

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee B)

16th Report of Session 2017–19

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

Includes 9 Information Paragraphs on 12 Instruments

Ordered to be printed 12 February 2019 and published 14 February 2019

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

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 hseclegscrutiny@parliament.uk. Proposed Negative Statutory Instruments under the European Union (Withdrawal) Act 2018

Sixteenth Report

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

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

- Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Mutual Assistance on Customs and Agricultural Matters (Revocation) (EU Exit) Regulations 2019
- Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019
- Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2019

INSTRUMENTS OF INTEREST

Draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019

1. The purpose of these draft Regulations is to introduce a new requirement for employment agencies to provide people who are seeking work with clearer information on their prospective pay. The instrument forms part of the Government's response to the Matthew Taylor Review of Modern Working Practices,¹ which, according to the Department for Business, Energy and Industrial Strategy, found that the various fees, deductions, and different ways in which agency workers can be paid can cause confusion. The Review recommended that government should improve the transparency of the information available to agency workers, particularly around pay. This instrument proposes a requirement on employment agencies to provide agency workers with a "key information document" before workers sign the terms of employment. The draft Regulations set out requirements in relation to the information that the document must contain, such as the minimum rate of remuneration payable and the nature and amount of any deductions, limitations as to the length of the document, and when it must be provided. The intention is for the new requirements to apply to new workers signing on to an employment agency after April 2020.

Draft Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2019

2. The Intellectual Property Office (IPO) states that, as a Member State of the EU, the UK is currently part of an EU-wide system for protection of designs. The Community Designs Regulation (CDR)² defines two forms of designs protected at EU level: the Registered Community Design (RCD) and the Unregistered Community Design (UCD). An RCD is granted by the EU Intellectual Property Office through an application for registration. A UCD enjoys protection if it is new, has individual character, and is made available to the public in the manner provided for in the CDR. The IPO says that, after the UK's exit from the EU, the CDR will no longer confer protection for existing RCDs and UCDs in respect of the UK. These draft Regulations, however, allow for the continued UK protection of these acquired rights for businesses, trade mark holders and designers, and as far as possible maintain the current system. Holders of RCDs registered before exit will receive a "re-registered" UK design on exit day. Where a UCD is in existence before exit day, rights holders will continue to have the benefit of the UK protection conferred by this right through the "continuing unregistered community design". The IPO explains that it will be creating approximately 700,000 "re-registered" UK rights on exit, with each of these rights being present on the UK register at exit and treated as if registered under the Registered Designs Act 1949. It gives a preliminary estimate of around £375,000 as the administrative cost of converting some 700,000 RCDs into the comparable UK right. The work of conversion is clearly a major exercise. The IPO has told us, however, that it is adequately resourced to cover the cost of conversion, and it is built into its planning assumptions. The IPO explained that it receives no central government funding and that costs are recovered through fees; any additional resources required, for example to deal with increased demand, would be covered by the associated additional fees paid.

1 Department for Business, Energy and Industrial Strategy, *Good work: the Taylor review of modern working practices* (July 2017): <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices> [accessed 12 February 2019].

2 Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

Draft European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019

3. These draft Regulations propose changes to regulations on European Structural and Investment Funds (ESI Funds) where they apply to the European Regional Development Fund (ERDF), European Social Fund (ESF) and European Territorial Cooperation (ETC). This is to ensure that in a possible ‘no deal’ scenario, projects supported by these funds can continue to operate in a UK domestic context, under the Government’s funding guarantee. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the UK has been allocated £8.4 billion of funding under ESI Funds for the 2014–20 period, supporting growth, low carbon, transport, research, innovation, SMEs, employment opportunities and social inclusion. If there is no agreement with the EU, the Government have committed to continue the support provided by these funds until the planned closure of the funds in 2020. This instrument proposes the changes needed to enable payments to continue in a ‘no deal’ exit. BEIS explains that, for ETC projects involving Northern Ireland and the Republic of Ireland, the European Commission has prepared a new regulation that will enable the UK to take part in specific ETC programmes (such as PEACE and Interreg VA) even in a ‘no deal’ scenario, until these programmes come to an end in 2020. The Department says that this is in recognition of the role these programmes play in supporting peace and reconciliation, and that the instrument proposes specific powers for the Government and relevant authorities to continue payments under these specific ETC programmes.

Draft Financial Regulators’ Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019

4. In its 38th Report of the current Session, the Secondary Legislation Scrutiny Committee drew the draft Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 (“the 2018 Regulations”) to the special attention of the House on the ground that they gave rise to issues of public policy likely to be of interest to the House.³
5. Binding Technical Standards (BTS) set out very specific requirements and standards in order to ensure that financial services institutions are able to comply with the requirements of the EU’s financial regulation. European Supervisory Authorities are currently responsible for drafting BTS.
6. The 2018 Regulations proposed that UK Regulators perform the task of making corrections to deficiencies in existing BTS so that these rules operate effectively in the UK on exit day.
7. Since the 2018 Regulations were laid, additional BTS have come into force and will be transferred to the UK statute book on exit day. The main purpose of this instrument is therefore to amend the 2018 Regulations to add the BTS that have come into force since the laying of those Regulations.

3 Secondary Legislation Scrutiny Committee, [38th Report](#), Session 2017–19 (HL Paper 179).

Draft Human Medicines (Amendment Etc.) (Eu Exit) Regulations 2019

Draft Medical Devices (Amendment etc.) (EU Exit) Regulations 2019

Draft Medicines for Human Use (Clinical Trials) (Amendment) (EU Exit) Regulations 2019

Human Medicines (Amendment) Regulations 2019 (SI 2019/62)

8. The UK currently participates in a EU-wide system for the testing and approval of medicines and medical devices. In the event of a ‘no deal’ exit, this group of regulations, laid by the Department for Health and Social Care, transfer responsibility for these activities to the Medicines and Health products Regulatory Agency (MHRA) as a stand-alone medicines and devices regulator for the UK. The MHRA already carries out a wide range of work including medicines licensing, pharmacovigilance, inspections, and standards and enforcement, but would take an expanded role in registration, assessment, and post-market surveillance of medical devices. The legislation provides transitional “grandfather” rights for medicines and products that have already been authorised in Europe up to the date of exit. The Committee expressed concern about authorisations at an advanced stage of development at the point of exit. MHRA has confirmed that a UK licence would be required but, through administrative measures, are taking steps to ensure authorisation is not delayed by that additional step. The regulations also include certain provisions which would allow the Secretary of State to make temporary changes to the authorisation process, or to allow alternative medicines to be dispensed in case of potential shortages.⁴

Draft Securitisation (Amendment) (EU Exit) Regulations 2019

9. Securitisation refers to the process of packaging and converting loans into tradable financial assets (securities), which can then be sold to investors. The EU Securitisation Regulation⁵ defines a set of criteria for securitisations to qualify as simple, transparent and standardised (STS) securitisations.
10. The Securitisation Regulation creates a framework for the regulation of these STS securities, and asset-backed commercial paper (ABCP) products (a type of security used by companies to raise short-term financing, backed by company assets). These draft Regulations, laid by HM Treasury, propose amendments to the Securitisation Regulation, and to a number of other items of EU and UK secondary legislation, to ensure that the UK’s regulation of securitisation can operate effectively at the point at which the UK leaves the EU. They transfer functions of certain EU bodies, including the European Securities and Markets Authority, to the Prudential Regulatory Authority (PRA) and Financial Conduct Authority (FCA) after exit. Responsibility for making Binding Technical Standards under this instrument will be transferred to the FCA and PRA as appropriate, through a sub-delegation of powers.

4 See for example new regulation 344A of the [Draft Human Medicines \(Amendment Etc.\) \(EU Exit\) Regulations 2019](#) or regulation 9 of [Human Medicines \(Amendment\) Regulations 2019 \(SI 2019/62\)](#).

5 Regulation (EU) 2017/2402 of 12 December 2017.

Draft State Aid (EU Exit) Regulations 2019

11. The Committee drew the draft State Aid (EU Exit) Regulations 2019 to the attention of the House on the ground of policy interest in its last report.⁶ At the time, the Committee noted the assurance provided by the Department for Business, Energy and Industrial Strategy that it had “extensive technical discussions with the devolved administrations on the proposed State aid regime” and that there was “broad agreement on the substance of the Government’s policy”. The Committee also noted that the UK Government had “not sought political consent from the devolved administrations to the draft SI, as the UK Government considers the regulation of State aid to be a reserved matter”.
12. The Committee has received a letter from the Constitutional and Legislative Affairs Committee of the National Assembly of Wales, expressing concern that the draft Regulations propose to transfer functions to non-devolved public authorities in a way that would restrict the legislative competence of the National Assembly, and that the instrument is being taken forward without any prior notice being given to the Assembly and without the Regulations being laid before the Assembly. In addition, the Constitutional and Legislative Affairs Committee points to a disagreement between the Welsh Government and the UK Government as to whether State aid is a devolved or reserved matter, suggesting that the UK Government have not responded to a request by the Welsh Government for an explanation of its position.
13. We are publishing the letter at Appendix 1 as the House may wish to be aware of the concerns of the National Assembly when debating the draft Regulations.

Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (SI 2019/42)

14. These Regulations, laid by the Department for Transport, implement Annex I (Regulations for the Prevention of Pollution by Oil) of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1998 (“MARPOL”), an International Convention made by the International Maritime Organization (IMO) for the prevention of pollution from ships (including offshore installations). The Regulations establish a survey and certification regime for ships, and prescribe technical requirements relating to the construction and operation of ships and on-board equipment. The Impact Assessment explains that the amendments being made date back to 2004 as the UK currently has a “backlog of some 40 separate items of maritime regulation.” The Secondary Legislation Scrutiny Committee has previously expressed concerns about the backlog in maritime legislation,⁷ and has corresponded with the Minister about the extent of the backlog.⁸ We remain concerned about this and urge the Government to act swiftly to rectify the statute book.
15. The Regulations also bring UK law in line with recent updates to MARPOL requirements and introduce ambulatory referencing to refer UK industry to international legislation in this area. The introduction of ambulatory referencing will mean that ship operators can focus on convention text in

6 [15th Report](#), Session 2017–19 (HL Paper 281).

7 Secondary Legislation Scrutiny Committee, [20th Report](#), Session 2017–19 (HL Paper 82).

8 Secondary Legislation Scrutiny Committee, [34th Report](#), Session 2017–19 (HL Paper 157).

technical areas instead of having to refer to both the convention and national legislation. The Secondary Legislation Scrutiny Committee has clear guidance on the use of ambulatory references,⁹ which notes that the use of this mechanism has been of concern to the House because it takes future changes to legislation out of the normal legislative scrutiny process. Our guidance states that ambulatory references should therefore only be used for technical updates, such as adding items to a list of banned chemicals, and that the Explanatory Memorandum accompanying the instrument should make it clear if an ambulatory reference is being introduced. If the power is applied to anything other than simple technical updates, the Committee expects to see a full explanation of why it is being proposed, including how any risks or unintended consequences are to be managed in the absence of further parliamentary scrutiny.¹⁰ We asked the Maritime and Coastguard Agency about the nature of the ambulatory references proposed in this instrument and their response is set out at Appendix 2.

Education (Student Fees, Awards and Support Etc.) (Amendment) Regulations 2019 (SI 2019/142)

16. The instrument aligns the legislative framework for student finance with the new regulatory regime in England established by the Higher Education and Research Act 2017,¹¹ which required the Office for Students (OfS) to register all English higher education institutions.¹² This instrument updates definitions and terminology in the Student Support Regulations to limit student support to courses provided by, or on behalf of, registered providers. This instrument also prescribes the fee loan rates applicable for the academic year commencing 1 August 2019. While the maximum fee for a standard undergraduate course at an Approved (Fee Cap) institution remains at £9,250, the instrument introduces a higher fee of up to £11,000 for an accelerated course. It also increases the maximum loans for living costs for students attending full-time and part-time undergraduate courses in 2019–20 (£8,944 outside London, £11,672 in London), increases disabled students' allowances and introduces a new means test for full-time students who apply for a grant for dependents.

9 Secondary Legislation Scrutiny Committee, *Guidance for departments submitting statutory instruments to the Secondary Legislation Scrutiny Committee* (July 2016): <https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/SLSC-Guidance-for-Departments-July-2016.pdf> [accessed 12 February 2019].

10 The agreed Whitehall position on the use of the power is set out in the Merits of Statutory Instruments Committee [25th Report](#), Session 2008–09 (HL Paper 151), appendix 1. It states: “The agreed position is that care should be taken before the power to make ambulatory references is used. Particular care is needed before a criminal offence or other penalty is involved. This is highlighted because of the effect that an ambulatory reference may have and that it will catch all future amendments to the Community instruments, and not just technical ones. Such future amendments may be significant, and may not necessarily be foreseen at the time of making the ambulatory reference. To minimise the risk of any unintended results Departments are asked to note that the ambulatory reference can apply to only certain sections or parts of a Community instrument e.g. an Annex.

Further it is noted that transparency is important, and so if an ambulatory reference brings in a substantial change in the law, it is good practice for the responsible department to publicise it, in order to draw it to the attention of people affected by it. For example, an updated transposition note can be put on the departmental website or a press release issued.”

11 See also [14th Report](#), Session 2017–19 (HL Paper 56).

12 The register is published at Office for Students, *The Register*: <https://www.officeforstudents.org.uk/advice-and-guidance/the-register/> [accessed 13 February 2019]. Registrations are expected to be completed by the end of March 2019.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019

Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019

Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2019

European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019

Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019

Greater Manchester Combined Authority (Functions and Amendment) Order 2019

Human Medicines (Amendment etc.) (EU Exit) Regulations 2019

Medical Devices (Amendment etc.) (EU Exit) Regulations 2019

Medicines for Human Use (Clinical Trials) (Amendment) (EU Exit) Regulations 2019

National Minimum Wage (Amendment) Regulations 2019

Public Procurement (Electronic Invoices etc.) Regulations 2019

Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2019

Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2019

Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019

Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

SI 2019/42	Merchant Shipping (Prevention of Oil Pollution) Regulations 2019
SI 2019/62	Human Medicines (Amendment) Regulations 2019
SI 2019/111	Exotic Disease (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

- SI 2019/112 Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- SI 2019/118 Pesticides (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- SI 2019/123 Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- SI 2019/130 Civil Legal Aid (Procedure) (Amendment) Regulations 2019
- SI 2019/139 Education (Student Fees, Awards and Support) (Amendment) (EU Exit) Regulations 2019
- SI 2019/142 Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2019
- SI 2019/143 Criminal Procedure (Amendment) Rules 2019
- SI 2019/160 Merchant Shipping (Technical Requirements for Inland Waterway Vessels) (Amendment) Regulations 2019

APPENDIX 1: DRAFT STATE AID (EU EXIT) REGULATIONS 2019

Letter from Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee of the National Assembly, to Lord Trefgarne, Chair of the Secondary Legislation Scrutiny Committee

The Constitutional and Legislative Affairs Committee considered the Welsh Government written statement (issued under Standing Order 30C of the National Assembly for Wales) for the above named Regulations at its meeting on 4 February 2019.

These Regulations transfer functions to non-devolved public authorities, namely the Competition and Markets Authority and the Secretary of State; and giving functions to non-devolved public authorities restricts the legislative competence of the National Assembly for Wales.

As we noted in our letter to you (dated 14 January 2019) regarding the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, functions transferred to a public authority other than a devolved Welsh authority engage paragraph 10 (and in this case paragraph 11) of Schedule 7B to the Government of Wales Act 2006. In brief, this means that if the National Assembly for Wales wishes to pass primary legislation to remove or modify such functions in future, it will need the consent of the UK Government.

As with the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018, this is being done without any prior notice being given to the National Assembly for Wales and, of course, without the Regulations being laid before the National Assembly for Wales.

However, in this case, there is the added problem that the Welsh Government and the UK Government disagree as to whether State Aid is devolved.

At our meeting, we considered correspondence from the Welsh Government's Counsel General. In his letter to us, the Counsel General states:

“The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent. The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response.”

The approach being adopted by the UK Government therefore appears to be a breach of paragraph 8 of the Intergovernmental Agreement on the European Union (Withdrawal) Bill, which states:

“The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency ... ”

In reaching this view we also note that the UK Government has not responded to the Welsh Government's request for an explanation of their position that State Aid is a reserved matter.

In his letter to us, the Counsel General has confirmed that the Welsh Ministers do not intend on granting to the UK Government unilateral consent for these Regulations.

It is our understanding that discussions between the Welsh Government and the Secretary of State for Business, Energy and Industrial Strategy are ongoing.

Given the significant effect of these Regulations, we wish to draw these matters to your attention. The Counsel General's letter and Welsh Government written statement are enclosed.

I am also drawing these matters to the attention of Baroness Taylor of Bolton, Chair of the Constitution Committee, and Sir Bernard Jenkin, Chair of the House of Commons Public Administration and Constitutional Affairs Committee.

6 February 2019

APPENDIX 2: MERCHANT SHIPPING (PREVENTION OF OIL POLLUTION) REGULATIONS 2019 (SI 2019/42)

Further information from the Department for Transport

Q1: In relation to these Regulations, will the ambulatory references be used to update technical changes or make changes to policy?

A1: The impact is on technical changes (see paragraph 6.5 of the Explanatory Memorandum). References are made in the Regulations to specific technical provisions in Annex I to the Convention on the Prevention of Pollution from Ships, 1973 (MARPOL) as well as to the Polar Code and the Code for Recognized Organizations. These references are dynamic references, by virtue of the ambulatory reference provision in regulation 4. As such, these references to technical requirements will automatically update if there are corresponding amendments to the MARPOL Convention. However, these amendments will also be scrutinised in the IMO during negotiations before they come into force, allowing the UK an opportunity to object to any amendment that it is felt should not come into force for the UK.

The same approach was used in the Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018 (SI 2018/155) and the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (SI 2018/68), where only technical requirements of the Conventions were cross-referenced and made subject to ambulatory references.

Q2: What are the limits of the use of the references?

A2: The limits of the use of the references are to update the subject matter of the references where an amendment is made. An amendment may include a modification to a provision in Annex I, the Polar Code or the Code for Recognized Organizations, or a replacement of it (see regulation 4(1) in the Regulations and the vires under section 306A(2) of the Merchant Shipping Act 1995)). A modification may include an omission, addition or alteration (see regulation 4(2) and the vires under section 306A(3)(a) of the 1995 Act). As explained above, the references are to technical provisions in the international instruments.

Q3: Para 2.1 of the Explanatory Memorandum (EM), says that the Regulations establish a survey and certification regime. This is not explained in the EM. Can you please set out what this is, how will it be established? What are the costs involved?

A3: The survey and certification provisions in these Regulations are part of an already established survey and certification regime, introduced in 1973. All ships must be surveyed and verified by officers of the flag State Administrations (or their recognized organizations/recognized security organizations/nominated surveyors, on behalf of the flag State) so that relevant certificates can be issued to establish that the ships are designed, constructed, maintained and managed in compliance with domestic and international requirements. The changes introduced as a result of these Regulations do not affect the established survey and certification regime. Therefore, there are no additional costs as this regime has been in place for many years and any costs have already been absorbed.

Q4: The EM needs to set out more clearly. Why have these amendments not been implemented before 2004?

A4: The Department accepts that there has been a long delay between entry into force of the international requirements in the revised MARPOL Annex I (Regulations for the Prevention of Pollution by Oil), and implementation of these Regulations. This delay has not prevented UK registered vessels from meeting the revised Annex I requirements as they trade in the international arena. Therefore, shipping companies will ensure they fully comply with the latest international requirements and can trade without hindrance.

The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (SI 1996/2154) (“the 1996 Regulations”), which implemented the earlier Annex I requirements and are revoked by the 2019 Regulations, contained powers to enforce the revised Annex I. This means that in the event of a pollution incident concerning oil, powers have been available to enable appropriate action to be taken.

It is also the case that the changes that have been made are generally incremental enhancements to already high standards (for example, rules applied to oil fuel tank protection and pump room bottom protection). All other requirements from the previous MARPOL Annex I remain in place, with some updating. So, there are very few inconsistencies between the standards imposed by the revised Annex I and those currently in UK law.

The maritime sector is highly regulated and over the last 20 years the Secretary of State for Transport has made in excess of 250 pieces of UK maritime secondary legislation. This number comprises the implementation of international obligations and EU legislation as well as the development of domestic legislation. The legislative programme has been prioritised according to safety, commercial and legislative need.

The majority of amendments to international conventions are complex and highly technical in nature and transposing such amendments into domestic law by way of secondary legislation is very time consuming and resource intensive, involving many policy officials, lawyers, economists and staff in parliamentary functions. The Deregulation Act 2015 amended the Merchant Shipping Act 1995 to include a power for the Secretary of State to include an ambulatory reference in secondary legislation implementing amendments to international conventions (section 306A). This will enable subsequent amendments to conventions to come (automatically) into force domestically at the same time as they come into force internationally. It also makes the process more efficient for industry, which will have one set of technical obligations to become familiar with instead of two, and receives the authoritative mandatory text at an earlier stage. Thus, during the Red Tape Challenge, the Chamber of Shipping requested the UK Government to use ambulatory reference.

Q5: What is a PIR as set out in the Impact Assessment (IA)?

A5: The Post Implementation Review (PIR) is a process to assess the effectiveness of regulatory provisions after they have been implemented and operational for a period of time, typically every five years, and is carried out on behalf of the Secretary of State. It will evaluate whether the policy has achieved its goal and is still valid, and will also evaluate the costs and benefits of all the technical amendments enacted since the previous review (or Impact Assessment).

In the case of the MARPOL I Regulations, a PIR will be undertaken in five years as required under the statutory review provision (regulation 48) and will be validated by the Regulatory Policy Committee (RPC).

The report published following the PIR will set out the conclusions regarding the next steps for the Regulations; that is, as to whether they should be renewed, amended, removed or replaced.

Q6: As per page 5 of the IA, what is the Government doing to address the backlog of maritime regulation?

A6: The backlog does not have any material impact on ship safety—this is a stable, mature sector with a strong international network of complementary intergovernmental and state regulators. Given the long history of maritime regulation, many regulatory changes are incremental. However, the Government is actively addressing the backlog of maritime legislation¹³.

To understand the extent of the UK's compliance with amendments to international maritime convention amendments, the Department commissioned ChartCo Training & Consultancy to undertake a gap analysis to compare IMO conventions amendments with that of UK domestic legislation and identify where UK legislation is out of step with international obligations. This extensive package of work, which concluded in May 2017, identified that of 10 International conventions considered, a total of 381 amendments had been introduced with 43% of those not yet introduced into UK law.

Whilst this seems a significant number, the impact is far more limited in practice. Many amendments to international instruments are simply clarifications, explanations or improvements to outdated drafting and incremental improvements to reflect technological advances. A significant number apply only to “new build” ships, and those which are retrospective are only ones which can be accommodated in the design of existing ships.

Whilst we are seeking to reduce the backlog as quickly as practical, we are also mindful of the hard deadline of the International Maritime Organization (IMO) flag State administration audit, which is expected to take place in 2020 at the latest. The IMO has put in place a programme of audits of flag States who are IMO members, including the UK. This is known as the “IMO Instruments Implementation Code” audit or “Triple I” audit and covers six international conventions, which have been prioritised.

In October 2015, the Maritime and Coastguard Agency (an executive agency of the Department) established a small team dedicated to developing a long term radical programme to restructure maritime legislation to provide a legislative framework that is responsive to change and reflects the latest requirements, whilst adhering to the principles of Better Regulation.

The current “roadmap” for implementation of the outstanding amendments to international conventions into domestic law uses cross-referencing of convention requirements and ambulatory reference to the fullest extent possible to enable

¹³ The global nature of the maritime sector results in a complex and extensive set of international obligations emanating predominantly from the IMO and the International Labour Organization (ILO). There is also an extensive programme of EU legislation on maritime matters which the UK has been required to transpose, although many of these duplicate, at least in part, the content of international Conventions, e.g., the Port State Control and Port Waste Reception Facilities Directives.

future amendments to be implemented into UK law automatically. The first statutory instrument to use this approach was the Merchant Shipping Act 1995 (Amendment) Order 2016 (which allowed for the automatic updating of the limitation of liability limits in the International Convention on the Limitation of Liability for Maritime Claims, 1976), came into effect on 30 November 2016. Since then we have been working through a steady implementation process which is now coming to fruition.

Throughout 2016 the team identified a roadmap of long term projects and commenced a further three pilot projects suitable to fully test ambulatory reference. They also worked with the Better Regulation Executive to develop a streamlined and robust process that all future changes implemented pursuant to ambulatory reference provisions would need to comply with.

By 2018, secondary legislation implementing amendments to the International Load Line Convention 1966 and MARPOL Annex II (prevention of noxious liquid substances in bulk) had come into force. These Regulations, implementing Annex I of MARPOL, are also now complete and a significant number of projects are in train. Work to clear the full backlog of international amendments, with priority given to the six conventions under the III audit scheme (which account for the vast majority of outstanding amendments), is expected to be completed within the next three years.

APPENDIX 3: 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 12 February 2019, Members declared no interests.

Attendance:

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