

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee (Sub-Committee B)

18th Report of Session 2017–19

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

Includes information paragraphs on:

Draft Aviation Statistics (Amendment etc) (EU Exit) Regulations 2019	Draft European Structural and Investment Funds Common Provisions Rules etc. (Amendment etc.) (EU Exit) Regulations 2019
Draft Detergents (Amendment) (EU Exit) Regulations 2019	Draft Rural Development (Amendment) (EU Exit) Regulations 2019
Draft Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019	Draft Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019
Draft European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019	Draft Trade etc. in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019

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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

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/seclegapublications>

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.

Eighteenth Report

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

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

- Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019
- European University Institute (EU Exit) Regulations 2019
- Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019
- Food (Amendment) (EU Exit) Regulation 2019
- Food and Feed Hygiene and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Regulated Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- Teachers' Pensions Schemes (Amendment) (EU Exit) Regulations 2019

INSTRUMENTS OF INTEREST

Draft Aviation Statistics (Amendment etc) (EU Exit) Regulations 2019

1. The Sub-Committee previously considered this instrument when it was laid as a proposed negative. We recommended it be upgraded to the affirmative resolution procedure and the Department for Transport (DfT) has complied with that recommendation. The EC Statistical Returns Regulation¹ requires airport operators to provide statistical data to Member States for onward transmission to Eurostat.² The Explanatory Memorandum explains that, during the preparation of this instrument, a review of the Statistical Returns Regulation (which came into force in 2003) showed that a mechanism for enforcing the requirement for respondents to provide data was required in order to meet the UK's responsibilities as a Member State. This instrument therefore provides a mechanism whereby the Civil Aviation Authority (CAA) can enforce the obligation on airport operators and impose a civil penalty of up to £5,000 if they do not provide the required data. DfT says that, in the event of 'no deal' with the EU, the instrument will require airport operators to send statistical data to the CAA, and the CAA will be obliged to collect that data and send it to the Secretary of State (if directed). It states that, in practice, airports are likely to continue to provide data as they have done in the past.

Draft Detergents (Amendment) (EU Exit) Regulations 2019

Draft Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019

2. According to the Department for the Environment, Food and Rural Affairs (Defra), the purpose of these two sets of draft Regulations is to ensure that current EU standards and requirements, in relation to the placing on the market of detergents, can operate effectively after the UK's withdrawal from the EU, and that a high degree of protection for the environment and human and animal health can be maintained. Amongst other changes, the instruments set out how decision-making powers currently held by the European Commission ("the Commission"), including in relation to derogations for certain detergents from biodegradability requirements, will be transferred to the Secretary of State as the UK's competent authority for detergents, and how, in practice, these functions will then be exercised by the Health and Safety Executive (HSE) after exit. The Committee notes that HSE's responsibilities after EU exit will expand significantly as a result of these and other instruments; it will need to be resourced adequately to carry out its new functions. The instruments also transfer to the Secretary of State and the devolved administrations powers from the Commission to initiate action under the 'safeguarding clause'. This mechanism allows urgent, temporary restrictive action to be taken when there is evidence that a specific detergent, despite complying with the statutory requirements, constitutes a risk to the safety or health of humans or animals or a risk to the environment. We asked the Department about the use of the safeguarding mechanism, and whether the fact that the UK will no longer have access to the EU's information-sharing systems will mean greater health or

1 Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air, 11 March 2003 (OJ L66/1).

2 The European Commission's statistical body.

environmental risks. The Department told us that while the UK would lose access to information-sharing systems, such as the EU's rapid reporting and response systems, in practice, the safeguarding mechanism was very rarely used, and the impact therefore was likely to be low. We are publishing the additional information provided by Defra at Appendix 1.

Draft European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019

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

Draft Rural Development (Amendment) (EU Exit) Regulations 2019

Draft Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019

3. A range of EU legislation underpins financial support both for rural development through the European Agricultural Fund for Rural Development (EAFRD), and for maritime and fisheries activity through the European Maritime and Fisheries Fund (EMFF). In the Explanatory Memorandum (EM) to the draft Regulations concerned with European Structural and Investment Funds, the Department for Environment, Food and Rural Affairs (Defra) says that the instruments correct deficiencies in the relevant EU legislation to enable existing programmes in the UK currently funded by the EAFRD or the EMFF to continue operating for the remainder of the 2014 to 2020 programme period. In the EM to the draft Rural Development Regulations, Defra explains that the instruments similarly amend retained EU law, again to ensure a basis to allow funding for the continuation of rural development programmes in the UK after EU exit. Defra says that the UK Government have guaranteed that any EAFRD and EMFF projects in the UK whose funding has been agreed before the end of 2020 will be funded for their full lifetime. It adds that the estimated value of the EU funds to be replaced is around £132.7 million for the remainder of the programme period (to 2020) for the EMFF, and around £400-£450 million a year for the EAFRD.
4. All four of the instruments were first presented to Parliament as proposed negative instruments. At the time, the Sub-Committee criticised a lack of background information and financial analysis in the EMs and recommended that the first of the European Structural and Investment Funds instruments, and both of the Rural Development Regulations, should be upgraded to the affirmative procedure, to allow the House an opportunity to press the Minister for a fuller explanation of their purpose and effect.³ The Sub-Committee welcomes that the Department has revised the EMs in response to the Sub-Committee's concerns but notes that it would have been helpful to provide more financial information in relation to the two sets of Rural Development Regulations to inform Parliament's debates of these instruments.

Draft Trade etc. in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019

5. The Department for International Trade (DIT) states that the purpose of these draft Regulations is to ensure that EU-derived domestic export control legislation can operate effectively after the UK's withdrawal from the EU. The

3 [9th Report](#), Session 2017–19 (HL Paper 253).

instrument relates to firearms, their parts and components, and ammunition; dual-use items, such as goods, software, technology or documents which can be used for both civil and military applications; and items which could be used for capital punishment or torture. The instrument does not cover export controls on military goods. According to DIT, the intention is for the current controls to operate as they do now as far as possible; the key difference would be that after EU exit, controls would apply when relevant goods are exported from the UK, rather than from the EU. DIT has said that under the new arrangements, UK exporters of firearms to the EU would need to supply the Secretary of State with documentary proof that the importing country has authorised the import and, if the goods transit any country, that there is no objection to the transit. The export of items to the EU that can be used for torture or capital punishment would be subject to the same prohibitions and licence requirements that currently apply to such items for third-country exports. Businesses wishing to export dual-use items to the EU would need to obtain an open general export licence (OGEL). DIT explains that exporters can register for an OGEL licence now which will come into force on exit day, and that registration through SPIRE, the Export Control Joint Unit's (ECJU) electronic licensing system, is free and straightforward. Exporters will need to state where records of any exports will be kept and where the ECJU may inspect them.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Aviation Statistics (Amendment etc.) (EU Exit) Regulations 2019

Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019

Detergents (Amendment) (EU Exit) Regulations 2019

Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019

European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019

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

Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019

Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019

International Waste Shipments (Amendment) (EU Exit) Regulations 2019

Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019

Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019

Organic Production and Control (Amendment) (EU Exit) Regulations 2019

Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Rural Development (Amendment) (EU Exit) Regulations 2019

Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019

Trade etc. in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019

Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

- SI 2019/207 Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019
- SI 2019/208 Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019
- SI 2019/209 Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- SI 2019/306 Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

APPENDIX 1: DRAFT DETERGENTS (AMENDMENT) (EU EXIT) REGULATIONS 2019 AND DRAFT DETERGENTS (SAFEGUARDING) (AMENDMENT) (EU EXIT) REGULATIONS 2019

Additional information from the Department for Environment, Food and Rural Affairs

Q1: Is there information available on how often Member States currently make use of temporary restrictive actions under the safeguarding mechanism?

A1: The final report of the Study on the ex-post Evaluation of Regulation (EC) No 648/2004 (Detergents Regulation) by RPA published in January 2018 identified one instance of the safeguard clause being used (for the product POR-ÇÖZ), placed on the market in Germany and Belgium) in November 2010. There may also have been an additional instance of the use of the safeguard clause in July 2013 where the Belgian authorities placed a restriction on a product called “Total Clean”, placed on the market in Belgium.

At least one Member State, Ireland, had also considered using the safeguard clause to address the risk (of unintentional poisoning) posed by liquid laundry detergent capsules. In the latter case, however, it was concluded that the safeguard clause was not adequate to deal with this issue, because the problem covered a whole category of laundry detergent, and not a specific brand or product within this type. This issue was eventually addressed by Commission Regulation (EU) No 1297/2014 of 5 December 2014 which amended Annex II of the Classification, Labelling and Packaging of substance and mixtures Regulation (CLP Regulation) (Regulation (EC) No. 1272/2008) introducing new rules for the packaging of liquid consumer laundry capsules.

The safeguard clause may only be used on a case-by-case basis for a specific product, not for a class of product and cannot, therefore, be used to introduce risk management measures of a general nature. There is generally consensus among MS authorities and consumer associations that the safeguard clause is an important, and beneficial, element of the Detergents Regulation, even if (to date) it has rarely been used.

Q2: The Explanatory Memorandum suggests that under the current system, if the safeguarding mechanism is used by a Member State, that Member State has to immediately inform the Commission and other Member States. This means that information about a risk to the safety or health of human or animals or a risk to the environment is shared across the EU. After EU exit, will the UK no longer be part of this information sharing system? If so, has the potential risk to human and animal health and the environment been assessed? Could the UK as a third country access the system?

A2: In the event that the UK leaves the EU without an agreement, in the ‘no deal’ scenario, the UK as a third party country will not have access to information sharing systems, including the Rapid reporting and response systems (RAPEX) as well as information shared with Member States under the safeguarding mechanism under the Detergents Regulation and similar mechanisms in chemicals legislation such as the REACH Regulation (Regulation (EC) No. 1207/2006) or the CLP Regulation (Regulation (EC) No. 1272/2008). A full impact assessment on the effect of not having access to the information sharing systems on human and animal health or the environment with regard to the Detergents Regulation has not been conducted; however, given that the safeguard clause is rarely used, it is likely to be low. If there is an agreement, during the implementation period as

set out in the White Paper, the UK will seek to participate in bodies such as the European Chemicals Agency which operates information sharing systems such as RAPEX.

19 February 2019

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 26 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 and Lord Sherbourne of Didsbury.