

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee  
(Sub-Committee B)

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11th Report of Session 2017–19

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

Includes a Recommendation on the following:

Road Vehicles and Non-Road Mobile Machinery (Type-  
Approval) (Amendment) (EU Exit) Regulations 2018

**Criminal Legal Aid  
(Remuneration) (Amendment)  
(No. 2) Regulations 2018**

Includes 2 Information Paragraphs on 2 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](mailto:hlseclegscrutiny@parliament.uk).

# Eleventh Report

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

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### Instruments recommended for upgrade to the affirmative resolution procedure

*Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2018*

*Date laid: 11 December 2018*

*Sifting period ends: 10 January 2019*

1. Type-approval is the process by which manufacturers of vehicles and components show they are compliant with safety and environmental standards. To sell and register these products in the EU, they must hold a European Community type-approval (EC type-approval) issued by the responsible authority in an EU Member State (the Vehicle Certification Agency (VCA) in the UK). In the event of ‘no deal’ with the EU, EC type-approvals issued in another Member State will no longer be accepted in the UK. Manufacturers holding an EC type-approval will be issued with a Provisional UK type-approval during a transitional period of two years. During this period, manufacturers can apply to the VCA for a full conversion of their EC type-approval to a UK type-approval. The Government will undertake a review of the UK’s type-approval arrangements and will bring forward legislation in due course. The Department for Transport (DfT) has estimated that “there are around 300 approval holders (manufacturers and companies modifying vehicles) currently registering motor vehicles of the relevant categories” and “the total number of type approvals (i.e. different models) involved is estimated to be around 3500.” DfT confirms that the “total cost to VCA has been estimated at £0.7m, to convert existing EC type-approvals into Provisional UK type-approvals” and “VCA’s internal costs will be covered by Government and not billed to manufacturers.” The Government’s technical guidance<sup>1</sup> explains that “Manufacturers currently holding a VCA-issued EC type-approval, who intend to continue placing their products on the EU market, must obtain a new EC type-approval from a type-approval authority in an EU country.” However, DfT has confirmed that “The Commission’s proposed regulation to allow the transfer of EU approvals issued by the VCA to an EU27 approval authority is nearly complete.” Given the potential impact on manufacturers, the House may wish to have the opportunity to debate this instrument. **The Committee therefore recommends that this proposed negative instrument be upgraded to the affirmative resolution procedure.**

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

- Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

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<sup>1</sup> HM Government, *Vehicle type approval if there’s no Brexit deal* (13 September 2018): <https://www.gov.uk/government/publications/vehicle-type-approval-if-theres-no-brexite-deal> [accessed 4 January 2019].

- Pesticides (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2018
- Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2018
- Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2018
- Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2018

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2018 (SI 2018/1323)

*Date laid: 10 December 2018*

*Parliamentary procedure: negative*

*The level of fees paid to lawyers, particularly junior advocates, under the Criminal Legal Aid Scheme caused contention for most of 2018. These Regulations, introducing Scheme 11, appear to address many of the concerns raised by the profession. The Explanatory Memorandum states that a wider review of criminal legal aid fee schemes is due to begin in January 2019.*

**These 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. This instrument has been laid by the Ministry of Justice (MOJ) and is accompanied by an Explanatory Memorandum (EM) and an Impact Assessment. The specific details of the fee to be paid for each activity are set out in a separate document which the Regulations bring into effect from 31 December 2018.<sup>2</sup>
3. These Regulations amend the Advocates' Graduated Fee Scheme (AGFS), which is the fee scheme through which criminal defence advocates are paid for carrying out publicly-funded work in the Crown Court. On 1 April 2018, the Government implemented a reformed AGFS (Scheme 10) with the intention of more fairly remunerating the work done.<sup>3</sup> It was not well received, with advocates refusing to take cases and organisations representing the legal profession stating that it was causing a recruitment crisis, because junior lawyers were not being paid enough to compensate them for the amount of work required.
4. The MOJ proposed further revisions (Scheme 11) in a consultation exercise in August 2018, but following the strong views expressed by advocates in their responses, these Regulations include two key changes to the version of the scheme consulted on which proposed to add £15 million in spending compared to the baseline of the 2016–17 AGFS caseload and spend data. First, the Government will add a further £8 million to the pot, making a total of £23 million; this additional spending will be focused on fee increases for work typically undertaken by more junior advocates. Second, the Government decided to bring forward the proposed 1% increase to all fees, from April 2019 to the coming into force date of Scheme 11, so that advocates will benefit from this increase from the start of 2019.

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2 Ministry of Justice, *Banding of Offences in the Advocates' Graduated Fee Scheme (AGFS) Version 1.2* (December 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/762989/banding-offences-agfs-v.1.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762989/banding-offences-agfs-v.1.2.pdf) [accessed 2 January 2019].

3 Through the Criminal Legal Aid Remuneration (Amendment) Regulations 2018 (SI 2018/220) and the Ministry of Justice, *Banding of Offences in the Advocates' Graduated Fee Scheme Version 1.1* (February 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/683445/agfs-banding-of-offences.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683445/agfs-banding-of-offences.pdf) [accessed 2 January 2019].

5. Both the Bar Council and the Law Society have welcomed the revised scheme and hope that it will form a constructive basis for further dialogue about the future structure of the AGFS. The Government recognise that there is scope to improve further the way Crown Court defence advocates are paid to reflect the work that they do. However, the EM states that this will require further assessment, including the collection of new evidence and data, which will form part of a wider review of criminal legal aid fee schemes that is due to begin in January 2019.

## INSTRUMENTS OF INTEREST

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### Draft Public Procurement (Amendment Etc.) (EU Exit) Regulations

6. The regulation of public procurement by public authorities and utilities for contracts over specified financial thresholds is currently set out in several EU Directives. This instrument sets out the framework for arrangements to replace those provisions after the UK's exit from the EU in a manner compatible with the World Trade Organisation Agreement on Government Procurement, which the UK hopes to join in its own right within eight months of leaving the EU. Amongst other things, this instrument will replace the requirement to send notices to the EU Publications Office (for publication in the Official Journal via Tenders Electronic Daily), with a requirement to submit notices to a new, free, UK e-notification service. No information is yet available on how this new system will operate, and the Cabinet Office simply states that “the communications plan is to provide regular updates via the EU Exit Portal<sup>4</sup> when it is launched in the new year.” These Regulations include transitional provisions in respect of European procurement procedures which straddle exit day, and the instrument makes no substantive changes to the restriction on the publication of notices at a local level, for example, on Contracts Finder, Sell2Wales or e-TendersNI. A parallel instrument deals specifically with procurement by the Ministry of Defence.<sup>5</sup>

### European Enforcement Order, European Order for Payment and European Small Claims Procedure (Amendment etc.) (EU Exit) Regulations 2018 (SI 2018/1311)

7. Existing EU Regulations established procedures for the national courts of EU Member States to deal with cross-border civil and commercial claims, providing standard, simplified procedures for obtaining and/or enforcing orders or judgments in certain types of claims. The European Enforcement Order (EEO) procedure enforces judgments from uncontested debt claims across different EU Member States; the European Orders for Payment (EOP) procedure pursues uncontested EU cross-border monetary claims; and the European Small Claims Procedure (ESCP) enables the making of cross-border claims with a value of up to €5000, which is designed for claimants to be able to use without needing to instruct lawyers. These procedures operate on a reciprocal basis, requiring cooperation between relevant national courts in participating EU Member States. In the event of ‘no deal’ with the EU, the continued, reciprocal, recognition and enforcement between EEOs, EOPs and ESCP judgments issued by UK and EU Member State courts will cease. Through the transitional provisions in the instrument, the EEO, EOP and ESCP provisions continue to apply to matters commenced under the EU Regulations prior to exit where enforcement is sought in the UK. The Ministry of Justice has explained that “this will allow for a smooth winding down of cooperation in cases live at the point of exit”.

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4 HM Government, *Prepare for EU Exit*: <https://protect-eu.mimecast.com/s/01qrC1WJ8FLNVPRIGFJnf?domain=euexit.campaign.gov.uk> [accessed 9 January 2019].

5 [Draft Defence and Security Public Contracts \(Amendment\) \(EU Exit\) Regulations 2019](#).

## INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft instruments subject to affirmative approval

Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019

Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019

Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019

Public Procurement (Amendment etc.) (EU Exit) Regulations 2019

### Instruments subject to annulment

- SI 2018/1311 European Enforcement Order, European Order for Payment and European Small Claims Procedure (Amendment etc.) (EU Exit) Regulations 2018
- SI 2018/1331 Single European Sky (National Supervisory Authority) (Amendment) Regulations 2018
- SI 2018/1332 Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2018
- SI 2018/1336 CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018
- SI 2018/1338 INSPIRE (Amendment) (EU Exit) Regulations 2018
- SI 2018/1342 Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018
- SI 2018/1346 Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) Regulations 2018
- SI 2018/1352 Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018
- SR 2018/209 Housing Benefit and Universal Credit Housing Costs (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2018

## APPENDIX 1: INTERESTS AND ATTENDANCE

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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 8 January 2019, 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, Lord Sherbourne of Didsbury, Baroness Redfern, Lord Rooker and Baroness Watkins of Tavistock.