HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee B)

9th Report of Session 2017–19

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

Includes 3 Recommendations

Draft Nuclear Safeguards (EU Exit) Regulations 2018 and one related instrument

Includes 6 Information Paragraphs on 6 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

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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.

Ninth Report

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

Instruments recommended for upgrade to the affirmative resolution procedure

European Structural and Investment Funds Common Provisions (Amendments) (EU Exit) Regulations 2018

Rural Development (Amendment) (EU Exit) Regulations 2018

Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018

Date laid: 29 November 2018

Sifting period ends: 18 December 2018

1. These three Proposed Negative instruments all deal with aspects of continuing funding under the European Agricultural Fund for Rural Development (EAFRD). They raise important issues and involve large amounts of money. We were therefore disappointed that the Explanatory Memoranda (EMs) were so uninformative. For example, they provide no explanation of the different instruments' discrete functions; they do not explain that EAFRD involves £400-450 million expenditure per year, nor do they explain what the money is spent on. The supplementary information that we have been given indicates that this may be less than the expenditure previously sent to the EU for those purposes, but that is not clear. Supplementary material from the Department for Environment, Food and Rural Affairs also states that, in a 'no deal' scenario, not only will these Regulations permit existing projects to continue, but they will also allow new ones to be commissioned up to 2020. The proposed European Structural and Investments Funds Common Provisions (Amendment) (EU Exit) Regulations 2018 would also perform a similar function for the European and Maritime Fisheries Fund which will cost £132.7 million for the remainder of the programme period up to 2020. The EMs provided simply state that these instruments correct deficiencies in retained law to the effect that in a 'no deal' scenario they would allow continued delivery of payments already committed to. The lack of sufficient background information and the almost total absence of any financial analysis in the EMs make Parliamentary scrutiny of these Regulations difficult. **We therefore recommend that these three instruments should be subject to the affirmative resolution procedure to allow the House an opportunity to press the Minister for a fuller explanation of their purpose and effect.**

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

- European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018
- Exotic Disease (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

- Health and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2018
- Livestock (Records, Identification and Movement) (Amendment) (Northern Ireland) (EU Exit) Regulations 2018
- Renewables Obligation (Amendment) (EU Exit) Regulations 2018
- Shipments of Radioactive Substances (EU Exit) Regulations 2018
- Zoonotic Disease Eradication and Control (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Nuclear Safeguards (EU Exit) Regulations 2018

Draft Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018

Date laid: 29 November 2018

Parliamentary procedure: affirmative

These draft Regulations propose a new domestic safeguards regime for the civil nuclear sector to replace the current Euratom safeguards regime, which will end when the UK leaves Euratom on the same day as it withdraws from the EU. The Department for Business, Energy and Industrial Strategy says that the draft Regulations would enable the UK to continue to comply with its obligations under international agreements on non-proliferation of nuclear weapons. The Department also explains that the proposed new regime largely reflects the current arrangements under Euratom and that the Office for Nuclear Regulations (ONR) will take over responsibility for oversight of the new regime. Information that we have obtained from the Department suggests that the ONR is on track in preparing to take on this new responsibility.

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 two sets of draft Regulations with an Explanatory Memorandum and Impact Assessment. The purpose of the draft Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018 ("FM & IA Regulations") is to define "fissionable material" and "relevant international agreement". The purpose of the draft Nuclear Safeguards (EU Exit) Regulations 2018 ("NS Regulations") is to provide a detailed framework for a new domestic safeguards regime to replace the current safeguards regime provided by the European Atomic Energy Community (Euratom). The new safeguards regime is to apply to nuclear material held in civil nuclear facilities, including fissionable material as defined in the FM & IA Regulations.

3. BEIS says that the intention is to debate the two draft Regulations together in Parliament. This report is focused on the NS Regulations.

Background

4. The UK will withdraw from Euratom on the same day as it will leave the EU, and Euratom's oversight over the civil nuclear sector in the UK will end on exit day. Once Euratom arrangements no longer apply, the UK will need to have in place new bilateral safeguards agreements with the International Atomic Energy Agency (IAEA) to replace current trilateral agreements involving Euratom. These bilateral agreements were signed in June 2018 and set out the UK's future safeguards obligations in relation to the non-proliferation of nuclear weapons. In addition, Nuclear Cooperation Agreements are in place with the United States, Canada, Australia and Japan. BEIS says these agreements, together with the draft Regulations, will allow the Office for

Nuclear Regulation (ONR) to establish a new regime which will deliver the international safeguards standards of the IAEA from day one of exit. Over time, the intention is to deliver standards that are equivalent in effectiveness and coverage to those currently provided by Euratom, exceeding the international standards.

5. BEIS explains that nuclear safeguards are non-proliferation reporting, accountancy and verification processes by which nation states demonstrate to the international community that civil qualifying nuclear material is not diverted into military or weapons programmes. They are also needed to enable civil nuclear trade.

6. The NS Regulations propose a detailed framework for the new domestic safeguards regime. The ONR, as existing UK regulator for nuclear safety and security, will take on regulatory oversight from Euratom. As under the current Euratom arrangements, the core requirements of the new regime will be for operators of a qualifying nuclear facility to maintain records and report information to the ONR which the ONR will then use to provide information to the IAEA, thus fulfilling the UK's obligations under the IAEA agreements. The NS Regulations prescribe the information and reporting requirements and the forms by which that information will be conveyed to the ONR.

7. According to BEIS, the NS Regulations largely replicate the current Euratom arrangements, with a number of additional requirements for operators to provide information to the ONR, including through Accountancy and Control Plans, and a different approach to exemptions for schools and hospitals.

Accountancy and Control Plans

8. The NS Regulations propose a new requirement for operators of civil nuclear facilities to develop and submit an Accountancy and Control Plan to the ONR. Under Euratom arrangements this is voluntary, but BEIS says that making it obligatory will codify in a single document the responsibilities and procedures that operators have in relation to their nuclear material accountancy and control systems. According to BEIS, this will facilitate more effective oversight by the ONR and align the ONR's oversight of safeguards more closely with its approach to regulating nuclear safety and security. BEIS estimates that the total one-off cost for operators of familiarising themselves with the new requirement will be between £460,000 and £720,000, with annual follow-on costs of between £60,000 and £100,000 for preparing the Accountancy and Control Plans.

Exemptions for schools and hospitals

9. Some schools and hospitals hold very small amounts of nuclear material for educational and medical purposes. These sites are currently not subject to Euratom safeguards obligations due to informal agreements with Euratom. BEIS says that the NS Regulations propose exemptions for schools on the basis of the very small quantity of nuclear material they hold. In contrast, hospitals will not receive an explicit exemption under the new regime, but under the NS Regulations they will be able to apply for, and benefit from, a derogation for facilities with limited operation, which will mean more limited reporting requirements, or make use of an exemption for sites where the nuclear material is, in practice, irrecoverable. We asked the Department

why it had not opted for a more general exemption for hospitals as under the current informal Euratom arrangements. BEIS told us that:

> "We understand that that there may be some hospitals, such as University Hospitals, which do report under the Euratom regime, although they do benefit from a derogation, which requires limited reporting. Due to the limited evidence on the precise nature of all of the qualifying nuclear material held by hospitals, a similar exemption for hospitals was particularly challenging to include within the regulations, as this may remove from the regime some establishments which are currently subject to the Euratom regime. Qualifying nuclear material held by hospitals may meet the criteria set out in regulation 32(1) [in relation to material that is irrecoverable] and therefore be exempt from the regulations, and as set out above, in implementing the new Nuclear Safeguards Regulations, ONR will take a proportionate approach based on risk, in accordance with The Regulators' Code."

10. BEIS estimates that it will cost the UK's 6,500 secondary schools and 2,400 hospitals between £190,000 and £1,200,000 in total to familiarise themselves with the new regulatory regime. BEIS does not know how many hospitals do not qualify for the exemption for sites where the nuclear material is irrecoverable, and how many will need to seek a derogation for limited reporting instead, because they do not meet the requirements for the exemption. Based on an assumption that between 25% and 75% of hospitals will need to seek such a derogation, BEIS puts the total cost for hospitals at between £20,000 and £500,000 for the one-off derogation application and at between £10,000 and £220,000 per year for the annual reporting to the ONR. BEIS says that hospitals will be able to seek advice from the ONR about their position under the new regime.

Progress made in preparing for the new safeguards regime

11. We asked the Department why the higher Euratom safeguards standards could not be met on day one after exit, and when the ONR expects to be able to meet the higher Euratom standards. BEIS told us that:

> "The Government and ONR have always made it publicly clear, including in Parliament, that the UK will meet IAEA international obligations from 29 March 2019 including through the recruitment and training of inspectors, building thereafter to a regime equivalent in coverage and effectiveness to that currently provided by Euratom, with or without a deal on withdrawal from the European Union. ONR needs time to build its capacity and expertise in implementing safeguards to have in place a safeguards regime equivalent in effectiveness and coverage to that provided by Euratom. It takes 12-18 months to up-skill new recruits to inspector level, less time is required to up-skill those already in post, and the ONR have recruited and are training the inspectors required to deliver international obligations on day one. ONR aims to have the required capacity and capability to deliver a regime equivalent in effectiveness and coverage to that currently delivered by Euratom by December 2020."

12. The ONR will need to be able to deliver the new domestic safeguards regime after 31 December 2020 (if there is an implementation period following the UK's withdrawal from the UK), or after 29 March 2019 (in a 'no deal'

scenario). BEIS says that the ONR is in the process of developing a new Safeguards Information Management and Reporting System (SIMRS) to enable it to provide reporting data to the IAEA, and that it is also recruiting and training staff to carry out its new regulatory functions. We asked BEIS about the progress that the ONR has made in these preparations. In relation to the SIMRS, the Department told us that:

> "ONR is confident that it will have in place the new SIMRS system, to enable the UK to meet international obligations when we leave Euratom on 29 March 2019. The development of SIMRS is on track, with all work packages delivered on time to date. SIMRS is on target for testing and operations later this month. SIMRS, will enable ONR to manage and process nuclear materials accountancy reports from duty holders and submit these, along with other relevant safeguards reports to the IAEA."

13. The ONR estimates that it will require a team of around 30 to 35 staff to be able to deliver its functions to Euratom standards as set out in the NS Regulations. We asked BEIS about the progress made on recruitment and training. The Department said that:

> "ONR estimated it would require a minimum of 9 safeguards inspectors to deliver a safeguards regime that enables the UK to meet its international obligations from 29 March 2019. ONR has exceeded this minimum requirement and has in place 15 safeguards officers and 3 nuclear material accountants, all of whom are progressing through training. ONR will have sufficient safeguards inspectors and nuclear material accountants in place to deliver a UK State System of Accountancy for and Control of (UK SSAC) nuclear material that enables the UK to meet international obligations from 29 March 2019. The estimated 30-35 staff needed to deliver a regime equivalent in effectiveness and coverage to that currently provided by Euratom includes support staff as well as inspectors and nuclear material accountants. ONR is in the process of recruiting and training the required additional safeguards specialists to deliver a regime equivalent in coverage and effectiveness to that currently provided by Euratom."

Conclusion

14. These draft Regulations seek to establish a new domestic nuclear safeguards regime to replace the current Euratom arrangements when the UK withdraws from the EU and Euratom. While the Department says that the new regime will largely replicate the requirements of the current Euratom regime and meet Euratom standards by the end of 2020, the House may wish to explore further the approach the Government have taken with these draft Regulations. **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 Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018

15. These Regulations continue the existing system of passenger rights as set out in EU law, including: the right of passengers to compensation and assistance if denied boarding or if flights are cancelled or delayed; the right of disabled passengers and those with reduced mobility to access air transport and to receive free of charge assistance; and the rights of passengers in relation to injury or damage to baggage. In the event of 'no deal' with the EU, however, these Regulations remove the mutual recognition of the insolvency protection as set out in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012: the Package Travel Directive. At present, businesses established in European Economic Area (EEA) Member States and their UK agents are exempt from the requirement to hold an Air Travel Organisers' Licence (ATOL) because the UK recognises mutual schemes in other Member States. In the absence of an agreement with the EU, businesses established in the EEA will be required to hold an ATOL for their package sales in the UK. Applications for these licences will be assessed by the Civil Aviation Authority. There are different types of ATOL licences depending on the type of business being operated.[1] The Government's guidance explains that "businesses should be aware that remaining Member States are unlikely to recognise UK insolvency protection.[2] Traders may therefore need to comply with multiple insolvency regimes across the EU and will have to make themselves familiar with the regime of the country they are selling to".

Draft Higher Education (Fee Limits for Accelerated Courses) (England) Regulations 2018

16. These Regulations propose variable limits on the maximum fees that higher education (HE) providers can charge students undertaking accelerated HE courses where the first year of that course starts on or after 1 August 2019. Maximum fees for accelerated full-time courses in 2019–20 will be 20% higher than the equivalent maximum fees for full-time courses that are not accelerated. In the Explanatory Memorandum (EM), the Department for Education (DfE) says that the main objective is to enable providers of accelerated degree courses, which require more teaching to be delivered within each twelve-month period compared with standard degree courses, to charge annual fees up to a higher cap that will still mean that total fee costs for accelerated degree courses will be lower than their standard equivalent courses. The aim is to encourage greater provision of accelerated courses by providers, and greater take-up of those courses by students for whom they represent the best option.

17. DfE explains that it carried out consultation on these proposals between December 2017 and February 2018. 97 responses were received, from a range of HE providers, HE representative bodies, further education colleges, professional representative organisations, charitable organisations and

1 The CAA provides advice on the various types of licences available under ATOL; which includes a standard ATOL, a small business ATOL, franchise ATOL and trade ATOLs.

2 Department for Business, Energy & Industrial Strategy, *Consumer rights if there's no Brexit deal* (12 October 2018): https://www.gov.uk/government/publications/consumer-rights-if-theres-no-brexit-deal--2/consumer-rights-if-theres-no-brexit-deal [accessed 12 December 2018].

individuals. The Government response was published in November.[3] We note from the EM that, in answer to the key question of whether an annual accelerated degree fee cap up to 20% higher than the standard equivalent would incentivise wider provision, 31% of respondents agreed, while 58% disagreed. In the EM, and in the Government response, DfE casts doubt on the validity of the high level of disagreement, with statements such as: "the overwhelming majority of these negative assertions were theoretical, conservative, and not supported by evidence based on existing accelerated degree provision". **We would comment that, while such statements may support the decision to implement the original proposals, they run the risk of leading respondents to doubt that the Department approached the consultation process with an open mind.**

Draft Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018

18. In the Explanatory Memorandum (EM) to these Regulations, HM Treasury (HMT) says that the rules for ensuring that certain UK businesses properly assess money laundering and terrorist financing risks and carry out appropriate checks on their customers are set out in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692: "the MLRs").[4] It also says that the role of the Financial Conduct Authority (FCA) in overseeing the work of Anti-Money Laundering (AML) supervisory bodies who are professional, self-regulatory organisations is established by the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (SI 2017/1301). Both SI 2017/692 and SI 2017/1301 include provisions that derive solely from the UK's membership of the EU, which will cease to be appropriate once the UK is no longer a member of the EU. These draft Regulations propose to address deficiencies in the relevant retained EU law in relation to anti-money laundering, to ensure that the legislation continues to operate effectively at the point at which the UK leaves the EU.

19. Noting that, at paragraph 2.11 of the EM, HMT states that the amendments to be made will, among other things, remove any requirements to transmit AML-related information to EU institutions, we obtained further information from the Department about future cooperation between the FCA and its counterparts in other countries in dealing with money-laundering. We are publishing HMT's response at Appendix 1; it will be the case that, while there will no longer be an EU-specific requirement on the FCA, that body will continue to be subject to a general duty to co-operate with other supervisory authorities, whether at home or abroad, by taking such steps as it considers appropriate to counter money laundering and terrorist financing.

Draft Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2018

20. These draft Regulations, laid by the Department for Business, Energy and Industrial Strategy (BEIS), seek to correct deficiencies in retained EU law in relation to the supervision and control of shipments of radioactive waste and spent fuel. BEIS explains that the aim is to maintain a functioning regime

3 See Department for Education, Accelerated Degrees: Government consultation response (November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757047/Accelerated_Degrees_consultation_response_November_2018.pdf [accessed 4 December 2018].

4 The Secondary Legislation Scrutiny Committee drew SI 2017/692 to the attention of the House in its Second Report of the current Session (HL Paper 8).

in this area following the UK's withdrawal from the EU and Euratom. The intention is to revoke the current regulations[5] which prescribe procedures for the regulation and authorisation of shipments of radioactive waste and spent fuel within the Euratom community, and for shipments to and from third countries, and then largely to replicate the current arrangements by requiring broadly equivalent procedures for the import, export and transit of radioactive waste and spent fuel into and out of the UK. According to BEIS, this will allow for the continuation of the UK's nuclear activities, such as decommissioning legacy sites and returning radioactive waste arising from the reprocessing of other countries' spent fuel. BEIS explains that as authorisations will no longer be mutually recognised after exit, operators will in future need to request authorisations from the relevant UK competent authority[6] to import radioactive waste and spent fuel from Euratom states. They will also need to notify the competent authority of the completion of shipments to Euratom states and, when importing from a Euratom state, they will need to provide evidence that they have made an arrangement with the exporter which has been accepted by the exporter's competent authority.

Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 (SI 2018/1227)

21. This instrument, amongst other changes, introduces a new requirement for a written management system for certain waste sites in England and Wales. The Department for Environment, Food and Rural Affairs (Defra) explains that under the current arrangements, permits for waste sites issued after 6 April 2008 include a requirement for waste operators to use a written management system. The purpose of such a system is to identify and minimise the risks of pollution and to keep a written record of activities. From 7 April 2019, this requirement will apply to all permits issued before 6 April 2008 to ensure that all permitted waste sites are covered. Defra expects a one-off cost of £10.5 million for the sector, followed by annual cost of £1.4 million. The instrument also introduces a new Fixed Penalty Notice (FPN) for breaches of the household waste duty of care. Defra explains that, under section 34 of the Environmental Protection Act 1990, it is a criminal offence for households to give their waste to someone to take it away without checking whether they are a registered waste carrier.[7] Breaches of this duty can be prosecuted through the courts at present, leading to a fine and criminal record. Defra says that the new FPN will provide a more proportionate alternative to prosecution: if a person pays the notice within 14 days, they cannot be convicted for the offence. The FPN is set between £150 and £400, with a minimum early payment of £120, and will come into force on 7 January 2019. The Department has told us that local authorities will introduce the FPN to their own timeframes and that guidance has been issued to support them, including in relation to raising awareness of the new FPN.[8]

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5 The Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 implement Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel.

6 In the UK the competent authorities are the agencies responsible for environmental protection. These are the Environment Agency in England, the Scottish Environment Protection Agency, the Natural Resources Body for Wales and the Northern Ireland Environment Agency.

7 The Environment Agency maintains an online register of waste carriers, brokers and dealers. Environment Agency, *Register of waste carriers, brokers and dealers:* https://environment.data.gov.uk/public-register/view/search-waste-carriers-brokers [accessed 12 December 2018].

8 See: Department for Environment, Food & Rural Affairs, *Household waste duty of care: fixed penalty notice guidance* (26 November 2018): https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance [accessed 12 December 2018].

Sanctions Review Procedure (EU Exit) Regulations 2018 (SI 2018/1269)

22. The UK currently implements over 30 sanctions regimes as an EU member state. These include country-specific sanctions, for example, in relation to Russia, North Korea and Iran, as well as sanctions targeting Da'esh, Al Qaida and other terrorist groups. There are currently around 2,000 individuals and entities subject to sanctions implemented by the UK.[9] These sanctions include asset freezes, travel bans and other financial and trade restrictions. The UK has undertaken to maintain the same sanctions as the EU but to do so needs to restate them. This is the first of a series of instruments to be made under the Sanctions and Anti-Money Laundering Act 2018 (the 2018 Act), setting out the appeal procedure for those on whom sanctions are imposed. Other specific sanctions will follow in the next few months as a mix of negative and made affirmative instruments to conform with the requirements of the 2018 Act.

9 The names of designated persons are not included in Regulations but will be held on a separate administrative list on the Gov.uk website, see: HM Government, *Collection:*

Financial sanctions targets by regime (19 October 2018): https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases [accessed 12 December 2018].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018

Civil Legal Aid (Amendment) (EU Exit) Regulations 2019

Higher Education (Fee Limits for Accelerated Courses) (England) Regulations 2018

Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018

Trade Marks (Amendment etc.) (EU Exit) Regulations 2018

Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2018

Instruments subject to annulment

SI 2018/1217	State Pension Revaluation for Transitional Pensions Order 2018
SI 2018/1218	Occupational Pensions (Revaluation) Order 2018
SI 2018/1219	State Pension Debits and Credits (Revaluation) Order 2018
SI 2018/1221	Merchant Shipping (Miscellaneous Provisions) (Amendments etc.) (EU Exit) Regulations 2018
SI 2018/1227	Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018
SI 2018/1241	Official Controls (Animals, Feed and Food) (England) (Amendment) (EU Exit) Regulations 2018
SI 2018/1243	Open Internet Access (Amendment etc.) (EU Exit) Regulations 2018
SI 2018 1252	Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018
SI 2018/1257	Service of Documents and Taking Evidence in Civil and Commercial Matters (Revocation and Saving Provisions) (EU Exit) Regulations 2018
SI 2018/1269	Sanctions Review Procedure (EU Exit) Regulations 2018

APPENDIX 1: DRAFT MONEY LAUNDERING AND TRANSFER OF FUNDS (INFORMATION) (AMENDMENT) (EU EXIT) REGULATIONS 2018

Additional information from HM Treasury

Q1: In the Explanatory Memorandum you say: "The relevant provisions of the [Money Laundering Regulations], the Funds Transfer Regulation and the Oversight Regulations will be amended so as to remove any requirements to transmit information to EU institutions, or to have regard to guidelines published by the [European Supervisory Authorities]." Regulatory bodies in different countries presumably often rely on exchanging information with their counterparts in order to expose and control money-laundering. Even if the Financial Conduct Authority will not be legally required to pass information to EU institutions, has it—or the UK Government—made a policy statement about future cooperation with counterparts in other countries in dealing with money-laundering?

A1: National anti-money laundering (AML) authorities often make use of international cooperation to detect, prevent and investigate money laundering. Within the MLRs (as defined in the explanatory memorandum for this SI), there's a legal gateway created by Regulation 50(4) which provides that UK supervisory authorities must take such steps as they consider appropriate to cooperate with overseas AML authorities. Although that regulation will undergo technical amendments if this instrument is commenced, the substance of Regulation 50(4) will remain unchanged (and so the obligation will remain on UK supervisors). Where changes to information-submission requirements are being made by this SI, these relate primarily to the specific duties in the current MLRs to provide notifications/information directly to EU institutions. Examples include deleting obligations on the UK in Regulation 16(7) to transmit the National Risk Assessment of Money Laundering and Terrorist Financing to the European Commission and European Supervisory Authorities.

Separately, and as you may already be aware, the Political Declaration setting out the framework for the future relationship between the EU and UK that was endorsed by the European Council on 25 November contains, at paragraph 84, a statement of mutual intent that the future relationship between the UK and EU should cover arrangements across three areas of cooperation. One of these is anti-money laundering and counter-terrorist financing. Further detail on this is included in paragraphs 85-91, which include commitments to: (a) putting in place arrangements for effective and swift data sharing and analysis to support law enforcement; (b) putting in place measures for practical cooperation between law enforcement authorities; and (c) agreeing to support international efforts to prevent and fight against money laundering and terrorist financing, particularly through compliance with the international AML standards set by the Financial Action Task Force (FATF) and associated cooperation.

Paragraph 39 of the Political Declaration, which relates to financial services more widely, also contains an agreement between the UK and EU that close and structured cooperation on regulatory and supervisory matters is in our mutual interest. This builds upon the active role already played by the UK in international fora relating to AML, including the FATF and the Egmont Group of Financial Intelligence Units.

4 December 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 December 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, Lord Sherbourne of Didsbury, Baroness Redfern and Lord Rooker.