HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee A)

9th Report of Session 2017–19

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

Includes 3 Recommendations

Draft Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019

Building (Amendment) Regulations 2018

Includes 6 Information Paragraphs on 6 Instruments

Ordered to be printed 10 December 2018 and published 12 December 2018

Published by the Authority of the House of Lords

HL Paper 251

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.

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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.

Ninth Report

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

Instruments recommended for upgrade to the affirmative procedure

Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018

Date laid: 27 November 2018

Sifting period ends: 13 December 2018

1. These Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra), propose over more than 90 pages of extensive amendments to EU-retained legislation on the Common Fisheries Policy. Defra states that the instrument proposes the minimum technical changes that are necessary to preserve the status quo and to ensure that fishing within UK waters can continue to be regulated in a sustainable manner. Defra also says that the instrument is not expected to lead to any practical changes for the fisheries industry and that it does not alter the devolution settlements in any way.

2. The Committee notes, however, that the Explanatory Memorandum (EM) fails to provide evidence or examples to demonstrate that the proposed amendments and revocations will not change the way that UK fisheries will be managed and regulated after exit, and that it will not impact adversely on the sector. In addition, the draft Regulations appear to propose the transfer of legislative functions and fee raising powers which could be seen to trigger the requirement under Schedule 7, Part 1, paragraphs 1(2)(a) and (b) of the EU (Withdrawal) Act 2018 for the affirmative resolution procedure to apply to this instrument.

3. The future of the UK fisheries industry is an important and highly sensitive policy area in the process of withdrawing from the EU. Given this significance, and the complexity of the instrument, the EM should provide a clearer rationale for the chosen approach and a more extensive explanation of why the proposed changes do not change policy or impact on the way that UK fisheries will be managed and regulated after exit. The lack of sufficient information in the EM makes effective Parliamentary scrutiny of the draft Regulations difficult. These are issues which the House may wish to explore further during a debate. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

Intelligent Transport Systems (EU Exit) Regulations 2018

Date laid: 29 November 2018

Sifting period ends: 18 December 2018

4. The EU Intelligent Transport Systems Directive ("the Directive") creates the framework for interoperable deployment of Intelligent Transport Systems (ITS). The Directive explains that ITS "… integrate telecommunications, electronics and information technologies with transport engineering in order to plan, design, operate, maintain and manage transport systems. The application of information and communication technologies to the

road transport sector and its interfaces with other modes of transport will make a significant contribution to improving environmental performance, efficiency, including energy efficiency, safety and security of road transport ...".[1] This proposed negative instrument seeks to revoke the EU Regulations and Decisions which have been adopted since the Directive came into force because, according to Department for Transport (DfT), the requirements of the legislation will continue to be met by administrative means. DfT is developing these administrative means, including negotiating future measures with the STREETWISE group, the coordinating body for UK engagement in European-funded ITS deployment and study programmes and has also commissioned a detailed feasibility study. Given that these administrative measures are not yet fully developed, the House may wish to debate this instrument to ensure compliance with the Regulations and the future operability of ITS in the UK. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residues Limits) (Amendment etc.) (EU Exit) Regulations 2018

Date laid: 26 November 2018

Sifting period ends: 12 December 2018

5. These Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra) as a proposed negative instrument, seek to amend and revoke retained direct EU legislation to ensure that the regulatory regimes for veterinary medicines and residues surveillance can operate and be enforced after the UK leaves the EU. Defra says that the current arrangements ensure that animal welfare and consumer safety are protected. While the draft Regulations largely correct technical deficiencies, they also propose a new requirement on holders of marketing authorisations for veterinary medicines to establish themselves in the UK if they wish to continue to market their medicines after exit. Defra says that this new requirement is needed to ensure that all UK authorisation holders are within the UK's enforcement jurisdiction and to provide for a level playing field with those holders already established in the UK. The Department expects 90 companies holding a total of 751 authorisations for veterinary medicines to be affected by the new requirement. While the financial and administrative impact on these companies is expected to be small (with an initial cost of £100 per business, followed by annual costs of £40), Defra acknowledges that some companies may choose not to establish themselves in the UK, which potentially could lead to a reduction in the number of veterinary medicines being readily available after exit. The Committee also notes that the expected impact of some of the proposed amendments is unclear, in particular whether or not they lower safety standards in relation to: the import of veterinary medicinal products from third countries; the use by veterinary surgeons of veterinary medicinal products from third countries where none has been authorised in the UK; the import of feeding stuff containing veterinary medicinal products; and the removal of a duty to investigate, in response to specified triggers, whether a prohibited substance has been illegally administered. The Explanatory Memorandum does not provide information on the potential impact of the proposed changes. These are risks and concerns that the House

1 Directive of the European Parliament and of the Council, Directive 2010/40/EU [accessed 11 December 2018].

may wish to explore during a debate. **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

- Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2018
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2018
- European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2018
- Horizon 2020 Framework Programme for Research and Innovation (EU Exit) Regulations 2018
- Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2018
- Radio Spectrum (EU Exit) Regulations 2018
- Sanctions (Amendment) (EU Exit) Regulations 2018

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019

Date laid: 26 November 2018

Parliamentary procedure: affirmative

These draft Regulations, laid by the Department for Transport, are intended to ensure that the legal framework on aviation safety continues to function correctly after exit day. They transfer powers from the European Commission ("the Commission") to the Secretary of State and the existing functions of the European Union Aviation Safety Agency (EASA) to the Civil Aviation Authority (CAA). In the event of 'no deal' with the EU, EASA issued licences, certificates and approvals will be valid in the UK for two years and, after that, all organisations and individuals will need CAA issued licences, certificates and approvals. The Commission has confirmed that licences, certificates and approvals previously issued by the CAA before exit day will no longer be automatically accepted in the EASA system after 29 March 2019.

We draw these Regulations to the attention of the House as the EU will not reciprocate mutual recognition of licences, certificates and approvals issued in the UK from exit day and industry will need to be aware and plan accordingly. The House may also wish to ask the Minister how the CAA will deal with the additional responsibilities.

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

Background

6. The EU Basic Regulation[2] established a European Union Aviation Safety Agency (EASA), made further provision on the establishment of a comprehensive aviation safety regulatory system in the EU, and conferred powers on the European Commission ("the Commission") to give effect to requirements in the Convention on International Civil Aviation ("the Chicago Convention"). Further EU technical regulations and legislation have developed different aspects of aviation safety regulation.

7. EASA is responsible for:

- Rulemaking: drafting aviation safety legislation and providing technical advice to the European Commission and to the Member States;
- Inspections, training and standardisation programmes to ensure uniform implementation of European aviation safety legislation in all Member States;
- Safety and environmental type-certification of aircraft, engines and parts;
- Approval of aircraft design organisations world-wide and of production and maintenance organisations outside the EU;
- Authorisation of third-country (non-EU) operators;

2 Regulation (EU) 2018/1139 [accessed 11 December 2018].

- Coordination of the European Community programme SAFA (Safety Assessment of Foreign Aircraft) regarding the safety of foreign aircraft using Community airports;
- Data collection, analysis and research to improve aviation safety.[3]

8. The Civil Aviation Authority (CAA), as the independent specialist aviation regulator in the UK, is responsible for the certification and oversight activities of individuals or organisations based in the UK.

Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019

9. These Regulations, laid by the Department for Transport (DfT), are accompanied by an Explanatory Memorandum (EM). In addition, we asked the DfT for clarification on a number of points , the answers to which are set out in this Report. The Regulations should also be read alongside the Government's technical guidance *Aviation safety if there's no Brexit deal* ("the Government's Guidance").[4]

10. The Regulations are intended to ensure that the legal framework on aviation safety continues to function correctly after exit day and the UK will continue to have the same technical requirements and standards as the EASA system on exit day.

11. The Regulations transfer powers from the Commission to the Secretary of State to amend or adopt new requirements on safety.

12. The Regulations also provide for the CAA to carry out the responsibilities currently being exercised by EASA. They relate to technical rulemaking, and to the certification and oversight of products (including product design) and of organisations (such as maintenance and flight training organisations) based in third countries previously overseen by EASA.

13. DfT has explained that:

> "The CAA has been implementing a comprehensive contingency plan to ensure that it continues to deliver a high quality aviation safety regulatory regime. The additional functions they would need to undertake are limited to aircraft design certification, certification for third country organisations (e.g production, maintenance, training) providing goods and services into the UK, and safety authorisations for foreign air carriers. The majority of the additional work required by the CAA to prepare for Brexit is on areas in which they already have the responsibility and capability."

Licences, Certificates and Approvals

14. In the event of 'no deal' with the EU, the mutual recognition of licences, certificates and approvals will cease to apply. On exit day, all licences, certificates and approvals issued by EASA (or by a Member State) before 29 March will be treated as if issued by the CAA. However, all licences,

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3 European Aviation Safety Agency: https://www.easa.europa.eu/the-agency/faqs/agency#category-about-easa [accessed 11 December 2018].

4 Department for Transport, *Aviation safety if there's no Brexit deal* (September 2018): https://www.gov.uk/government/publications/aviation-safety-if-theres-no-brexit-deal/aviation-safety-if-theres-no-brexit-deal [accessed 11 December 2018].

certificates and approvals, other than those relating to type approvals,[5] are to be subject to a maximum validity period of two years (unless they expire or otherwise become invalid).

15. After this two-year transition period, all organisations and individuals will need CAA issued licences, certificates and approvals. The cost will be dependent on the type of certificate[6] and the DfT has clarified that the application processes will remain the same as at present.

16. DfT has explained in the EM that this two-year period "is intended to provide continuity for industry and facilitate a smooth transition to the new regulatory regime"; however, "to provide effective safety regulation of the UK system, the CAA will need to be directly responsible for the regulation of those involved in it."

17. From exit day, organisations and individuals who do not hold a current licence, certificate or approval will need to obtain the relevant licence, certificate or approval from the CAA.

18. We asked DfT if the CAA has the resources in place to deal with this increase in applications as well as undertaking its new functions referred to at paragraph 12 above. DfT explained:

> "59 additional staff are required by 29 March, 38 are already in post and are qualified and experienced to undertake their duties. The CAA operates on the basis of cost recovery in form of schemes of charges paid by industry. On an exceptional basis, DfT granted £2.7m to the CAA in financial year 18/19."

19. **The House may wish to ask the Minister what assessment the Government have made of the impact of the costs to obtain new or renewed licences, certificates and approvals will be on organisations and individuals; and what guidance the Government will provide to assist organisations and individuals who need to apply for new licences, certificates or approvals or renew them in due course.**

20. **We acknowledge that the CAA has put contingency measures in place to deal with the additional responsibilities it will undertake. However, the House may also wish to seek assurances from the Government that all applications for new licences, certificates and approvals will be processed by the CAA in time for exit day and all existing licences, certificates and approvals will be renewed within two years to enable aviation operations to continue smoothly.**

21. The Commission has issued a notice[7] confirming that certificates previously issued by the CAA before exit day would no longer be automatically accepted in the EASA system after 29 March 2019. The Government's Guidance states that:

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5 Which are relevant to the design of aircraft.

6 The CAA's charging schemes are available at https://publicapps.caa.co.uk/modalapplication.aspx?catid=1&pagetype=65&appid=11&mode=detail&id=8295. The CAA is already responsible for issuing most certificates required by UK based companies and individuals [accessed 11 December 2018].

7 European Commission, *Notice to Stakeholders: Withdrawal of the United Kingdom and EU Aviation Safety Rules* (April 2018): https://ec.europa.eu/transport/sites/transport/files/legislation/brexit-notice-to-stakeholders-aviation-safety.pdf [accessed 11 December 2018].

> "Those certificates would have been issued in accordance with EU rules, and UK aviation will remain as safe the day after exit as it was the day before exit, so the UK encourages the EU to take reciprocal action in recognising UK-issued certificates."

Pilots

22. Pilot licences[8] issued under EU Regulations by an authority other than the CAA must be validated by the CAA before being used outside the UK on a UK registered aircraft. The EM explains that these validations will be automatic and the CAA does not intend to charge for this service.

23. We asked DfT how pilot licences will be validated and how many pilots will be affected. DfT explained:

> "A general validation will be issued by the CAA [immediately after] the SI enters into force and it will be downloadable free of charge from the CAA website. We do not know how many people will be affected as non UK EASA licence holders are not required to notify use when flying UK registered aircraft. The regime that will apply in the event of a no deal exit from the EU have been set out in the technical notice issued by the Department and the CAA are providing further information to industry."

24. Again, the Commission has confirmed that any pilot licences issued by the CAA will not be valid on exit day, and therefore holders of a UK issued licences will need to transfer their licence to another EASA state if they wish to operate aircraft registered in the EASA system.

Cabin crew and engineers

25. Licensed engineers and cabin crew attestations issued in an EASA Member State will continue to be valid in the UK in accordance with paragraphs 9 above. However, the EU has indicated that licences and attestations issued by the CAA will no longer be valid for use with EU operators after exit day.

Aircraft production and maintenance

26. Certificates and approvals for aircraft production and aircraft maintenance issued by an EASA authority will remain valid for the transitional period in accordance with paragraph 14 above. This enables any new EU certified parts to be fitted on UK registered aircraft and enables UK registered aircraft to be maintained by organisations and engineers holding an EASA certificate for up to two years after exit day.

27. However, the EU has indicated that it will not recognise approvals which are issued by the CAA. This means that parts manufactured and certified by organisations approved by the CAA can not be installed on EU registered aircraft, and maintenance organisations which are approved by the CAA will be unable to perform maintenance on EU registered aircraft. The Government's Guidance explains that:

> "The affected organisations could be approved as third country production organisations by EASA. However, EASA has yet to provide

8 This is related to pilot licences which are issued under Commission Regulation 1178/2011 (known as a Part-FCL licence) [accessed 11 December 2018].

the details for how and when it would process applications from UK manufacturers in advance of the UK leaving the EU."

Safety Authorisations

28. Third country airlines require a safety authorisation from the EASA.[9] If there is 'no deal' on EU exit, UK air carriers would become third country operators under EU legislation and would be required to apply for, and hold, an EASA issued safety approval. The Government's Guidance indicates that:

> "EASA has yet to provide the details for how and when it would process applications from UK airlines in advance of the UK leaving the EU. The UK however would expect the recognition of equivalent safety standards to be on a reciprocal basis."

29. All foreign operators flying to the UK would require a safety approval issued by the CAA before they can operate commercial services to the UK. EASA issued authorisations to airlines outside the EU would remain valid in the UK for up to two years after the UK leaves the EU. However, as EU airlines do not hold EASA issued authorisations they would have to obtain a safety approval from the CAA now that EU operators will become foreign operators under UK legislation.

30. As the Government's Guidance explains:

> "The CAA will consider each application for a UK Part-TCO authorisation on a case-by-case basis, but in principle, an airline that holds a valid EASA Air Operator Certificate would be considered as having met the qualifying requirements to hold such an approval. The UK would expect this recognition of equivalent safety standards to be reciprocated by the EU in its 'Part-TCO' authorisations."

Impact

31. We asked the DfT what assessment has been made of the impact on UK industry by the EU not reciprocating the recognition of certificates, licences or approvals. The department explained:

> "… the impact is being considered as part of our contingency planning. We are providing information through the technical notices and the CAA website to help licence holders to determine what action would be appropriate in their individual circumstances.
>
> Individuals applying for licences etc will have to apply for a licence from a EU/EAA state so any cost will depend on the state to which they apply. A large number of professional pilot licence and maintenance engineer licence holders are transferring their licences to other Member States, particularly Austria and Ireland. The CAA has employed extra staff to help facilitate those transfers.
>
> Organisations (such as maintenance, flight training and production organisations) based in the UK will need an EASA approval if they want to provide products or services to the EU. Applications from such organisations will follow the normal EASA procedures for third country applications although EASA has indicated that they will be processed in

9 Known as a "Part-TCO Authorisation".

a streamlined way. EASA has also indicated that the fee for applications covered by the streamlined process will be €1,768. This is considerably less than the normal charge for such applications."

Conclusion

32. Given the additional responsibilities that will be undertaken by the CAA, the House may wish to be assured that the necessary resources and contingency arrangements are in place to enable the CAA to carry out these extra functions. Because the EU will not reciprocate mutual recognition of licences, certificates and approvals issued in the UK from exit day, industry will need to be aware and plan accordingly. **We draw these Regulations to the attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

Building (Amendment) Regulations 2018 (SI 2018/1230)

Date laid: 29 November 2018

Parliamentary procedure: negative

In the wake of the Grenfell Tower fire and the subsequent review of building regulations and fire safety led by Dame Judith Hackitt, these Regulations ban the use of combustible materials on the external walls of high-rise residential buildings (and some other buildings).

In the Explanatory Memorandum (EM) as originally laid, the Ministry of Housing, Communities and Local Government (MHCLG) said that 460 responses were received to the consultation, and that a clear majority (69%) of these supported the ban; no details were given about other comments received. At our request, MHCLG has revised and re-laid the EM, to provide more information about views expressed in the consultation process, and the Government's response. We look to the Ministry to be more forthcoming in the information that it provides to Parliament in support of statutory instruments of such policy significance, without the need for external prompting.

We draw these 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.

33. The Ministry of Housing, Communities and Local Government (MHCLG) has laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment. MHCLG says that, in amending the Building Regulations 2010,[10] the instrument prohibits the use of combustible materials within the external walls of any building with a storey at least 18 metres in height, where building work takes place and where the building contains: at least one dwelling; or residential accommodation for the treatment, care or maintenance of persons; or certain rooms used for residential purposes, including student accommodation and school dormitories.

Review by Dame Judith Hackitt

34. In the EM, MHCLG explains that, following the fire at Grenfell Tower on 14 June 2017, Dame Judith Hackitt was commissioned to complete a review, and that she released her final report, "Independent Review of Building

10 SI 2010/2214, as previously amended.

Regulations and Fire Safety", in May 2018.[11] In response to the report, the Secretary of State for Housing, Communities and Local Government reaffirmed on 11 June 2018 that the Government's intention was "to ban the use of combustible materials on the external walls of high-rise residential buildings, subject to consultation".[12]

Consultation

35. MHCLG says that the consultation ran for eight weeks from 18 June 2018 to 14 August 2018. [13] The Government response to the consultation was published on 29 November 2018,[14] when the Secretary of State made a written statement, giving a "Grenfell Update", and confirming that Regulations had been laid to give legal effect to the ban on the use of combustible materials in the buildings specified.[15]

First Explanatory Memorandum

36. In the EM as originally laid, MHCLG said that 460 responses were received to the consultation, and that a clear majority (69%) of these supported the ban; no other details were given about comments received.

37. The Government response of November 2018 is more informative. At paragraph 18, it confirms the finding that 69% of respondents agreed that combustible materials in cladding systems should be banned. However, at paragraph 28, it states that, in answer to a consultation question as to whether the ban should apply to all high-rise, non-residential buildings, such as offices and other buildings, as well as residential buildings, 64% of respondents said "yes", whereas only 26% disagreed.

38. The Government response offers no explicit response to this finding. At paragraph 65, it states that "the consultation proposed that the ban would apply to blocks of flats as these present the greatest risk to life. The majority of respondents agreed with the proposal. Therefore, the ban will apply to all new residential buildings above 18m in height." At paragraph 66, acknowledging that support had been expressed for the policy to be extended to include places where occupants were vulnerable and/or where people slept, the response confirms that the ban will also apply to new dormitories in boarding schools, student accommodation, registered care homes and hospitals above 18 metres. Nothing is said about the exclusion of office buildings from the scope of the ban.

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11 See Judith Elizabeth Hackitt, Independent Review of Building Regulations and Fire Safety, Building a Safer Future, Cm 9607, May 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf [accessed 11 December 2018].

12 See HC Deb, 11 June 2018, col 620.

13 See MHCLG, Banning the use of combustible materials in the external walls of high-rise residential buildings: a consultation paper (June 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717216/Combustible_Cladding_Consultation.pdf [accessed 11 December 2018].

14 See MHCLG, Government Response to the Consultation on Banning the Use of Combustible Materials in the External Walls of High-Rise Residential Buildings: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760302/Government_response_to_banning_combustible_materials.pdf [accessed 11 December 2018].

15 Written Ministerial Statement HCWS1126, Session 2017-19.

Revised Explanatory Memorandum

39. At our request, MHCLG has revised and re-laid the EM, to provide more information about views expressed in the consultation process, and the Government's response. The Ministry has now provided additional detail, including the fact that there was strong support for the policy to be extended (80%) and that a smaller majority (64%) felt that it should cover all types of building. MHCLG now explains that the Government have decided to extend the scope of the ban to buildings where the normal strategy for evacuation tends to be delayed and where the occupants of the building are most vulnerable. This explanation casts more light on the decision to exclude office buildings, but we are writing to the Minister to seek further clarification.

40. In the revised EM, MHCLG also acknowledges that a majority (66%) of respondents thought that the ban should extend to projects that had been notified before the ban took effect, but work had not begun on site. The Ministry says that the Government decided therefore to adopt a more stringent approach than is normal for building regulations, and to provide that the ban will apply to any building works unless the works have started on site or an initial notice, building notice or full plans has be deposited and work has started on site within a period of two months.

Conclusion

41. We have no doubt that the House will be interested to see the action which the Government are proposing to take, through these Regulations, to ban the use of combustible materials on the external walls of high-rise residential buildings, as well as in new dormitories in boarding schools, student accommodation, registered care homes and hospitals above 18 metres. Responses to the consultation process carried out over the summer of this year showed strong support for extending the ban to other buildings as well. In the revised EM laid at our request, the Ministry elaborates on these responses and on the basis for the decisions taken by Government in finalising these Regulations. **We look to the Ministry to be more forthcoming in the information that it provides to Parliament in support of statutory instruments of such policy significance, without the need for external prompting.**

INSTRUMENTS OF INTEREST

Draft Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018

42. Alternative investment funds ("AIFs") are funds that are not regulated at EU level by the 2014 Undertakings for Collective Investment in Transferable Securities (UCITS) Directive;[16] they are usually aimed at professional and institutional investors. The regulatory framework in the EU for AIF managers is the Alternative Investment Fund Managers Directive ("AIFMD").[17] In the Explanatory Memorandum (EM) to these draft Regulations, HM Treasury (HMT) says that they propose amendments to existing UK legislation which implemented AIFMD,[18] and to related European Commission delegated and implementing regulations, to ensure that they continue to operate effectively in a 'no deal' scenario after exit day.

43. HMT says that the use of the "marketing passport", which allows EEA AIF managers to market the EEA AIFs they manage in any other Member State, would not operate effectively without a negotiated agreement with the EU. To ensure that UK investors have continued access to AIFs that are currently marketed in the UK, the draft Regulations provide for a temporary permissions regime for EEA AIFs and UK AIFs that have been marketed by EEA AIF managers in the UK via a passport before exit day (as well as making other provisions).

44. On 13 November 2018, HMT laid two other sets of draft Regulations: the draft Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018; and the draft Venture Capital Funds (Amendment) (EU Exit) Regulations 2018. In the EM to those Regulations, HMT referred to the Alternative Investment Funds Managers (Amendment) (EU Exit) Regulations 2018 ("the latest Regulations"), and to the intention that the latter would provide a temporary permissions regime allowing both EU Social Entrepreneurship Funds and EU Venture Capital Funds to continue to access the UK market. Since the latest Regulations were not laid before Parliament at that time, we published additional information from HMT about the interaction between the instruments in our 7th Report of the current Session.[19] HMT stated its intention to lay the latest Regulations during November, and has now done so.

Draft Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019

45. The EU framework for electronic communications has already been transposed into UK law, principally through the Communications Act 2003 and (in respect of the management of the radio spectrum) the Wireless Telegraphy Act 2006. These Regulations amend those Acts to ensure that the law on electronic communications will operate in substantially the same way after the UK's withdrawal from the EU and seeks to remove redundant or inoperable references to maintain the status quo. It provides for powers

16 Directive 2014/91/EU amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities [accessed 11 December 2018].
17 Directive 2011/61/EU on Alternative Investment Fund Managers [accessed 11 December 2018].
18 Notably, the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773) [accessed 11 December 2018].
19 7th Report, Session 2017-19 (HL Paper 238).

previously exercised by the European Commission ("the Commission") to be conferred on the Secretary of State or Ofcom. For example, the instrument removes the obligations on Ofcom to provide information to the Commission and replaces this with a power for Ofcom to share information with the Commission and the Body of European Regulators for Electronic Communicators, where it considers this appropriate. Ofcom is also able to grant licences for wireless telegraphy, in particular to use radio spectrum; however, Ofcom will no longer be restricted to the requirements set out in EU legislation (although must ensure that conditions are objectively justifiable, non-discriminatory, proportionate and transparent). Some stakeholders have expressed concerns that removal of the requirement for EU consultation on certain Ofcom proposed regulatory measures amounts to a loss of a valuable check on Ofcom's decision-making. Those stakeholders proposed that an equivalent function be recreated domestically to approve certain of Ofcom's proposed measures. However, the Government decided not to adopt this proposal on the ground that "… it is not necessary to recreate the EU consultation procedure after EU exit, since its principal objective is harmonisation of regulatory practice to consolidate the EU internal market. It is clearly desirable that Ofcom's decision-making is of a high standard, but safeguards already exist to ensure this, both in the procedural statutory requirements and in the availability of statutory appeal before the Competition Appeal Tribunal (or judicial review before the Administrative Court) of Ofcom's decisions." Although the UK will no longer be eligible for EU funding to support projects in this field after exit, a Government guarantee will support some project delivery.

Draft Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019

46. These draft Regulations amend the law on ship recycling from exit day to provide that UK flagged ships must use an approved ship recycling facility on a new UK list (rather than on the EU's approved European list). The UK list will initially include all the recycling facilities (UK, EU and non-EU facilities) that are on the European list. However, the Secretary of State will have the power to accept or remove facilities on the UK list. The Regulations also establish a new procedure to allow ship recycling facilities worldwide to apply for inclusion on the new UK approved list. The EU Regulation on Ship Recycling requires all new UK flagged ships to carry a valid inventory of hazardous materials (IHM) from 31 December 2018 onwards. While this requirement is being retained, the requirement on existing ships to carry an IHM from 31 December 2020 will not be. The Department for Transport has explained that "this is because the EU Withdrawal Act only retains any direct EU legislation that is operative immediately before exit day. However, such ships will still need to have an IHM before the ship is recycled at an approved UK recycling facility. We also expect all ships which call at an EU port will have an IHM by 31 December 2020, as EU Member States will require existing ships to carry one."

Waste Electrical and Electronic Equipment (Amendment) (No. 2) Regulations 2018 (SI 2018/1214)

47. An EU Directive[20] requires all waste electrical and electronic equipment (WEEE) to fall within the scope of the Directive unless specifically exempt or

20 Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment [accessed 11 December 2018].

excluded (called the "open scope" principle) and requires the categorisation and reporting of WEEE into six revised categories. The Waste Electrical and Electronic Equipment Regulations 2013 (which implemented the EU Directive) ("the WEEE Regulations") provided for compliance with the EU Directive by moving from 14 to six categories from 1 January 2019. However, as the Department for Environment, Food and Rural Affairs explains in the Explanatory Memorandum, "financial obligations imposed on UK producers of electrical and electronic equipment are based on their market share in each of these categories. An assessment of costs and benefits demonstrated that the move to 6 categories would result in huge changes to individual producers' market shares in each category. This would result in large swings to many individual producers' costs under the WEEE Regulations with many producers paying significantly more." Therefore, these Regulations will provide for the introduction of "open scope" whilst maintaining the existing 14 categories to "minimise burdens of EU legislation on the UK WEEE industry at a time where the UK is leaving the EU."

48. Producers of electrical and electronic equipment are required under the WEEE Regulations to join producer compliance schemes (PCS), which deal with financial responsibilities in respect of the treatment, reuse, recovery, recycling and environmentally sound disposal of WEEE on their behalf. The WEEE Regulations also permit local authority designated collection facility operators who do not have a contract with a PCS to require any PCS to arrange for the collection and treatment of deposited WEEE (Regulation 34 collections). The PCS Balancing System (PBS)[21] shares the cost of such collections amongst all member PCSs on a market share basis. Under the new Regulations, membership of the PBS will be mandatory for all PCSs. This is intended to ensure that all Regulation 34 requests are dealt with by a PCS and the cost shared on a market share basis amongst all PCSs in the UK.

Financial Penalty Deposit and Fixed Penalty Offences (Miscellaneous Provisions) Order 2018 (SI 2018/1236)

49. This Order designates specified offences relating to the use of goods vehicles and trailers without the appropriate authorisation or registration, as offences that may be enforced through the Financial Penalty Deposit and Fixed Penalty Notice regimes, and sets the monetary amount for fixed penalties. The Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2018, which the Committee considered in its 2nd report,[22] set the FPD amount. The Department for Transport (DfT) has explained that the amounts provided for in this instrument mirror those which currently apply to similar offences and the DfT has an ongoing communications campaign about the new haulage permits and trailer registration schemes, targeted to those affected by these changes, to inform them about what they are required to do under the new regulations.

Banks and Building Societies (Priorities on Insolvency) Order 2018 (SI 2018/1244)

50. In the Explanatory Memorandum to this Order, HM Treasury (HMT) says that it implements EU Directive 2017/2399 (the Bank Creditor Hierarchy Directive), which amends the EU's 2014 Banking Recovery and Resolution

21 Which is approved by the Secretary of State.
22 2nd Report, Session 2017-19 (HL Paper 203).

Directive (BRRD),[23] specifically on the ranking of unsecured debt within the insolvency hierarchy.[24] The instrument provides for a new class of secondary non-preferential debt to be issued by financial firms. HMT says that this will predominantly benefit building societies (for reasons arising out of their legal structure).

51. On 23 October 2018, HMT laid the draft Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018. HMT explained that the UK had implemented the BRRD, to achieve a common approach within the EU to the recovery and resolution of banks and investment firms; and that the draft Regulations were intended to ensure that the UK's Special Resolution Regime (for dealing with failing banks and other institutions) was legally and practically workable on a standalone basis once the UK had left the EU (a process termed "onshoring"). We published information about the draft Regulations in our 4th Report of this Session.[25]

52. We asked HMT whether it would need to make a further instrument to "onshore" the implementation through this Order of the Bank Creditor Hierarchy Directive (since the latter amends the BRRD). The Department has told us that the instrument has been drafted so that a separate "onshoring" instrument would not be required; and that there should be no deficiencies or provisions in the Order which would fail to operate effectively after exit day.

23 Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

24 The hierarchy dictates the order in which assets are distributed to creditors in the case of an insolvency or resolution.

25 4th Report, Session 2017-19 (HL Paper 217).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018

Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019

Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2018

Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018

Motor Vehicles (Wearing of Seat Belts) (Amendment) (EU Exit) Regulations 2018

Patents (Amendment) (EU Exit) Regulations 2018

Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

SI 2018/1214	Waste Electrical and Electronic Equipment (Amendment) (No. 2) Regulations 2018
SI 2018/1220	Public Lending Right Scheme 1982 (Commencement of Variation) (No. 3) Order 2018
SI 2018/1225	Higher Education and Research Act 2017 (Transitional and Saving Provisions) (University Title) Regulations 2018
SI 2018/1232	Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018
SI 2018/1234	Planning (Hazardous Substances and Miscellaneous Amendments) (EU Exit) Regulations 2018
SI 2018/1235	Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018
SI 2018/1236	Financial Penalty Deposit and Fixed Penalty Offences (Miscellaneous Provisions) Order 2018
SI 2018/1238	Livestock (Records, Identification and Movement) (England) (Amendment) (EU Exit) Regulations 2018
SI 2018/1244	Banks and Building Societies (Priorities on Insolvency) Order 2018
SI 2018/1251	Driving Licences (Amendment) (EU Exit) Regulations 2018
SI 2018/1268	Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) (Amendment) and Multilingual Standard Forms Regulations 2018

APPENDIX 1: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 11 December 2018, Members declared the following interests:

Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2018

Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2018

Baroness Bowles of Berkhamsted

Non-executive Director, London Stock Exchange plc

Draft Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019

Lord Sharkey

Holder of a Private Pilots Licence

Attendance:

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