

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee (Sub-Committee B)

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17th Report of Session 2017–19

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

#### **Draft International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019**

#### **Draft Mobile Roaming (EU Exit) Regulations 2019**

#### **Draft Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019**

#### **Includes 4 Information Paragraphs on 4 Instruments:**

- Draft General Food Law (Amendment etc.) (EU Exit) Regulations
- Draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019
- Draft REACH etc. (Amendment etc.) (EU Exit) Regulations 2019
- Transmissible Spongiform Encephalopathies and Animal By-Products  
(Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/170)

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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), 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 [hlseclegscrutiny@parliament.uk](mailto:hlseclegscrutiny@parliament.uk).

# Seventeenth 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

*Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019*

*Date laid: 4 February 2019*

*Sifting period ends: 20 February 2019*

1. An EU Regulation<sup>1</sup> provides reciprocal liberalised market access for “regular” (scheduled) and “occasional” (non-scheduled, for example holiday or tour) coach services between the UK and the EU. The EU Regulation establishes the conditions for the international carriage of passengers by coach and bus within the EU, and within Member States by non-resident EU operators (cabotage). This proposed negative instrument, laid by the Department for Transport, enables current bus and coach operators from the EU to operate in the UK after exit day (EU operators who wish to run a new regular service in the UK after exit day will need to obtain an authorisation in the UK). However, reciprocal rights for UK operators operating in the EU market after exit day cannot be guaranteed. Therefore, the Government intend the UK to join “Interbus”, a multilateral treaty between the EU and seven other contracting parties, as a contracting party in its own right.<sup>2</sup> The UK deposited its instrument of ratification on 30 January 2019, so the UK will formally accede to the Interbus Agreement on 1 April 2019.
2. At present, Interbus only provides for “occasional” coach travel between the parties. A Protocol to the Agreement was opened for signature in July 2018 to extend Interbus to allow “regular” and “special regular” services (cross-border services taking specific passengers to school or work), but no contracting party has yet signed the Protocol so it could take at least three months for this Protocol to come into effect.<sup>3</sup> As a result, “regular” and “special regular” services will not be able to take place immediately after exit day.
3. Given the potential impact on coach services, particularly in Northern Ireland, the House may wish to debate this instrument. The House may wish to press the Minister, in particular, on why there will be a two-day period between the UK exiting the EU and the Interbus Agreement entering into force (during which UK-operated occasional services will not be able to operate in the EU), and also on what the impact will be on “regular” and “special regular” services, and on cabotage services since Interbus does not provide for these. **The Committee therefore recommends that**

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1 Regulation (EC) No [1073/2009](#).

2 See Secondary Legislation Scrutiny Committee, [41st Report](#), Session 2017-19 ( HL Paper 190).

3 Four contracting parties need to sign the Protocol, including the European Community, with the Protocol then coming into force in the third month after the fourth signature is made. As of 11 January, no contracting party had signed the Protocol so it is unlikely that regular services will be authorised under the Interbus Agreement immediately after exit day.

**this proposed negative instrument be upgraded to the affirmative resolution procedure.**

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

- European University Institute (EU Exit) Regulations 2019
- Roads (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Sprouts and Seeds (Amendment) (EU Exit) Regulations 2019

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019

*Date laid: 31 January 2019*

*Parliamentary procedure: affirmative*

*The main purpose of these draft Regulations is to introduce a national framework for the endorsement and adoption of International Financial Reporting Standards (IFRS) after the UK's withdrawal from the EU. Subject to further Regulations, the power to endorse and adopt IFRS after exit is to be transferred to a Board hosted by the Financial Reporting Council (FRC). In the context of a recent review of the performance of the FRC and the Government's commitment to fundamental reform, the Sub-Committee is of the view that the Secretary of State will need to satisfy himself as to the FRC's ability to provide effective oversight of this important function.*

**The 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.**

4. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations with an Explanatory Memorandum (EM).
5. The main purpose of the instrument is to introduce a national framework for the endorsement and adoption of International Financial Reporting Standards (IFRS) after the UK's withdrawal from the EU.<sup>4</sup> The instrument also proposes a number of consequential amendments and transitional provisions in relation to European Public Limited-Liability Companies (also known as Societas Europaea or SEs) which, under separate Regulations,<sup>5</sup> will automatically convert on exit day to a new UK corporate form, UK Societas. These amendments are not explored further in this report.

#### *What is changing*

6. BEIS states in the EM that "it is in the UK's interest to maintain convergence with IFRS after EU Exit", highlighting that "the standards are used globally, by over 140 jurisdictions including 15 out of the 20 G20 countries" and that "IFRS bring consistency to financial statements and are widely recognised by investors who value the transparency afforded in company reporting and the ability to compare the financial statements of companies in the world". BEIS concludes that the "instrument is therefore consistent with the UK Government's policy that after departure from the EU, the UK will retain its reputation as a global hub for business".

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4 Publicly traded companies in the UK are required to apply IFRS as endorsed and adopted by the EU to their consolidated accounts. All other companies must either produce their accounts using IFRS or UK Generally Accepted Accounting Practices (UK GAAP) which is a UK specific set of accounting standards set by the Financial Reporting Council. Some companies use IFRS on a voluntary basis.

5 The European Public Limited Liability Company (Amendment etc.) (EU Exit) Regulations 2018 ([SI 2018/1298](#)).

7. Under the current arrangements, as set out in the EU’s International Accounting Standards (IAS) Regulation (“the IAS Regulation”),<sup>6</sup> decisions on the endorsement and adoption of IFRS rest with the European Commission. The international accounting standards in the UK on exit day will be those which were endorsed and adopted by the European Commission as having effect immediately before exit day.<sup>7</sup>
8. BEIS explains that without a UK framework for endorsement and adoption of IFRS, any future revisions to existing standards or the adoption of new standards would not be possible and UK standards would quickly become out of date. This instrument therefore proposes to transfer the power to decide on the endorsement and adoption of IFRS for use in the UK after exit to the Secretary of State. The use of this power is to be subject to a prescribed process, including compulsory assessment criteria and requirements to consult on and publish final decisions. The Department explains that under the proposed criteria, IFRS cannot be adopted for use in the UK, for example, if they are contrary to established principles for financial reporting: the standards must provide a “true and fair” view of an undertaking’s financial position, as required by section 393 of the Companies Act 2006, and be conducive to “long term public good”. These principles are set out in Article 3 of the IAS Regulation. The instrument also includes a statutory duty on the Secretary of State to report to Parliament annually on the discharge of the functions provided for in the Regulations.
9. The instrument proposes a further power for the Secretary of State to sub-delegate the decision-making function in relation to IFRS to another body. This body is not specified in the draft Regulations, but the instrument proposes a duty for the body to report on its activities annually to the Secretary of State, and for the Secretary of State to lay these annual reports before Parliament. The Department explains that the policy intention is for a subsequent instrument, subject to the affirmative procedure, to delegate the IFRS decision-making function to a UK IFRS Endorsement Board which is to be “hosted” by the Financial Reporting Council (FRC), the UK’s regulator of auditors, accountants and actuaries. While BEIS has said that the intention is that the Board should be operationally independent, we question whether its relationship with the FRC as its “host” will readily lend itself to achieving this intention.
10. We asked BEIS about the expected timetable for establishing the Board. The Department told us that:
- “The statutory instrument to sub-delegate the decision-making function [ ... ] is expected to be laid in Parliament before the summer recess. It was not possible to take the power to delegate the IFRS endorsement function and use it in the same Statutory Instrument, which is why we need to use two Statutory Instruments. Due to lack of Parliamentary time between now and exit day we will not be able to lay the second SI before March 2019. Looking at the forward programme from the International Accounting Standards Board on changes to the IFRS standards in the next few months, we expect the number of changes to the standards that the [Secretary of State] will need to endorse and adopt to be minimal.”

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6 Regulation EC No. [1606/2002](#).

7 These standards are set out in Commission Regulation (EC) No. [1126/2008](#).

11. The Sub-Committee notes the recent review and report<sup>8</sup> on the performance of the FRC and the Department’s commitment to reform it fundamentally. Against this background, we asked whether the Department is confident that the FRC (or a successor body) will have the capacity to host the Board and whether the proposed approach will be effective and guard the public interest. We were told that:

“The Department is currently working with the FRC to build capacity to set up the new Endorsement Board (EB) in time for EU Exit. We have worked extensively with stakeholders including businesses, their advisers and investors as well as other market regulators in developing this approach. Stakeholders input helped ensure that robust consultation and transparency requirements as well as a specific consideration of the long term public good are included in the SI [Statutory Instrument]. In addition, stakeholder input helped us define the extent of the FRC’s role in relation to the new Endorsement Board—the FRC is setting up the infrastructure to host the Board and to provide oversight, but the policy intention is that the Board members and the Chair will be operationally independent. In addition, the Chair of the Endorsement Board will be recruited by the public appointments process. We believe these measures will help ensure that the new Endorsement Board is operationally independent from the FRC. As a result, we can be confident that the approach will be effective and will guard the public interest.”

### *Conclusion*

12. These draft Regulations propose important changes to the way IFRS will be endorsed and adopted in the UK after EU exit. The policy intention is to delegate this function to a Board hosted by the FRC. We note the Department’s explanation regarding capacity-building at the FRC and the planned operational independence of the Board. Given the recent criticism of the performance of the FRC, however, and the Department’s commitment to fundamental reform, it will be important that the Secretary of State satisfies himself as to the FRC’s ability to provide effective oversight in this important area. **We draw the draft Regulations 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.**

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<sup>8</sup> Department for Business, Energy and Industrial Strategy, *Independent Review of the Financial Reporting Council* (18 December 2018): <https://www.gov.uk/government/publications/financial-reporting-council-review-2018> [accessed 20 February 2019].

## Draft Mobile Roaming (EU Exit) Regulations 2019

*Date laid: 4 February 2019*

*Parliamentary procedure: affirmative*

*UK consumers travelling in the EU currently have the guarantee of surcharge-free roaming. This means consumers can use their mobile devices to make calls, send texts and use mobile data services for no more than they would be charged when in the UK. This surcharge-free roaming, known as “Roam Like at Home”, is underpinned by the EU Roaming Regulation.<sup>9</sup> The EU Regulation also regulates the charges mobile operators can charge each other for providing roaming services.*

*The Department for Digital, Culture, Media and Sport (DCMS) states that the requirements on UK mobile operators to guarantee surcharge-free roaming for customers in the EU are inoperable after exit. This is because the UK will no longer be part of the EU regulatory system for mobile roaming that limits the charges that EU operators can place on UK operators. DCMS states that costs of regulating retail roaming charges without harmonised wholesale charges might lead to roaming becoming unaffordable for many operators. The instrument therefore removes the requirement on UK mobile operators to guarantee surcharge-free roaming for customers in the EU after exit.*

*Other consumer protections that are not contingent on membership of the EU regulatory framework are retained. These include the current transparency obligations on mobile operators to inform customers travelling abroad that they have reached 80% and 100% of their data allowance; and the financial limit provisions set out in the Roaming Regulation, converting the €50 limit to £45 so that, after spending £45, the customer is not able to consume any more data until they make an active choice to continue.*

**The 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.**

### *Background*

13. The Department for Digital, Culture, Media and Sport (DCMS) has laid these draft Regulations with an Explanatory Memorandum (EM) and Impact Assessment (IA). DCMS states that this instrument is being made in order to address deficiencies arising from the withdrawal of the UK from the EU in legislation relating to mobile roaming, to ensure that the legislation continues to operate effectively after exit.
14. The EU Roaming Regulation (“the Roaming Regulation”) regulates the charges that mobile network operators charge each other for providing services in other EU Member States (“wholesale charges”). It also regulates the charges that mobile network operators can charge their customers (“retail charges”). The Roaming Regulation applies across the EU and the European Economic Area (EEA).<sup>10</sup>
15. The main provision in the current Roaming Regulation states that consumers cannot be charged more for using mobile services when travelling in the

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<sup>9</sup> Regulation (EU) [No 531/2012](#).

<sup>10</sup> The Impact Assessment (IA), p 2 states: “the EU Roaming Regulation applies to the EEA - the Member States of the EU plus Iceland, Liechtenstein and Norway. Subsequent references to its impact on the EU have EEA application”.



EU than they would be in their home Member State (that is, roaming is surcharge-free). The Roaming Regulation also sets out transparency obligations on mobile operators, requiring operators to inform their customers when travelling abroad when they have reached 80% and 100% of their data allowance, and to take reasonable steps to protect customers from paying roaming charges for inadvertently accessed roaming services. In addition, the Roaming Regulation sets a financial limit that caps the spend of customers' mobile data roaming overseas: after spending €50, the customer will not be able to consume any more data until they make an active choice to continue.

16. The instrument removes the requirement on UK mobile operators to guarantee surcharge-free roaming for customers in the EU after exit. However, DCMS says that mobile operators will not be prevented from making and honouring commercial arrangements with mobile operators in the EU - and beyond the EU - to deliver the services their customers expect, including roaming arrangements. Surcharge-free roaming for UK consumers travelling in the EU may therefore endure due to commercial pressures or customer expectations. The IA notes that "Some mobile operators (3, EE, O2 and Vodafone) have stated that they have no current plans to change their approach to mobile roaming after EU Exit".<sup>11</sup>
17. The Roaming Regulation was first adopted in 2007, putting caps on wholesale and retail roaming charges for voice calls; its provisions have been extended over time to cover text and data services and have consistently pushed down the wholesale charges operators can charge each other and the retail charges they can charge their customers. The Roaming Regulation has now evolved so that consumers can "Roam Like at Home" (RLAH), meaning retail roaming prices cannot exceed a consumer's normal, domestic prices. This retail obligation is underpinned by caps on the wholesale charges which European mobile operators can charge one another for handling roaming traffic.
18. The IA states that "RLAH has only been in force since June 2017 and so we do not yet have more than a year's worth of data to evaluate the impact of this change. However, consumers have embraced RLAH. Latest research shows a fourfold growth in data roaming since the measure was introduced."<sup>12</sup>
19. The IA also states that: "Following the UK's exit from the EU, the existing EU regulations which enable UK mobile network operators access to capped wholesale rates in Member States will cease to apply. The arrangements that replace these rules will be subject to negotiation between the UK and EU".<sup>13</sup> In the event of 'no deal', DCMS says that no new arrangements with the EU would be in place at the point of exit, and that this instrument therefore aims to correct deficiencies in the retained Roaming Regulation in the event there is no negotiated arrangement. **The House may wish to press the Minister about the implications, in particular, of the disapplication of capped wholesale rates for those living near the border between**

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11 IA, p 2.

12 IA, p 6. See also European Commission, *Report on the implementation of the Regulation on roaming on public mobile communications networks within the Union* (14 December 2018) : <https://ec.europa.eu/digital-single-market/en/news/report-implementation-regulation-roaming-public-mobile-communications-networks-within-union> [accessed 20 February 2019].

13 IA, p 7.

**Northern Ireland and the Republic of Ireland who may be exposed to a risk of inadvertent roaming.**

20. In the IA, DCMS explains that the purpose of the instrument is to ensure, in the event of ‘no deal’, that:

“UK mobile operators would not face ‘one-sided’ regulation, i.e. the risk that the retail rates they can charge are capped, but there is no control over the rates they have to pay out to EU network operators - known as ‘wholesale rates’. Therefore the SI would avoid a situation in which UK operators potentially face significant losses. It therefore mitigates the risk that mobile operators deactivate roaming capability (which they could do to protect themselves against the losses mentioned above). In addition, the SI would also reduce the risk of legal challenge arising from the imposition of one-sided regulation. Finally, it would allow operators some flexibility: in a competitive market they might decide it is in their commercial interests to continue with EU surcharge-free mobile roaming. They might also be able to secure appropriate commercial arrangements with EU operators to allow surcharge-free roaming to endure. The SI ensures there is no legal ambiguity upon EU Exit, replacing business uncertainty with legal clarity”.<sup>14</sup>

*Consultation*

21. The EM states that the Government have engaged with a wide range of stakeholders, including consumer, industry and regulatory bodies, in the process of developing the instrument; and that mobile operators have commented that, if there were no cap on the charges EU operators can apply to UK operators, any increases in costs would likely be passed on to customers, and that a limit on the costs that could be passed on to customers would affect the sustainability of certain roaming services. According to the EM, this might mean that roaming services could be removed altogether from some customers. **We are concerned about the Government’s uncertainty on this issue. The House may wish to ask the Minister to provide a fuller explanation and greater clarity about the numbers likely to be affected.**
22. The EM refers to discussions with consumer bodies, who expressed concerns that the removal of the requirement for UK operators to offer surcharge-free roaming would lead to the reintroduction of higher charges for customers travelling to the EU. The consumer bodies proposed that the Government should maintain surcharge-free roaming for UK customers - a proposal which the Government did not accept because of the view that the costs of regulating retail roaming charges without harmonised wholesale charges (after EU exit) may lead to roaming becoming unaffordable for many operators.
23. We obtained additional information from DCMS about views expressed in consultation and we are publishing that information at Appendix 1 to this report.

*Impact*

24. The EM states that the impact on businesses that offer mobile roaming services will be to incur a limited one-off cost when familiarising themselves

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<sup>14</sup> IA, p 2.

with the limited changes to regulations and converting the €50 financial limit to £45 for automated notifications to customers.

25. The IA states that:

“[i]f operators were to pass on costs as roaming surcharges, consumers (both business and individuals) would be able to consume fewer roaming services at a similar price [ ... ] UK operators losing access to capped wholesale rates is a function of no longer being party to the EU Roaming Regulation. It is not a function of this SI. Other costs, such as those potentially arising from operator market power, are too uncertain to quantify.”

26. We asked DCMS whether it had done any modelling of the possible effects on consumers’ bills of removing the guarantee of surcharge-free roaming. The Department said that the IA accompanying the instrument did not evaluate the possible effects of removing the EU guarantee of surcharge-free roaming, but that it did compare the options of either explicitly removing or explicitly retaining retail caps on roaming after the caps on wholesale charges fall away. DCMS said that the IA highlighted some other potential impacts on consumers, including possible costs if operators re-introduced roaming surcharges independently of changes to wholesale prices, and a possible loss of consumer access to any roaming services. However, it added that “[t]he impact assessment discusses why these effects are too uncertain to quantify.” **The House may wish to invite the Minister to explain why the possible effects of removing the EU guarantee of surcharge-free roaming were not evaluated, and press for further information on the likely impact on individual and business users.**

### *Conclusion*

27. DCMS has laid this instrument to prepare for the possibility of a ‘no deal’ exit from the EU, which would mean that no new arrangements with the EU would be in place at that point. Leaving the EU in such circumstances would mean that the wholesale rates which EU network operators charge UK operators would become unconstrained by regulation, and also that the rate which UK network operators charge EU operators would similarly be unconstrained. Harmonised wholesale charges, under the EU Roaming Regulation, have underpinned the offer of surcharge-free roaming. The instrument therefore removes the requirement on UK mobile operators (contained in the retained Regulation) to guarantee surcharge-free roaming for customers in the EU after exit. **Given the potential significance of the draft Regulations for consumers and business users, we draw them 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.**

## Draft Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019

*Date laid: 7 February 2019*

*Parliamentary procedure: affirmative*

*With more than 600 pages, this is an exceptionally large and complex statutory instrument. According to the Department for Business, Energy and Industrial Strategy, the purpose is to ensure that there is no reduction in product safety or accuracy, or consumer protections, in a possible ‘no deal’ withdrawal of the UK from the EU. The instrument proposes amendments to a total of 38 legislative measures on product safety and metrology, including primary legislation, to correct deficiencies which arise from EU exit. The instrument had to be corrected and re-laid because of legal drafting errors in an earlier version of the draft Regulations.*

*While the Sub-Committee notes that there is an underlying policy coherence in the draft Regulations, we are concerned about the Department’s decision to combine so many different legislative measures in a single statutory instrument. We have raised these concerns with the Department and are not persuaded by its view that this approach has made the instrument more accessible and has assisted Parliament. We find that the chosen approach undermines the Sub-Committee’s ability to scrutinise the instrument effectively and reduces the time that is available to Parliament to debate the instrument and ask questions. We question whether the Department may have chosen this approach for its own convenience, rather than in the interest of Parliament or those affected by the proposals. We call on the Government to avoid combination instruments in the future, where the resulting size and complexity make it difficult to scrutinise and debate the proposals.*

*The Sub-Committee is also concerned about the uncertainty in relation to the impact that leaving the EU’s product safety regime in a ‘no deal’ scenario could have on UK consumers and businesses.*

**The 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.**

### *Context*

28. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations with an Explanatory Memorandum (EM) and an Impact Assessment (IA), as part of the Department’s contingency planning for a possible ‘no deal’ withdrawal from the EU. The Sub-Committee has also been provided with five factsheets which highlight and summarise some of the key aspects of the proposed changes.
29. BEIS says that the objective of the instrument is to ensure that there is no reduction in product safety or accuracy, or consumer protections, after EU exit. The Department explains that current requirements in relation to product safety and metrology (that is, products used for scientific and industrial measurement) will be maintained by retaining the appropriate EU obligations in UK law, so that products placed on the UK market must continue to meet substantially the same essential requirements. This is to provide continuity and certainty for business and maintain consumer confidence in the safety and accuracy of the relevant products.

30. The instrument proposes amendments to a total of 38 legislative measures on product safety and metrology, including primary legislation, to correct deficiencies which arise from EU exit. The instrument covers a substantial part of the manufacturing sector and a wide range of different product areas, including cosmetics, machinery, pressure equipment, electrical and electronic equipment, toys, measuring instruments and civil explosives. The IA estimates that around 63,000 UK manufacturers are involved in these industries, accounting for around £54 billion of the UK's economy Gross Value Added (GVA),<sup>15</sup> and that £63 billion worth of goods from these industries was exported to other EU countries in 2017, with around £104 billion imported from the EU.
31. This is the second version of the instrument that has been laid. Legal drafting errors in an earlier version required correction and relaying of the draft Regulations (see paragraph 57). The earlier version of the instrument was laid without an Impact Assessment (see paragraph 36).

### *Background*

32. According to BEIS, current product safety and metrology legislation places an obligation on manufacturers, importers and distributors to ensure that the products they place on the market are safe or accurate and comply with the relevant statutory requirements.
33. The Department explains that the current legislative framework consists of general requirements that apply to all consumer (non-food) goods, and specific requirements that apply to specific product categories, such as electrical goods and toys. The underlying principle, as set out in the General Product Safety Regulations 2005, is that all products must be safe under normal or reasonably foreseeable use. In the case of product-specific legislation, the legislation follows a framework developed at EU level and applied with adaptations to different product areas. Under this legislative framework, the manufacturer is responsible for undertaking an assessment of the product and for making a declaration that the product is compliant with the essential requirements. For some products, manufacturers may self-certify that the product meets the requirements. Products that present a greater risk are required to undergo an assessment by a third-party conformity assessment body known as a Notified Body (NB) that will produce the evidence for the manufacturer to provide a Declaration of Conformity. The product can then be marked with a conformity marking to demonstrate that the manufacturer attests that the product complies with the statutory requirements. In the EU this is commonly the CE (Conformité Européenne) marking, with other or supplementary markings used for certain products such as aerosols and measuring instruments.
34. The system currently operates on the basis of mutual recognition within the EU. National accreditation bodies within Member States ensure that all NBs meet the requirements set at EU level to ensure consistency and competence of NBs across the EU. Any business can then use any approved NB in any Member State to conduct their conformity assessment before placing products on the EU market. The UK statutory national accreditation body for NBs is the UK Accreditation Service. The main enforcing authorities are the Secretary of State, local authority trading standards and the Health and Safety

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<sup>15</sup> Gross Value Added is the measure of the value of goods and services produced in an area, industry or sector of an economy.

Executive (HSE). They have specific duties and powers in relation to checking compliance with the statutory requirements to ensure the safety of products.

*What is changing*

35. While this instrument largely proposes technical amendments to address deficiencies in retained EU legislation, several of the suggestions are more significant. They include proposals to:

- Create an independent UK regime for checking that products meet the relevant statutory requirements. This new regime is to mirror current EU requirements but would replace the conformity assessment by an EU NB with a requirement to use a UK-approved NB.
- Create a framework for a stand-alone UK marking system for manufacturers to show that their products comply with relevant statutory requirements. This new marking system is to replace the EU’s CE marking. The Department has published guidance on the design and use of the proposed new product safety UKCA (UK Conformity Assessed) marking on its website.<sup>16</sup>
- Allow products that meet current EU requirements to continue to be placed on the UK market and continue to recognise CE marking conformity assessments and EU NBs. BEIS says that this is intended to ensure that there is no reduction in the availability of products in the UK after exit. The continued recognition is proposed irrespective of whether the EU will reciprocate, but the Department says that it would be time-limited. According to BEIS, ending the recognition would require further legislation and is likely to be implemented on a sector-by-sector basis depending on the specific needs and circumstances of individual sectors.
- Transfer legislative powers currently held by the European Commission (“the Commission”) to the Secretary of State, including powers to update statutory requirements for certain product sectors to reflect technical or scientific developments or where new risks are identified. Powers held by the Commission in relation to so-called EU “harmonised standards”, will be replaced by a system in which the Secretary of State can designate so-called UK “designated standards” which indicate conformity with UK statutory safety requirements. Compliance with such standards is voluntary for businesses but, where it is shown, it provides a presumption of conformity with the standards.
- Creation of new UK-only databases for market surveillance and public protection purposes, to replace the existing EU databases. These databases are to support market surveillance activities to identify and remove unsafe or non-compliant products from the UK market.

*Impact*

36. The original instrument was laid without an IA. The EM to the original instrument stated that an IA with further analysis would be published to assist

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<sup>16</sup> Department for Business, Energy and Industrial Strategy, *Using the UKCA marking if the UK leaves the EU without a deal* (February 2019): <https://www.gov.uk/government/publications/prepare-to-use-the-ukca-mark-after-brexite/using-the-ukca-marking-if-the-uk-leaves-the-eu-without-a-deal> [accessed 20 February 2019].

Parliament in its consideration of the instrument and to inform parliamentary debate. **The Sub-Committee expects an IA to be published at the same time as the instrument is laid before Parliament;**<sup>17</sup> the Sub-Committee can scrutinise legislation effectively only once all relevant information is available. This is particularly important where the proposed legislation is complex as is the case with this instrument.

37. We raised this concern with the Department. BEIS told us that the expected impacts had been found to be de minimis and that there was therefore no requirement to publish a full IA, but, given the size and scale of the instrument, and in the interest of transparency, it was always the intention of the Department to publish an assessment of the impacts ahead of debate. The Sub-Committee notes that the Department has now laid an IA, alongside the corrected instrument and a revised EM. **While we welcome that an IA has now been provided, we reiterate the general point that, where an IA is to be provided alongside an instrument, it is essential that it is laid at the same time as the instrument so that proper scrutiny can be undertaken within the standard timetable.**
38. The Department has assessed the costs directly associated with the instrument to be largely familiarisation costs in relation to the new legislation and estimates these familiarisation costs to be around £19.6 million for some 241,000 businesses, equivalent to approximately £80 per business. While other additional transition and annual costs, including for the cosmetics industry, are referred to, the IA highlights that the wider impacts caused by the interaction between the UK's withdrawal from the EU and the UK's new product safety and metrology regime are out of the IA's scope, as they are not caused by the changes proposed in the instrument but by EU exit itself. These wider costs include, for example, the potential requirement for UK manufacturers to arrange conformity assessments from an EU NB for products that they wish to export to the EU, or the costs of relabelling products.
39. The IA explains that while the Department has “regularly engaged with stakeholders and wherever possible [has] provided quantitative evidence”, this type of evidence “has been limited and difficult to source”, as “businesses are still unsure how they will respond in a ‘no deal’ situation and it is difficult to predict how they might behave”. The Department adds that “[c]osts may be commercially sensitive and therefore not available and many of the products affected do not have sector focussed manufacturing or trade data making it difficult to provide quantifiable direct costs”.
40. **We take the view that the purpose of contingency regulations is to address the consequences of a ‘no deal’ exit. This includes setting out as comprehensively as possible how relevant stakeholders are likely to be affected in practice, including possible financial costs.** The House requires this type of information to make an informed decision on whether the approach chosen by the Government represents the most effective solution in the circumstances.

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17 The two Chairmen of the Sub-Committees have written to HM Treasury (HMT), as the absence of an Impact Assessment has been a concern in relation to some of the statutory instruments that HMT has laid before Parliament recently. The letter has been published on the Committee's website: [https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Session%202017-19/SKM\\_C30819021911490.pdf](https://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Session%202017-19/SKM_C30819021911490.pdf) [accessed 20 February 2019].

41. The factsheets provided to the Sub-Committee explain that the UK will lose access to key EU databases, including the Rapid Alert System for Serious Risk (RAPEX) and the Information and Communication System for Market Surveillance (ICSMS), in a ‘no deal’ scenario. This impact is not mentioned in the published IA or EM. While the EM refers to the creation of a new UK market surveillance database that is to provide a mechanism for rapid product safety alerts and product recalls, it is not clear from the material provided by the Department whether the loss of access to information contained in the EU’s databases could lead to a reduction in protection of UK consumers. We raised this with BEIS who told us that:

“Information from RAPEX and other EU databases form only a small portion of the intelligence used by UK market surveillance Authorities. They also use a variety of other intelligence sources, including that received from cooperation with Customs Authorities, Border Force, from businesses and consumers to determine whether a product should be checked. Loss of access to EU databases therefore will not prevent UK market surveillance authorities from effectively conducting checks on products on the domestic market. Both ICSMS and RAPEX have public facing access that provides information on EU product safety issues and product recalls. We take the extra precaution of adding RAPEX updates to the BEIS Product Recall Campaign site.”

42. While we note the information provided by the Department, it is not clear whether access to the publicly facing elements of the EU product safety databases provides the same timely intelligence and safeguards in relation to product safety issues and product recalls as access to the databases themselves.
43. The IA also notes that leaving the EU’s CE marking system would impact on UK NBs which currently award new CE marks for products by UK and international manufacturers to be sold in the EU but will no longer be able to do so in a ‘no deal’ scenario. We asked BEIS for more information on this potential loss of business for UK NBs. The Department told us that:

“There are 176 Notified Bodies based in the UK in 2019. [...] BEIS analysis suggests that in 2017 there were around 4,000 members of staff employed in support of Notified Body activity in the UK. [...] We do not currently have data on the proportion of Notified Body activities which relates directly to products sold in the rest of the EU. In part this is because a product that requires assessment for sale in the rest of the EU also requires assessment for sale in the UK – i.e. there is no difference in process or requirements. However, from our engagement with Notified Bodies and manufacturers we do know that the access to the EU market that UK Notified Bodies provide is a very important part of the service they provide. [...] The Government recognises the valuable role UK Notified Bodies play, which is why our no deal plans give them a clear ongoing role in ensuring products sold in the UK comply with the relevant rules.”

44. The Department added that:

“The Political Declaration on the Framework for the Future Relationship, published on 25 November 2018, sets out that both the UK and EU are committed to a comprehensive partnership, with as



close a trading relationship in goods as possible. It also sets out that ‘the Parties envisage comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation underpinned by provisions ensuring a level playing field for open and fair competition’. This text refers to common principles in the field of conformity assessment, i.e. the approval of products.”

45. The Sub-Committee notes that there is considerable uncertainty in relation to the impact that leaving the EU’s product safety regime could have on UK consumers and businesses, including UK NBs that currently award new CE marks but will no longer be able to do so in a ‘no deal’ exit. **We are particularly concerned about the impact that the loss of access to EU product safety databases could have on UK consumers. We regret that the Department has not provided more information about this and the risk it poses.**

*Concerns about the size and complexity of the instrument*

46. At over 600 pages, this statutory instrument is exceptionally large and complex. The Sub-Committee believes that this size of instrument may be unprecedented. BEIS provides an explanation in the EM, highlighting that having all amendments covering different product areas and metrology in one instrument “will enable Parliament to consider [the proposals] in the round” and provide users with a “single piece of domestic legislation that contains all requirements”. The Department adds that a key reason for the length of the instrument is that technical annexes from current EU Directives, setting out many of the detailed provisions, have been reproduced in the schedules. According to BEIS, the annexes account for more than 200 pages of the instrument.
47. Given the exceptional size and complexity of the instrument, we raised concerns about this approach and its impact on the transparency of the legislation and Parliament’s ability to scrutinise the proposals with the Minister for Small Business, Consumers and Corporate Responsibility and Secretary of State.<sup>18</sup> The Minister told us that:

“We saw clear advantages in the bundling approach as the framework for product safety and metrology is substantially the same over nearly all the products; therefore, the amendments are being laid together because there are so many cross-cutting issues.”

48. With regard to parliamentary scrutiny, the Minister explained that:

“We have considered the impact on Parliament and conclude that the consolidated approach of one SI [Statutory Instrument] has the benefit of reducing pressure on Parliamentary time because it allows for one debate on the same issues that arise in respect of the different product areas. An alternative approach of separating similar product areas into smaller bundles or individual SIs would result in multiple debates and considerable repetition.”

49. On the accessibility and transparency of the instrument, the Minister explained that:

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<sup>18</sup> This correspondence is published on the Sub-Committee B publications page: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-b/publications/> [accessed 20 February 2019].

“Whilst the size of the SI could be considered unusual, it will allow all the issues to be discussed in the light of the whole product safety and metrology landscape. Thereby increasing transparency and providing reassurance to MPs and consumers alike that we are not making fundamental policy changes or reducing protections in any way as a result of action to move EU law into UK domestic law on exit from the EU.”

50. The Minister added that:

“It also provides a single, coherent framework for businesses who have to comply with this legislation and regulators, such as Trading Standards, that advise and enforce across the wider product safety and metrology system. Departments were advised by PBL [Parliamentary Business and Legislation Committee] to take a common-sense approach to SIs, balancing the need for Parliament to undertake effective scrutiny, whilst making sure the legislation is coherent and understandable to the public. I am satisfied the right balance has been struck in this case.”

51. The Sub-Committee does not find these arguments convincing. The Department’s intention to reduce pressure on parliamentary time by bundling a large number of different legislative measures into a single instrument, has the practical effect of shortening debate in Parliament, thereby reducing the opportunity for Members to scrutinise the proposals and ask questions.

52. As for the suggestion that bundling enhances transparency, we do not think that those reading this large instrument along with its single EM, would find it clearer and more accessible than if it were divided into smaller instruments, with separate EMs for each. The Sub-Committee is of the view that in this case, the Department may have bundled many different legislative measures into a single combination instrument for its own convenience rather than to assist Parliament or those affected by the legislation. **We are not persuaded that the approach the Department has chosen with this large instrument makes for accessible and transparent legislation and supports effective parliamentary scrutiny by this Sub-Committee and by way of debate.**

53. While we note that there appears to be an underlying policy coherence in the instrument, we remain concerned that the exceptional size and complexity of this instrument make it difficult for the Sub-Committee to scrutinise the instrument to the standard to which the House is accustomed. We strongly urge the Department to avoid a bundling approach in the future where this undermines the ability of Parliament to carry out effective scrutiny.

54. We also wrote to the Leader of the House of Commons and the Parliamentary Under Secretary of State for Exiting the EU<sup>19</sup> to ask about the Government’s use of combination instruments in the particular context of preparing the statute book for EU exit, where it is the Government’s declared intention to reduce the number of statutory instruments that need to pass through Parliament ahead of exit day. We asked about the underlying rationale and decision-making process in relation to combination instruments, in the context of this instrument and another large “portmanteau” instrument that

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19 *Ibid.*.

combines a significant number of disparate policy areas in a single statutory instrument and has also been reported to the House.<sup>20</sup> We were told that:

“It is up to individual departments, and ultimately the Ministers who make the SIs, to assess the appropriateness of the composition of each instrument. [...] A large amount of the statutory EU Exit instruments involve minor amendments or technical fixes and are designed to maintain the status quo and minimise disruption. They do not include major changes in policy, where possible. Departments may therefore decide to consolidate changes in a single instrument, to assist the understanding of those changes both by Parliamentarians and industry stakeholders that are affected by the legislation. [...] All secondary legislation - not least that relating to exiting the EU - has to be accessible and usable. In some cases, having a number of separate instruments that are closely related or cross-cutting would be to the detriment of that. [...] We will share your letter with all SI Ministers to make them aware of your concerns.”

55. **We welcome that the Government will share our concerns about combination instruments with Ministers who have responsibility for secondary legislation. We remain concerned, however, that where the bundling of many different measures into a single statutory instrument leads to exceptional size and complexity, as with this instrument, it is a challenge to effective parliamentary scrutiny and risks compromising the accessibility of the law. We would not like this instrument to set a precedent and urge the Government to avoid laying further large, combination instruments in the future.**
56. The Sub-Committee also notes that there are considerable risks to adopting a bundling approach. Should the House seek to object to one element of an instrument, the entire instrument would be under threat. In addition, there is a risk that if a single serious drafting error has been made, the whole instrument may have to be withdrawn, corrected and re-laid before Parliament.
57. This is what happened with this instrument: as set out in paragraph 3.2 of the EM, legal drafting errors in the original instrument were significant enough to require withdrawal, correction and re-laying of the draft Regulations. This has delayed parliamentary scrutiny of the instrument and has led to additional work for this Sub-Committee and the JCSI. **The Sub-Committee notes that combination instruments carry a considerable risk that a single serious drafting error may require the whole instrument to be withdrawn, leading to delay and additional work for Parliament. We call on the Government to assess this risk and the possible impact on Parliament carefully when considering the case for combination instruments.**

### *Consultation*

58. BEIS explains that it did not undertake a public consultation as the instrument is limited to addressing deficiencies in retained EU and UK law after EU exit

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20 The Home Office has laid the draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019. This instrument has 24 Parts and over 75 pages covers a wide range of disparate policy areas such as child pornography, counter-terrorism, extradition and football disorder. See Sub-Committee A, [17th Report](#), Session 2017-19 (HL Paper 292).

and does not propose significant policy change. The Department also says that it wanted to minimise any sensitivities in relation to the negotiations with the EU. Technical input was provided by the Office for Product Safety and Standards, HSE and other relevant government bodies.

59. The Department states that it consulted informally a cross-representation of stakeholders, including trade associations and other industry representative bodies across the product areas covered by the instrument. According to BEIS, stakeholders were supportive of the need to maintain a functioning product safety and metrology regime which mirrors the current framework as closely as possible, and were particularly interested in the establishment of a UK marking and the lead-in time business will have to implement any new marking requirements.
60. We asked the Department whether during its engagement with stakeholders it had sought views on the bundling approach taken with this instrument, and whether stakeholders had supported this approach. The Department explained that:

“Yes, the bundling approach was discussed with stakeholders, but none raised concerns about the approach nor the size of the legislation. The approach was understood by stakeholders, given the similar cross-cutting issues, and stakeholders supported that these be discussed across all the product areas, to avoid potential risk of inconsistent approach if debated separately.”

### *Conclusion*

61. The Sub-Committee regrets the approach the Department has taken with this instrument. While we note that there appears to be an underling policy coherence in the instrument, we are not persuaded by the Department’s view that its approach has made the legislation more accessible and has assisted Parliament. On the contrary, the exceptional size and complexity of the instrument inhibit effective parliamentary scrutiny of the proposals (both by this Sub-Committee and by the House in debate), carry a considerable risk that the whole instrument may have to be withdrawn if a single serious drafting error has been made (as happened in this case), and reduce the accessibility of the legislation. We find that the Department may have chosen the approach for its own convenience, rather than in the interest of Parliament or those affected by the proposals.
62. We are concerned that this instrument could set a precedent of combining large numbers of legislative measures into a single statutory instrument. **We call on the Government to avoid such an approach in the future.** Where the Government do consider that there is a case for a combination instrument, it is essential that the rationale for the approach is explained clearly and that comprehensive and accessible supporting information is provided in the EM and, where appropriate, the IA when the instrument is laid before Parliament.
63. As to the substance of this instrument, we are concerned about the uncertainty in relation to the impact that leaving the EU’s product safety regime in a ‘no deal’ scenario could have on UK consumers and businesses. **We are particularly concerned about the impact that the loss of access to EU product safety databases could have on UK consumers and regret**

**that the Department has not provided more information about the risk that this poses.**

64. The House may wish to explore these concerns further with the Minister. **We 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**

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### **Draft General Food Law (Amendment etc.) (EU Exit) Regulations**

65. In case of a ‘no deal’ Brexit, these Regulations will deal with deficiencies in retained EU law<sup>21</sup> so that the basic principles currently underpinning food safety remain operable. This instrument also revokes (EU) Regulation No 16/2011 because, unless negotiated otherwise, the UK will not retain access to the Rapid Alert System for Food and Feed (“RASFF”) after exit. In additional material provided to the Sub-Committee, the Food Standards Agency (FSA) has indicated the alternative means it will use to seek equivalent information. We remain concerned, however, at the lack of access to RASFF which issued over 3,800 “original notifications” (of which 942 were classified as an “alert”) in 2017 alone. The Sub-Committee has asked the FSA to revise its Explanatory Memorandum to set out the alternative arrangements it is making to receive food safety warnings in the future, so that, in debate, the House may consider if the provision is adequate.

### **Draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019**

66. In the Explanatory Memorandum to these draft Regulations, HM Treasury (HMT) says that, for the purposes of EU law, the UK and Gibraltar are in effect considered as the same EU Member State; but that, in practice, the UK has treated Gibraltar in many cases as if it were an European Economic Area state. As regards financial services regulation, both passporting and non-passporting arrangements between the UK and Gibraltar in financial services are determined by EU financial services law. HMT adds that this means that the existing regulatory framework between the UK and Gibraltar in financial services will become deficient once the UK and Gibraltar leave the EU. In line with a Government announcement in March 2018 that Gibraltar’s authorised financial services firms would continue to be able to access the UK from now until 2020 in a ‘no deal’ scenario (with reciprocal rights for UK firms in Gibraltar), this instrument amends financial services legislation that support market access between the UK and Gibraltar, to ensure that relevant matters in relation to Gibraltar can be treated as they were before exit day. HMT confirms that the government of Gibraltar will be adopting a similar approach in its own EU Exit legislation to ensure that Gibraltar has a functioning regulatory framework in a ‘no deal’ scenario with mirroring rights and obligations.

### **Draft REACH etc. (Amendment etc.) (EU Exit) Regulations 2019**

67. The purpose of these draft Regulations is to replicate the current EU regime for the regulation and control of chemicals in a UK domestic context, as part of the contingency planning of the Department for Environment, Food and Rural Affairs (Defra) for a ‘no deal’ scenario. The Sub-Committee previously reported the draft Regulations to the House on the ground that the explanatory material laid in support of them provided insufficient information on their expected impact and that they gave rise to issues of public policy likely to be of interest to the House.<sup>22</sup> Since the Sub-Committee’s report, Defra has had to withdraw, correct and re-lay the instrument, after the Joint Committee on Statutory Instrument identified several drafting

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21 Principally Regulation (EC) No. 178/2002 and Regulation (EC) No. [931/2011](#).

22 [15th Report](#), Session 2017–19, (HL Paper 281).

errors. While the draft Regulations have now been corrected and re-laid, the Department has not sought to address the issues we raised in our report. We therefore remain concerned that the Department has provided insufficient information on the possible impact of the proposed changes, especially in relation to the additional responsibilities being transferred to the Health and Safety Executive and its readiness to act as the national regulator, and the potential costs for the UK chemical industry. Since the publication of our report, we have received a submission from the Cosmetic, Toiletry and Perfumery Association (CTPA) which raises concerns about the draft Regulations, in particular about potential additional costs for industry in relation to obtaining or creating new data to support the registration of chemicals in the UK, a potential reduction in the availability of cosmetics ingredients in the UK, and a potential need for additional animal testing. We have obtained a response from Defra to CTPA's submission, and we are publishing the submission and the response on our website.<sup>23</sup>

### **Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/170)**

68. The purpose of this instrument, laid by the Department for Environment, Food and Rural Affairs (Defra), is to address deficiencies in retained EU legislation in relation to the control and eradication of transmissible spongiform encephalopathies (TSEs), such as BSE, and the use, disposal, placing on market and import of animal by-products. The Sub-Committee previously considered the proposals when they were laid as a proposed negative instrument under the European Union (Withdrawal) Act 2018. At the time, the Sub-Committee recommended an upgrade to the affirmative procedure, as one of the proposed amendments would have had the effect of removing a statutory duty to ensure staff of competent authorities have appropriate education and training in relation to checks for TSEs. The Sub-Committee said that the proposal then risked giving the impression that control measures in this area were being weakened, and that this could potentially undermine UK meat exports after EU exit.<sup>24</sup> We welcome that the Department has listened to the Sub-Committee's concerns and has now laid the instrument without the amendment. We also welcome that Defra has revised the Explanatory Memorandum to reflect additional information that the Sub-Committee requested during its earlier scrutiny of the practical impact of some of the other proposed changes.

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23 SLSC Sub-Committee B publications page: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-b/publications/> [accessed 20 February 2019].

24 [8th Report](#), Session 2017–19 (HL Paper 244).

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

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### **Draft instruments subject to affirmative approval**

Animal Feed (Amendment) (EU Exit) Regulations 2019

Contaminants in Food (Amendment) (EU Exit) Regulations 2019

Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019

General Food Law (Amendment etc.) (EU Exit) Regulations 2019

Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

Local Elections (Northern Ireland) (Election Expenses) Order 2019

Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019

Nutrition (Amendment etc.) (EU Exit) Regulations 2019

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

REACH etc. (Amendment etc.) (EU Exit) Regulations 2019

Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019

Social Security Benefits Up-rating Order 2019

### **Instruments subject to annulment**

SI 2019/157 Livestock (Records, Identification and Movement) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

SI 2019/170 Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019

SI 2019/202 Metrology Health and Safety and Product Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019



## APPENDIX 1: DRAFT MOBILE ROAMING (EU EXIT) REGULATIONS 2019

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### Additional information from DCMS

*Q1: Is there a Consultation analysis available? If not, is there a list of who was consulted?*

A1: A list of stakeholder engagement on mobile roaming is set out below, followed by an analysis of their comments.

**Table 1: stakeholder engagement on mobile roaming**

Mobile operators	O2, Vodafone, BT/EE, Three
MVNOs	Sky, Virgin Media, Lebara
Trade bodies	Mobile UK, Broadband Stakeholder Group
Consumer	Which?, Citizens Advice, Citizens Advice Scotland, Communications Consumer Panel, Consumer Council for Northern Ireland, Money Saving Expert
Regulator	Ofcom
Other	Crown Dependencies, Gibraltar, Devolved Administrations, DfE (Northern Ireland)

Source: DCMS

### *Summary of views expressed during stakeholder engagement*

The mobile network operators expressed similar concerns on roaming under a no deal scenario. All were concerned about the UK no longer being a party to the EU Roaming Regulation. They all stated that their companies support the EU Roaming Regulation regime so that the wholesale charges they face from EU operators are capped. In the event of the UK not being a party to the EU Roaming Regulation (which is a necessary consequence of the UK leaving the EU without a deal covering roaming), they did not believe that the regulation mandating surcharge-free roaming could or should endure as the costs that EU mobile operators would be able to charge them for providing roaming services would no longer be regulated. The operators explained that due to customer demand, they have no current plans to re-introduce roaming surcharges.

The mobile virtual network operators (MVNOs) shared the mobile operators' views in relation to the UK not being party to the EU Roaming Regulation as a consequence of the UK exiting the EU. MVNOs are subject to the charges of EU mobile operators via their parent UK mobile operator when their customers roam in the EU. This is because MVNOs do not have networks of their own - they use the networks of one of the four mobile operators.

Which? expressed concern that consumers would no longer be guaranteed surcharge-free roaming in the EU as a result of the UK leaving the EU. Mobile roaming charges were a significant consumer / consumer harm issue for them. They did not welcome the potential return of surcharges post-Exit (in the event of the UK leaving the EU without a deal). They noted mobile operators' statements

about 'no current plans to re-introduce roaming surcharges' but were less reassured by the fact such statements are not legally binding. Which? proposed that the UK should secure a deal with the EU that will cover mobile roaming. Which? noted that the €50 financial limit is essential as well as transparency more generally. As well as wanting to see surcharge-free mobile roaming with the EU, Which? has called on the Government to secure surcharge-free roaming with the rest of world as part of its future trade negotiations.

Citizens Advice prepared a document in December setting out its key consumer questions - including mobile roaming. DCMS drafted a response to the points set out by Citizens Advice in its document. Their questions included: Will there be roaming fees for using my mobile phone in the EU? And can I still use my included data when travelling in the EU?

DCMS officials discussed these concerns with stakeholders and noted that, as the UK will no longer be part of the EU, reciprocal arrangements on surcharge-free roaming cannot be guaranteed via this SI. DCMS officials communicated to stakeholders the provisions it is appropriate to retain, such as transparency and the €50 financial limit converted to £45.

Ofcom provided detailed input on the deficiencies identified in roaming legislation and raised no concerns about the drafting of the SI.

**February 2019**

## APPENDIX 2: 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 19 February 2019, Members declared the following interests:

### **Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019**

Baroness O'Loan

*Close relative drives coaches*

### **Attendance:**

The meeting was attended by Lord Cunningham of Felling, Baroness Donaghy, Lord Goddard of Stockport, Lord Hodgson of Astley Abbots, Baroness O'Loan, Baroness Redfern, Lord Rooker and Lord Sherbourne of Didsbury.