

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee B)

10th Report of Session 2017-19

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

Includes a Recommendation on the following:

Trade in Animals and Related Products (Amendment) (EU
Exit) Regulations 2018

Includes 7 Information Paragraphs on 8 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.

Tenth Report

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

Instruments recommended for upgrade to the affirmative resolution procedure

Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018

1. This Proposed Negative, laid by the Department for Environment, Food and Rural Affairs (Defra), proposes amendments to EU-derived domestic legislation in England, Scotland and Wales in relation to trade in animals and animal-related products. Defra says that no policy changes are being introduced by these amendments, which are technical in nature and would come into force in a ‘no deal’ scenario only.
2. The Department explains that the proposed amendments are needed to ensure that the current arrangements for the import of and trade in live animals, products of animal origin (including meat), animal by-products, germplasm, and the non-commercial movement of pets and equines can continue with minimum disruption, whilst maintaining biosecurity and welfare standards following the UK’s withdrawal from the EU. Defra highlights the importance of this sector: 52 million tonnes of live animals and products of animal origin are imported into the UK annually, worth around £58 billion, of which an estimated 34 million tonnes and £41 billion are from trade with the EU. In addition, around 300,000 pet animals move into the UK annually through the EU Pet Travel Scheme, which provides relatively disruption-free travel between participating countries via so-called Pet Passports. Pet Passports provide assurance that animals are appropriately vaccinated; without them animals must be quarantined prior to entry into the UK.
3. This instrument only makes provisions for the movements of animals and animal-related products from the EU into the UK. We asked the Department about the impact of a ‘no deal’ scenario on the movement of animals and animal products from the UK into the EU. Defra told us that the UK would be treated as a third country and would face considerable additional administrative requirements and potential costs for the commercial movement of animals and animal-related products and the non-commercial movement of pets. Defra also emphasised, however, that any potential reciprocal agreements with the EU would be the outcome of negotiations with the EU and are therefore beyond the scope of these draft Regulations.
4. This instrument proposes to maintain the current arrangements for the import of animals and animal products from the EU into the UK in a possible ‘no deal’ scenario. As Defra says, the question of whether the EU would reciprocate these arrangements is subject to negotiations with the EU rather than this instrument. The Committee frequently considers instruments where the UK Government’s decision to maintain current arrangements may not be reciprocated by the EU in a ‘no deal’ scenario. In this instance, given the potential impact of a ‘no deal’ exit on the export of animals and animal

products and the movement of pets from the UK to the EU, the possible lack of reciprocity may be of interest to the House, and the House may expect the opportunity to debate the Department's choice of unilateral recognition of current arrangements. **The Committee therefore recommends that the instrument should be subject to the affirmative procedure.**

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

- Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2018
- Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2018
- Protocol 1 to the EEA Agreement (Amendment) (EU Exit) Regulations 2018
- Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2018
- Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2018

INSTRUMENTS OF INTEREST

Draft Fisheries (Amendment) (EU Exit) Regulations 2019

5. These draft Regulations seek to correct deficiencies in primary and secondary legislation in relation to the EU's Common Fisheries Policy to ensure that the legislation can operate effectively, and that the UK fisheries sector can continue to be regulated in a sustainable way after the UK leaves the EU. While the Department for Environment, Food and Rural Affairs (Defra) states that the draft Regulations respect existing devolution settlements and do not propose substantive changes to policy, the Explanatory Memorandum (EM) provides limited information and evidence to support this assertion. The EM lists the different pieces of primary and secondary legislation that are to be amended, relating to sea fisheries, inland fisheries, marine management and food, but does not explain sufficiently whether the proposed changes will have any impact on the fisheries sector after EU exit. Defra has provided further explanation of the proposed changes to the Committee which we have asked the Department to reflect in a revised EM. **The Committee urges the Department to ensure that in future the explanatory information provided in support of secondary legislation is sufficiently comprehensive to enable effective Parliamentary scrutiny.**

Draft Market Abuse (Amendment) (EU Exit) Regulations 2018

6. In the Explanatory Memorandum (EM) to these Regulations, HM Treasury (HMT) says that, in 2014, the EU enacted more stringent legislation against market abuse, the Market Abuse Regulation (MAR).¹ In order to increase market integrity and investor protection, the MAR contains prohibitions on insider dealing, unlawful disclosure of inside information and market manipulation, and provisions to empower the regulators of Member States to prevent and detect these.²
7. HMT says that the draft Regulations do not alter the policy approach of the current market abuse regime but make certain amendments to reflect the UK's new position outside the EU. The principal amendment is to provide that financial instruments admitted to trading or traded on UK venues continue to be within scope of regulation in the UK after the UK leaves the EU, in addition to continuing to include those admitted to trading or traded on EU venues. In the EM, HMT says that the decision to keep instruments admitted to trading or traded on EU venues, rather than amending to a UK-only scope, was taken because of the close relationship between UK and EU markets.
8. We obtained further information from HMT about this decision, and the possibility that regulatory action might be duplicated, which we are publishing at Appendix 1.

1 Regulation (EU) [No 596/2014](#) on market abuse.

2 The Secondary Legislation Scrutiny Committee published information about the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (SI 2016/680), which amended UK law to ensure its compatibility with MAR, in its [5th Report](#) of Session 2016–17 (HL Paper 25).

Convention on the Simplification of Formalities in Trade in Goods (Cm 9746)

Convention on Common Transit Procedures (Cm 9748)

9. These two Conventions aim to maintain the speedy transit of goods across borders by allowing the collection of tariffs and duty liabilities inland (rather than at the border itself). Membership of the Convention on Common Transit Procedure (CTC) allows for the movement of goods under duty suspension across the Contracting Parties' customs territories, provided a financial guarantee is in place to cover any potential duty liabilities, which are payable when the goods reach their final destination. The UK is currently a member of the CTC, as a member of the European Union, but this provision will fall on exit day in the case of 'no deal'. These treaties will allow the UK to accede to the CTC in its own right. A number of statutory instruments support these arrangements but are for scrutiny by the Commons only.³ The companion Convention on the simplification of formalities in trade in goods performs much the same role but, in respect of trade with European Free Trade Association states, Turkey, Serbia and the Former Yugoslav Republic of Macedonia, introduces a single administrative document for use between all Contracting Parties. Whilst the governing Joint Committee voted in favour of the UK acceding to the Conventions on 4 December, the official invitation to accede is still awaited. The UK's formal instrument of accession needs to be lodged by 31 January 2019 to ensure arrangements are in place by 29 March 2019.

Branded Health Service Medicines (Costs) (Amendment) Regulations 2018 (SI 2018/1255)

10. The cost of branded health service medicines is controlled through two schemes: the statutory scheme and the voluntary scheme. The voluntary scheme is agreed between the industry body that represents manufacturers and suppliers of branded health service medicines and the Secretary of State. Companies which choose not to join the 2014 Pharmaceutical Price Regulation Scheme, are subject to the statutory scheme.⁴ From 1 April 2018, a 7.8% payment percentage on sales was introduced to limit spend on branded health service medicines under the statutory scheme. However, the Department of Health and Social Care (DHSC) considers "a 7.8% payment percentage going forward does not deliver the Government's objective of constraining branded medicines spending growth to within allowable limits and therefore payment percentages will have to be amended from 2019 onwards". These Regulations amend the payment percentages so that certain manufacturers and suppliers of branded health service medicines pay to the Secretary of State 9.9% in 2019, 14.7% in 2020 and 20.5% in 2021 of their net sales income received for the supply of those medicines. Industry were opposed to an increase, as they say it would be detrimental to profitable supply of medicines in the UK. The changes are expected to reduce pharmaceutical company revenues of £152 million by 2021. However, DHSC considers that it has sought to establish what an appropriate measure is, to limit the growth of branded health service medicines to a level that secures the financial position of the NHS and balances the Government's

3 A list of the SIs, guidance and other relevant instructions are available at: HM Government, *Customs, VAT and Excise regulations: leaving the EU with no deal* (18 December 2018): <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal> [accessed 18 December 2018].

4 The statutory scheme is set out in the Branded Health Service Medicines (Costs) Regulations 2018.

overall objectives for the statutory scheme. The policy is expected to reduce NHS costs by £152 million by 2021.

Electronic Monitoring (Responsible Persons) (Amendment) Order 2018 (SI 2018/1277)

11. Following up a previous pilot to test the effectiveness of electronic monitoring using GPS tags,⁵ as an alternative to jail, for persistent offenders given a community sentence, this instrument enables the extension of the pilot to those convicted with possession or use of a knife. The Order appoints Buddi Limited to monitor the tagged subjects. The proposed pilot is part of the London Mayor’s Office for Policing and Crime’s strategy to reduce knife crime in London. According to the Explanatory Memorandum, the pilot’s aims include: challenging offenders’ thinking around carrying a knife and providing a deterrent; disrupting gang activity; improving the protection of the general public; and increasing the subjects’ compliance with the conditions for their release on licence. The pilot will also test the response by decision-makers when imposing a GPS tag as a licence condition. The pilot is due to run for 12 months and it is anticipated that between 50 and 100 subjects will be tagged. The Ministry of Justice intends that the information gleaned from this pilot should inform the development of its new national electronic monitoring service.

Local Government (Structural and Boundary Changes) (Amendment) Regulations 2018 (SI 2018/1296)

12. In the Explanatory Memorandum (EM) to these Regulations, the Ministry of Housing, Communities and Local Government (MHCLG) says that they update four sets of existing Transitional Regulations⁶ with respect to changes in legislation and policy affecting the duties and functions of local authorities undergoing structural change; and that, in particular, they update provisions relating to finance and council tax made by the Local Government (Structural Changes) (Finance) Regulations 2008 (SI 2008/3022: “the 2008 Regulations”). MHCLG says that, while the Regulations are of general application, in the first instance they will apply to local government reorganisation in Bournemouth, Dorset and Poole; in East Suffolk and West Suffolk; and in Somerset West and Taunton.
13. As regards the first of these reorganisations, the Secondary Legislation Scrutiny Committee drew the draft Dorset (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2018, and the draft Bournemouth, Dorset and Poole (Structural Changes) Order 2018, to the House’s attention in its 26th Report of this Session.⁷ The Committee noted the scale of opposition to the reorganisation proposal expressed both by Christchurch Borough Council and by its residents.
14. In the EM to the latest Regulations, MHCLG says that 26 representations were received from one MP, eight Councillors, and 17 members of the public “in one area in Dorset”, asking that the Regulations, rather than allowing local preference, should require council tax harmonisation on day one of

5 Global Positioning System (GPS) tagging is attaching a small transmitter to a person which sends a signal to the GPS satellite network, enabling it to be traced.

6 Notably, [SI 2008/3022](#), [SI 2008/2113](#), [SI 2008/2867](#) and [SI 2009/467](#).

7 [26th Report](#), Session 2017–19 (HL Paper 125).

reorganisation. In response to our questions, MHCLG has confirmed that the area mentioned is Christchurch.

15. We also asked whether the approach to council tax harmonisation in these Regulations wasprecedented. MHCLG has told us that “allowing local authorities to decide their approach to harmonisation within a maximum period set by government was the approach already enabled by the [2008 Regulations] which these regulations update. In the past, local authorities could choose what approach to take to harmonisation within five years and this approach was set in consultation with the local authorities at the time. These regulations extend the maximum timeframe allowed to seven years, following consultation with the affected local authorities undergoing structural and boundary change now. This allows all those shadow authorities who expressed their local preference to harmonise in accordance with that preference.”

European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2018 (SI 2018/1298)

16. The purpose of this instrument is to enable companies which are currently registered in the UK as so-called European Public Limited-Liability Companies (Societas Europaea or SEs) to automatically convert to a new legal entity (UK Societates), to ensure that they have a clear legal framework after the UK’s withdrawal from the EU. The Department for Business, Energy and Industrial Strategy (BEIS) says that approximately 49 SEs are registered in the UK at present, primarily in the insurance sector and including holding companies with no employees and companies with large operations elsewhere in Europe and only the head office in the UK. BEIS explains that the automatic conversion process of SEs to UK Societates will retain the structure of SEs and provisions relating to accounts, winding-up, liquidation, insolvency and cessation of payments, with the intention of providing legal certainty for those SEs which choose not to transfer their registered office to another Member State or convert to a UK public limited company before exit day. The instrument also makes provisions to facilitate the conversion of SEs into UK public limited companies, by removing current requirements for SEs to be registered in the UK for a minimum period of two years, or to have the first two sets of annual accounts approved.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Environment (Amendment etc.) (EU Exit) Regulations 2019
 Fisheries (Amendment) (EU Exit) Regulations 2019
 Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019
 Market Abuse (Amendment) (EU Exit) Regulations 2018
 Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018
 Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2018

Draft instruments subject to annulment

Crawley (Electoral Changes) Order 2019
 Norwich (Electoral Changes) Order 2019

Instruments subject to annulment

Cm 9746	Convention on Transit Procedure
Cm 9748	Convention on the Simplification of Formalities in Trade in Goods
SI 2018/1255	Branded Health Service Medicines (Costs) (Amendment) Regulations 2018
SI 2018/1275	Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018
SI 2018/1277	Electronic Monitoring (Responsible Persons) (Amendment) Order 2018
SI 2018/1278	Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018
SI 2018/1282	Whole of Government Accounts (Designation of Bodies) Order 2018
SI 2018/1283	European Network of Employment Services (EU Exit) Regulations 2018
SI 2018/1296	Local Government (Structural and Boundary Changes) (Amendment) Regulations 2018
SI 2018/1297	Bank of England (Amendment) (EU Exit) Regulations 2018
SI 2018/1298	European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2018
SI 2018/1299	European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018

APPENDIX 1: DRAFT MARKET ABUSE (AMENDMENT) (EU EXIT) REGULATIONS 2018

Additional Information from HM Treasury

Q1: In the Explanatory Memorandum you say: “The decision to keep instruments admitted to trading or traded on EU venues, rather than amending to a UK only scope, was taken because of the close relationship between UK and EU markets. As far as is possible in a no deal scenario, this will ensure the Financial Conduct Authority (FCA) maintains the ability to prohibit, investigate and pursue cases of market abuse related to financial instruments which affect UK markets and its reputation, thereby maintaining the integrity of UK markets. For example, this could include taking action against abuse of a UK firm’s debt instruments which are admitted to trading on EU trading venues.”

Is there not a risk that the FCA might duplicate action being taken by a regulatory body in an EU Member State against abuse in trading on an EU trading venue in that State?

A1: The scope of this instrument enables the FCA to continue to be able to take action in respect of acts or omissions in both the EU and UK that affect UK markets, to address relevant instances of misconduct under the Market Abuse Regulation (MAR) as far as is possible in a no-deal and no-cooperation scenario. It is essential to maintain the scope of MAR to capture conduct related to instruments admitted to trading or traded on both UK and EU trading venues, in order to protect the integrity and reputation of the UK market.

Firstly, the UK MAR enforcement regime is not part of the EU regulatory regime and UK regulators must retain an independent overview of the transactions affecting its markets. We have taken a decision to monitor activity in this way rather than ceasing that which already exists in the form of the UK’s enforcement powers. This scope means that there may be a degree of overlap between the jurisdictions of the FCA and EU regulators. However, in maintaining this scope, we are mitigating against the risk that an EU national regulator fails to adequately address misconduct affecting the UK markets. For example, there is the risk that EU national regulators may be unable or unwilling to take action in cases where the perceived harm to EU markets is less significant than that caused to the integrity or reputation of UK markets. There could be a knock-on impact on confidence in UK markets and the UK regulatory regime if these cases were ineffectively regulated.

As now, the FCA would generally look to the EU regulator as the home authority to take action in the first instance. However, where the behaviour has had a significant impact on the functioning or reputation of the UK market, the FCA, under this scope, could consider taking action if the home authority did not act, in order to protect the UK market.

The instrument also amends Part 8 of the Financial Services and Markets Act 2000, to ensure that the FCA can continue to respond to information requests from overseas regulators. This will enable the FCA to coordinate on regulatory action with EU counterparts in relation to market abuse on EU venues. Such regulatory action will, as now, be taken only where it is proportionate and reasonable to do so and the assessment (on a case by case basis) of the risk of serious harm to consumers and markets is such that the FCA must take action. If a suitable outcome can be obtained by an EU regulator, it may not be an appropriate case for the FCA to take forward.

12 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 18 December 2018, Members declared no interests.

Attendance:

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