HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee A)

20th 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 Electricity Capacity (No.1) Regulations 2019

Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019

Includes information paragraphs on:

Draft Cash Controls (Amendment) (EU Exit) Regulations 2019

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

Draft Customs Safety and Security Procedures (EU Exit) Regulations 2019

Tax Credits, Child Benefit and Childcare Payments (Miscellaneous Amendments) Regulations 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
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Lord Sharkey
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Lord Wood of Anfield

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

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Twentieth Report

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

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

- Drivers' Hours and Tachographs (Amendment) (EU Exit) (No. 2) Regulations 2019
- Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019
- Network and Information Systems (Amendment etc.) (EU Exit) Regulations 2019

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Electricity Capacity (No. 1) Regulations 2019

Date laid: 28 February 2019

Parliamentary procedure: affirmative

These draft Regulations propose measures to ensure that the Capacity Market, a key element of the Government's strategy for maintaining the security of electricity supply, can continue to operate while the regular processes of the Market are on hold, following the annulment of the European Commission's approval of the State aid aspect of the scheme by the EU's Court of Justice on 15 November 2018. While the draft Regulations seek to provide legal certainty to participants in the Capacity Market, there remains considerable uncertainty in the absence of a final State aid decision by the European Commission. An application was made on 5 March 2019 for judicial review of the actions being taken by the Government, and the Department for Business, Energy and Industrial Strategy says that a 'no deal' EU exit may require the Competition and Market Authority to investigate and approve the scheme. Given this uncertainty, and the importance of the Capacity Market for the security of electricity supply, the House may find it helpful to have an overview of the measures being introduced by the Government to ensure that the scheme can continue to operate.

The draft 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 Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations before Parliament alongside an Explanatory Memorandum (EM). The purpose of the instrument is to ensure that the Capacity Market in Great Britain, which helps to secure electricity supply at peak demand, can continue to operate during a 'standstill period' following the annulment of the scheme's State aid approval by the General Court of the Court of Justice of the European Union (CJEU), and pending the conclusion of a State aid investigation by the European Commission ("the Commission") to re-approve the scheme.

Background

2. The Capacity Market is a key part of the Government's 2013 Electricity Market Reform, which was designed to decarbonise UK electricity supplies while maintaining security of supply and minimising costs to consumers. BEIS explains in the EM that the Capacity Market is one of the main mechanisms to ensure that there is enough capacity to meet peak demand for electricity at minimum cost to consumers in Great Britain.[1]

3. The EM explains that a key feature of the Capacity Market are competitive auctions which are held four-years (T-4) and one-year (T-1) before the capacity needs to be delivered. While the main T-4 auctions are used to secure the majority of the predicted capacity requirements, supplementary T-1 auctions secure further capacity in line with more accurate demand forecasts which are available closer to the delivery year. During these

1 There are separate arrangements for Northern Ireland which is part of the Single Electricity Market (SEM) for Ireland.

auctions, electricity generators, interconnectors and so-called Demand Side Response (DSR) providers[2] make bids; if they are successful, they secure a capacity agreement which obliges them to generate electricity, or to reduce demand in the case of DSR providers, at times of system stress. Capacity providers (successful bidders that hold a capacity agreement) are then paid monthly for the capacity they have committed to make available during the delivery year if there is system stress. They face financial penalties if they fail to deliver this capacity when required to do so. According to BEIS's annual report for 2017–18, eight auctions to date have awarded capacity of 257.8 gigawatt of electricity at a first-year cost of £3.8 billion.[3]

4. BEIS says that a judgment of the General Court of the CJEU on 15 November 2018[4] annulled the Commission's State aid approval of the Capacity Market from 2014, on the ground that the Commission should have opened an in-depth investigation into the scheme in relation to the participation of DSR providers before granting State aid approval. Since this judgment, the Capacity Market has been in a standstill period. The Department says that the Commission announced on 21 February 2019 that it would open an in-depth investigation, and that it also intends to appeal the Court's judgment. BEIS also told us that, on 5 March 2019, Tempus Energy Ltd issued an application for Judicial Review of the actions the Government have taken to keep the Capacity Market operational during the standstill period.

5. This instrument proposes, as set out below, a range of measures to ensure that the Capacity Market can continue to operate during the standstill period and until the Commission has re-approved State aid.

Re-arranged auction

6. The instrument proposes that a postponed T-1 Capacity Market auction, originally scheduled for January 2019, be rescheduled to summer 2019, with the aim of securing electricity capacity for the delivery year 2019–20 beginning on 1 October 2019. BEIS explains that, as this auction is likely to take place at a time when the scheme has not yet secured State aid approval, the instrument provides for the auction to award conditional capacity agreements, and for these conditional capacity agreements to convert into regular capacity agreements if, as the Department expects, the State aid approval is obtained.

Deferred payments

7. During the standstill period, no capacity payments can be made to capacity providers, so these payments will be put on hold. The instrument proposes to make deferred payments to capacity providers that met their obligations during the standstill period once State aid approval has been obtained.

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2 DSR providers enable consumers to shift their electricity usage to off-peak times when there is less demand on the electricity network.

3 See Department for Business, Energy and Industrial Strategy, *Annual Report and Accounts 31 March 2018* (31 March 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725808/BEIS_Web_accessible_Annual_Report_and_Accounts_2017_18.pdf [accessed 11 March 2019].

4 European Court of Justice, *Tempus Energy and Tempus Energy Technology v European Commission* Case T-793/14. Tempus Energy Ltd, an electricity demand reduction technology company, considered certain aspects of the Capacity Market scheme to disadvantage DSR providers in comparison to other operators, such as more conventional generators, arguing that the Commission should have investigated these concerns more thoroughly before reaching its State aid decision.

Supplier charges

8. Under the current system, electricity suppliers make payments to a Settlement Body[5] to meet the cost of capacity payments to capacity providers. While these charges are put on hold during the standstill period, the instrument would allow the Settlement Body to hold any voluntary payments it receives from electricity suppliers during the standstill period and to set them off against suppliers' future liabilities once State aid approval has been obtained. According to BEIS, the aim is to minimise uncertainty and disruption amongst suppliers by ensuring that they do not face unexpected and unfunded liabilities when any outstanding supplier charges become due once State aid has been re-approved.

Appeals and financial penalties

9. Under the current arrangements, capacity providers may have their agreements terminated and be subject to a fine if they fail to meet the requirements of their capacity agreements. This instrument proposes an extension of the period in which capacity providers have to comply with termination notices from six to 12 months and proposes that, where it would involve undue financial hardship for a capacity provider to pay a termination fee or non-completion fee because no capacity payments were made during the standstill period, the Secretary of State may decide that a termination notice be withdrawn. The instrument also proposes that capacity providers will not have to pay financial penalties they have incurred during the standstill period unless and until the State aid approval is obtained.

Trigger events

10. The instrument proposes so-called "trigger events" for certain processes that will take place once State aid approval has been obtained. These processes include the making of deferred capacity payments, capacity payments for successful bidders in the re-arranged T-1 auction, payments of any accrued penalties and termination fees, and the collection of the supplier charge. BEIS says that the aim of using trigger events is to provide certainty about the timing of these processes once the State aid decision has been made.

11. The Department told us that:

> "[I]f the Commission declines to give State aid approval, or if a decision in relation to State aid remains outstanding on 1 October 2020, one or more of the termination trigger events will occur. The termination trigger events will have the consequences of terminating affected capacity agreements and, where both have occurred, triggering the return of payments made by suppliers during the standstill period."

Consultation

12. BEIS says that a public consultation on the proposed changes between 19 December 2018 and 10 January 2019 received 61 responses from a wide range of stakeholders, including generators, DSR providers, developers, electricity suppliers, trade associations and investors. According to BEIS, most respondents supported the proposals and welcomed action by the Department to clarify and, as far as possible, maintain operation of the

5 The Capacity Market Settlement Body is the Electricity Settlements Company (ESC). It is responsible for administering all payments under the scheme. It is a private limited company whose sole shareholder is the Secretary of State.

Capacity Market during the standstill period. BEIS explains that some concerns were raised, especially by energy-intensive operators, about the uncertainty and potential costs of supplier charges, and that two respondents disagreed with the proposal to maintain operation of the scheme during the standstill period, suggesting that the Department should suspend all aspects of the Capacity Market. The EM sets out the measures the Department has taken in response to this feedback, including, for example, the award of conditional capacity agreements following the auction which will be converted into regular capacity agreements following State aid approval, and the putting on hold of charges for energy suppliers during the standstill period.

Further legislation

13. BEIS says that the intention is to lay a second instrument in spring 2019 to make provision for future Capacity Market auctions and any further provisions needed in relation to the re-arranged T-1 auction and the operation of the scheme during the standstill period.

Timings and impact of the Commission's investigation and appeal

14. We asked the Department about the timing of the Commission's in-depth investigation and the expected outcome. BEIS explained that:

> "The UK Government is working closely with the European Commission ["the Commission"] on the necessary steps for the GB Capacity Market scheme to be investigated as quickly as possible. […] We are hopeful that this investigation will conclude, and their decision on State Aid approval will be issued, ahead of the start of the 2019/20 delivery year (1 October 2019), and consider it very improbable that it will be delayed into 2020.
>
> We are confident that the Commission will approve the scheme following investigation, not least as they have approved six other Capacity Markets since 2014. It is possible, as part of this, that the Commission might require policy changes to the design of the CM scheme when granting State aid approval. In this case, the Government would seek to respond swiftly to consider and bring forward the required changes.
>
> The Government continues to monitor our security of supply position carefully, together with Ofgem and National Grid. In the unlikely event that State aid approval is not granted or is excessively delayed, the Government will ensure that any necessary steps are taken. The Government remains of the view that the Capacity Market is the right mechanism to deliver secure electricity supplies at least cost."

15. With regard to the Commission's appeal, the Department explained that:

> "This appeal is likely to be decided in early 2020 and is therefore unlikely to come to a resolution within the timeframes associated with the Commission's investigation, and as such is unlikely to have a bearing on whether or not State aid approval is granted to the CM scheme."

Impact of EU exit

16. We asked the Department about the impact of the UK's withdrawal from the EU, in particular on the Commission's pending State aid decision. BEIS told us that:

"The interconnections between EU Exit and State aid raise complex issues. However it is clear that:

- So long as the UK remains a Member State or is subject to an implementation period following a negotiated withdrawal, the current State aid regime will continue to apply and the Commission will need to re-approve the scheme.
- If the UK leaves as a result of a no-deal exit, or at the end of the implementation period, the UK will be subject to a domestic State aid regime for which the Competition and Markets Authority (CMA) rather than the European Commission will be the regulator. This assumes that the draft State Aid (EU Exit) Regulations currently before Parliament are approved.
- If at that point the Commission has not yet approved the scheme, it will fall to the CMA to investigate and approve the scheme (all existing State aid approvals would be brought across into domestic law by the draft State Aid (EU Exit) Regulations)
- The draft Electricity Capacity (No. 1) Regulations 2019 provide that a State aid decision taken by the Commission or the CMA (which both fall within the definition of a "relevant authority") may form the basis for a "trigger event" under these regulations."

Conclusion

17. BEIS says that the draft Regulations will provide as much legal certainty as possible to industry and the electricity market about the operation of the Capacity Market during the standstill period and until the scheme obtains final approval from the Commission, and that this will maintain confidence of the industry in the scheme.

18. It is clear, however, that there remains considerable uncertainty in the absence of a final State aid decision by the Commission and in the light of an application for Judicial Review of the Government's actions and the UK's withdrawal from the EU, which, in a 'no deal' scenario, may require the Competition and Market Authority to investigate and approve the scheme. **Given this uncertainty and that the Capacity Market forms a key element in the Government's strategy of maintaining the security of electricity supply in Great Britain, the House may wish to explore further how the Government are proposing to ensure that the Capacity Market can continue to operate in the future.**

Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (SI 2019/345)

These Regulations, laid by the Department for Transport, aim to ensure that the UK's rail interoperability regime continues and a regime for technical standards is in place after exit day. After exit, existing EU technical standards will be replicated in the UK. However, a new system is being created enabling the Secretary of State to set and publish UK technical standards, including a power to diverge from EU standards.

We draw this instrument to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

Background

19. A European Directive on the interoperability of the rail system within the European Community ("the Directive")[6] provides for a common assessment and authorisation process for rail projects based on conformity with harmonised standards. Interoperability aims to help rail compete more effectively with other modes of transport through a set of common standards. This has led to the harmonisation of the rail technical standards framework of Member States, including the technical standards for building and operating equipment and the process by which vehicles, infrastructure, and equipment designs are verified against these standards and authorised to be placed into service by the safety authorities in each Member State.

20. The Directive was implemented in the UK via the Railways (Interoperability) Regulations 2011 ("the 2011 Regulations").[7]

21. In the UK the safety authorities are:

- the Office of Rail and Road for Great Britain;
- the Department for Infrastructure in Northern Ireland (DfI NI); and
- the Intergovernmental Commission for the UK section of the Channel Tunnel

Standards

22. Technical Specifications for Interoperability (TSIs) are EU-wide technical and operational standards for new or upgraded rail infrastructure, vehicles and component parts. They set out how components must be built, and compliance assessed and verified, to ensure the interoperability of the rail system.

23. TSIs are developed by working groups of the European Union Agency for Railways. The UK sends technical experts to participate in the working groups, and votes on the final TSI as a member of the Railways Interoperability and Safety Committee. Once published in the Official Journal of the European Union, TSIs automatically apply in the UK without the need to create additional regulations.

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6 Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community.

7 Railways (Interoperability) Regulations 2011 (SI 2011/3066). These Regulations have been amended three times, in 2013, 2014 and 2015.

24. In addition, Member States have the right to produce their own national technical rules to supplement TSIs. In the UK, national rules are derived from rail industry standards. The Rail Safety and Standards Board (RSSB) proposes which industry standards the Department for Transport (DfT) should notify to the European Commission as notified national technical rules (NNTR) against each TSI.

25. Rail projects that come within the scope of interoperability[8] must be certified by the relevant Safety Authorities to conform to the relevant TSIs and NNTRs before they can be authorised to be placed into service. Assessment bodies that certify conformity to TSIs are called "notified bodies" and the DfT must notify them to the European Commission. Bodies that certify conformity to NNTRs are called "designated bodies".

Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019

26. These Regulations are laid by DfT with an Explanatory Memorandum (EM) and an Impact Assessment (IA). DfT has explained that the instrument is made under powers in the Transport Act 2000 (section 247), not the European Union (Withdrawal) Act 2018, and that the 2000 Act provides that the regulations made under it are subject to the negative procedure.

27. The Regulations are intended to ensure that the UK's rail interoperability regime continues, and that a technical standards regime is in place, after exit day. This includes correcting certain aspects of the interoperability regime that would no longer function correctly if the UK is not an EU Member State.

28. The Sub-Committee received a copy of a letter sent from Lord Berkeley to Baroness Sugg, Parliamentary Under-Secretary of State at the Department for Transport, about these Regulations. The letter is published at Appendix 1.

New System

29. The Regulations also create new powers for the Secretary of State to set and publish technical standards, under a new system of UK National Technical Specification Notices (NTSNs) which will replace EU TSIs. Initially, it is proposed that existing TSI content will be replicated in its entirety within the system of NTSNs. However, the establishment of the system of Secretary of State published NTSNs will make it possible for the UK to diverge from, or keep pace with, EU TSIs after exit day.

30. Decisions on whether it is necessary to keep pace or diverge will be made by the Secretary of State. The Government have stated that these decisions will be informed through consultation with industry about the suitability of new TSIs. It is expected that this process will involve the RSSB and other stakeholders with an interest in technical standards.

Certificates of conformity

31. There are 12 UK appointed "notified bodies" who also have separate appointments as "designated bodies".[9] These UK bodies will be automatically

8 That is, projects that are not light rail, metros, trams, local lines, heritage, touristic or private freight.
9 Altran UK Ltd, Halcrow Rail Approvals Ltd, SNC-Lavalin Rail & Transit, Verification Ltd, Lloyds Register Verification Ltd, TUV Rheinland UK Ltd, Ricardo Certification, MMRA Ltd, Network Certification Body Ltd, Railway Approvals Ltd, SGS United Kingdom Ltd, AEGIS Certification Services Ltd, SCONRAIL AG.

given the status of "approved bodies" after exit day and there will be no charge. After exit, any new entities wishing to become "approved bodies" will be appointed by the Secretary of State.

32. After exit, the UK will continue to recognise conformity assessment certificates from an EU "notified body" unless the applicable UK technical standards diverge from the standards set by the EU.

33. Where there is divergence, the UK will require any new product to be assessed against the UK standard by a UK "approved body". As a result, there may be situations where new products already holding conformity assessment documents issued against TSIs will need to be reassessed for placement on the UK market.

34. The Directive provides that Member States can choose whether an additional authorisation process for use in that Member State should be a voluntary or mandatory procedure. The UK had previously elected that this should be a voluntary process. These Regulations require rail vehicles first authorised in the EU to undergo a mandatory additional authorisation for use in the UK to ensure that vehicles comply with the UK's standards. The IA states that this mandatory authorisation process "is not expected to impose an additional cost or administrative burden on rail operators seeking to use vehicles that were first authorised in the EU".

Consultation

35. Although there was no formal consultation, DfT explains that its intentions were discussed with the UK rail industry[10] during workshops and there was "broad support from all sectors to the proposal to develop a system of notices for the UK".

36. The EM explains that "there was one proposal that evenly divided opinion, where half of the responses supported NTSN exemptions to be made by the Secretary of State and the other half preferred the power to be given to an industry body. Broader concerns have been raised by some industry parties regarding the impact of potential divergence from EU standards." DfT has, however, stated that the standards that are in place on exit day will be preserved, and that any decision to diverge will be informed by close engagement with industry.

Impact

37. Although the Regulations are accompanied by an IA, it provides no quantitative costs for this measure. The IA explains that:

> "Given that this SI [statutory instrument] establishes a framework for UK technical standards for rail providing the scope for divergence, rather than specifying new standards itself, it is not possible to provide monetised costs in respect of each potential future divergence between UK and EU standards. A narrative approach has been taken instead for this IA."

10 The Explanatory Memorandum explains that these have been attended by a range of stakeholders including; the UK Safety Authorities; RSSB; Network Rail; the Rail Delivery Group (RDG); the Railway Industry Association; conformity assessment bodies; leasing companies and rail manufacturers.

38. The original IA produced for the 2011 Regulations ("the 2011 IA") assessed the costs and benefits of complying with the interoperability regulations for a period lasting from 2012 to 2022. The 2011 IA estimated that total benefits of £111 million and total costs of £35.8 million, with a net benefit of £75.2 million by 2022, would be generated. Since the 2011 IA was produced, DfT says it has been made aware of additional costs that could arise as a result of compliance with EU TSIs.[11] As such, the IA indicates that "it is expected that the UK will diverge from TSI requirements to allow HS2 to build higher platforms." The IA also notes that "Stakeholders have previously referred to the need for greater flexibility in terms of the application of TSIs. The ability for the UK to diverge from the EU TSIs may open up further flexibilities".

Conclusion

39. Given the significance of the proposals in these Regulations, we draw these Regulations to the attention of the House on grounds of public policy interest.

11 See Impact Assessment p.7.

INSTRUMENTS OF INTEREST

Draft Cash Controls (Amendment) (EU Exit) Regulations 2019

40. These draft Regulations were originally laid by HM Revenue and Customs (HMRC) as a proposed negative instrument. The Sub-Committee recommended it should be upgraded to the affirmative resolution procedure, and HMRC has accepted this recommendation. The 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 by requiring them to complete a declaration to customs authorities. This is intended to enable the UK to build its own risk profiles, predominantly to tackle money laundering. UK Border Force will have the right to seize money where no declaration has been made, pending an investigation into its source and its intended use. The Impact Assessment accompanying the instrument explains that "currently 1,500 individuals complete a declaration annually and a five-fold increase is estimated on departing the EU. The additional costs of completing a declaration are assessed to be negligible." These Regulations will not have any effect in relation to individuals carrying cash between Northern Ireland and the Republic of Ireland as HMRC has said that "further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible."

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

41. The Sub-Committee saw this instrument as a proposed negative instrument and agreed that it should be upgraded to the affirmative resolution procedure, a recommendation which HM Revenue and Customs (HMRC) has accepted. The draft Regulations provide for an independent Economic Operator Registration Identification (EORI) system, meaning that businesses which currently trade only between the EU and the UK, or overseas businesses 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 of trading goods between Northern Ireland and the Republic of Ireland. HMRC explains that "further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible."

Draft Customs Safety and Security Procedures (EU Exit) Regulations 2019

42. The Sub-Committee considered this instrument when it was laid as a proposed negative instrument and agreed it should be upgraded to the affirmative resolution procedure, a recommendation which HM Revenue and Customs (HMRC) has accepted. In a 'no deal' scenario, 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 and to prevent entry of illegal goods. Traders who wish to receive UK Authorised Economic Operator status, 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).

43. Since the instrument was first laid as a proposed negative instrument, two changes have been made. First, the instrument temporarily removes the

requirement to submit safety and security information via entry summary declarations for goods being imported from territories where the UK does not currently require entry summary declarations. This includes the EU, Norway, and Switzerland. This transitional period will be in place for six months. Second, it enables the movement of goods between the UK and the Channel Islands or Isle of Man without requiring declarations for safety and security purposes.

44. HMRC explains in the Explanatory Memorandum that "There is a strong possibility that businesses, such as hauliers and ferry operators, will suffer immediate hardship if the UK leaves the EU without a negotiated deal. They do not have the systems in place in readiness for exit day." HMRC says that its discussions with these businesses about how their obligations could be met have resulted in the decision to introduce the six-month transitional period, and UK-Crown Dependency provisions. After the transitional period, HMRC acknowledges that "businesses will have additional administrative and financial burdens. They will need to adapt their processes and systems to meet the requirement to make safety and security entry summary declarations prior to arrival of goods in the UK." The Government have announced an extra 300 border staff in preparation for 'no deal' and an additional 1,000 staff in the future.

Tax Credits, Child Benefit and Childcare Payments (Miscellaneous Amendments) Regulations 2019 (SI 2019/364)

45. These Regulations, laid by HM Revenue and Customs (HMRC), make a number of changes to earlier instruments relating to tax credits, Child Benefit and Tax-Free Childcare: details are set out in section 7 of the Explanatory Memorandum (EM). Of particular interest are the changes made to the Tax Credits (Definition and Calculation of Income) Regulations 2002[12] (SI 2002/2006), so as to provide a disregard from a person's income for tax credits, for any payments made under any compensation scheme established by the Home Office in respect of Windrush Generation citizens (as well as any interest arising on these payments within the 52-week period from the date the payment is made). In the EM, dealing with this disregard, HMRC refers to the Government's recognition that certain Commonwealth citizens known as the Windrush Generation have been adversely affected by measures introduced under the Home Office's compliance laws.

12 Tax Credits (Definition and Calculation of Income) Regulations 2002 (SI 2002/2006).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

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

Heavy Duty Vehicles (Emissions and Fuel Consumption) (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

CP 60	Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Serbia on International Road Transport
SI 2019/342	Civil Procedure (Amendment) Rules 2019
SI 2019/347	Agriculture, Food and Horse (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019
SI 2019/364	Tax Credits, Child Benefit and Childcare Payments (Miscellaneous Amendments) Regulations 2019
SI 2019/380	Sanctions (Amendment) (EU Exit) (No 2) Regulations 2019
SI 2019/381	Child Trust Funds (Amendment) Regulations 2019
SI 2019/395	Central Rating List (England) (Amendment) Regulations 2019
SI 2019/396	Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2019

APPENDIX 1: RAILWAYS (INTEROPERABILITY) (AMENDMENT) (EU EXIT) REGULATIONS 2019 (SI 2019/345)

Letter from Lord Berkeley to Baroness Sugg, Parliamentary Under-Secretary of State at the Department for Transport

The European Agency for Rail and BREXIT

I write to express my concern about the possible changes to the relationship between the UK Government and the European Agency for Rail (ERA) which Government appears to be contemplating after BREXIT, whether there is agreement between the UK and the EU or if there is a no-deal scenario.

Ministers appear to have decided that it is in the interests of the UK to distance itself from the ERA to the maximum degree. This approach is completely different to that which the Government is reported to be seeking with the air sector, where ministers seem to recognise the need, for very good safety, regulatory and technical reasons, to stay as closely aligned with the rest of Europe as possible. I note that we are due to debate some of the air SIs on 21 November 2018.

I believe that the same requirements apply to the rail sector. The DfT's technical notice states:

> "The technical specifications for interoperability and the safety regime have been developed by the EU Agency for Railways (EUAR) in conjunction with EU countries and stakeholders. As new rules and standards are developed by the EU after exit, as a third country, the UK will have the flexibility to align with or diverge from these as it wishes. We will only diverge where there are clear arguments for doing so and after fully engaging with industry to assess the impact - particularly the commercial and cost impact to industry."

The UK played a major part in the introduction of common standards across Europe (TSIs); these are already being shown to be very useful in ensuring that other member states who do not like competition in the manufacture or operation of the sector do not use their national regulations and standards to preserve national monopolies. Having competition in the manufacturing and supply within the sector does reduce costs if there is one common set of standards; since so much of the manufacturing is now based on sourcing of components from across Europe. This needs to continue, and having the possibility of diverging standards between the UK and the EU, even subject to impact assessments etc., will be very counter-productive.

Similarly, staying with the ERA to the maximum extent will significantly help those operators seeking to operate passenger and freight trains through the Channel Tunnel and beyond.

The TSIs are largely within the UK legislation. There will always be particular issues for which the UK may want derogations, particularly in relation to the sizes of trains, the structure gauges or platform heights, but there are many more examples of where TSIs come in very useful, not least when we may wish to export our equipment and services to member states or third countries. I cannot see any benefit in our seeking to persuade a railway authority or company in a third country of the benefits of using new untried UK standards compared to European ones for equipment or services that we are seeking to sell them.

The supply industry is already very international and it is unlikely that they would build for a UK only specification without extra cost. So the UK would not gain from this change and

I see no benefit in having the 'flexibility to diverge' built into new regulations; there is no need and it will only bring uncertainty – and quite likely cost – to the sector.

As to how we would deal with changes to TSIs in the future after BREXIT, we may well be a rule taker then without having a formal vote, but experience with how the Swiss Government works indicates that their opinions are welcome and respected; in a recent meeting I had with the rail sector and Commission in Brussels, the EC welcomes a suggestion to use a Swiss methodology for measuring the structure gauge gap. We can also continue to seek derogations where necessary for the UK under the existing arrangement.

So I do urge your Department to draft the necessary SIs to include retaining the closest relationship possible with the European Agency for Rail on all relevant issues, and to encourage our rail sector to participate in its activities. Only by this means will rail services, passenger and freight, have the best option of growing and extending its services. Similarly, our manufacturing sector will be able to market its services and equipment with confidence around the world, backed up by the full range of European standards.

You will know that all the main industry bodies, the Railway Deliver Group, The Railway Industry Association, the Chartered Institute of Logistics and Transport and the Rail Freight Group are all in favour of retaining the closest possible links to the ERA including, if possible, full membership.

I would be happy to meet to discuss these issues further but will be requesting that all relevant regulations in the rail sector proceed through the Affirmative Procedure. I would hope that it would not be necessary to move a Motion of Regret, but I do believe that these are very important issues.

9 November 2018

APPENDIX 2: INTERESTS AND ATTENDANCE

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

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

Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (SI 2019/345)

Lord Faulkner of Worcester

Chair, Great Western Railway Advisory Board (formerly called First Great Western Trains Advisory Board)

Attendance:

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