

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee  
(Sub-Committee A)

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11th Report of Session 2017–19

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

Includes a Recommendation on the following:

Motor Vehicles (Compulsory Insurance) (Amendment etc.)  
(EU Exit) Regulations 2019

**Credit Rating Agencies  
(Amendment, etc.) (EU Exit)  
Regulations 2019**

Includes 4 Information Paragraphs on 4 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](mailto:hlseclegscrutiny@parliament.uk).

# Eleventh Report

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

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### Instruments recommended for upgrade to the affirmative procedure

*Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019*

*Date laid: 14 December 2018*

*Sifting period ends: 15 January 2019*

1. The EU Motor Insurance Directives enable UK residents who are victims of motor traffic accidents in another EEA Member State to make claims in the UK against the insurer (or its claims representative) or from the Motor Insurers Bureau (MIB) as the UK's appointed Compensation Body ("the visiting victims scheme"). The MIB estimates that 5,000 UK road traffic victims make claims via the visiting victims scheme each year. Of these 5,000, 4,300 are made against insurers and 700 made against the MIB. In the event of 'no deal' with the EU, reciprocal arrangements with other EEA Member States are not guaranteed. The MIB would retain responsibility for compensating UK residents injured in an EEA state without the ability to claim reimbursement from that country. The MIB would also have to continue reimbursing EEA countries for claims made by EEA residents injured in the UK. The obligation on insurers based in the EEA to appoint a claims representative would also cease. The Government estimate that this could result in cost exposure for the MIB, which would result in costs being passed on to insurers, and in turn, to motorists. Therefore, this instrument removes the Compensation Body requirements from the MIB. UK residents who have already commenced court proceedings against the MIB prior to exit day will be able to continue pursuing visiting victims claims. The Department for Transport (DfT) anticipates "more UK residents issuing legal proceedings from November 2018 to exit day in order to ensure their claim can continue to be made in the UK" and estimates that this "could be up to 240 personal injury cases" resulting in the average levy increasing by £15,000.<sup>1</sup> Victims of road traffic accidents in the EEA will continue to be able to pursue claims for compensation, but will now need to do so in the Member State where the accident occurred. In the absence of an agreement with the EU, all UK motorists will be required to carry a "Green Card" (an international certificate of insurance issued by insurance providers in the UK) guaranteeing that the motorist has the necessary third-party motor insurance cover for travel in the EU. DfT estimates that "between two to four million individuals may need a Green Card." Green Cards are obtained free of charge from insurance providers; however, the DfT has explained that "insurance providers can decide to reflect production and handling costs in a small increase to their administration fees." DfT has also stated that they "expect that drivers crossing into Ireland from Northern Ireland will need Green Cards just as all UK drivers will in order to drive in the EU." Given the impact of these changes on UK motorists, the House may wish to

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<sup>1</sup> The levy applied by MIB is member specific and is calculated based on the premium income for each member.

debate the instrument. **Therefore, we recommend that this instrument be upgraded to the affirmative resolution procedure.**

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

- Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2018
- EU Export Credits Legislation (Revocation) (EU Exit) Regulations 2018
- Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018
- Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019

*Date laid: 13 December 2018*

*Parliamentary procedure: affirmative*

### Impact Assessment: European Union (Withdrawal) Act 2018– Financial Services Statutory Instruments (II)

*In anticipation of the UK's exit from the EU, these draft Regulations amend an EU Regulation on credit rating agencies to establish a UK regime for regulation and supervision of credit rating agencies (CRAs). In particular, they propose to transfer functions and powers from the European Securities and Markets Authority to the Financial Conduct Authority (FCA), so that the FCA will gain full powers of regulatory oversight over CRAs on the first day the UK leaves the EU: the powers will include complete authorisation and supervision responsibilities over such agencies.*

*The Impact Assessment (IA) accompanying the Regulations relates not only to this instrument but also to nine other instruments that address deficiencies in UK law and retained EU law relating to financial services regulation that arise from the UK leaving the EU. Although nine of the SIs have now been laid before Parliament, this is the first time that this IA has been laid in support of an SI. HM Treasury (HMT) estimates that the total cost to financial services businesses of implementing these instruments will be some £140 million. Commentary in the IA itself suggests that it may not be appropriate to rely too heavily on this estimate. HMT says that no IA was prepared for consultation with those affected, and that the time available made it impossible to engage with the financial services industry in sufficient detail to monetise the costs associated with the SIs.*

**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.**

#### *Regulations*

2. In the Explanatory Memorandum to these draft Regulations, HM Treasury (HMT) states that credit ratings are used for regulatory purposes, which involve assessing the creditworthiness of an entity or financial instrument, and that they are used widely by financial market participants. In 2009, the EU introduced a Regulation on credit rating agencies (“CRAR”)<sup>2</sup> with the aim of regulating credit rating agencies (CRAs) established in the EU for the first time, to address failings in the run-up to the financial crisis. The CRAR provides that only credit ratings issued under the CRAR can be used for regulatory purposes.
3. HMT says that, after the UK's exit from the EU, CRAs established in the UK would not be covered by the EU regulatory regime under CRAR. These draft Regulations therefore amend CRAR to establish a UK regime for regulation and supervision of CRAs. In particular, they transfer functions and powers from the European Securities and Markets Authority (ESMA)

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<sup>2</sup> Regulation (EC) No 1060/2009 on credit rating agencies.

to the Financial Conduct Authority (FCA), so that the FCA will gain full regulatory oversight powers from ESMA on the first day the UK leaves the EU: the powers will include complete authorisation and supervision responsibilities over CRAs.

4. HMT acknowledges that there will be an impact on the credit rating industry, because the Regulations will require a CRA to establish a legal entity in the UK and register with the FCA if its credit ratings are to be used for regulatory purposes in the UK after exit; and because IT processes will have to be changed, for example, where firms will be required to report to the FCA rather than ESMA. HMT adds, however, that other aspects of CRAR will not create significant strains for businesses as the Regulations largely replicate the current regulatory framework. Detailed cost figures are provided in the Impact Assessment (IA) accompanying the Regulations which gives a total of £290,000 as the one-off non-familiarisation costs (relating to changes to IT systems, business processes, and reporting requirements) and £640,000 as the recurring cost of duplicating compliance and control functions.

#### *Impact Assessment*

5. The accompanying IA is of particular interest. It relates not only to the draft Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, but also to nine other statutory instruments (SIs) that address deficiencies in UK law and retained EU law relating to financial services regulation that arise from the UK leaving the EU. Although nine of the SIs have now been laid before Parliament, this is the first time that this IA has been laid in support of an SI. The instruments covered, all subject to the affirmative resolution procedure, are as follows:

- Short Selling (Amendment) (EU Exit) Regulations 2018<sup>3</sup>
- Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018<sup>4</sup>
- Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018<sup>5</sup>
- Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018<sup>6</sup>
- Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018<sup>7</sup>
- Central Securities Depositories (Amendment) (EU Exit) Regulations 2018<sup>8</sup>
- Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018<sup>9</sup>

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3 Laid on 9 October 2018, made on 6 December 2018 as [SI 2018/1321](#).

4 Laid on 9 October 2018, made on 19 November 2018 as [SI 2018/1201](#).

5 Laid on 9 October 2018, made on 19 November 2018 as [SI 2018/1199](#).

6 Laid on 17 October 2018, made on 19 December 2018 as [SI 2018/1403](#). Sub-Committee B of the SLSC drew the draft Regulations to the attention of the House in its [3rd Report](#) of the current Session (HL Paper 213).

7 Laid on 23 October 2018, made on 20 December 2018 as [SI 2018/1394](#).

8 Laid on 31 October 2018, made on 6 December 2018 as [SI 2018/1320](#).

9 Laid on 6 November 2018, made on 6 December 2018 as [SI 2018/1318](#).

- Capital Requirements (Amendment) (EU Exit) Regulations 2018<sup>10</sup>
  - Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018<sup>11</sup>
  - Solvency 2 and Insurance (Amendment) (EU Exit) Regulations 2018<sup>12</sup>
6. The IA gives detailed information about the impact of the individual SIs (at page 23 onwards). The summary sheet (at page 3) gives a figure of £141.1 million as the best estimate of the total cost which may be incurred by the main affected groups as a result of these SIs. HMT comments that, while most direct costs to businesses relate to the need for familiarisation with new requirements, there will be a limited set of other business costs which may include transition costs, such as changes to business processes and reporting requirements. HMT adds that it intends to legislate to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in any changes resulting from the UK leaving the EU, and that this could reduce the costs of adjusting to the new regulatory regime. Commentary in the IA itself suggests that it may not be appropriate to rely too heavily on the estimate of £141.1 million. HMT says that no IA was prepared for consultation with those affected, and that the time available made it impossible to engage with the financial services industry in sufficient detail to monetise the costs associated with the SIs.

### *Conclusion*

7. The House will be interested to see that, through these Regulations, HMT proposes to give the FCA full regulatory oversight over credit rating agencies once the UK leaves the EU. It may also take an interest in the accompanying IA which relates not only to these Regulations but also to nine other SIs, all but one of which have been laid before Parliament in the last three months without an IA. HMT estimates that the total cost to financial services businesses of implementing these instruments will be some £140 million. It states that, without these SIs, financial services firms would face much greater costs, and far greater uncertainty.

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10 Laid on 15 November 2018, made on 19 December 2018 as [SI 2018/1401](#).

11 Laid on 13 December 2018.

12 Laid on 8 January 2019.

## **INSTRUMENTS OF INTEREST**

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### **Draft Data Protection (Charges and Information) (Amendment) Regulations 2019**

8. Current data protection laws set out a requirement for “data controllers” (individuals and organisations that handle people’s personal data) to provide information, and pay a charge,<sup>13</sup> to the Information Commissioner’s Office (ICO), unless a relevant exemption applies. This instrument extends the exemptions to include: members of the House of Lords; elected representatives (including members of the House of Commons, members of the National Assembly for Wales, members of the Scottish Parliament, members of the Northern Ireland Assembly, UK wide local authority councillors and police and crime commissioners) in connection with the discharge of their respective functions; and candidates (prospective and validly nominated) seeking to become elected representatives. Of the total responses to the Government’s consultation, 29% supported a new exemption for these groups, 15% of respondents did not agree with the proposed exemption, 24% responded they did not know and 32% did not answer the question. The Department for Digital, Culture, Media and Sport explains, however, that the Government “has decided to proceed with implementing the new exemption, noting the support from respondents for those who take up public office roles, some of which do not receive substantive remuneration, which is in line with its intention to remove perceived or actual barriers to those roles where appropriate.” The Regulations come into force on 1 April 2019.

### **Draft Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2019**

9. A “protection measure” is a court order which imposes restrictions on an individual who has caused a threat to, and on whom obligations have been imposed in respect of, another individual: for example, an order for a stalker to keep away from the protected person. In a ‘no-deal’ situation, these Regulations would provide that courts in England, Wales and Northern Ireland would continue to recognise and enforce measures ordered in another EU State without further procedure. However, the Regulations would repeal the legislation that allows UK courts to issue equivalent certificates because EU courts would not be obliged to enforce them. The Ministry of Justice (MoJ) states that the repeal is intended to ensure that protected persons would not be misled about the effectiveness of such a UK order if they go abroad. MoJ also states that actual use of these protection measures is minimal. The Committee recommended that, as a Proposed Negative, the instrument should be upgraded to an affirmative instrument because these Regulations would create an uneven playing field, where there was a potential cost to UK taxpayers from the courts and police enforcing EU-issued protection orders but no corresponding benefit to UK citizens. We welcome the decision of the MoJ to accept that recommendation so that the House may consider the principle.

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<sup>13</sup> There are three levels of charge for data controllers, payable annually: micro organisations (including individuals), charities and small occupational pension schemes, who pay £40, small and medium organisations, who pay £60 and large organisations, who pay £2,900. A £5 discount applies for payment by direct debit.

### Statement of Changes in Immigration Rules (HC 1779)

10. Changes made by this Statement of Changes in Immigration Rules (HC 1779) include, as the result of a recent judgment, extending the protection offered to victims of domestic abuse to include partners of refugees who have not yet gained indefinite leave to remain, a reduction in the Tier 5 Youth Mobility quota for Australians (to maintain reciprocity with visas issued to UK citizens) and the introduction of a one year “cooling off period” between visas for religious and charity workers, so that this route cannot be abused to establish residence. This instrument also implements the new seasonal workers scheme announced by the Government on 6 September 2018.<sup>14</sup> This was announced as a nationwide pilot to bring 2,500 non-EU migrant workers to pick produce on UK fruit and vegetable farms. The first workers should be available from 1 April 2019. The selected scheme operators will play a key role in ensuring that suitable workers are selected for the pilot, reach the designated place of employment, and leave the UK at the end of their visa.

### Consumer Protection (Amendment etc.) (EU Exit) Regulations 2018 (SI 2018/1326)

11. This instrument makes changes to different areas of consumer protection law to ensure that it can operate effectively after a possible ‘no deal’ withdrawal of the UK from the EU. While the amendments largely replace obsolete cross-references to EU law, two changes appear to be more relevant. First, the instrument makes changes to the protection of consumers from payment surcharges. The Department for Business, Energy and Industrial Strategy (BEIS) explains that at present, traders are prohibited from charging consumers in the European Economic Area more than the direct cost borne by the trader for the use of a given means of payment, such as a credit card, and from making additional charges to consumers for the use of specific payment mechanisms. BEIS says that after EU exit, these protections against payment surcharges for UK consumers will apply only where a payment service provider is located in the UK. UK users of non-UK payment services may experience less protection, depending on the national rules applicable in the country of the payment services provider. Secondly, the Regulations amend EU-derived legislation on alternative dispute resolution (ADR).<sup>15</sup> At present, participation in ADR is compulsory for businesses in some regulated sectors, such as finance and energy, and voluntary for other businesses, but all traders must signpost consumers to certified ADR providers and inform consumers whether they would use them should a dispute arise. Under separate legislation, an Online Dispute Resolution (ODR) platform is available as a case management tool that allows consumers across the EU to make a complaint against an online trader, and all online traders are required to link to the ODR platform on their websites. BEIS says that the ADR requirements will continue to apply to UK businesses and consumers in the UK market, while the requirement to provide cross-border dispute resolution will be removed. The instrument also revokes the regulations on the ODR platform, as this platform will no longer be available to UK consumers and traders after EU exit.

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<sup>14</sup> Written Statement [HLWS 911](#), Session 2017-19.

<sup>15</sup> ADR aims to settle disputes between a consumer and a business more quickly and cheaply, for example through mediators or ombudsmen, than using the courts.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

Carriage of Dangerous Goods (Amendment) Regulations 2019

Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019

Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019

Data Protection (Charges and Information) (Amendment) Regulations 2019

Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019

Equality (Amendment and Revocation) (EU Exit) Regulations 2018

Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019

Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2019

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

### **Instruments subject to annulment**

HC 1779 Statement of changes to the Immigration Rules

SI 2018/1325 Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018

SI 2018/1326 Consumer Protection (Amendment etc.) (EU Exit) Regulations 2018

SI 2018/1329 Provision of Services (Amendment etc.) (EU Exit) Regulations 2018

SI 2018/1335 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2018

SI 2018/1337 Money Laundering and Terrorist Financing (Miscellaneous Amendments) Regulations 2018

SI 2018/1340 Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018

SI 2018/1353 Freedom of Information Act 2000 (Amendment) (EU Exit) Regulations 2018

SI 2018/1355 Districts of Aylesbury Vale, Chiltern, South Bucks and Wycombe (Changes to Years of Elections) Order 2018

SI 2018/1381 Licensing Act 2003 (Personal and Premises Licences) (Forms) (Amendment) Regulations 2018 Correspondence on the Building (Amendment) Regulations 2018

## APPENDIX 1: INTERESTS AND ATTENDANCE

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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 7 January 2019, Members declared the following interests:

### **Data Protection (Charges and Information) (Amendment) Regulations 2019**

*All Members present declared a potential interest as Members of the House of Lords*

### **Attendance:**

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