) (Amendment) Order 2017 |
| SI 2017/1220 | Plant Health (England) (Amendment) (No. 2) Order 2017 |
| SI 2017/1221 | Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2017 |

- SI 2017/1222 Proceeds of Crime Act 2002 (Application of Police and Criminal Evidence Act 1984) (Amendment) Order 2017
- SI 2017/1223 Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) Regulations 2017
- SI 2017/1226 Administrative Forfeiture of Terrorist Cash and Terrorist Money Held in Bank and Building Society Accounts (Cash and Account Forfeiture Notices) Regulations 2017
- SI 2017/1232 Charitable Incorporated Organisations (Conversion) Regulations 2017
- SI 2017/1233 Index of Company Names (Listed Bodies) Order 2017
- SI 2017/1234 Renewables Obligation (Amendment) Regulations 2017
- SI 2017/1237 Civil Legal Aid (Procedure) (Amendment) (No.2) Regulations 2017
- SI 2017/1242 Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017

APPENDIX 1: RADIO EQUIPMENT REGULATIONS 2017 (SI 2017/1206)

Additional Information from the Department for Business, Energy and Industrial Strategy

Q1: In the Explanatory Memorandum, you refer at paragraph 4.3 to delays beyond BEIS' control. What were these?

A1: Implementation was delayed to ensure that the penalties in the Regulations would be effective, dissuasive and proportionate. Lengthy consideration was given to the options for penalties and to ensure the right balance between criminal and civil penalties. Additionally the Purdah periods in advance of the General Elections in 2015 and 2017 and the referendum on the UK's membership of the EU in 2016 further impacted on progress in implementing the Directive by the deadline of June 2016.

Q2: In paragraph 8.1 of the Explanatory Memorandum you say that the consultation process lasted 4 weeks, from 14 July to 14 August. This is not only a very short period, but it also falls squarely in the traditional holiday period. In paragraph 8.3, you say that information in the responses received was not comprehensive. Does BEIS consider that the timing of the consultation process had a negative impact on the usefulness of the responses received?

A2: BEIS recognises that the breadth of data received in consultation responses was limited, however, it does not believe that changes to the timing of the consultation would have resulted in significantly more evidence being submitted. The shorter consultation period was considered appropriate, taking into account that full consultation had previously been undertaken on the EU Directive which the Regulations implement.

The UK Regulations follow the same format as the UK Regulations they were replacing and, based on discussions with industry we were not anticipating a high level of responses or extensive comments. BEIS was aware that industry also wanted the legislation implemented as soon as possible to ensure that there was a common legislative requirement across the Internal Market that they could work to.

Although the number of responses was modest, these included a cross section of responses including from key stakeholder (representative) groups and individual businesses. The consultation identified some areas of concern but there was no quantification of the impact; these were followed up with calls to seek further clarification from respondents raising these issues. None of the respondents were able to expand on the information they provided to the consultation.

Q3: Did BEIS receive any criticism of the timing?

A3: Two respondents commented on timing. One respondent noted that the time to respond was short but also noted the importance of getting the consultation completed given the implementation date for the Directive. Another respondent noted that it would be difficult for micro businesses to respond to the consultation. Despite these comments, responses from individual businesses (who did not identify their size) were received. Our analysis of the responses indicates the regulations are not expected to have significant impact on business, which also may have impacted on business' appetite to respond to the consultation.

8 December 2017

APPENDIX 2: RINGING OF CERTAIN CAPTIVE-BRED BIRDS (ENGLAND AND WALES) REGULATIONS 2017 (SI 2017/1213)

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

Q1: Could you give a clearer explanation of the measures provided for in the Regulations?

A1: Explanation of the measures:

- We have amended the definition of rings in the Regulations so that live captive-bred birds of species listed under Wildlife and Countryside Act 1981 Part I of Schedule 3 may be traded and imported from the EU provided they are ringed in accordance with the proposed new minimum ringing standard. The Regulations specify requirements for British-bred birds, such as authorised suppliers and new maximum ring sizes currently used by the International Ornithological Association and British Bird Council. Our over-arching goal is to ensure close rings are of a size which poses the least welfare risks to captive-bred birds, while also minimising the potential for rings to be fitted on to birds taken unlawfully from the wild.
- [We are ensuring] that the General Licences permit trade in birds of other species if they are ringed in accordance with the proposed new minimum ringing standard.
- We have removed the requirement to provide documentary evidence of captive breeding from the relevant General Licences, which permit the import of live captive-bred birds into England and Wales from the EU.

Q2: Is the main objective of the Regulations to make it easier to trade in imported birds, meaning that the need to protect birds is a lesser objective?

A2: The Regulations do make it easier to trade in imported captive bred birds as the requirement to provide documentary evidence of captive breeding is removed, but at the same time a common minimum ringing standard, which can be easily understood, for imported birds is also introduced. Stakeholders told us they have difficulty in obtaining documentary evidence for EU captive bred birds and the Commission Pilot Case showed this may restrict trade. Therefore overall there is no less protection for birds, but trade is made easier.

Q3: What issues were raised by the 31% of respondents who did not support Defra's preferred option set out in the consultation of January 2015?

A3: Some respondents said the proposals were not radical enough and the current system was outdated for both the sale and protection of birds, with difficulties to react quickly to changes, in either species conservation terms or market demands. Concerns were raised over the potential for increased illegal trading in wild taken birds by claiming these are imported birds from elsewhere in the EU. 8% of respondents preferred Option 2, namely, to amend the Wildlife and Countryside Act 1981 so that trade is only permitted through a licensing system. 14% of respondents preferred Option 3, namely, to expand the exception in Section 6 of the Wildlife and Countryside Act 1981 to allow trade in all captive-bred birds currently permitted to be traded under General Licences

We believe our proposals (Option 1) create a means of regulating the trade in captive-bred birds which is easier for those trading EU imported birds to comply with, whilst continuing to protect wild birds. We consider that the best way of achieving this is by implementing measures that enable captive-bred birds to be relatively easily distinguished from wild birds of the same species. The majority of consultation respondents (69%) supported this key proposal.

Q4: How quickly was the UK expected to respond to the Commission communication of 2011, mentioned in paragraph 7.6 of the EM?

A4: The UK was not given any specific deadline to respond to the Commission communication of 2011...we committed to introducing our proposals as soon as possible and have kept the Commission and stakeholders regularly updated on our progress.

Q5: Why has it taken almost three years from launching the consultation to laying Regulations before Parliament?

A5: It has taken almost three years from launching the consultation to laying the Regulations before Parliament, because we have been drafting the government response to the consultation, negotiating with the Welsh Government over the contents of a joint SI, agreeing a new licensing regime with Natural England and liaising with stakeholders over the details of the new regulatory regime.

In addition:

- We were required to notify the Commission under the Technical Services Directive. Under the Technical Services Directive there was a required 3 month standstill period where all Member States and the Commission had an opportunity to review our proposals and comment on them. The notification period ended on 1 March 2017.
- There have been three election periods and changes to Ministers where we have had to either put the Regulations on standstill or re-seek Ministerial approval (including the EU referendum where we needed to take some time to understand what this might have meant for any outstanding Pilot Cases).

Interim measures already agreed with the trade in 2012 for the sale of EU bred birds in England included a temporary change to the requirements for documentary evidence (so as to address any perceived restriction in trade), therefore the Regulations put the interim measures that have been operating since 2012 on a statutory basis.

12 December 2017

APPENDIX 3: 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 20 December 2017, Members declared the following interests:

SI 2017/1127 Packaged Retail and Insurance-based Investment Products Regulations 2017

Lord Janvrin

Senior Adviser, HSBC Private Bank (UK) Ltd

Attendance:

The meeting was attended by Baroness Blackstone, Lord Faulkner of Worcester, Baroness Finn, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury, Lord Trefgarne and Baroness Watkins of Tavistock.