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

Drawn to the special attention of the House:
Sea Fish Licensing (England) (EU Exit) Regulations 2019

Includes information paragraphs on:
Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2019
Invasive Alien Species (Enforcement and Permitting) Order 2019
Port Services Regulations 2019

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HL Paper 325
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.

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Baroness Bowles of Berkhamsted
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Rt Hon. Lord Walker of Gestingthorpe
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 hlseclegscruptiny@parliament.uk.
Proposed Negative Statutory Instruments about which no recommendation to upgrade is made

- Merchant Shipping (Inland Waterways) (Amendment etc.) (EU Exit) Regulations 2019
Sea Fish Licensing (England) (EU Exit) Regulations 2019 (SI 2019/523)

Date laid: 8 March 2019

Parliamentary procedure: negative

These Regulations make provisions to enable the licensing of fishing boats from outside the UK for fishing in English waters after the UK’s withdrawal from the EU. According to the Department for Environment, Food and Rural Affairs, the instrument replicates the approach taken in the Fisheries Bill and has been laid in case the Fisheries Bill does not receive Royal Assent by exit day. Similar legislation has been taken forward for Scotland, Wales and Northern Ireland.

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 Environment, Food and Rural Affairs (Defra) has laid these Regulations before Parliament under the negative procedure, alongside an Explanatory Memorandum (EM). The main purpose of the instrument is to enable the licensing of fishing boats from outside the UK for fishing in English waters after the UK’s withdrawal from the EU. According to Defra, the instrument replicates the approach taken in the Fisheries Bill, which is currently before Parliament. It has been laid in case the Fisheries Bill does not receive Royal Assent by exit day.

Background

2. The EM explains that UK fisheries are currently managed under the EU’s Common Fisheries Policy (CFP), which establishes the objectives for the conservation and sustainable exploitation of fisheries resources. Under the relevant EU regulations, EU vessels that are licensed by their respective Member State to fish within EU waters have equal access to all EU waters and resources within the 12-200 nautical miles zone (measured from Member State baselines).

3. When the UK leaves the EU and the CFP, EU vessels will no longer have automatic access rights, or licences, to fish in UK waters. The UK, as an independent coastal state, will be responsible for managing its fisheries and marine environment.

4. The EM sets out that, under section 4 of the Sea Fish (Conservation) Act 1967, fishing within British waters by fishing vessels without the authority of a licence issued by Ministers is prohibited. While this only applies to British registered fishing vessels at present, Ministers may, by order, prohibit fishing by foreign vessels in British waters if they do not have a licence. The EM states that these powers are devolved.

What is changing

5. According to Defra, this instrument will make it illegal for foreign vessels to fish within English waters without the authority of a licence, and the Marine Management Organisation (MMO) will act as the single authority for issuing foreign vessel licences on behalf of all UK administrations. The Department...
says that as part of this licensing regime, foreign vessels will be required to comply with specific conditions attached to their licence for fishing within English waters which may include, for example, vessel monitoring systems and catch and position reporting. The licencing system will also allow the MMO, as the enforcement authority, to introduce closed areas or specific gear requirements on the basis of scientific advice. Foreign vessels fishing in English waters without a licence will be liable to enforcement action and possible prosecution. The EM states that the MMO will require new staff and updating of IT systems to carry out its new role. Defra told us that “[s]taff have been recruited to issue licences and the IT system to manage this is now in place”.

6. The Department emphasises that without the instrument it would not be possible to license fishing by foreign vessels within English waters, including as part of any international fisheries agreements that the UK may conclude with other coastal states after EU exit, and to manage marine resources effectively and sustainably.

7. Defra says that its preferred approach is to introduce the licensing powers through the Fisheries Bill, so that there is a consistent approach across the UK. While the Fisheries Bill had its second reading on 21 November 2018 and completed its Commons Committee stage on 17 December 2018, this instrument replicates the approach taken in the Bill in case the Bill does not gain Royal Assent before the UK leaves the EU. The Department told us that in order to achieve UK-wide consistency in the absence of a Bill, the devolved administrations have laid similar legislation to come into force by exit day that will enable them to manage the access of foreign fishing vessels to their waters.

8. We asked the Department about any potential impact of the new licensing regime for English waters on the fishing rights of vessels from Scotland, Wales and Northern Ireland. Defra told us that “vessels from England, Scotland, Wales and Northern Ireland currently have the right to fish in each other’s waters and this will not change. The Fisheries Bill will enshrine this principle.”

Conclusion

9. Fishing by foreign vessels in UK waters after EU exit is a politically significant issue. The House may wish to be aware that this instrument, which has been laid under the negative procedure, makes provisions for the licensing and control of foreign fishing vessels in English waters in case the Fisheries Bill does not receive Royal Assent by exit day. **Given the political significance, we draw the 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.**
INSTRUMENTS OF INTEREST


10. This Order, laid by HM Treasury (HMT), designates bodies for inclusion in departmental estimates and accounts for the financial year that ends on 31 March 2020 (for example, 15 bodies are designated to the Ministry of Housing, Communities and Local Government, including the Homes and Communities Agency). A new instrument is prepared each year to designate departmental boundaries; for the current year (2018-19), the relevant instrument is the Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2018 (SI 2018/313). In the accompanying Explanatory Memorandum, HMT says that the consolidation of bodies within the central government boundary supports greater transparency of spending data by providing Members of Parliament with information about departmental spending plans that is easier to understand and to track.

Invasive Alien Species (Enforcement and Permitting) Order 2019 (SI 2019/527)

11. The purpose of this Order, laid by the Department for Environment, Food and Rural Affairs (Defra), is to implement EU Regulation No 1143/2014 (“the EU Regulation”) that aims to prevent, minimise or mitigate the adverse impact of the introduction and spread of invasive alien species within the EU. Defra explains that invasive alien species pose a threat to some of the UK’s rarest species and most sensitive ecosystems, and that their impact is estimated to cost the economy more than £1.7 billion per year. This Order introduces criminal offences to enforce the restrictions contained in the EU Regulation, with a maximum penalty of two years’ imprisonment, a fine (not exceeding the statutory maximum in Scotland or Northern Ireland), or both. Defra says that the criminal offences back up the civil penalties regime that is also included in the Order, give regulators an option to enforce the most serious breaches and are intended to act as deterrent. The Order provides enforcement officers and customs officials with a range of powers, including stop and search powers, as well as powers of entry, examination, seizure (for example at the UK border) and sampling. The Order also enables cost recovery by the relevant regulators and a permitting and licensing regime. According to Defra, permits will be issued for the import, keeping and breeding (but not for sale or release) of species, for example, where these are needed for research or used in products that support human health. Licences will be made available for activities that aim to eradicate newly-arrived species or contain species that have spread. Defra says that a separate instrument was made to correct any deficiencies arising from the UK’s withdrawal from the EU.\footnote{Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/223).}

Port Services Regulations 2019 (SI 2019/575)

12. EU Regulation (2017/352) (“the EU Regulation”)\footnote{EU Regulation 2017/352.} established a framework for the provision of port services and common rules on the financial transparency of ports. The UK voted against the adoption of the EU
Regulation, arguing that its provisions (other than those promoting transparency of public funding) were unnecessary and largely inappropriate for promoting investment and efficiency at European ports, and particularly those in the UK. The UK was the only Member State to vote against the EU Regulation; it was however agreed, and the UK is required to comply with its EU legal obligations whilst it is still a Member State. Given the Government’s objection to the EU Regulation, we asked the Department for Transport (DfT) if it was Government policy to disapply the EU Regulation after exit day. DfT explained: “In the event of a no-deal Brexit, with no implementation period, it would be open to the Government to bring forward primary legislation to repeal the retained European Regulation (2017/352) at an appropriate juncture. In that eventuality, the Government would revoke these regulations which are only needed to supplement the EU Regulation.” The EU Regulation entered into force on 23 March 2017 and applies to Member States from 24 March 2019. These Regulations come into force on 6 April 2019. DfT explains that “Because of the pressure on the Department’s secondary legislation programme with the volume of Brexit no-deal SIs that we have been required to make, it was not possible for the Department to make this SI in time to adhere to the 21-day rule and come into force on 24 March, as ideally it would have done.” It is regrettable that, while the EU Regulation came into force two years ago, the Department was unable to bring forward secondary legislation in time to meet the implementation deadline specified.
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019

Instruments subject to affirmative approval

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APPENDIX 1: INVASIVE ALIEN SPECIES (ENFORCEMENT AND PERMITTING) ORDER 2019 (SI 2019/527)

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

Q1: When was the implementation deadline was for introducing an enforcement regime under EU Regulation 1143/2014? Has the UK missed the deadline, and if so, why?

A1: In regards to the implementation deadline for enforcement, Article 30 (4) of the EU Regulation states that member states should have communicated their enforcement measures to the Commission by the 2nd of January 2016. The UK has missed this deadline, but now having laid the Order we are further ahead than many other member states who still have yet to implement enforcement regimes. The delay in implementing the EU Regulation is primarily due to the fact that implementation proved to be more complex than originally envisaged, requiring domestic issues around enforcement to be fully worked through. We have also needed to prioritise the demands arising from the UK’s exit from the EU.

Q2: Has there been any adverse impact as a result of the late implementation of the enforcement regime?

A2: As a consequence of the delay we have been at risk of activity that would constitute a breach of the EU Regulation taking place. Where we have been made aware of activity prohibited under the EU Regulation, such as the sale and transport of listed species, we have attempted to contact those in breach, so that they can be made aware that their activity contravenes EU law. In instances where the activity could potentially also constitute a breach of other domestic legislation, such as the Wildlife and Countryside Act 1981, we have made the relevant enforcement bodies aware.

The EU Commission has been in regular contact with the INNS team at Defra, and has from time to time requested updates on our progress in putting an enforcement regime in place. The Commission have been informed of our progress in response to these requests. No infraction proceedings have been commenced against the UK in relation to this matter.

Q3: The Explanatory Memorandum refers to guidance to the general public and enforcement bodies that will be published at the time of laying. Where can that guidance be found?

A3: As regards to guidance documentation as stated in the Explanatory Memorandum, it is our intention that these documents will be available prior to the Order coming into force. We had intended them to be ready at the time of laying. There is still some time before the Order comes into force, and we will have this guidance ready and finalised well in advance of the coming into force date in October. We do not believe that the public or enforcement bodies will be impacted by this and Defra policy will continue supporting the general public and enforcement until formal guidance is be published.

We continue to be in contact with relevant enforcement bodies, and we will be seeking their continued input in drafting comprehensive guidance. Any direct queries from enforcement bodies on the Order can be made to the policy team before more formal guidance is published. The general public are able to contact Defra correspondence, their MP, or the GB non-native species secretariat, who
will ask policy to provide guidance if the question requires specific information relating to the Order. Policy have been helping answer correspondence from the public about the Order and will continue to do so.

20 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 25 March, Members declared no interests.

Attendance:

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