

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee (Sub-Committee A)

19th Report of Session 2017–19

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

Drawn to the special attention of the House:

**Draft Immigration, Nationality and
Asylum (EU Exit) Regulations 2019**

**Amendments Relating to the Provision
of Integrated Care Regulations 2019**

**Primary Medical Services (Prohibition
on the Sale of Goodwill) Regulations
2019**

Includes information paragraphs on:

Draft Common Fisheries Policy and
Aquaculture (Amendment etc.) (EU
Exit) Regulations 2019

Draft Common Organisation
of the Markets in Agricultural
Products Framework (Miscellaneous
Amendments, etc.) (EU Exit)
Regulations 2019

Draft Financial Services
(Miscellaneous) (Amendment) (EU
Exit) Regulations 2019

International Joint Investigation Teams
(International Agreements) (EU Exit)
Order 2019

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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), Helen Gahir (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant), Ben Dunleavy (Committee Assistant) and Paul Bristow (Specialist Adviser).

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.

Nineteenth Report

PROPOSED NEGATIVE STATUTORY INSTRUMENTS ABOUT WHICH NO RECOMMENDATION TO UPGRADE IS MADE

- Customs (Enforcement of Intellectual Property Rights) (Amendment) (EU Exit) Regulations 2019
- Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) (No. 2) Regulation 2019
- Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019
- Local Audit (England and Wales) (Amendment) (EU Exit) Regulations 2019

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Immigration, Nationality and Asylum (EU Exit) Regulations 2019

Date laid: 11 February 2019

Parliamentary procedure: affirmative

The UK's current legislation in relation to immigration, nationality and asylum reflects its membership of the EU. This Home Office instrument mainly makes technical amendments either to revoke provisions that will become redundant or to allow the legislation to operate effectively after Brexit and until Parliament has passed the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, currently before the House. However, the House may be interested to note plans for a UK Biometric Residence Permit and also that the Home Office anticipates that the loss of the provisions of the Dublin Regulation will have minimal impact on how those seeking asylum in the UK are handled.

These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

1. The UK's current legislation in relation to immigration, nationality and asylum reflects its membership of the EU and the European Economic Area. This instrument, laid by the Home Office and accompanied by an Explanatory Memorandum (EM), makes modifications to that legislation, necessitated by the United Kingdom's withdrawal from the EU.
2. It also provides for the scenario in which free movement continues to operate beyond the UK's exit from the EU, that is, until Parliament has passed the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, currently before the House, and its provisions have been implemented. Many of the elements of the legislation will therefore take effect "on the appointed day".
3. The EM divides the provisions of this instrument into seven groups. The majority of these are simply technical amendments either to revoke redundant provisions or to allow the legislation to operate effectively after Brexit without altering its effect. However, the House may be interested in the third and fourth groups.

A new design for documents

4. The third group of provisions will revoke the retained EU legislation concerning the specifications for certain documents, notably the uniform format for Biometric Residence Permits for third-country nationals (such as the information and security features that they must contain). We asked the Home Office whether, if the UK deviates from the EU standard format, that will cause any difficulty at borders, and how immigration officials abroad will recognise that the individual has the correct (or incorrect) documentation to be allowed to return to the UK.

5. The Home Office replied that:

“The EU is in the process of switching from the current design of the Biometric Residence Permit (with a bull and stars above the photo) to a very different visual design. Some member states have started to issue the new design and all will do so later in 2019. The UK will not issue the new EU design and has developed a UK specific visual design, for use from a date to be confirmed.

Before the UK switches to that design, foreign border control agencies, airlines, ferry and international companies will be made aware of implementation plans. This will use channels established by the Home Office Carriers Liaison Section, which is the primary method by which the UK communicates to operators and agencies changes to its visa regime. The degree of information shared will vary. Operators will receive basic information on the design, while border control agencies will have access to more detailed forgery detection information.”

Dealing with asylum seekers

6. The fourth group of provisions comprise revocations of a number of EU instruments, including the Dublin Regulation, under which asylum seekers are required to make their claim in the first safe country they arrive in. The effect of this will be that the UK will have to deal with all asylum claims made here and will lose the ability to return the person to the ‘responsible’ Member State under the terms of the Dublin Regulation. The Home Office, however, states that asylum claims may still be deemed inadmissible to the UK if the claimants have already been recognised as a refugee or could have claimed asylum elsewhere.
7. The Home Office indicates that these changes will not make a considerable difference to the UK’s asylum process. In 2017, 26,350 asylum applications were made in the UK, and during that same period there were 461 transfers of asylum seekers into the UK and 314 transfers to the EU under the Dublin Regulation.
8. The Home Office also states that it is seeking a new agreement with the EU on returning illegal migrants, including asylum seekers:

“We are also mindful of the obligation in section 17 of the European Union (Withdrawal) Act 2018 (family unity for those seeking asylum or other protection in Europe). We currently work bilaterally on returns with France where for example the Sandhurst Treaty, and the subsequent Joint Action Plan, features a mutual commitment to return more migrants to France who have used boats to illegally cross the Channel.”

Amendments Relating to the Provision of Integrated Care Regulations 2019 (SI 2019/248)

Date laid: 13 February 2019

Parliamentary procedure: negative

Primary Medical Services (Prohibition on the Sale of Goodwill) Regulations 2019 (SI 2019/251)

Date laid: 13 February 2019

Parliamentary procedure: negative

The first of these two instruments supports the introduction of new contractual arrangements for the provision of integrated health and care services under an Integrated Care Provider (ICP) contract; the second sets out that the prohibition on the sale of goodwill in a medical practice should apply to those providing primary medical services under the new ICP Contract in the same way as it does for existing primary medical services contracts.

ICP contracts are seen by the Government as a potentially important element in the organisational changes needed to deliver greater integration of health and social care services. Responses to consultation on the instruments have shown, however, that there is a “climate of suspicion” around these proposals, which has not so far been dispelled. The House may be interested to see the way in which the Government are taking forward their proposals through these statutory instruments.

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.

9. The Department for Health and Social Care (DHSC) has laid both these instruments, each with a separate Explanatory Memorandum (EM).
10. SI 2019/248 is intended to support the introduction of new contractual arrangements for the provision of integrated health and care services under an Integrated Care Provider (ICP) contract - a single contract through which services from general practice, the wider NHS and, in some cases, local authorities can be commissioned from a “lead” provider organisation, responsible for integrating services. In the EM, DHSC says that ICPs are based on the premise that, by bringing providers together into a single organisation, “the historical partitions between primary, community, mental health and social care and acute services can be removed ... a single provider is intended to have the flexibility to utilise its resources to maximise the health of the population”.
11. In the EM to SI 2019/251, DHSC says that existing Regulations¹ prevent the sale of goodwill in a medical practice; when such a practice is sold, it must be at a price which represents the fair market value of its tangible assets (including premises). A premium cannot be placed on the purchase price of the business because of the goodwill that has been built up in it over the years. In revoking and replacing the earlier Regulations, this instrument provides that the prohibition on the sale of goodwill should apply to those

¹ Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004 ([SI 2004/906](#)).

providing primary medical services under the new ICP contract in the same way as it does for existing primary medical services contracts.

Consultation

12. In the EMs, DHSC acknowledges public concern over the development of ICPs, in particular that the new contractual arrangements have been seen as potentially representing “a means of privatising NHS services”. DHSC refers to a public consultation on the proposed changes to regulations to support the ICP contract which it conducted between 11 September and 3 November 2017. The Department received over 45,000 responses, which highlighted three main concerns: lack of Parliamentary scrutiny; inadequate public consultation; and opposition to privatisation of the NHS. DHSC comments that its analysis found that 44,621 responses could be attributed to a campaign by the political activist group 38 Degrees;² but also that 811 responses did not follow a campaign template, and expressed opposition to privatisation, gave examples from their personal experience and voiced general concerns over the future of the NHS. DHSC also says in the EM that it received nine responses which directly addressed the specific amendments to regulations and answered the consultation questions, including a response from the British Medical Association; and that these led to a number of post-consultation revisions to the regulations.
13. DHSC published the Government response to the consultation in April 2018.³ In acknowledging the many representations from the public, that document stated that “[i]t is misleading to suggest that [ICPs] are a step towards privatising the health system. The objective of the new care models programme is to deliver joined up, patient-centred care. [ICPs] will always offer free healthcare at the point of use.”

Report by Commons Select Committee

14. In the EM, DHSC notes that the House of Commons Health and Social Care Committee’s report on integrated care (published in June 2018)⁴ found that the prospect of a private provider holding an ICP contract was unlikely. The Department is correct in this reference. However, it does not mention another finding in that Committee’s report, that understanding of the changes being promoted by the Government to achieve more integrated healthcare had been “hampered by poor communication and a confusing acronym spaghetti of changing titles and terminology, poorly understood even by those working within the system”. The Committee commented that this had “fuelled a climate of suspicion about the underlying purpose of the proposals and missed opportunities to build goodwill ...” Responses to the autumn 2017 consultation process may be seen as evidence of this.

2 See, for example, 38 Degrees, *No Americanisation of our NHS. Stop the ACOs. Full public scrutiny now*: <https://you.38degrees.org.uk/petitions/no-americanisation-of-our-nhs-stop-the-acos-full-public-scrutiny-now> [accessed 5 March 2019].

3 Department for Health and Social Care, *Accountable care models contract: proposed changes to regulations* (11 September 2017): <https://www.gov.uk/government/consultations/accountable-care-models-contract-proposed-changes-to-regulations> [accessed 5 March 2019].

4 Health and Social Care Committee, *Report: Integrated care: organisations, partnerships and systems* (Seventh report, Session 2019-19, HC 650).

Legal challenges

15. In the EM, DHSC says that there have been two legal challenges to this policy which, it states, have been unsuccessful. The first judicial review, against the Department and NHS England (NHSE), argued that the contract constituted unlawful delegation by Clinical Commissioning Groups; the second, brought against NHSE, challenged the use of a whole population budget.⁵ In the case of the second of these judicial reviews, the Department told us that the Appellant is seeking permission to appeal from the Supreme Court, but that Court has not yet reached a decision about whether it will allow an appeal.

Conclusion

16. The Government and the NHS are seeking greater integration of health and social care services in order to meet the demands of a population where life expectancy has greatly increased and may continue to do so. Integrated Care Provider contracts, which these instruments support, are seen as a potentially important element in the organisational changes needed to deliver such integration. Responses to consultation on the instruments have shown that there is a “climate of suspicion” around these proposals, which has not so far been dispelled. The House may be interested to see the way in which the Government are taking forward their proposals through these statutory instruments.

5 R (oao Hutchinson & others) v SSHSC and NHS England [2018] EWHC 1698 (Admin); (R (oao Jennifer Shepherd) v NHS England [2018] EWHC 1067 (Admin).

INSTRUMENTS OF INTEREST

Draft Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

17. The Common Fisheries Policy (CFP) establishes a common approach to the sustainable management of fisheries across the EU and its waters. The Department for the Environment, Food and Rural Affairs (Defra) says that the purpose of the instrument is to transfer legislative functions that are currently exercised by the European Commission to the appropriate fisheries administrations in the UK after EU exit. These functions are powers to introduce or amend detailed technical rules relating to 15 specific CFP regulations and one regulation on aquaculture, and include, for example, the power to amend a list of vessels that are engaged in illegal, unreported and unregulated fishing.
18. The instrument also proposes amendments to enable the UK to apply to become a contracting party to three Regional Fisheries Management Organisations (RFMOs). RFMOs are international agreements on common management of shared resources in specific seas or maritime areas. Defra explains that this instrument relates to three RFMOs where the EU is a contracting party and in which the UK currently participates through its membership of the EU.⁶ At present, CFP regulations that directly apply in UK domestic law ensure that the UK complies with the requirements of the RFMOs. According to Defra, this instrument seeks to continue the effect of the current arrangements, so that after EU exit, the UK will be able to demonstrate compliance with the RFMOs, enabling it to apply to be a contracting party in its own right. The Department states in the Explanatory Memorandum (EM) that this approach should “ensure that there is as little gap in membership as possible”. We asked Defra for further information on the application process and the potential impact of a gap in membership on the UK fisheries industry. The Department told us that there could be gap in membership of the North-East Atlantic Fisheries Commission (NEAFC) for a “short period” and that while the “UK fleet could theoretically lose access to the fishing opportunities”, NEAFC members “would also lose access to fishing opportunities” in UK waters. We are publishing the additional information provided by Defra at Appendix 1 and note that it would have been helpful for the Department to give a fuller picture of the application process and possible delays in the EM. We also received a submission from Green Alliance on behalf of Greener UK and Wildlife and Countryside Link which raises concerns about the instrument, including in relation to a potential weakening of oversight and controls. We are publishing this submission, and Defra’s response addressing these concerns, on our website.⁷

6 The three Regional Fisheries Management Organisations are the Northwest Atlantic Fisheries Organisation, the North-East Atlantic Fisheries Commission and the International Commission for the Conservation of Atlantic Tunas.

7 Secondary Legislation Scrutiny Committee (Sub-Committee A) Publications page: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-a/publications/>

Draft Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

19. This instrument, laid by the Department for Environment, Food and Rural Affairs (Defra), is linked to and shares an Explanatory Memorandum with three other instruments.⁸ Together these four instruments propose amendments to legislation on the Common Market Organisation (CMO), so that market support measures can continue to operate effectively in the UK after EU exit. Defra explains that the CMO provides a framework for the EU's market support schemes in the agricultural sector, and that it was set up to stabilise markets, ensure a fair standard of living for agricultural producers, and increase agricultural productivity. The CMO enables the EU to manage market volatility, encourage collaboration between and competitiveness of agricultural producers and facilitate trade. One specific aspect of this instrument is that it deals with promotional measures for agricultural products that are managed by the European Commission ("the Commission") and highlight the quality, nutritional value and safety of certain agricultural products. Such measures include, for example, three-year programmes to promote fruit and vegetables, meat or dairy products. This instrument makes amendments to allow existing "simple" programmes that only involve the UK to continue after exit. "Multi-programmes", that involve more than one Member State, will no longer operate in the UK if there is a 'no deal' exit. Further information provided by the Department suggests that the UK is currently a key recipient of financial support provided by the Commission for certain multi-programmes. For example, the UK has been allocated €4.7 million of a €10 million budget of a programme to promote lamb, and €7.3 million of a €10.4 million budget for promoting organic products. Defra has confirmed that there is no funding from the Government for the continuation of these multi-programmes after exit until their completion in 2020, and that stakeholders have been informed. We are publishing the additional information at Appendix 2.

Draft Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

20. HM Treasury (HMT) first laid this instrument as a proposed negative. As HMT acknowledges in section 3 of the Explanatory Memorandum (EM), both the European Statutory Instruments Committee of the House of Commons⁹ and this Sub-Committee¹⁰ recommended that the instrument should be "upgraded" to the affirmative procedure, a recommendation which HMT has accepted. In making our recommendation we noted that the legislation proposed to be amended by the instrument includes: four Acts of Parliament; seven "pre-EU Exit" statutory instruments; 12 "EU Exit" statutory instruments that have been considered by the House during the last six months; and several items of retained EU legislation. While the detailed explanations of the changes given in section 7 of the EM are replete with references to "minor and technical amendments", we consider that the number and significance of the Acts and instruments being amended, and

8 The three other instruments are the draft [Market Measures \(Miscellaneous Provisions\) \(Amendment\) \(EU Exit\) Regulations 2019](#), the draft [Market Measures Payment Schemes \(Amendment\) \(EU Exit\) Regulations 2019](#) and the draft [Market Measures \(Marketing Standards\) \(Amendment\) \(EU Exit\) Regulations 2019](#).

9 European Statutory Instruments Committee, *Eighteenth Report of Session 2017-19* (HC 1933).

10 [17th Report](#), Session 2017-19 (HL Paper 292).

of the policy area (financial services regulation) concerned, justify the choice of the affirmative procedure to provide the House with the opportunity to debate the instrument. To repeat what we have previously expressed in commenting on another instrument,¹¹ we hope that HMT has not underestimated the challenge which is posed to financial services firms in taking on board so many amendments to the core legislation for the sector. The House may wish to seek assurances that the Government are assisting financial services firms in understanding the volume of legislation.

**International Joint Investigation Teams (International Agreements)
(EU Exit) Order 2019 (SI 2019/274)**

21. This instrument is intended to fix a gap that will arise in the case of a ‘no-deal’ Brexit, so that the UK will be able to continue to operate Joint Investigation Teams (JITs) into serious organised crime with EU Member States. By amending the legal base to be used, the UK will be able to continue to participate in such investigations, particularly with Italy, Greece, Luxembourg and Slovakia, which four countries have not fully ratified one of the necessary Conventions. The Explanatory Memorandum states that without this provision four ongoing investigations would lapse and no more could be initiated with those countries. This is exactly the sort of contextual information that the Committee was seeking when it criticised the Home Office’s inadequate explanation of the draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019.¹² Part 17 of that instrument revoked certain provisions relating to JITs without explaining either the consequences or the Home Office’s wider intentions. The House may wish to note the connection between the two items of legislation and ask the Home Office why it declined to present a coherent picture of its policy.

11 The draft Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 in our [16th Report](#), Session 2017-19 (HL Paper 285).

12 [17th Report](#), Session 2017-19 (HL Paper 292).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Common Fisheries Policy and Aquaculture (Amendment etc.)
(EU Exit) Regulations 2019

Common Organisation of the Markets in Agricultural
Products Framework (Miscellaneous Amendments, etc.) (EU
Exit) Regulations 2019

Financial Services (Miscellaneous) (Amendment) (EU Exit)
Regulations 2019

Market Measures (Marketing Standards) (Amendment) (EU
Exit) Regulations 2019

Market Measures (Miscellaneous Provisions) (Amendment)
(EU Exit) Regulations 2019

Market Measures Payment Schemes (Amendment) (EU Exit)
Regulations 2019

Waste (Miscellaneous Amendments) (EU Exit) Regulations
2019

Instruments subject to annulment

SI 2019/272 Official Controls (Animals, Feed and Food) (Amendment)
(Northern Ireland) (EU Exit) Regulations 2019

SI 2019/274 International Joint Investigation Teams (International
Agreements) (EU Exit) Order 2019

SI 2019/279 Environmental Impact Assessment (Amendment) (Northern
Ireland) (EU Exit) (No. 2) Regulations 2019

SI 2019/281 Fluorinated Greenhouse Gases and Ozone-Depleting
Substances (Amendment) (Northern Ireland) (EU Exit)
Regulations 2019

SI 2019/282 Waste (Miscellaneous Amendments) (Northern Ireland) (EU
Exit) Regulations 2019

SI 2019/324 Employment Rights (Increase of Limits) Order 2019

APPENDIX 1: DRAFT COMMON FISHERIES POLICY AND AQUACULTURE (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

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

Q1: Paragraph 7.6 of the Explanatory Memorandum refers to the UK seeking membership of the Regional Fisheries Management Organisations (RFMOs). How long does the Department for the Environment, Food and Rural Affairs expect it will take for the UK to become a member? What happens in the interim after EU exit - will there be any impact of not being a member temporarily? For example, will there be a practical impact on the UK fisheries industry?

A1: The UK is seeking to join five priority RFMOs in the first instance: North East Atlantic Fisheries Commission (NEAFC), North Atlantic Salmon Conservation Organisation (NASCO), North West Atlantic Fisheries Organisation (NAFO), the International Commission for the Conservation of Atlantic Tunas (ICCAT), and the Indian Ocean Tuna Commission (IOTC). The process and timings for becoming a member differs across these five RFMOs. It is Defra's intention to join all five RFMO's on Exit.

Before the UK can ratify these international agreements, they must be laid before Parliament for 21 sitting days under the Constitutional Reform and Governance (CRaG) Act 2010. The agreements for NAFO, ICCAT and IOTC will be laid in Parliament in time to allow the UK to become a member immediately after EU Exit, in the absence of a Withdrawal Agreement.

The UK's application to NASCO requires the approval of three-quarters of the Contracting Parties. The application will be submitted in a timely manner, with the intention that the UK is a member by 29 March 2019, in preparation for EU Exit.

The UK's application to NEAFC also requires the approval of four of the five current Contracting Parties and may take up to 90 days. The application to NEAFC was made on January 8th 2019 and the CRaG process has begun. In the event of any gap in NEAFC membership, which should only be for a short period, then the UK fleet could theoretically lose access to the fishing opportunities it regulates. NEAFC members would also lose access to fishing opportunities and these waters. Members such as the Faroes and Norway are highly dependent on access to UK waters. The UK might not be represented in its discussions around fish stocks and conservation matters, however, in practice these meetings occur late in the year and so it would be unlikely that the UK would not have completed an application at this stage. In this event the UK Government would work with industry, in particular affected fleets, to mitigate any impact. We will consider all possible options to ensure continuity for businesses, including activity that industry can take whilst still covered by the existing agreement.

Q2: In relation to NEAFC, approval may take up to 90 days and the application was made on 8 January. Why wasn't the application made earlier, given that the 90-day period could take the approval past the day of EU exit?

A2: The application to NEAFC was made well in advance of the UK's withdrawal from the EU. We are in regular contact with other contracting parties to ensure that the application is dealt with ahead of the UK's withdrawal.

This statutory instrument amends EU retained law to ensure that the UK is compliant with existing RFMO requirements, in preparation for the UK becoming a contracting party. The instrument is not itself concerned with the application process to become a contracting party.

21 February 2019

**APPENDIX 2: DRAFT COMMON ORGANISATION OF THE
MARKETS IN AGRICULTURAL PRODUCTS FRAMEWORK
(MISCELLANEOUS AMENDMENTS, ETC.) (EU EXIT)
REGULATIONS 2019**

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

Q1: P. 10 of Annex B of the shared Explanatory Memorandum (EM) refers to decisions currently taken by the European Commission on proposals for funding on simple programmes. To whom will these decision-making powers be transferred after EU Exit? The Secretary of State or is this a devolved matter?

A1: This matter is fully devolved. For England, powers are being transferred to the Secretary of State.

Q2: There is a reference to multi-programmes that benefit producers in more than one Member State. Could you provide an example please of such a multi programme where the UK is currently a participant?

A2: Below is a summary table of the programmes currently running:

Table 1

Type	Programme Name	Programme partners	Product(s)	Duration	Start Date	End Date	Budget
Multi	Normalising organic choice	Organics Trade Board and Denmark (DK)	Organic	3 years	Jan 2017	Jan 2020	€10.4m of which €7.3m in UK
Multi	European Milk Forum Climate	Dairy Council (NI) with Belgium/DK/France (FR)/ Republic of Ireland (IE)/ Netherlands	Milk/Dairy	3 years	2017	2020	€3.6m of which €9k in UK
Multi	EU lamb	AHDB [Agriculture and Horticulture Development Board] with IE/FR	Sheep and goat meat	3 years	2017	2020	€10m of which €4.7m in UK
Simple	Adding value with EU dairy products FESEA [Far East and South East Asia]	Dairy council (Northern Ireland (NI))	Dairy	3 years	2017	2020	€2m of which €1.56m EU funding
Simple	Adding value with EU dairy products (ME [Middle East])	Dairy council (NI)	Dairy	3 years	2017	2020	€1.1m of which €0.9m EU funding

Q3: The EM says that the provisions on multi-programmes will not be retained. Does this mean that the UK elements of current multi-programmes will stop after EU exit? Or will the UK elements of these programmes continue with funding from the UK Government?

A3: The UK will be unable to continue to participate in the multi programmes beyond the date of EU Exit in the case of no deal as participants must be a Member State or an EU organisation according to the promotion scheme legislation. It is our understanding that the European Commission will re-asses each multi programme involving the UK to determine whether it is able to continue once the UK has dropped out. For example, those programmes where the UK was a relatively minor participant that leave behind more than one other Member State are likely to continue. There is no funding from the UK Government for the continuation of existing multi programmes.

Q4: If the Government does not provide funding for the continuation of these multi-programmes, does that mean that, for example, the funding for the 'EU lamb programme' or the 'Normalising organic choice programme' would end in the UK after exit day, so these programmes would have to stop on exit day?

A4: Yes. It is our understanding that the European Commission will reassess each multi programme that had the UK as a participant to determine whether it is able to continue once the UK has dropped out. For example, those programmes where the UK was a relatively minor participant and leave behind more than one other Member State are likely to continue.

Q5: Does the end of the funding apply to a 'no deal' scenario only?

A5: If there were to be an implementation period following EU Exit, the European Commission have informed Defra that the UK would continue to be treated as a Member State for the purposes of the Agri-Promotions Scheme. Any existing simple or multi programmes could continue without change until the end of the implementation period. During this time, proposing organisations from the UK may continue to apply for and where appropriate receive funding, with the caveat that any UK participants to multi programmes would need to drop out at the end of the implementation period. Programmes can run for up to 3 years so any such simple programmes accepted in 2019 and 2020 could run beyond the current Government guarantee. In the event of a 'no deal' scenario, UK participants will not be able to continue their participation in multi programmes.

Q6: With these programmes, the UK appears to be a key beneficiary, so has the impact of this been assessed (e.g. on those organisations or businesses running these campaigns)? Have they been notified?

A6: The European Commission have made the multi-programme participants aware and we have further drawn attention to this messaging to make sure the stakeholders were informed. An impact assessment has not been conducted as the UK will not be able to participate in multi programmes after EU Exit and these programmes are entirely managed by the European Commission with no input from Defra or the RPA [Rural Payments Agency].

1 March 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 4 March, Members declared the following interests:

Draft Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

Lord Chartres

Associated with Green Alliance

Draft Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

Lord Walker of Gestingthorpe

Gestingthorpe Farming Company Limited

Draft Financial Services (Miscellaneous) (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 Haskel, Lord Hogan-Howe, Lord Lilley, Lord Sharkey, Lord Trefgarne, Lord Walker of Gestingthorpe and Lord Wood of Anfield.