

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee B)

5th Report of Session 2017–19

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

Includes a Recommendation on the following:

Maritime Transport Access to Trade and Cabotage
(Revocation) (EU Exit) Regulations 2018

**Draft Accounts and Reports
(Amendment) (EU Exit)
Regulations 2018**

Includes 4 Information Paragraphs on 7 Instruments

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Secondary Legislation Scrutiny Committee (Sub-Committee B)

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

Rt Hon. Lord Cunningham of Felling (Chairman)	Rt Hon. Lord Janvrin	Lord Sherbourne of Didsbury
Baroness Donaghy	Lord Kirkwood of Kirkhope	Rt Hon. Lord Rooker
Lord Goddard of Stockport	Baroness O'Loan	Baroness Watkins of Tavistock
Lord Hodgson of Astley Abbotts	Baroness Redfern	

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/seclegbpublications>

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

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.

Fifth Report

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

Instruments recommended for upgrade to the affirmative resolution procedure

Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit) Regulations 2018

Date laid: 29 October 2018

Sifting period ends: 19 November 2018

1. This proposed negative instrument aims to revoke a number of EU laws regarding access to the maritime market and anti-competitive practices. The Department for Transport explains that, after exit, a number of reciprocal arrangements will be removed; for example, the rights for shipowners in the remaining 27 Member States to provide maritime services within the UK (maritime cabotage), as UK ships would no longer benefit from these equivalent rights in the EU. The Explanatory Memorandum (EM) states that “the UK has no intention currently of restricting cabotage since the UK believes that an open approach promotes competition leading to better and more efficient services. However, the UK does not intend that cabotage rights for Member States should continue to be expressly guaranteed in UK legislation when these will not necessarily be reciprocated for UK shipping.” The impact of these Regulations is not clearly explained in the EM. Given the uncertainty about the potential consequences for UK shipping, the House may expect the opportunity to debate this instrument. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

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

- European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018
- Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018
- Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018
- Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018
- Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018
- Official Controls (Animals, Feed and Food) (England) (Amendment) (EU Exit) Regulations 2018

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Accounts and Reports (Amendment) (EU Exit) Regulations 2018

Date laid: 31 October 2018

Parliamentary procedure: affirmative

Amongst other changes, these draft Regulations propose amendments to Part 15 of the Companies Act 2006 that relate to the preparation and filing of accounts by companies in the UK. While most of the amendments address minor deficiencies arising from the UK's exit from the EU, some of the changes, such as limiting certain exemptions from reporting requirements to UK registered companies, appear to be more significant. The Department for Business, Energy and Industrial Strategy has identified a risk of companies de-listing from UK markets as a result of these changes which the House may wish to explore further with the Minister.

These 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.

2. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations with an Explanatory Memorandum (EM). BEIS says that the purpose of the Regulations is to ensure that retained EU law in the area of company accounts and reports operates effectively after the UK's withdrawal from the EU. The draft Regulations are part of the Department's contingency preparations for a possible 'no deal' scenario.

Background

3. BEIS explains that the UK corporate accounting and reporting framework derives heavily from EU law. The Accounting Directive (Directive 2013/34/EU) sets out reporting requirements (including requirements in relation to the preparation of accounts) and exemptions from those requirements for entities, their parents or subsidiaries that are registered in the European Economic Area (EEA), or for entities that are listed on markets in the EEA. These requirements were transposed into UK law by Part 15 of the Companies Act 2006 ("the 2006 Act") and subsequent regulations. BEIS says that without amendments, this legislation would contain deficiencies and EU references which are no longer appropriate.

What is being changed

4. According to BEIS, the current provisions and exemptions partly rely on reciprocal arrangements with EEA countries. Following the UK's withdrawal from the EU, EEA countries will be third countries, and BEIS says that it would be inappropriate to continue with preferential treatment for EEA entities in a potential 'no deal' scenario without this preferential treatment being reciprocated by EEA countries. The draft Regulations therefore propose that in the absence of a negotiated exit agreement all overseas companies, including those from the EEA, will be subject to the same third country requirements, while preferential treatment will continue only for UK entities.

5. The instrument proposes a number of minor amendments to Part 15 of the 2006 Act which include, for example, substituting references to the EU Accounting Directive with references to domestic legislation.
6. More substantially, however, the instrument proposes to abolish certain exemptions which currently apply to EEA entities in relation to the preparation and filing of accounts. These exemptions cover, for example, dormant UK subsidiaries¹ of certain EEA parent undertakings which are not currently required to prepare and file annual accounts with Companies House. Similarly, UK subsidiaries with EEA parents, as well as intermediate UK parent companies with an immediate EEA parent, are not required to produce and file group accounts at present. After the UK's withdrawal from the EU, these exemptions will only be available to UK subsidiaries of UK parents.
7. The draft Regulations also propose to abolish certain arrangements under sections 395 and 403 of the 2006 Act which currently allow some entities, after the first financial year of reporting, to switch to accounting frameworks for the preparation of accounts or group accounts that are different from the International Accounting Standards or UK Generally Accepted Accounting Practise. At present, one of those conditions relates to when an entity trading on an EEA regulated market de-lists. The draft Regulations propose to limit this condition to the de-listing of entities that trade on UK regulated markets.
8. BEIS explains in paragraph 12.5 of the EM that limiting the scope of these exemptions to UK companies, especially the ability to switch between accounting frameworks as set out in paragraph 7, could lead to companies deciding to withdraw their listings from UK markets. This is because companies may seek accounting frameworks that are more advantageous or present less onerous reporting requirements. We asked the Department for further information about this risk, but BEIS was unable to provide this, explaining that:

“[T]he risk of companies de-listing is an indirect (secondary) risk which may arise from the changes to the requirements. In our analysis of impacts, we were not able to quantify the risk of companies de-listing from UK markets, or to determine the potential scale of this impact. Doing so would have required us to predict companies' future behaviour separate from the increased reporting costs. Given the unprecedented nature of the changes being introduced as a result of the UK's decision to leave the EU, and the lack of evidence on which to develop suitable models, our analysis would have been highly uncertain.”
9. The Committee notes that this may also create a risk of companies using the de-listing from UK markets as a loophole to avoid the UK's regulatory oversight, potentially undermining the high standards of UK markets.
10. BEIS also explains in the EM that it did not consult publicly on the proposals in order to minimise sensitivities ahead of the negotiations with the EU, but that informal consultation with relevant stakeholders suggests that many UK registered companies will have made their own preparations in advance of the UK's withdrawal from the EU to smooth the transition to the new accounting and reporting framework.

1 A company is dormant if it has not had any significant accounting transactions during an accounting period.

Conclusion

11. BEIS says that some of the changes proposed in the draft Regulations may lead to companies withdrawing their listings from UK markets, as they may seek accounting frameworks with less onerous reporting requirements. The Department is unable, however, to quantify this risk. The House may wish to explore further the draft Regulations and their potential impact, in particular the risk of de-listing and the potential loopholes this may create, with the Minister. **We therefore draw the draft Regulations to the special attention of the House, as they give rise to issues of public policy likely to be of interest to the House.**

INSTRUMENTS OF INTEREST

Draft Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018

12. These draft Regulations amend EU-derived regulations² which protect consumers buying package holidays or linked travel arrangements (LTAs)³ to ensure that these protections can continue to operate effectively after the UK's departure from the EU. Under the current arrangements, businesses are required to provide information to travellers about their package holiday or LTA, including about their statutory rights. Businesses also need to have adequate insolvency protection to cover refunds and the repatriation of passengers, with EU Member States mutually recognising their insolvency protection arrangements. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the draft Regulations revoke this mutual recognition as it would be inappropriate for the UK to recognise unilaterally the insolvency protection of EU businesses when it is unlikely that UK businesses will continue to benefit from that recognition in the remaining EU Member States. Under the new rules, EU businesses will be required to comply with UK insolvency protection rules if they sell package holidays or LTAs in the UK. The draft Regulations also propose a new obligation on UK businesses that sell package holidays that have been put together by an EU business: they will be required to comply with UK insolvency protection requirements unless they can demonstrate that the EU business has taken out appropriate insolvency protection. BEIS says that while this could cause extra cost to UK businesses, in practice the impact is expected to be insignificant because of the requirement for EU businesses to hold insolvency protection if they direct business into the UK.

Draft Privacy and Electronic Communications (Amendment) (No.2) Regulations 2018

13. In the Explanatory Memorandum to these Regulations, HM Treasury (HMT) says that the Government have decided to legislate to ban pensions cold calling because it was becoming increasingly clear that direct intervention was necessary to curb the threat of pension scams in the UK. These Regulations propose therefore to restrict firms from making unsolicited direct marketing calls to individuals regarding their pensions schemes. They also propose two exemptions to this restriction: either where the individual being called has given consent to the caller to receive direct marketing calls in relation to pensions;⁴ or where the recipient of the call has an existing client relationship with the caller such that they would reasonably envisage receiving direct marketing calls in relation to pensions. The Regulations enable the Information Commissioner's Office (ICO) to take enforcement action against those who contravene the Regulations: they may be liable to pay compensation to the victim and may be subject to enforcement action by the ICO under the Data Protection Act 1998.

2 The Package Travel and Linked Travel Arrangements Regulations 2018 ([SI 2018/634](#)) implement the EU Package Travel Directive (2015/2302).

3 An LTA is a holiday that includes two or more travel services, such as a flight and hotel booking, where the customer makes a single visit to a shop or website but selects and pays for each service separately.

4 Such consent must be given within the framework of the General Data Protection Regulation, requiring (among other things) a very clear and specific statement of consent.

14. HMT has undertaken two consultations in relation to this ban, in December 2016 and in July 2018. Respondents to both consultations overwhelmingly supported the ban.⁵

Draft Takeovers (Amendment) (EU Exit) Regulations 2019

15. These draft Regulations amend Part 28 of the Companies Act 2006 to enable the UK takeovers regime to operate effectively on a freestanding basis once the UK has left the EU. While the draft Regulations are part of the contingency preparations of the Department for Business, Energy and Industrial Strategy (BEIS) for a ‘no deal’ scenario, BEIS says that the provisions are likely to also apply if a deal is concluded, as the UK’s takeover regime will still need to become freestanding. The draft Regulations ensure that the Panel on Takeovers and Mergers (“the Panel”) will continue to be the UK’s statutory supervisory authority. BEIS explains that while a specific duty of the Panel to cooperate with supervisory authorities in the European Economic Area (EEA) is revoked, a comparable general duty to cooperate with counterpart authorities in countries outside the UK, including in the EEA, is maintained. The draft Regulations also enable the continued disclosure of confidential information by the Panel to EEA public authorities, but onward disclosure of such information by EEA authorities will no longer be permitted, as current reciprocal protections will no longer apply after exit. The draft Regulations also end the current EU shared jurisdiction regime for companies that are headquartered in one EEA country and trade securities exclusively in another. At present, a takeover of such a company is usually supervised by two regulatory authorities, one in the country where the target company is registered and the other in the country where that company is listed on a regulated market. BEIS explains that under the new rules, any takeover bid involving a company registered in the UK but trading securities exclusively in a EEA country will be supervised only by the Panel, while takeovers of companies registered in an EEA country but trading securities exclusively on a regulated UK market will not be supervised automatically by the Panel but may be supervised by another authority. BEIS expects that the end of the shared jurisdiction regime will affect around 25 EEA companies and ten UK companies.

Merchant Shipping (Work in Fishing Convention) Regulations 2018 (SI 2018/1106)

Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 (SI 2018/1107)

Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018 (SI 2018/1108)

Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018 (SI 2018/1109)

5 See: HM Treasury, Department for Work & Pensions, *Pension scams: consultation response*, August 2017: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf [accessed 13 November 2018].

And; HM Treasury, *Regulations to ban pensions cold calling: consultation response*, October 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752005/regulations_to_ban_pensions_cold_calling_consultation_response_web.pdf [accessed 13 November 2018].

16. These four instruments bring UK law in line with the International Labour Organisation Work in Fishing Convention 2007. Amongst other things, these instruments impose duties and requirements on fishing vessels to ensure the protection of fishermen in relation to the minimum age for working, night work, work agreements, payments, repatriation, accommodation, food, catering, medical care and fishing vessel owner's liability towards fishermen. There is currently no statutory requirement for the regular inspection of the living and working conditions on fishing vessels; however, provisions under these Regulations require every UK fishing vessel to be subject to a survey every five years.⁶ The Regulations also introduce a requirement for fishermen to hold a medical certificate to show they are medically fit, so they can work safely and that their condition will not be worsened by their work. Each instrument sets out the offences and penalties for failure to comply with the Regulations. Some of the measures are progressively implemented to give fishing vessel owners and fishermen time to comply, and some requirements are phased in so that they apply to larger vessels and those which operate for longer periods first.

6 Four years for vessels over 24m in length.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Mental Health (Northern Ireland) (Amendment) Order 2018
Package Travel and Linked Travel Arrangements (Amendments) (EU Exit) Regulations 2018
Privacy and Electronic Communications (Amendment) (No. 2) Regulations 2018
Social Security (Amendment) (EU Exit) Regulations 2018
Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018
Takeovers (Amendment) (EU Exit) Regulations 2019

Draft instruments subject to annulment

East Suffolk (Electoral Changes) Order 2018
West Suffolk (Electoral Changes) Order 2018

Instruments subject to annulment

SI 2018/1106 Merchant Shipping (Work in Fishing Convention) Regulations 2018
SI 2018/1107 Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018
SI 2018/1108 Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018
SI 2018/1109 Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018
SI 2018/1114 National Health Service (Pharmaceutical Services, Charges and Prescribing) (Amendment) Regulations 2018
SI 2018/1116 Childcare (Miscellaneous Amendments) (EU Exit) (England) Regulations 2018
SI 2018/1126 Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment No. 3) Regulations 2018
SI 2018/1127 Coroners Allowances, Fees and Expenses (Amendment) Regulations 2018

APPENDIX 1: 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 13 November 2018, Members declared no interests.

Attendance:

The meeting was attended by Lord Cunningham of Felling, Baroness Donaghy, Lord Goddard of Stockport, Lord Hodgson of Astley Abbotts, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury, Baroness Redfern and Lord Rooker.