

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee (Sub-Committee A)

21st Report of Session 2017–19

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

Includes information paragraphs on:

Draft Common Fisheries Policy
(Amendment etc.) (EU Exit) (No.2)
Regulations 2019

Alternative Fuel Labelling and
Greenhouse Gas Emissions
(Miscellaneous Amendments)
Regulations 2019

Creative Europe Programme and
Europe for Citizens Programme
(Revocation) (EU Exit) Regulations
2019

Iran (Sanctions) (Nuclear) (EU Exit)
Regulations 2019

ISIL (Da'esh) and Al-Qaida (United
Nations Sanctions) (EU Exit)
Regulations 2019

European Union Budget, and
Economic and Monetary Policy (EU
Exit) Regulations 2019

Customs (Enforcement of Intellectual
Property Rights) (Amendment) (EU
Exit) Regulations 2019

Ordered to be printed 18 March 2019 and published 20 March 2019

Published by the Authority of the House of Lords

HL Paper 318

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.

Twenty First Report

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

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

- Fisheries, Aquaculture and Marine (Functions Exercisable in or as Regards Scotland) (Amendment) (EU Exit) 2019

INSTRUMENTS OF INTEREST

Draft Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

1. These draft Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra), propose amendments to EU-retained legislation on three aspects of the EU's Common Fisheries Policy: fishing opportunities (the catch limits currently set by the EU for most commercial fish stocks), the landing obligation (a ban on discarding certain catches of fish at sea), and prohibitions on fishing for certain species in certain areas. According to Defra, the instrument proposes the minimum technical changes needed to ensure that the current conservation requirements and prohibitions continue to have effect in UK law after EU exit. The Department explains that the instrument revokes provisions which put into law the EU's current fishing opportunities, as it will no longer be appropriate for these to apply to the UK after exit. Defra says that the Secretary of State will instead set fishing opportunities for the UK, under clause 18 of the Fisheries Bill. Defra told us that after exit the "Secretary of State will immediately replace the current EU figures with UK fishing opportunities" and that "in the event that the [Fisheries] Bill is not in force for Exit day, the Secretary of State will set UK total fishing opportunities for the UK for 2019 using prerogative powers".
2. We received comments from Green Alliance on behalf of Greener UK and Wildlife and Countryside Link about the instrument, which we put to Defra. In its response, the Department explains that key aspects of the UK's post-exit fisheries policy, including oversight arrangements and the role of the new Office for Environmental Protection, are set out in the Fisheries Bill and the draft Environment (Principles and Governance) Bill. The Department also points to the inclusion in the Fisheries Bill of a sustainability objective, a so-called precautionary objective in relation to maximum sustainable yields and a requirement for the UK fisheries administrations to produce a legally binding Joint Fisheries Statement as evidence that the Government will remain committed to the principle of sustainability. We are publishing the submission from Green Alliance and Defra's response on our website.¹

Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019 (SI 2019/421)

3. At present there is no requirement for transport fuel sold in the UK to be accompanied by standardised labelling. Mis-fueling of petrol and diesel vehicles is a recognised issue, particularly putting petrol into diesel engines. The EU's Alternative Fuels Infrastructure Directive² 2014 requires Member States to adopt standard labelling that clearly sets out the type and biofuel content of road transport fuels. Introducing standardised fuel labelling aims to ensure consumers can identify and select different fuels accurately.
4. These Regulations require filling stations to place graphical identifiers, in the form of standardised labels, on both transport fuel dispensers and their nozzles, to indicate the fuel which that equipment dispenses. Vehicle manufacturers will be required to ensure that relevant identifiers, for all fuels

1 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/>.

2 [Directive 2014/94/EU](#) on the Deployment of Alternative Fuels Infrastructure

with which a new vehicle is compatible, are placed near the fuel filler cap and in the vehicle manual. Motor vehicle dealers will also need to ensure that this information is clearly available to prospective users of the vehicle while that vehicle is offered for sale or lease. The Regulations allow time for parties to comply with the labelling requirements: for filling stations, operators will have five months from the coming into force date to comply, while vehicle manufacturers and dealers will have 12 months.

5. The Secretary of State has a duty to enforce the fuel labelling requirements. The Regulations enable any suitable person to be authorised to carry out that function, and the current intention is that the Office for Product Safety and Standards³ should be authorised to do so. Under the enforcement regime, obligated parties will have the opportunity to correct incidences of non-compliance; however, if the non-compliance is not rectified, civil penalties can be issued. The Department for Transport (DfT) estimates that the costs to businesses required to comply with the labelling requirements are expected to be around £1.4 million per year for the first five years. DfT also estimates projected savings to motorists of around £17 million per year based on reduced incidences of misfuelling and the corresponding reduction in vehicle repair fees.
6. The Sub-Committee received a letter from the Minister setting out the reasons for the breach of the 21-day rule for this instrument. The correspondence and our reply are set out at Appendix 1.

Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 (SI 2019/447)

7. The Department for Digital, Culture, Media and Sport states in the Explanatory Memorandum accompanying this instrument that, in 2016, the Chancellor announced that the Government would guarantee funding to organisations delivering projects awarded through EU direct bid grant funds, including where such projects continue beyond the UK's departure from the EU ("the HMG Guarantee"). This was extended, as notified to Parliament by Written Ministerial Statement in July 2018, to cover the payment of awards under successful competitive bids, both while the UK remained part of the EU and, in certain circumstances, after the UK's departure from the EU when the UK will become a "third country". The HMG Guarantee will only be needed if the EU and UK fail to put in place a negotiated agreement for EU exit. The purpose of these Regulations is to give the Secretary of State powers to provide financial assistance, in relation to England and Northern Ireland, to participants in the Creative Europe Programme and the Europe for Citizens Programme, if the European Commission ceases to provide funding to UK participants on or after exit day because of the UK's withdrawal from the EU. The provision of this assistance may include the following circumstances: where UK organisations successfully bid directly to the European Commission on a competitive basis while the UK remains in the EU, and in respect of successful bids where UK organisations are able to participate as a third country in competitive grant programmes from exit day until the end of 2020.

³ A body situated within the Department for Business, Energy and Industrial Strategy.

Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (SI 2019/461)**ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (SI 2019/466)**

8. There are currently around 35 sanctions regimes that take effect in the UK under EU law and associated UK secondary legislation. These are being progressively replaced by instruments under the Sanctions and Anti-Money Laundering Act 2018, so that all sanctions measures can continue to operate effectively after the UK leaves the EU. The new legislation, laid by the Foreign and Commonwealth Office, will also allow the Government to amend and lift the sanctions, or impose further sanctions, autonomously. Instruments laid include country-specific sanctions regimes, including in relation to the Democratic Republic of the Congo, North Korea and Iran, as well as thematic sanctions including chemical weapons and counter-terrorism sanctions on organisations such as Da'esh. Some instruments also deal with multiple countries. None of these instruments include the names of designated persons on whom sanctions are imposed. They will be listed separately on the Gov.uk website.⁴ These instruments will be brought into force by a separate set of regulations which will set an appointed commencement day for all of them.

European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019 (SI 2019/484)

9. These Regulations, laid by HM Treasury, prevent EU legislation relating to the EU budget and economic policy from becoming part of UK domestic law on exit day. The UK is under an obligation to pay into the EU budget each month (the first payment after exit day being due in April 2019), and to submit convergence reports by the end of April 2019. This instrument, which comes into force on exit day, prevents the UK from accruing a new obligation to pay into the EU budget from the start of April. With regard to any payments that may be made to the EU under the draft Withdrawal Agreement, these will be provided for through separate primary legislation to implement the agreement in domestic law.

Customs (Enforcement of Intellectual Property Rights) (Amendment) (EU Exit) Regulations 2019 (SI 2019/514)

10. Under current EU Law, there is a common process for the protection of intellectual property at the border of the EU.⁵ Customs authorities in each Member State carry out checks on goods which are imported or exported until the goods are “cleared by customs” or formally released. The checks are intended to intercept counterfeit goods. After exit, the UK will provide a system of protection of intellectual property rights similar to the EU System. In the event of ‘no deal’, holders of rights that are enforceable in the UK (for example, where they have a Trade Mark registered in the UK), must be registered on a new UK database. An Impact Assessment provided by HM Revenue and Customs’ (HMRC) explains that steps are being undertaken to transfer existing registrations to a new system, where applications were made through the UK authorities. However, for registrations which were made in another Member State, businesses will need to register on the new

4 See for example HM Treasury, *Financial sanctions targets by regime* (19 October 2018): <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases> [accessed 15 March 2019].

5 [Regulation \(EU\) No 608/2013](#).

UK system to have their rights protected in the UK. HMRC anticipates that the costs of EU businesses having to register will be negligible. HMRC will make no charge for registration. This instrument does not have effect in relation to trade in goods between the Republic of Ireland and Northern Ireland. HMRC has stated that “further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible.”

Draft Agriculture (Legislative Functions) (EU Exit) Regulations 2019

Draft Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019

11. These instruments have been re-laid by the Department for the Environment, Food and Rural Affairs. The Sub-Committee drew these instruments to the special attention of the House in its 18th Report.⁶

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Agriculture (Legislative Functions) (EU Exit) Regulations 2019

Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019

Cat and Dog Fur (Control of Import, Export and Placing on the Market) (Amendment) (EU Exit) Regulations 2019

Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Food and Farming (Amendment) (EU Exit) Regulations 2019

Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019

State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

- | | |
|-------------|--|
| SI 2019/409 | Airports (Noise-related Operating Restrictions) (Scotland) Regulations 2019 |
| SI 2019/410 | Animals (Scientific Procedures) Act 1986 (Fees) Order 2019 |
| SI 2019/420 | Personal Injuries (Civilians) Scheme (Amendment) Order 2019 |
| SI 2019/421 | Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019 |
| SI 2019/439 | Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2019 |
| SI 2019/440 | Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2019 |
| SI 2019/447 | Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 |
| SI 2019/451 | Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 |
| SI 2019/452 | Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (England and Wales) (EU Exit) Regulations 2019 |
| SI 2019/461 | Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 |
| SI 2019/466 | ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 |
| SI 2019/472 | Seed Marketing and Seed Potatoes (England) (Amendment) Regulations 2019 |

- SI 2019/484 European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019
- SI 2019/485 Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) (No. 2) Regulations 2019
- SI 2019/492 Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2019
- SI 2019/504 Local Audit (England and Wales) (Amendment) (EU Exit) Regulations 2019
- SI 2019/506 Bilateral Investment Agreements (Transitional Arrangements and Framework for Managing Financial Responsibility) (Revocation) (EU Exit) Regulations 2019
- SI 2019/514 Customs (Enforcement of Intellectual Property Rights) (Amendment) (EU Exit) Regulations 2019

APPENDIX 1: ALTERNATIVE FUEL LABELLING AND GREENHOUSE GAS EMISSIONS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2019 (SI 2019/421)

Letter from Jesse Norman MP, Minister of State at the Department for Transport, to the Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee

The Department laid the Alternative Fuel Labelling and Greenhouse Gas Emissions (Miscellaneous Amendments) Regulations 2019 [SI 2019/421] on 4th March 2019. I write to inform you that we have broken the 21-day rule, for which I wish to apologise.

Regulation 1(2) brings regulation 22 into force on 22nd March 2019, in breach of the 21-day rule, by 3 days. Regulation 22 is an amendment to paragraph 19(2)(d) of the Schedule to the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 which allows fuel suppliers to claim Greenhouse Gas Credits for certain emissions reductions in 2019.

By way of explanation, it had been our intention to lay this instrument on Friday 1st March 2019. However, I understand that following problems with registration of this instrument we omitted to ask for an extension to the usual 2.30 pm (Friday) closing time. This meant we did not lay the instrument on the Friday, as planned.

Although we laid the instrument at the first opportunity thereafter, clearly there are lessons to be learned concerning our communication with the Journal Office and the Printed Paper Office. Officials will be reminded to check office times for the relevant Parliamentary offices to avoid this happening again.

5 March 2019

Letter from Lord Trefgarne to Jesse Norman MP

Thank you for your letter of 5 March 2019, explaining why these Regulations will not comply with the 21-day rule.

It is important for us to receive an explanation of the circumstances surrounding the late laying of the instrument. I would nonetheless underline our expectation that instruments should be laid at least 21 days before coming into force, to allow both Parliament and other interested parties sufficient time to scrutinise them and prepare for their implementation.

The Sub-Committee is due to consider these Regulations next week.

12 March 2019

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 18 March, Members declared the following interests:

Draft Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Lord Chartres

Associated with Green Alliance

Airports (Noise-related Operating Restrictions) (Scotland) Regulations 2019 (SI 2019/409)

Lord Trefgarne

President, British Association of Aviation Consultants

Draft Agriculture (Legislative Functions) (EU Exit) Regulations 2019

Draft Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019

Draft Food and Farming (Amendment) (EU Exit) Regulations 2019

Draft State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

Seed Marketing and Seed Potatoes (England) (Amendment) Regulations 2019 (SI 2019/472)

Lord Walker of Gestingthorpe

Gestingthorpe Farming Company Limited

Attendance:

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