HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee A)

16th Report of Session 2017–19

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

Includes Recommendations on the following:

Cash Controls (Amendment) (EU Exit) Regulations 2019

Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019

Customs Safety and Security Procedures (EU Exit) Regulations 2019

Includes 7 Information Paragraphs on 11 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
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Lord Sharkey
Rt Hon. Lord Trefgarne (Chairman)
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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

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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.

Sixteenth Report

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

Instruments recommended for upgrade to the affirmative procedure

Cash Controls (Amendment) (EU Exit) Regulations 2019

Laid: 31 January 2019

Sifting period ends: 18 February 2019

1. An EU Regulation[1] requires all individuals who bring cash into or out of the EU to declare these amounts to the customs authorities in the Member State they first enter or leave. In the event of 'no deal' with the EU, this proposed negative instrument ensures that the UK can collect information from individuals who are carrying cash in excess of £10,000 into or out of the UK. This will enable the UK to build its own risk profiles, which will be used to identify and intercept cash which is being carried by individuals. However, these Regulations will not have any effect in relation to individuals carrying cash between Northern Ireland and the Republic of Ireland and do not allow for any new checks or controls at the border. Although HM Revenue and Customs has said that "further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible", the House may wish to discuss what will happen to cash controls between the North and South of Ireland after exit day. **As such, the Committee recommends that this instrument be upgraded to the affirmative resolution procedure.**

Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019

Date laid: 31 January 2019

Sifting period ends: 18 February 2019

2. Within the EU, persons involved in activities covered by EU customs legislation are required to register with the relevant customs authorities. Registration is required both for persons established in the EU, who must register with the customs authorities in the Member State in which they are established, and also for persons not established in the EU, where they first make a declaration or apply for a decision in the EU. Once registered, a person is given an Economic Operator Registration Identification (EORI) number, which is used to make a customs declaration as well as when applying for customs simplifications, approvals and decisions. An EORI record is also created. These Regulations, laid by HM Revenue and Customs (HMRC) as a proposed negative instrument, provide for an independent EORI system, meaning that businesses which currently trade only between the EU and the UK, or overseas business that will in future import in to the UK, will need to apply to HMRC for an EORI number. The Regulations would not have effect in relation to economic operators whose only customs activities consist

1 Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, 25 November 2005, OJ L309/9.

of trading goods between Northern Ireland and the Republic of Ireland. Although HMRC explains that "further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible", in the absence of such information the House may wish to debate the implications which these Regulations may have for trade across the border. **As such, the Committee recommends that this proposed negative instrument be upgraded to the affirmative resolution procedure.**

Customs Safety and Security Procedures (EU Exit) Regulations 2019

Date laid: 31 January 2019

Sifting period ends: 18 February 2019

3. The EU has in place a safety and security policy across the European security zone which protects the EU against potential threats such as terrorism and trade in illicit goods such as guns and drugs. It is governed by Union Customs Code legislation. In a 'no deal' scenario, the UK will be regarded as a non-EU nation, and UK exporters to the EU and other nations will have to complete safety and security declarations. Goods imported to the UK from the EU and other nations will also carry a safety and security declaration to enable border agencies to monitor goods coming into the UK. Traders who wish to receive UK Authorised Economic Operator (AEO) status,[2] which will be valid only in the UK customs area, will have to complete an application process (even if they currently have such status in relation to the EU customs area). Once considered reliable and compliant in their customs operations, and once they meet certain criteria, they will be issued with an AEO authorisation by HM Revenue and Customs (HMRC). HMRC can impose a penalty for failure to notify any changes that affect AEO status.

4. HMRC explains in the Explanatory Memorandum that "[t]his instrument will introduce an additional administrative and financial burden for businesses that currently trade with the EU. Businesses will need to adapt their process and systems to meet the requirement to make safety and security declarations prior to arrival of goods in the UK." HMRC also states that "[t]he impact on the public sector is high. Additional administrative responsibilities will affect UK border agencies. The government recognises further resource requirements to cope with additional customs arrangements and on 18 August 2018 announced an extra 300 border staff in preparation for 'No Deal' and an additional 1,000 staff in the future." HMRC acknowledges that the key message from the haulier industry and ferry operators at Roll on-Roll off ports is that safety and security requirements will be difficult to meet. It states that the Government will continue to engage with the industry on the application of their safety and security obligations. "This includes looking at how information requirements can be made less onerous while continuing to provide our border agencies with a sufficient, accurate risk assessment. These changes are not covered by this instrument and further details on these arrangements will be published in due course."

5. This instrument does not apply to trade in goods between the Republic of Ireland and Northern Ireland and further details on this are to be given in due course. Given the potential impact on trade, the House may wish to

2 AEO status is an internationally recognised quality mark that shows the role in the international supply chain is secure customs controls and procedures are efficient and meet EU standards. See HMRC, 'Authorised Economic Operator for imports and exports' (21 November 2018): https://www.gov.uk/guidance/authorised-economic-operator-certification [accessed 11 February 2019].

have the opportunity to debate this instrument. **As such, the Committee recommends that it be upgraded to the affirmative resolution procedure.**

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

- Customs (Enforcement of Intellectual Property Rights) (Amendment) (EU Exit) Regulations 2019
- Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

INSTRUMENTS OF INTEREST

Draft Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019

6. The purpose of these draft Regulations is to require all licensing authorities (that is, all district and unitary councils outside of London and Transport for London) in England and Wales to submit certain information, such as vehicle registration numbers, about their licensed taxis and Private Hire Vehicles (PHVs) to a central database. This includes companies such as Uber. The intention is for local authorities to use this information to check whether taxis or PHVs meet the relevant emission standard in a local Clean Air Zone where charges apply for vehicles. The Department for Environment, Food and Rural Affairs (Defra) explains that the UK's plan for tackling roadside nitrogen dioxide concentrations[3] found that Clean Air Zones and charges for drivers whose vehicles do not meet the relevant emission standard were the most effective measures to achieve compliance with statutory nitrogen dioxide limits in the shortest time. Several local authorities have consulted on proposals for Clean Air Zones and vehicle charges and are planning to introduce them by the end of 2019, using automatic number plate recognition cameras. The new database is necessary as local authorities may choose to use different charges for taxis/PHVs and private vehicles, and currently hold only information on taxis/PHVs licensed within their own area. Defra says that the database will operate in a way that aims to complement existing processes for gathering licensing data to minimise the administrative burden.

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

7. At present, common aviation standards and procedures are based on EU law. Passengers (and their baggage) who have been screened in the UK do not need to be rescreened if they transfer between flights at other EU airports. However, Member States do have the discretion to apply their own more stringent security measures. After exit day, this instrument provides that the effect of the regulatory framework will be the same in practice, and it retains the existing procedures. The UK already applies "More Stringent Measures", which require that all transfer passengers (and their luggage) are rescreened, including those from EU airports. There will therefore be no change to the screening of EU transfer passengers in the UK following exit. The Department for Transport (DfT) explained that:

> "… the [European] Commission published a Preparedness Notice on the 13th November and additional details on this on the 30th November … These documents set out some of the Commission intentions on how the EU will prepare for a no-deal scenario, including on aviation security, where they state that they will recognise UK security standards. The Commission state that they will 'take action to ensure that passengers and their cabin baggage flying from the UK and transiting via EU27 airports continue to be exempted from a second security screening, by applying the so-called 'One Stop Security' system'. Therefore, we expect that passengers flying from the UK and transferring through an EU airport will continue to not have to be rescreened."

3 Department for Environment, Food and Rural Affairs, *Air quality plan for nitrogen dioxide (NO2) in UK (2017)* (July 2017): https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017 [accessed 7 February 2019].

8. The EU ACC3[4] scheme is the EU inbound cargo regime. It requires air carriers and their supply chains to hold designations granted by an EU Member State confirming the security standards they apply in order to fly cargo into the EU. Any approvals granted under this regime are recognised in all EU Member States. When the UK leaves the EU, the default position is that the UK is no longer part of this regime. These Regulations ensure that, after exit, designations will be issued to all carriers who currently hold an EU ACC3 designation and fly cargo into the UK, and their supply chains. The Government are taking this measure to ensure there are no barriers to international trade, and to facilitate ongoing efforts to minimise the administrative burden on industry. DfT explained that the Commission's intention is that:

> "'… cargo will be included in the One Stop Security system' so that air carriers carrying cargo from the UK to the EU will not require an EU security designation. They [the Commission] also stated that they will ensure 're-attribution' of UK-issued designations for air carriers carrying cargo from a third country into the EU, which means designations of third country carriers issued by the UK prior to Brexit will continue to be valid in the EU."

Draft Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019

Draft Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019

Draft Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019

Draft Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019

Draft Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019

9. The purpose of these five sets of draft Regulations is to address deficiencies in retained EU law on electricity and gas markets to ensure that the UK energy market can continue to operate effectively in a potential 'no deal' withdrawal from the EU. The Department for Business, Energy and Industrial Strategy says that the instruments aim to minimise disruption to the UK's energy markets and ensure legislative continuity for industry following EU exit, with a particular focus on Northern Ireland and the Single Electricity Market (SEM) in Ireland. The Committee considered the draft Regulations when they were initially laid as proposed negative instruments, and recommended an upgrade of all five instruments to the affirmative procedure on the ground that they give rise to policy issues that are likely to be of interest to the House, suggesting that the House may wish to debate the instruments in the round.[5] The Committee notes that the proposed changes are complex and technical and do not appear to present significant policy or regulatory changes. It is also clear, however, that while none of the instruments stand out individually, they have been laid before Parliament as a package, and, as such, are important: the proposed changes are necessary to enable UK energy markets to operate effectively if there is no agreement with the EU,

4 Air Cargo Carrier from a Third Country.
5 12th Report, Session 2017-19 (HL Paper 263).

and they touch on issues of strategic significance, such as security of gas supplies, the trading and balancing of electricity across borders and, in particular, continuity of the SEM in Ireland.

Draft Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

10. As HM Treasury (HMT) makes clear in the Explanatory Memorandum (EM) to these draft Regulations, the Financial Services and Markets Act 2000 (FSMA) is a key part of the UK's legislative framework for financial services regulation. FSMA and related secondary legislation[6] define the "regulatory perimeter", setting out the activities and firms that fall within the scope of UK financial services regulation. In its current state, the legislation functions on the basis that the UK is a Member State of the EU and forms part of the EU's single market for financial services. Many provisions set out the scope of regulated activities by reference to those activities as defined in EU law. This instrument will amend many of the definitions used in FSMA and related secondary legislation so that they reflect the UK's position as a standalone regulatory regime outside of the single market for financial services.

11. FSMA itself is some 300 pages in length. In section 6 of the EM, HMT explains that these draft Regulations amend not only FSMA but also 18 statutory instruments which relate to that Act. It is therefore not surprising that the draft Regulations themselves run to some 80 pages. In the EM, HMT says that the instrument is expected to have a minimal impact on business (though a formal impact assessment had not been published when the Regulations were laid). We hope that HMT has not under-estimated the challenge which financial services firms will face in understanding such a large raft of amendments to the core legislation for the sector. We obtained additional information from HMT about the extent to which stakeholders were consulted on drafts of this instrument. We are publishing that information at Appendix 1.

Draft Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019

12. European Directives[7] provide for the automatic mutual recognition of seafarer certificates issued by European Economic Area (EEA) States and establish a process for EU-wide recognition of certificates from third countries. This instrument will enable the UK to continue to recognise EEA seafarer certificates that it currently recognises. The UK will also recognise the certificates from those non-EEA countries that are approved by the EU and recognised by the UK immediately before exit day. These Regulations also introduce a mechanism whereby the Secretary of State may recognise additional parties, or remove recognition, by assessing compliance with the requirements of the International Maritime Organization Convention on Standards of Training and Watchkeeping for Seafarers. As of 2016, there were 3,410 seafarers with EU/ EEA member states' endorsement to work who had obtained their original Certificate of Competency in the UK. The Department for Transport acknowledges that, in the event of 'no

6 Notably, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544), and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529).

7 Directive 2008/106/EC (amended by Directive 2012/35/EU) and Directive 2005/45/EC.

deal', EU recognition of UK certificates "will be at the discretion of each Member State." When this instrument was laid as a proposed negative, the Committee recommended that it should be upgraded to the affirmative resolution procedure to enable the House to have the opportunity to debate the potential impact on UK seafarers.

Homes and Communities Agency (Transfer of Property etc.) Regulations 2019 (SI 2019/36)

13. These Regulations are part of the Government's programme of disposing of surplus public-sector land to the private sector for housing development.[8] In 2015, the Government appointed the Homes and Communities Agency (HCA) (trading as Homes England) as its land disposal agency in England, outside of London. This enables the HCA to prepare that land for release to market, and these Regulations specify the public bodies whose designated property, rights or liabilities can be transferred to the HCA.[9] The Secondary Legislation Scrutiny Committee (SLSC) previously drew this policy to the attention of the House[10] and noted that, in February 2017, the Ministry for Housing, Communities and Local Government (MHCLG) published the first annual report on the "Public Land for Housing programme 2015–20" which contained an undertaking that a further report would be published in July 2017.[11] No further report has been published, and no reference has been made to this commitment in the Explanatory Memorandum (EM) to these Regulations. We asked MHCLG why this was the case, and they explained that:

> "the intention is to publish a PSL [Public Sector Land] Programme Progress Report during 2019 to provide an update on the programme covering the period since the Annual Report was published in February 2017. This progress report will include monitoring data on sites sold under both the 2011-15 programme and the current 2015-20 programme."

14. The Government previously said they wanted to use the sale of surplus NHS land to deliver more homes specifically for nurses and similar professionals (known as the "Homes for Nurses" scheme). In response to its 17th Report, the SLSC received a letter from Lord O'Shaughnessy, the then Parliamentary Under Secretary of State at the Department for Health and Social Care (DHSC), explaining that the Government will give "a right of first re-fusal for NHS staff on affordable housing built on sold surplus NHS land."[12] We asked MHCLG how they are progressing with the "Homes for Nurses" policy and they explained:

> "DHSC, working with partners including MHCLG and Homes England, is continuing to provide support and challenge to NHS trusts (who own the land) to deliver the policy. This includes providing specialist support to trusts on the ground; including delivery in the conditions attached to transformation funding; and working with One Public Estate and the GLA to support some specific London sites and develop tools for

8 The aim of the Public Land for Housing Programme 2015-20 is for government departments to sell surplus land with capacity for at least 160,000 homes by 2020.

9 Buckinghamshire Healthcare NHS Trust, Dorset Healthcare University NHS Foundation Trust, Gateshead Health NHS Foundation Trust, Hampshire Hospitals NHS Foundation Trust, Newcastle upon Tyne Hospitals NHS Foundation Trust and Southern Health NHS Foundation Trust.

10 Secondary Legislation Scrutiny Committee, 17th Report, Session 17-19 (HL Paper 71)

11 Covering the period from October 2016 to March 2017.

12 Secondary Legislation Scrutiny Committee, 19th Report, Session 17-19 (HL Paper 78).

> national use. DHSC believe good progress has been made so far. A number of trusts have committed to offering their staff first refusal on a total of over 300 affordable homes. DHSC are in discussion with a number of other trusts about implementing the policy. Given build-out timelines, it will be some time before the housing is available and we can know how many staff have taken up the offer."

15. We wrote to Kit Malthouse MP, Minister of State for Housing at MHCLG, asking for a fuller explanation for the delay in publishing a further report on the land disposal programme, and seeking comments on why the EM did not refer to this delay. We also asked for more information about NHS trusts' approach to offering their staff affordable homes. We have received a reply from the Minister which, we regret to say, appears to us to be perfunctory and fails to answer the questions we raised to our satisfaction. Should this negative instrument be the subject of a motion and debated in the House, Members may wish to press the Minister further on this important matter. We are publishing the correspondence at Appendix 2.

Animal Breeding (Amendment) (EU Exit) Regulations 2019 (SI 2019/117)

16. The purpose of this instrument is to ensure that the UK's zootechnical legislation and regulatory regime remain aligned with EU requirements after EU exit, with the aim of providing certainty for industry and allowing trade in live breeding pedigree animals and germinal products, such as semen and embryos, to continue. The Department for Environment, Food and Rural Affairs (Defra) explains that the instrument does not make any policy changes and that a transfer of legislative powers from the European Commission ("the Commission") to the appropriate ministers in the UK will be taken forward in a separate instrument under the affirmative procedure. Government guidance on animal breeding[13] suggests that in a 'no deal' scenario, UK breeding organisations involved in the trade of purebred livestock and germinal products would no longer be recognised in the EU, unless they can demonstrate equivalence to EU standards and are listed as third country breeding bodies. In the guidance, Defra also says that it will submit applications for breeding organisations to be recognised by the EU. We asked the Department about the progress with this application process. Defra told us that:

> "We are due to submit our application mid-February. We do not know the precise legal position on when the EU may consider our application but this may not be until after EU exit in any event. [The] failure to get listed as an approved third country breeding operation will not prevent exports, though it may reduce demand for the livestock or germinal products of that breeding business. The application should not take long to process because there is no assessment or investigation conducted by the Commission. Defra and the Devolved Administrations have worked closely with selected stakeholder organisations and provided updates on progress. The process of obtaining information in support of third country listing began in October 2018 and we are confident we will have the necessary information about each breeding organisation to submit an application in good time."

13 Department for Environment, Food and Rural Affairs, *Breeding animals if there's no Brexit deal* (19 December 2018): https://www.gov.uk/government/publications/breeding-animals-if-theres-no-brexit-deal/breeding-animals-if-theres-no-brexit-deal [accessed 7 February 2019].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019

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

Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019

Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019

Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019

Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019

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

European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019

Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019

Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019

Merchant Shipping (Standards of Training Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019

Made instruments subject to affirmative approval

SI 2019/134	Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019
SI 2019/135	Venezuela (Sanctions) (EU Exit) Regulations 2019
SI 2019/136	Burma (Sanctions) (EU Exit) Regulations 2019

Instruments subject to annulment

SI 2019/36	Homes and Communities Agency (Transfer of Property etc.) Regulations 2019
SI 2019/106	Electricity (Individual Exemptions from the Requirement for a Transmission Licence) (England and Wales) Order 2019
SI 2019/109	Organic Products (Amendment) (EU Exit) Regulations 2019
SI 2019/117	Animal Breeding (Amendment) (EU Exit) Regulations 2019

SI 2019/121	Customs Safety and Security (Penalty) Regulations 2019
SI 2019/131	Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019
SI 2019/137	Export Control (Amendment) (EU Exit) Regulations 2019
SI 2019/141	Rights of Passengers in Bus and Coach Transport (Amendment etc.) (EU Exit) Regulations 2019
SI 2019/147	Civil Procedure (Amendment) (EU Exit) Rules 2019
SI 2019/150	Food (Amendment) (England) (EU Exit) Regulation 2019
SI 2019/151	Communications (Television Licensing) (Amendment) Regulations 2019
SR 2019/8	Rules of the Court of Judicature (Northern Ireland) (Amendment) (EU Exit) 2019

APPENDIX 1: DRAFT FINANCIAL SERVICES AND MARKETS ACT 2000 (AMENDMENT) (EU EXIT) REGULATIONS 2019

Additional Information from HM Treasury

Q1: The Explanatory Memorandum to the Regulations states: "An explanatory policy note setting out the necessary deficiency fixes was published on 22 November 2018, with Parts 1 to 6 of the instrument published in draft on 12 December 2018." Part 7 deals with the financial regulators' transitional powers; Part 8 with regulators' fees. These are of considerable potential interest to stakeholders. Why were these Parts were not included in the draft instrument of December 2018? Has HM Treasury had any stakeholder reaction to Parts 7 and 8?

A1: As noted in the Explanatory Memorandum to the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, the Treasury published an explanatory policy note on 22 November 2018 setting out many of the changes made in the instrument to the Financial Services and Markets Act 2000 (FSMA) and subordinate legislation. The Treasury later published many of the provisions in this instrument in draft on 12 December 2018 after engaging with key industry stakeholders, in order to familiarise firms with many of the legislative changes introduced in this instrument. Given that the Treasury was continuing its engagement with stakeholders on the drafting of the regulators' temporary transitional power at the time this instrument was published in draft, the Treasury decided not to include the drafting of the temporary transitional power, which appears in Part 7 of the instrument, before the drafting had been finalised. The Treasury believed that publishing the draft temporary transitional power prematurely could have had negative impacts on firms' preparations if subsequent changes to the drafting were made.

Although the provisions were not included in the published draft of this instrument, the Treasury had taken several steps to ensure that stakeholders were aware of the intention to bring forward such measures. In June 2018, the Treasury published a paper[14] on its approach to financial services legislation under the EU (Withdrawal) Act 2018, in which the Treasury set out its intention to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in or defer new requirements for EEA firms after exit day in a no deal scenario. On 8 October 2018, the Treasury further published an explanatory policy note[15] on the regulators' temporary transitional power, setting out in more detail the policy intention of this temporary power to inform industry of the Treasury's no-deal contingency preparations. Our proposals for the temporary transitional power were positively received and identified as prudent and pragmatic by key stakeholders in our industry engagement. In addition, on 29 January 2019 a hearing with the Treasury Select Committee took place on the regulators' temporary transitional powers, and committee members expressed support for the power as necessary to mitigate disruption to firms.

Firms have welcomed the preparations that the Treasury has put in place to avoid disruption to their activities in a no deal scenario.

14 HM Treasury (HMT), *Approach to financial services legislation under the EU (Withdrawal) Act 2018* (9 August 2018): https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act [accessed 7 February 2019].

15 HMT, *Proposal for a temporary transitional power to be exercised by UK regulators* (8 October 2018): https://www.gov.uk/government/publications/proposal-for-a-temporary-transitional-power-to-be-exercised-by-uk-regulators [accessed 7 February 2019].

With regard to Part 8 of this instrument which relates to the regulators' fee-raising powers, the provisions in this part of the instrument ensure that the regulators can continue to raise fees as they currently do, in a no deal scenario. These amendments therefore have minimal impact on industry given that these amendments do not change the way that the regulators currently charge firms fees. We have been in regular contact with the regulators in the drafting of these provisions, as well as the other provisions in this instrument, to ensure that they function appropriately. The decision to include these provisions in this instrument was taken after the instrument was published in draft, and therefore these provisions were not included in the published version. Given that the Part 8 provisions do not affect the way firms carry on their activities and have minimal impact on firms, the Treasury did not believe it necessary to publish these in draft before the instrument was laid.

5 February 2019

APPENDIX 2: HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.) REGULATIONS 2019 (SI 2019/36)

Letter from the Rt Hon. Lord Trefgarne PC, Chairman of the Secondary Legislation Scrutiny Committee, to Mr Kit Malthouse MP, Minister of State for Housing at the Ministry of Housing, Communities and Local Government

Sub-Committee A of the Secondary Legislation Scrutiny Committee (SLSC) considered these Regulations yesterday and has asked me, as Chairman, to seek clarification of some aspects of them. I would be grateful if you could respond by close on Thursday 7 February. This will enable the Committee to conclude its consideration at its net meeting.

A year ago, in its 17th Report of the current Session, the SLSC drew the Homes and Communities Agency (Transfer of Property etc.) Regulations 2018 (SI 2018/8) to the special attention of the House. The Committee noted that, in February 2017, your Ministry published the first annual report on the "Public Land for Housing programme 2015-20" which contained an undertaking that a further report would be published in July 2017.

It is now February 2019. No further report has been published, and the Explanatory Memorandum to the latest Regulations makes no reference to this commitment. On this matter, your officials have told us only that the Ministry intends to publish a "PSL Programme Progress Report" during 2019 to provide an update on the programme covering the period since the February 2017 report.

We would be grateful if you could explain why the July 2017 date for a further report was missed, and why, in two years since the first annual report appeared, no further report has been published. We would also welcome an explanation for the omission from the Explanatory Memorandum to the latest Regulations of any mention of the annual report.

In its 17th Report, the SLSC also noted that the Schedule to SI 2018/8 specified 16 NHS Trusts for the purpose of transfer of surplus land to the HCA to prepare for release to market. It commented on the fact that, within the wider programme of releasing surplus public sector land, the Government had the objective that the sale of surplus NHS land should be used to deliver more homes specifically for nurses and other NHS staff. It added that the Government had provided little hard information on how far this objective had been achieved. There was subsequent correspondence about this issue with Lord O'Shaughnessy, then Parliamentary Under Secretary of State at the Department for Health and Social Care (DHSC).

In response to our queries about the latest Regulations, your Ministry has been in touch again with DHSC, and has told us that that Department believes that "good progress has been made so far. A number of trusts have committed to offering their staff first refusal on a total of over 300 affordable homes."

We would be grateful if you could clarify whether the trusts in question have had at their disposal only 300 affordable homes in total, all of which they have offered to their staff; or, alternatively, whether the 300 affordable homes offered to staff are only a proportion of the total number of affordable homes built on the land which those trusts have released for development.

We look forward to hearing from you by Thursday 7 February.

5 February 2019

Letter from Kit Malthouse MP to Lord Trefgarne

Thank you for your letter of 5 February 2019. Please find below the clarification you have requested regarding aspects of the Homes and Communities Agency (Transfer of Property etc.) Regulations 2019 (SI 2019/36).

The initial Public Land for Housing programme 2015-20 Annual Report was published in February 2017, covering the first 18 months of the programme. Since becoming Housing Minister in July 2018, I have taken the time to understand the programme and explore options for its future direction. I have agreed with my officials that the next Progress Report will be published as part of Spending Review this year, reporting progress on four full years of the programme and setting out our future strategy.

DHSC has confirmed that the amount of affordable housing offered to their staff will be a proportion of the total affordable housing delivered across the sites.

6 February 2019

APPENDIX 3: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 11 February 2019, Members declared the following interests:

Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

Baroness Bowles of Berkhamsted

Non-executive Director, London Stock Exchange plc (as part of this role, the member is also Chair, Regulatory Advisory Group, London Stock Exchange Group plc)

Attendance:

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