

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee B)

6th Report of Session 2017–19

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

Includes a Recommendation on the following:

Companies, Limited Liability Partnerships and Partnerships
(Amendment etc.) (EU Exit) Regulations 2018

Includes 2 Information Paragraphs on 2 Instruments

Ordered to be printed 20 November 2018 and published 22 November 2018

Published by the Authority of the House of Lords

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.

Sixth Report

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

Instruments recommended for upgrade to the affirmative resolution procedure

Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2018

Date laid: 5 November 2018

Sifting period ends: 23 November 2018

1. The purpose of these draft Regulations, laid by the Department for Business, Energy and Industrial Strategy as a proposed negative, is to ensure that the UK's company law framework can operate effectively after the UK's withdrawal from the EU. The instrument forms part of the Department's contingency preparations for a 'no deal' exit. While the Department asserts that the instrument seeks to preserve the company law framework unchanged as far as possible and appropriate, some of the proposed changes nevertheless appear to be significant. The Committee notes that the Explanatory Memorandum provides limited information on the expected impact of some the changes, in particular the proposed revocation of regulations underpinning the current European Economic Area cross-border mergers regime.
2. Given the importance of the draft Regulations for the continued and effective operability of the UK company law framework after exit, the House may expect the opportunity to debate the 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 Enforcement Order, European Order for Payment and European Small Claims Procedure (Amendment etc.) (EU Exit) Regulations 2018
- European Network of Employment Services (EU Exit) Regulations 2018
- European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2018
- INSPIRE (Amendment) (EU Exit) Regulations 2018
- Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018

INSTRUMENTS OF INTEREST

Draft Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2018

3. These draft Regulations amend the Companies Act 2006 and other legislation to ensure that the framework for the regulatory oversight and professional recognition of statutory auditors and third country auditors can work effectively following the UK's withdrawal from the EU. The Department for Business, Energy and Industrial Strategy (BEIS) says that the draft Regulations are contingency planning for a 'no deal' scenario, and that they will end the preferential treatment of auditors from the European Economic Area (EEA) which is currently reciprocated by EEA countries, but which will no longer be appropriate after exit. BEIS says that under the new arrangements, auditors from EEA countries will be subject to the same registration requirements and oversight as those from third countries. The draft Regulations propose a transition period until 31 December 2020 during which the Financial Reporting Council (FRC), the UK's statutory regulator of the auditing sector, will assess the equivalence of EEA countries' audit regulatory frameworks. Where such an equivalence is established, fewer registration requirements will apply to auditors from those countries and no regular audit inspections will be carried out. During the transition period the FRC will also assess the adequacy of the equivalent regulatory authorities in EEA countries in relation to the exchange of audit papers and investigation reports. These decisions will be made by the Secretary of State on recommendation of the FRC under new powers which are being transferred from the European Commission and will require additional regulations. BEIS estimates that the new requirements will affect 291 companies that are currently incorporated in the EEA and listed on UK regulated markets and 77 audit firms from the EEA that audit these companies. BEIS also expects that some 146 Public Interest Entities (PIE)¹ whose securities are currently traded only on EEA markets and which are audited by eight UK audit firms, will no longer fall under the enhanced regulatory requirements that apply to PIEs because they will be treated as third country entities after exit.

Merchant Shipping (Fees) Regulations 2018 (SI 2018/1104)

4. The Maritime and Coastguard Agency (MCA) provides a range of services such as vessel surveys, seafarer certifications and other documentation which are critical to maritime safety. The MCA has not changed its fee levels since 2006 and has absorbed the increases in the costs incurred in providing these services without raising fees. As a result, the Department for Transport (DfT) has assessed that "industry has benefitted from this under recovery of costs and in effect has received the services at below market rates."² These Regulations revise those fees to enable the MCA to achieve full cost recovery. The Explanatory Memorandum explains that these changes "will reduce the burden on the taxpayer and adhere to the consumer pays principle. It will eliminate the subsidisation of services to industry and ensure that the user pays the full cost of the resources that are consumed by the [MCA] in providing the service." The Committee wrote to the Minister, Nusrat Ghani MP, to ask further questions about the impact of the fee revisions. The correspondence is set out at Appendix 1. **Whilst the Committee notes the**

1 Public Interest Entities include banks, building societies, insurers and listed companies. There are enhanced audit requirements for PIEs because of the extent of the public interest in those audits.

2 Impact Assessment, p 5.

Minister's explanation (in the correspondence) for why it has taken so long for MCA fees to be increased, we would remind Departments that it is not good practice to leave fees unreviewed for so long and would urge the DfT to ensure it carries out more regular reviews of fee levels to avoid substantial increases for service users in the future.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Statutory Auditors and Third Country Auditors (Amendment)
(EU Exit) Regulations 2018

Trade Repositories (Amendment and Transitional Provision)
(EU Exit) Regulations 2018

Instruments subject to annulment

- SI 2018/1134 National Health Service (General Medical Services Contracts)
(Prescription of Drugs etc.) (Amendment) Regulations 2018
- SI 2018/1136 Plant Health (England) (Amendment) (No. 5) Order 2018
- SI 2018/1138 Social Security (Scotland) Act 2018 (Best Start Grants)
(Consequential Modifications and Saving) Order 2018
- SI 2018/1147 Communication of Investments (Revocation) (EU Exit)
Regulations 2018
- SI 2018/1151 Greater London Authority (Consolidated Council Tax
Requirement Procedure) Regulations 2018

APPENDIX 1: MERCHANT SHIPPING (FEES) REGULATIONS 2018 (SI 2018/1104)

Letter from Rt Hon. Lord Cunningham of Felling, Chairman of the Secondary Legislation Scrutiny Committee Sub-Committee B, to Ms Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport

I am writing as Chairman of the Secondary Legislation Scrutiny Committee Sub-Committee B which gave preliminary consideration to these Regulations at its meeting on Tuesday 6 November. The Committee has asked me to raise a number of issues with you.

These Regulations increase the fees charged by the Maritime and Coastguard Agency in providing services to ship owners and seafarers. The Committee acknowledges that these fee revisions will reduce the burden on the taxpayer and ensure that the user pays the full costs for the service received. However, the Committee notes with concern that these fees have not been revised since 2006 and that service users are now facing a substantial increase in costs. As such, can you please explain:

- What is the average range of fee increases in cash terms (we note the percentage terms given in the Impact Assessment)?
- Are the fees tax deductible?
- How do the fees compare with those charged in other EU states and whether they have any concerns that the proposed increase in fees will have a detrimental competitive effect on the UK industry?
- Has any consideration been given to raising these fees incrementally over a longer period of time (we note that a phased increase of only two years is in place for certain services)?
- What measures has the Department for Transport put in place to ensure that all fees are reviewed at shorter and more regular intervals in order to avoid significant increases (such as those proposed in this instrument) in the future?

9 November 2018

Letter from Ms Nusrat Ghani MP to Lord Cunningham of Felling

Thank you for letter dated 9 November 2018. In response to your specific queries please find my responses below:

- **What is the average range of fee increases in cash terms (we note the percentage terms given in the Impact Assessment)?** The average increase in the survey fee is £53 which is being phased in over two years, the average increase in Seafarer Training and Certification (STC) fees is £32 and the average increase in Registry of Shipping and Seaman (RSS) fees is £17. The survey fee is an hourly rate for vessels and for example a Domestic Passenger Vessel Class V in good order based on seven hours of work will equate to an extra annual cost of £371.
- **Are the fees tax deductible?** The fees are not tax deductible.
- **How do the fees compare with those charged in other EU states and whether they have any concerns that the proposed increase in fees**

will have a detrimental competitive effect on the UK industry? EU states have different fees models, with those running commercial registers e.g. Malta and Cyprus charging a fee based on the net tonnage of the vessel. Therefore, the larger the vessel, the greater the single annual registration fee. Germany uses the same fee model as the UK whereby a client pays for services as and when provided rather than a fee linked to vessel size. After the increases, the UK flag remains competitive with other EU registers. For example, a ten year old mid-sized container vessel would cost approximately £22,000 on the UK flag, £37,000 under the Maltese flag and £44,000 under the Cypriot flag over a five year period. It is not anticipated that the survey fee increase will have a detrimental competitive impact on the UK industry as our statutory fees are between 0.2% to 0.3% of total operating costs for all vessel types. Furthermore the MCA's new rate is still viewed as competitive in the market place compared to Recognised Organisations (RO) to whom the majority of the UK's maritime survey work is delegated. There is not a typical RO rate as this will depend on a variety of factors e.g. size, profile and age of the fleet as well as broader commercial considerations.³

- **Has any consideration been given to raising these fees incrementally over a longer period of time (we note that a phased increase of only two years is in place for certain services)?** Consideration was given to phasing in the increases over two or three years by my predecessor, who decided to phase in increases over two years. A decision that I subsequently endorsed. It enables the MCA to meet the Managing Public Money requirement of achieving cost neutrality within a reasonable time period.
- **What measures has the Department for Transport put in place to ensure that all fees are reviewed at shorter and more regular intervals in order to avoid significant increases (such as those proposed in this instrument) in the future?** The Department for Transport has already started progressing the next round of fee increases and will be reviewing its systems and processes to ensure that increases take place at shorter, more regular intervals. My predecessor and the MCA Chief Executive have both made public commitments to industry to this effect and published this on gov.uk as part of the consultation feedback to stakeholders.

It may also be helpful to highlight that the Agency has been attempting to increase its fees from 2011. At this point it was determined that an increase would not be appropriate given the economic downturn. The Agency continued to work with Ministers and to complete the regulatory processes required for consultation. This work included a series of further proposals to ministers in 2012 and 13. In September 2015 the Maritime Growth Study highlighted that the Agency's fees were uncompetitive and gave additional impetus. In particular, it led to an Agency consultation during which industry agreed that the fees needed increasing but suggested a phased approach would be required to allow it time to adapt to the changes. Although my predecessor agreed the way ahead in December 2016, since then the Agency has been completing the remaining regulatory processes in order to raise its fees to their new levels. It has been a protracted and time-consuming process which a more regular uplift process should help to avoid.

November 2018

³ The Oxford Economics Independent Impact Assessment (January 2013) that provided justification for the uplift of MCA fees assessed the average hourly rate of ROs to be approximately £300.

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 20 November 2018, Members declared no interests.

Attendance:

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