

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee A)

2nd Report of Session 2017–19

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

**Includes Recommendations on the following:
Consumer Protection (Enforcement) (Amendment
etc.) (EU Exit) Regulations 2018**

**Correspondence: International
Road Transport Permits (EU Exit)
Regulations 2018**

Includes 3 Information Paragraphs on 3 Instruments

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Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

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

Members

Baroness Bowles of Berkhamsted	Lord Haskel	Rt Hon. Lord Trefgarne (Chairman)
Rt Hon. Lord Chartres	Lord Hogan-Howe	Rt Hon Lord Walker of Gestingthorpe
Lord Faulkner of Worcester	Rt Hon. Lord Lilley	Lord Wood of Anfield
Baroness Finn	Lord Sharkey	

Registered interests

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

Publications

The Sub-Committee's Reports are published on the internet at <http://www.parliament.uk/seclegapublications>

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

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

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 hlseclegscrutiny@parliament.uk.

Second Report

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

Instruments recommended for upgrade to the affirmative resolution procedure

Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018

Date laid: 10 October 2018

Sifting period ends: 26 October 2018

1. The purpose of these draft Regulations, laid by the Department for Business, Energy and Industrial Strategy (BEIS) as a proposed negative, is to remove current reciprocal arrangements which oblige Member States to cooperate in the cross-border investigation of and enforcement against infringements of EU consumer laws, where the collective interest of consumers is being harmed. The instrument also ensures that UK enforcement bodies, such as the Competition and Markets Authority, retain the same powers as now for investigating and addressing infringements of specified retained EU law in the UK after EU exit. The instrument is proposed as contingency planning for a “no deal” scenario. BEIS explains that the changes are required because if the UK leaves the EU without an agreement, it would cease to benefit from current reciprocal arrangements, and that it would not be appropriate for remaining Member States to benefit from the arrangements unilaterally in the UK.
2. The Government’s guidance *Consumer rights if there is no Brexit deal*¹ confirms that in a “no deal” scenario there would no longer be reciprocal obligations on the UK or Member States to investigate breaches of consumer laws or take forward enforcement actions, and that UK consumers when buying goods and services in the remaining Member States would find it more difficult to use the UK courts to seek redress from EU based traders and enforce court judgements.
3. Given that cross-border protections for UK consumers, in cases where their collective interest is being harmed, would be reduced considerably in a “no deal” scenario or in any agreement with the EU that does not achieve reciprocity, the House may expect the opportunity to debate this instrument. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

Proposed Negative Statutory Instruments about which no recommendation to upgrade is made

- Driving Licences (Amendment) (EU Exit) Regulations 2018
- Road Vehicles (Registration, Registration Plates and Excise Exemption) (Amendment) (EU Exit) Regulations 2018

¹ Department for Business, Energy and Industrial Strategy, ‘Consumer Rights if there’s no Brexit deal’: <https://www.gov.uk/government/publications/consumer-rights-if-theres-no-brexite-deal--2/consumer-rights-if-theres-no-brexite-deal> [accessed 23 October].

INSTRUMENTS OF INTEREST

Draft Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018

4. In the Explanatory Memorandum (EM) to this draft Order, HM Treasury (HMT) says that claims management companies (CMCs) are businesses which provide advice or other services in relation to the making of compensation claims. CMCs in England and Wales are currently regulated by the Claims Management Regulation Unit (CMRU), which was established within the Ministry of Justice in April 2007 under the Compensation Act 2006. According to the CMRU, there are currently 1,238 authorised CMCs in operation. A 2015 independent review² found that the current regulator lacked sufficient powers and resources to regulate the market and recommended a number of actions to strengthen the regulatory regime, concluding that the Financial Conduct Authority (FCA) would be well-placed to deliver a step change in enforcing the regulation of the sector. The Order proposes the transfer of the regulation of claims management activities from the CMRU to the FCA. It sets out the types of claims management activities that will be regulated by the FCA and the restrictions on the promotion of those activities. It also specifies those activities which will be excluded from regulation by the FCA.

5. The Government consulted on its proposed approach from 23 April to 1 June 2018, and published its response on 27 July.³ In the EM, HMT says that there were 51 responses, from a range of CMCs, firms in the financial services industry and professional and trade bodies, which were largely supportive of the Government's proposals on the scope of regulation and the FCA's consultation requirements. HMT also reports (at paragraph 10.3 in the EM) a number of views suggesting that other sectors be included in the scope of the regime. HMT will consider extending the scope to some of these sectors, such as flight delays and timeshares, but has rejected an extension to credit hire and medical reporting organisations. The FCA is currently consulting on authorisation fees, including one-off application fees and ongoing periodic fees which would vary according to the size of the firm's turnover, and is expected to make a policy statement on fees in December 2018.

Draft Trailer Registration Regulations 2018

6. International road traffic is governed by a number of Conventions including the 1968 Vienna Convention on Road Traffic (the Convention), which provides for the mutual recognition of driving licences. The Convention allows contracting parties to deny entry to unregistered trailers with a gross weight of more than 750kg. There is currently no registration scheme for UK trailers and, as a result, UK trailers have been subject to "small-scale but persistent"⁴ enforcement action in some EU Member States. As the

2 'Independent review of claims management regulation': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508160/PU1918_claims_management_regulation_review_final.pdf [accessed 23 October 2018].

3 HM Treasury, 'Claims management regulation: response to the consultation on secondary regulations and policy statement for transitional provisions': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729891/Claims_management_consultation_response.pdf [accessed 23 October 2018].

4 Department for Transport, *Impact Assessment: Trailer Registration Regulations 2018* (September 2018) p.7, paragraph 5: http://www.legislation.gov.uk/ukia/2018/127/pdfs/ukia_20180127_en.pdf [accessed 23 October 2018].

Department for Transport states in the accompanying Impact Assessment, the UK has now ratified the Convention as part of its “preparations for leaving the EU, to ensure readiness in all scenarios” and the Convention will “subsequently become the UK’s legal basis for international road travel with fellow contracting parties” to the Convention.⁵ The Convention will come into force in the UK in March 2019.

7. This instrument makes provision for the operation of a new trailer registration scheme for any commercial trailer travelling to or through a Convention country that weighs more than 750kg, or non-commercial trailer that weighs more than 3,500kg (most caravans and single horse trailers are unlikely to require registration). The scheme will be operated on a cost recovery basis by the Driver and Vehicle Licensing Agency. The instrument also sets out the offences for contravening or failing to comply with the Regulations.

Draft Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2018

8. There are existing international road haulage rules for failing to produce a permit or a Community Licence (for EU transit) for a goods vehicle. In the event of a “no deal” with the EU, the Government have made provision for a permits scheme for international haulage.⁶ This Order sets out the financial penalties which will apply to offences under any new permits scheme. The Department for Transport (DfT) has informed the Committee that the financial penalties are the same as those that apply under the existing rules. The Trailer Registration Regulations 2018 (see paragraph 6) introduce a new scheme of trailer registration for UK trailers and include offences for contravention or failure to comply. This Order sets out the financial penalties to be paid under breach of the new registration scheme and the DfT has told us that these mirror the penalties currently applied for motor vehicle registration.

5 *Ibid*, p.7, paragraph 4.

6 Secondary Legislation Scrutiny Committee (Sub-Committee A), *1st Report Session 2017–19* (HL Paper 196).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018

Draft Investigatory Powers Tribunal Rules 2018

Draft Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2018

Draft Tax Collection and Management (Wales) Act 2016 and the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Consequential Amendments) Order 2018

Draft Textile Products (Amendment) (EU Exit) Regulations 2018

Draft Trailer Registration Regulations 2018

Instruments subject to annulment

SI 2018/1044 M1 Motorway (Junctions 23A to 25) (Variable Speed Limits) (Amendment) Regulations 2018

SI 2018/1046 Groceries Code Adjudicator Act 2013, Small Business, Enterprise and Employment Act 2015 and Enterprise Act 2016 (Amendment) (EU Exit) Regulations 2018

SI 2018/1048 Plant Health (Forestry) (Amendment) (England and Scotland) Order 2018

SI 2018/1053 Tribunal Procedure (Amendment No. 2) Rules 2018

SI 2018/1059 Lambeth College (Designated Institution in Further Education) Order 2018

APPENDIX 1: CORRESPONDENCE ON THE INTERNATIONAL ROAD TRANSPORT PERMITS (EU EXIT) REGULATIONS 2018

Letter from Mr Jesse Norman MP, Parliamentary Under Secretary of State at the Department for Transport, to Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee

Thank you for your letter of 16th October following my response on the 15th October,⁷ with a number of further questions on market access for UK hauliers when we leave the EU.

I should start by emphasising that there are strong mutual interests in reaching an ambitious agreement, one which maximises benefits for all our citizens and businesses. The Government is therefore still confident that it will secure a good deal and is working to secure this. A deal is in the interests of both the UK and the EU, but of course in the interim, the Government will continue to prepare for a range of potential outcomes including the possibility of no deal. Bilateral agreements with member states and issuance of permits to UK hauliers are part of these preparations.

You asked about historical bilateral agreements on international road transport. The UK has in the past concluded 26 such agreements with EU member states. Of those agreements, the Government considers that the agreements with 20 EU countries are extant and the other 6 have been terminated. Some of these would require permits though a number are liberalised. This would mean that the extant agreements will have effect once EU law ceases to apply, should the UK not reach an overall deal with the EU. The Government would expect to update these bilateral agreements and in practice it would also be important to ensure the other parties shared this view. The Department will work with the other parties to those agreements to ensure they are implemented and permits can be issued to hauliers, where the agreements require them.

The Government considers that the terminated agreements will need to be replaced and that at least some of the extant agreements would benefit from updating in various respects. The Department is exploring with the countries concerned how to provide continuity for the haulage industry after the UK leaves the EU, and is confident that arrangements can be put in place if there is no deal with the EU. Where permit requirements change as a result of bilateral agreements, these regulations will be amended and brought before Parliament.

You note that the regulations apply only to UK hauliers, that is, hauliers which are based in the UK and operating under a UK operator's licence. You asked about the definition of EU hauliers and how legislation would apply to them. "EU hauliers" refers to hauliers who are based in other EU member states and who operate under an EU operator's licence not issued in the UK. Therefore while EU hauliers may perform haulage to, from or through the UK, they do not operate from the UK. They will continue to be regulated as foreign vehicles. It is these EU hauliers that account for over 80% of road haulage between the UK and the continental EU.

The requirements on EU hauliers which haul goods to, from, or through the UK are linked to the progress of negotiations. The White Paper set out the Government's intention for reciprocal arrangements for road haulage. The UK

⁷ See earlier correspondence in Appendix 2 of our *1st Report Session 2017-19* (HL Paper 196).

has the discretion to continue to recognise EU hauliers Community Licences or to require permits for EU hauliers. Under an agreement with the EU or a series of bilateral agreements which require permits, the permits for EU hauliers entering the UK would typically be allocated by the authorities in the respective member states to their hauliers. The UK would normally provide blank permits to the Commission or individual member states for them to then fill in and allocate to their hauliers.

You asked about the basis of the 80,000 figure in the impact assessment. This has used an upper estimate of the maximum number of applications for permits which could be made. This is based on the number of unique, UK-registered HGVs that can travel internationally each year. In practice, the number of applications is likely to be substantially lower as this number includes vehicles that hauliers may choose not to use abroad, and vehicles that would be exempt from permit requirements (under ECMT or bilateral agreements with member states). Moreover, it does not account for the ability for hauliers to share a permit between different vehicles. There are around 5,000 trips by UK hauliers to the mainland EU each week, many of these by the same hauliers. The number of 80,000 applications is presented as a maximum upper limit rather than the likely number of applications.

You asked about the progress of the IT system for permit allocation and how this would work. The permit IT system is being delivered by the Driver and Vehicle Standards Agency (DVSA). This is well developed and is undergoing final user testing before the system is due to be launched in late November. It is built on the existing Vehicle Operator Licensing IT system with which hauliers are already familiar.

When making an application, hauliers will be asked to provide details of their operations and the extent of their international business. The IT system will use this data to compare applications consistently and objectively. The Department will provide guidance for hauliers, and to peers before debating the regulations, which will provide more specific detail about how the criteria are being applied.

The criteria are designed to deliver the principles of obtaining the greatest economic benefit from the permits, protecting the interests of UK hauliers, and applying a fair and consistent process. They are included in the regulations in broad terms to ensure the Secretary of State will continue to consider the same relevant criteria. However, this approach also allows for minor, technical adjustments to be made to the allocation process. For example, the information required from hauliers to measure the frequency with which a permit will be used can be amended to ensure that hauliers which previously did not receive a permit are not disadvantaged relative to those who did.

The Department intends to review the criteria to ensure they operate effectively and deliver these principles. The guidance the Department will publish will make the application process clear to all hauliers.

I hope this provides the further information you needed.

22 October 2018

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 22 October 2018, Members declared no interests.

Attendance:

The meeting was attended by Baroness Bowles of Berkhamsted, Lord Chartres, Lord Faulkner of Worcester, Baroness Finn, Lord Haskel, Lord Hogan-Howe, Lord Sharkey, Lord Trefgarne, Lord Walker of Gestingthorpe and Lord Wood of Anfield.

