HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee B)

19th Report of Session 2017–19

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

Drawn to the special attention of the House:

Draft Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019

Draft Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019

Draft Immigration (European Economic Area Nationals) (EU Exit) Order 2019

Includes information paragraphs on:

Draft Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019

Draft Train Driving Licences and Certificates (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/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.

Nineteenth Report

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

Instruments recommended for upgrade to the affirmative resolution procedure

Animal Health, Plant Health, Seeds and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Date laid: 21 February 2019

Sifting period ends: 12 March 2019

1. This proposed negative instrument seeks to ensure that Northern Ireland EU-derived legislation on animal health, plant health, the marketing of seed and propagating material and seed potatoes and beef, and veal labelling can operate effectively after the UK's withdrawal from the EU. The Sub-Committee notes the statement of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland that the proposed changes are minor and of a technical nature. However, one proposal in the instrument appears to be unusual: Part 6 of the instrument proposes amendments to the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. This is a draft affirmative instrument that has not yet been laid before Parliament and the Department has not provided Parliament with a draft of the instrument to assist and inform its scrutiny. The Department has told the Sub-Committee that this has arisen as a result of delays in getting cross-Government clearance of the draft affirmative instrument.

2. The amendments are extensive. Without a copy of the instrument that is to be amended, it is not possible to assess properly whether the proposed changes are only minor and technical, or whether they are more substantial and would require the affirmative procedure. Given this uncertainty, the Sub-Committee considers that the House may expect an opportunity to debate the proposals and **we therefore recommend that this instrument should be subject to the affirmative resolution procedure.**

Rail Safety (Amendment etc.) (EU Exit) Regulations 2019

Date laid: 18 February 2019

Sifting period ends: 6 March 2019

3. This proposed negative instrument, laid by the Department for Transport (DfT), is intended to allow the status quo in rail safety to continue in the event of 'no deal' with the EU. Safety certificates are issued in two parts, Part A and Part B. The Part A certificate is proof that an operator has general safety arrangements in place to run trains. Part A certificates are issued by national safety authorities (the Office of Rail and Road (ORR) in Great Britain) and they are reciprocal across the EU. An operator wishing to run trains must obtain a Part B certificate from the national safety authority of the country in which they wish to operate, in order to demonstrate their ability to run trains safely on a specific piece of infrastructure, such as a train route. This instrument allows for indefinite recognition of EU safety certificates

(Part A and Part B). However, DfT stated that it intends to introduce a maximum two-year limit on recognition of EU Part A safety certificates from exit day in a subsequent instrument to be introduced after exit. ORR-issued Part B safety certificates will be valid until they expire and will not be subject to a time-limited period. The European Commission has indicated that, in the event of 'no deal', operator licences issued by the ORR to operators currently operating in the EU would not remain valid in the EU after EU exit. DfT explains that "There are four operators holding UK-issued certificates that provide cross-border services between the UK and the EU (Eurostar, GB Rail Freight, DB Cargo and Northern Ireland Railways). The Government is actively engaging with relevant EU Member States, to secure bilateral arrangements in respect of these cross-border services." Given the potential impact on cross-border operations, the House may wish to debate this instrument. As such, **we recommend that this instrument should be subject to the affirmative resolution procedure.**

Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019

Date laid: 18 February 2019

Sifting period ends: 6 March 2019

4. This proposed negative instrument, laid by the Department for Transport, aims to preserve the status quo for the rail legislative framework for rail operations in Northern Ireland (NI). After exit day, the Office of Rail and Road (ORR), as the independent regulator for rail safety in Great Britain (GB), will continue to issue ORR-only "train driving licences", and the Department for Infrastructure in Northern Ireland (DfI NI) will issue "Northern Ireland train driving licences." The approach in GB[1] is to recognise European train driving licences issued before exit day for up to two years after exit day.

5. However, this proposed negative instrument will recognise European train driving licences (and ORR licences) indefinitely in NI. The Explanatory Memorandum explains that "this approach to recognition of documents reflects the particular importance of cooperation with the Republic of Ireland as regards cross-border railway services."

6. DfI NI explained that the reason for the policy divergence between GB and NI is "because the decision to introduce a sunset clause was recently taken by GB Ministers and applied to their legislation. Within NI, any decision to replicate that position in the devolved area would be a policy change and, in the current absence of Ministers here, not within our powers to deliver." The Committee considers that **the House may wish to have the opportunity to debate this instrument and recommends that this instrument be upgraded to the affirmative resolution procedure.**

1 See Draft Train Driving Licences and Certificates (Amendment (EU Exit) Regulations 2019 below – paragraph 33.

Railways (Safety Management) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2019

Date laid: 18 February 2019

Sifting period ends: 6 March 2019

7. This proposed negative instrument is intended to allow the status quo in rail safety to continue in Northern Ireland (NI) after exit day. Safety certificates are issued in two parts, Part A and Part B. Part A certificates relate to compliance with safety requirements generally. Part B certificates relate to requirements for particular infrastructure. Whilst operators may hold one Part A certificate, cross-border services will hold more than one Part B certificate. For example, Northern Ireland Railways hold a Part A certificate covering compliance with safety requirements for the totality of their rail operations, a Part B relating to their operations on NI infrastructure and a further Part B issued by the Commission for Rail Regulation (CRR) in the Republic of Ireland, for their operations in that jurisdiction.

8. After exit, EU Part A and Part B safety certificates will be recognised indefinitely in NI. However, the EU will not reciprocate recognition of UK certification. The Department for Infrastructure Northern Ireland has confirmed that:

> "Contingency arrangements have been agreed between NI and the ROI [the Republic of Ireland] whereby applications have been made to the CRR for individual Train driver Licences to be issued to each Train Driver employed by NIR [Northern Ireland Railways] who currently operates cross –border services. These licences will become active immediately on the UK leaving the EU. Equally, NIR have provided evidence of compliance supporting their recently granted Part A Certification to Iarnrod Eireann, the ROI train Operator, who will use this information to amend their Part A Certificate issued by the CRR to cover the operations of NIR in the ROI. These temporary arrangements will safeguard the continuing operation of the cross-border services pending agreement of bilaterals."

9. Given the potential impact on cross-border operations, the House may wish to have the opportunity to debate this instrument. As such, **we recommend that this instrument should be subject to the affirmative resolution procedure.**

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

- Railways (Access, Management and Licensing of Railways Undertakings) (Amendments etc.) (EU Exit) Regulations 2019

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019

Draft Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019

Date laid: 13 February 2019

Parliamentary procedure: affirmative

These two sets of draft Regulations propose wide-ranging amendments to a number of different policy areas to ensure that the existing policy regimes can continue to operate effectively after the UK's withdrawal from the EU. The policy areas covered include Geographical Indication schemes, the spirit drink and wine sector, the recognition of natural mineral waters, food labelling, the release into the environment of genetically modified organisms and veterinary medicines. A key purpose of the instruments is to transfer powers which are currently held by the European Commission to the appropriate UK ministers, so that the respective policy regimes can operate effectively in a UK domestic context. Given the importance of some of these sectors, the House may be interested to see how the Government are preparing for the transition to the new UK arrangements after exit.

These two sets of 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.

10. The Department for Environment, Food and Rural Affairs (Defra) has laid these two sets of draft Regulations before Parliament alongside an Explanatory Memorandum (EM) for each of the instruments. The instruments propose wide-ranging amendments to a number of different policy areas to ensure that the existing policy regimes can continue to operate effectively after the UK leaves the EU. The policy areas covered are Geographical Indication (GI) schemes, the spirit drink and wine sector, the recognition of natural mineral waters, food labelling, the release into the environment of genetically modified organisms (GMOs), animal health and veterinary medicines. This report provides a brief overview of the key proposals in these areas, except in relation to animal health where the proposed changes are minor and technical.

Natural Mineral Waters

11. Defra explains that under current EU legislation,[2] natural mineral waters have to go through a process of recognition to prove that they have the necessary composition and characteristics to be sold and marketed as natural mineral waters across the European Economic Area (EEA). Recognition is carried out by individual Member States.

12. The draft Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 ("the Environment Regulations") propose that, in a 'no deal' scenario, the current recognition of EEA natural mineral waters in the UK would continue for an interim period of six months after EU exit. After that period, the Secretary of State would be empowered to withdraw

2 Directive 2009/54/EC.

recognition of an EEA natural mineral water if certain conditions are not met,[3] and if a period of notice has been given to the affected business to give it time to adjust. Defra explains that the aim of these proposals is to ensure market stability immediately after EU exit, facilitate trade and business confidence and protect consumers against price increases as a direct consequence of EU exit, while maintaining control over the recognition and sale of EEA natural mineral waters in England. Defra has told the Sub-Committee that the European Commission ("the Commission") has indicated that, unless a future trade agreement or economic partnership agreement provides otherwise, natural mineral waters that had their recognition process undertaken by the UK will no longer be recognised in the EU after exit.[4]

Geographical Indication

13. Both sets of draft Regulations correct retained EU law on GI schemes. GIs are a form of intellectual property protection for the names of agricultural, food and drink products where the qualities or characteristics of the products can be attributed to the specific region or locality where they are produced and/or to the traditional methods used in their production. Examples include Scotch Whisky, Welsh Lamb and Cornish Pasties.

14. The draft Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019 ("the Food and Drink Regulations") make amendments to ensure that current GI schemes can be administered and enforced in a UK-only context after exit. The power to grant GI applications would be transferred from the Commission to the Secretary of State. The instrument also introduces an appeals mechanism to replace the current EU arrangements for appeals. Defra explains that the new mechanism is to allow those with a legitimate interest to appeal to the First-tier Tribunal where they disagree with decisions made in the administration of the UK GI scheme.

15. The instrument also proposes the creation and use of new UK GI logos, with existing UK GIs to be given three years to comply with the requirement to use the new UK logo in the UK market. According to Defra, the proposed changes will ensure the continued protection of the UK's 86 product names that are currently registered as EU GIs, and will also enable the UK to meet its obligations under the Trade Related Aspects of Intellectual Property Rights agreement of the World Trade Organisation.

16. We asked the Department whether, in a 'no deal' scenario, the UK would continue to recognise EU GIs or whether EU producers would have to apply for GI protection on the UK market after EU exit. The Department explained that:

> "The Government has not announced a decision on how EU27 GIs will be treated if the UK leaves the EU without a withdrawal agreement in place. The drafting of the legislation recently laid before Parliament reflects sensible contingency planning for an outcome the Government does not want. As stated in the technical notice, in a no deal scenario, producers of existing EU GIs may need to apply to the relevant UK scheme to secure UK GI status."

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3 These conditions are set out in the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (England) 2007 (SI 2007/2785).

4 European Commission, *Notice to Stakeholders* (23 January 2018): https://ec.europa.eu/food/sites/food/files/safety/docs/notice_brexit_mineral_waters.pdf [accessed 6 March 2019].

17. In relation to the EU's recognition of UK GIs after EU exit, specifically in relation to spirits, the Department previously explained to us that:

> "The EU position, taken from the Withdrawal Agreement is: The full list of existing EU-approved geographical indications will be legally protected by the Withdrawal Agreement - unless and until a new agreement is concluded on the future relationship. EU-approved geographical indications bearing names of UK origin (e.g. Scotch Whisky) will continue to be protected in the EU.
>
> In a 'no deal' scenario, we then revert to the provisions of the spirit drinks regulation (110/2008), which provides for the registration of GIs from third countries, and only allows for cancellation of GIs "if compliance with the specifications in the technical file is no longer ensured" (Article 18). The regulation does not (without being amended) provide for the cancellation of a GI due to a Member State leaving the EU."

Spirit drinks, wine and aromatised wine

18. In addition to establishing a UK regime for the application and enforcement of GIs, the Environment Regulations propose the transfer of powers from the Commission to the appropriate UK Ministers in relation to specifications, such presentation and labelling, of spirit drinks, the administration and application requirements for the protection of designations of origin and traditional terms of wines, and the production and marketing standards of aromatised wines (such as Vermouth).

Food labelling

19. In relation to food labelling, Defra explains that the Food and Drink Regulations transfer functions from the Commission to the appropriate UK Ministers for making new rules in relation to how certain pieces of information can be presented to the consumer. This includes, for example, updating the list of allergens that must be labelled on pre-packed food or changing the way nutritional values are presented. According to Defra, these functions will be exercised by Ministers through secondary legislation and will therefore be subject to parliamentary scrutiny.

Veterinary medicines

20. The Food and Drink Regulations make amendments to ensure that the UK can set Maximum Residues Limits (MRLs) in relation to veterinary medicines after EU exit. Defra explains that current EU and UK veterinary medicines legislation sets out the requirements for placing veterinary medicines on the market, including MRLs, to ensure their safe use and the protection of public health and the environment. According to Defra, MRLs protect consumers from residues of medicines in animal-derived produce and facilitate trade in such produce, as compliance with MRLs and food safety regulations provides assurance of the safety of animal-derived produce. Following EU exit, existing MRLs will be carried across to a new UK regime and any new MRLs set by the Commission will not apply to the UK. Defra says that as new MRLs will have to be set frequently, the draft Regulations propose for this function to be exercised administratively. The instrument transfers the function to the Secretary of State for England, Wales and Scotland and to the Department for Agriculture, Environment and Rural Affairs for Northern Ireland (DAERA), with the Secretary of State acting on a UK-wide basis

with the consent from DAERA as the default approach. It also introduces a new duty to maintain a searchable online MRL register.

21. Defra explains that the instrument also provides for the automatic conversion of all veterinary medicines which are currently approved by the European Medicines Agency (around 13% of all veterinary medicines currently available on the UK market) to UK national authorisations. The aim is to ensure that these medicines can remain on the UK market and can be subject to the established UK regulatory regime under the Veterinary Medicines Directorate, an executive agency of Defra. The instrument proposes a mechanism to update these authorisations, for example in light of new manufacturing processes. Any new applications for the authorisations of veterinary medicines in the UK would need to be made under the existing national approval regime.

Genetically modified organisms

22. The Environment Regulations make amendments in relation to the deliberate release into the environment of GMOs. EU legislation[5] currently requires Member States to ensure that authorised GMOs are labelled and traceable at all stages of their being placed on the market. The instrument proposes to transfer powers from the Commission to the Secretary of State to make legislation in England for the purpose of developing technical statutory guidance on sampling and testing for the presence of GMOs, and amending the threshold below which products containing unintentional or technically unavoidable traces of GMOs do not need to be labelled.

Conclusion

23. Defra has laid these instruments to prepare for the transition from policy regimes that are currently operated by the EU to a standalone UK framework. **Given the importance of the sectors covered in the instruments, the House may be interested to see how the Government are preparing for the transition to the new UK arrangements after EU exit.**

5 Directive 2001/18/EC, implemented by Regulation (EC) No 1830/2003.

Draft Immigration (European Economic Area Nationals) (EU Exit) Order 2019

Date laid: 11 February 2019

Parliamentary procedure: affirmative

This draft Order, laid by the Home Office, provides the mechanism by which those European Economic Area (EEA) nationals who will require leave to enter the UK once free movement is brought to an end will be granted temporary entry at the border. This Order forms one small part of a complex network of interlinked legislation to address the immigration position for EEA nationals and others after Brexit. Our questions on how the practicalities of the various grants of leave to remain will work may be resolved by the arrangements made under the Immigration and Social Security Cooperation (EU Withdrawal) Bill and the other Schemes, but we are currently concerned about the difficulties that may arise if, as this Order provides, an individual does not have a document with a specific date on it to act as a reminder of their obligations.

This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

Short term visitors

24. Following the UK's withdrawal from the EU, free movement will be brought to an end in 2021, subject to the passage of the Immigration and Social Security Cooperation (EU Withdrawal) Bill currently before Parliament.

25. This draft Order, laid by the Home Office and accompanied by an Explanatory Memorandum (EM), provides the mechanism by which those European Economic Area (EEA) nationals[6] who will require leave to enter the UK once free movement is brought to an end, will be granted temporary entry at the border.[7] Chapter 1 of this Order would enable an EEA national to enter the UK for three months, for work, study or as a tourist. We note from additional material from the Home Office, published in Appendix 1, that leave to enter would be granted automatically at the border on arrival, without any visa document or stamp in the individual's passport. It is not yet clear to us, therefore, how that the requirement to leave the UK will be enforceable.

26. The Home Office informed us that:

> "These are transitional arrangements to provide continuity and effective running of the border in the event that the UK leaves the EU without a deal, until the new immigration system is introduced in 2021. If EEA and Swiss nationals are found not to have European temporary leave to remain more than three months after arrival, they will be here unlawfully and may be liable to enforcement action. They will be strongly encouraged to make an application, otherwise they would need to leave the UK.

6 'EEA nationals' for these purposes means citizens of the EU, of the other EEA countries (Iceland, Lichtenstein and Norway) and of Switzerland.

7 Irish citizens will continue to be able to enter the UK freely under the Common Travel Area arrangements.

> The enforcement approach will of course need to take into account that the resident population of EEA and Swiss citizens will have until 31 December 2020 to make an application to the EU Settlement Scheme, and will be able to reside lawfully in the UK in the interim."

EEA nationals with right of residence

27. This instrument also makes changes to support the EU Settlement Scheme,[8] but is not the means to protect the rights of EEA nationals resident here before exit. In a 'no deal' scenario, the Home Office states that the Government intend to protect those rights by making regulations under clause 4 of the Immigration and Social Security Co-operation (EU Withdrawal) Bill ("the Bill"), once enacted.

28. Article 8 of this Order increases, from two to five years, the period of continuous absence after which indefinite leave to remain in the UK, granted to a person from the EEA, will lapse. If there is no stamp in someone's passport, with the issues raised by the Windrush scheme in mind, we asked how someone would provide acceptable evidence that they have (or have not) been resident in the UK for a certain amount of time.

29. The Home Office replied that data about indefinite leave granted under the EU Settlement Scheme would be recorded in all cases in the form of a secure digital status: "This Order does not make changes to how absence from the UK is assessed, nor the evidential requirements should an individual need to show that they have not exceeded the period of absence permitted. Relevant guidance will be updated to reflect the change made by the Order."

Further developments

30. Section 10 of the EM states that

> "The Home Office has not undertaken a public consultation on the EU Settlement Scheme. However, on 21 June 2018 the Government published a Statement of Intent[9] on the scheme and has since undertaken engagement with internal and external stakeholders, such as groups representing EU citizens in the UK, Consulates and community organisations, and account has been taken of those discussions.
>
> The Home Office has committed to a 12-month engagement programme, following the launch of the UK's Future Skills Based Immigration System White Paper,[10] with stakeholders in every nation of the UK to help inform the detailed design of the future immigration system."

Conclusion

31. This Order forms one small part of a complex network of interlinked legislation to address the immigration position for EEA nationals and others

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8 As specified in the Statement of Changes in Immigration Rules. HM Government, *Statement of changes to the Immigration Rules: HC 1849* (20 December 2018): https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1849-20-december-2018 [accessed 6 March 2019].

9 Home Office, *EU Settlement Scheme: Statement of Intent* (21 June 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf [accessed 6 March 2019].

10 HM Government, *The UK's future skills-based immigration system* (19 December 2019): https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system [accessed 6 March 2019].

after Brexit. Our questions on how the practicalities of the various grants of leave to remain will work may be resolved by the arrangements made under the Bill and the other Schemes, but we are currently concerned about the difficulties that may arise if an individual does not have a document with a specific date on it to act as a reminder of their obligations. We note that the Lords European Union Justice Sub-Committee wrote to the Home Secretary on 27 February raising very similar concerns.[11]

11 Lords European Union Justice Sub-Committee, Letter to Rt Hon. Sajid Javid MP, Home Secretary, on EU Settlement Status (27 February 2017): https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/CWM/HKtoSJ-SettledStatus-260219.pdf [accessed 9 March 2019].

INSTRUMENTS OF INTEREST

Draft Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019

32. These Regulations make changes to the operation of the business rates retention scheme. Since 2013-14, under the retention scheme, local authorities have kept 50% of locally raised business rates. Since 2017-18, the Government have, in each year, created "pilot" areas in which local authorities have been allowed to keep a higher percentage of locally raised business rates. For 2019-20, the Government are creating further "pilot" areas in Berkshire, Buckinghamshire, East Sussex, Hertfordshire, Lancashire, Leicester and Leicestershire, London, Norfolk, Northamptonshire, North and West Yorkshire, North of Tyne, Staffordshire and Stoke-on-Trent, Solent, Somerset, West Sussex, and Worcestershire, in which authorities will be allowed to keep 75%, instead of 50%, of local business rates income. The Ministry of Housing, Communities and Local Government (MHCLG) states that by means of the pilot programme, the Government will have been able to test changes to the rates retention scheme, including giving authorities greater control over their local business rates, before they roll out changes to the business rates retention scheme more generally. We obtained additional information from MHCLG which we are publishing at Appendix 2. MHCLG has said that findings from the 2017-18 pilot scheme have been published on the Local Government Association website: we note that there were mixed views among the participating authorities, who expressed both an appetite for the pilot scheme to "push a little further" as well as "dissatisfaction with the way in which grants had been rolled in from many authorities". The Regulations make additional changes including: providing for the basis on which, in future, the Government will distribute to local authorities any surplus on the "levy account"; making changes to the administration of the rates retention scheme to ensure that authorities are properly compensated for the loss of income arising from changes made to the rates liability of small businesses; and ensuring that the principal payments made to the Council of the Isles of Scilly under the Local Government Finance Act 1988 reflect Local Government Finance Reports approved by Parliament.

Draft Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019

33. An existing EU Directive[12] (as implemented in Great Britain (GB))[13] established a common regime for licensing and certifying train drivers in EU Member States. It harmonises the regulatory regimes of different Member States, enabling train drivers to move more freely between Member States and employers. After exit day, the Office of Rail and Road (ORR), as the independent regulator for rail safety in GB, will continue to issue ORR-only "train driving licences" and the Department for Infrastructure in Northern Ireland (DfI NI) will issue "Northern Ireland train driving licences." As a result, a distinction will made between ORR and DfI NI licences, and those "European train driving licences" issued in the European Economic Area. Northern Ireland (NI) train driving licences will be recognised

12 Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the European Union.

13 Train Driving Licences and Certificates Regulations 2010 (SI 2010/724).

indefinitely in GB. European train driving licences issued before exit day will be recognised in GB for up to two years after exit day. After the two-year transitional period, any train drivers working in GB who have previously used a European licence will need to apply to the ORR or the DfI NI for a train driving licence. The EU has stated that it will not recognise UK-issued train driving licences or certificates post-exit (that is, those issued by the ORR or DfI NI). The Government advise stakeholders, including railway undertakings and persons, to apply to any EU Member State national safety authority for a new train driving licence and certificate before exit day.

34. In this Report, the Sub-Committee has considered a proposed negative instrument — Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 — relating to railways in NI and has recommended it should be upgraded to the affirmative resolution procedure (see paragraphs 4-6).

Draft Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019

35. This instrument has been re-laid by the Department. The Sub-Committee published an information paragraph on this instrument in its 15th Report.[14]

14 15th Report, Session 2017-19 (HL Paper 281).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Architects Act 1997 (Amendment) (EU Exit) Regulations 2019

Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019

Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account: Basis of Distribution) Regulations 2019

Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

SI 2019/183	Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019
SI 2019/267	Transfer of Undertakings (Protection of Employment) (Transfer of Police Staff to the National Crime Agency) Regulations 2019
SI 2019/273	Animal By-Products and Transmissible Spongiform Encephalopathies (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
SI 2019/287	National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2019
SI 2019/289	Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

APPENDIX 1: DRAFT IMMIGRATION (EUROPEAN ECONOMIC AREA NATIONALS) (EU EXIT) ORDER 2019

Additional information from the Home Office

Q1: Chapter 1 of this Order would enable a European Economic Area (EEA) national to enter the UK for three months, for work, study or as a tourist. But the Home Office states that, where the conditions set out in the Order are satisfied, leave to enter by order would be granted automatically at the border on arrival, without any visa document or stamp in the individual's passport.

A1: The intention is to provide initial continuity and effective running of the border in a 'no deal' scenario, for the duration of the transition period until the implementation of the new skills-based immigration system from January 2021.

Until the new skills-based immigration system is introduced, EEA and Swiss nationals, including resident nationals and new arrivals, will be able to demonstrate their right to work and access services by showing a passport or national identity card, as now.

Q2: In the Explanatory Note it says that no notice of leave is given to the person – so how will 1) the visitor or 2) the authorities know if they have overstayed?

A2: Individuals wishing to stay for longer than three months would need to apply for European temporary leave to remain. Upstream communications and communications at the border would seek to ensure individuals were aware of this. When making an application for European temporary leave to remain, individuals would self-declare the date on which they arrived in the UK".

Q3: It has been rumoured that in case of a no-deal Brexit, UK citizens travelling to the EU will need to obtain an entry "visa" at a cost of around 8 Euros – is there no plan to charge for this "leave to enter" or will you wait and see and introduce a cost on a reciprocal basis?

A3: In a 'no deal' scenario, leave to enter with a duration of three months would be granted by order, automatically, at the border. There is no intention to apply a fee for this. Further details about the fee for European leave to remain, which individuals would require should they wish to stay for longer than three months in a 'no deal' scenario, will be announced in due course.

The EU have announced that UK nationals will not be subject to a visit visa requirement (i.e. for visits not exceeding 90 days in any 180-day period). However, the EU Commission has announced plans to introduce an Electronic Travel Information and Authorisation System (ETIAS). This is similar to systems in place in other countries, such as the US ESTA scheme, and will require third country nationals who do not need a visa to travel to the EU to obtain an ETIAS authorisation prior to travelling to the EU. The EU has indicated that the requirement will also apply to UK nationals as third country nationals once the UK leaves the EU. The EU's ETIAS is not expected to be operational before 2021.

The UK has announced plans in the white paper 'The UK's future skills-based immigration system' [Cm 9722] to introduce a similar scheme to ETIAS which would require visitors and transit passengers who do not currently normally need a visa to obtain an Electronic Travel Authorisation (ETA) prior to travel to the

UK. The scheme would not apply to British or Irish citizens, but we do intend to require EEA and Swiss nationals to obtain an ETA."

Q4: What happens if the visitor overstays the 3-month period?

Q5: Para 7.10 of the Explanatory Memorandum (EM) states that they will have to apply for further leave to remain – how will the overstayers be identified? How would they make that application? How many applicants are anticipated? Does the Home Office have capacity for to deliver the necessary permits?

A4 and A5: EEA and Swiss nationals who arrive after free movement has ended and are not eligible for the EU Settlement Scheme would need to apply for European temporary leave to remain if they wished to stay for longer than three months. Applications would be made online, once the individual had arrived in the UK and within three months of their arrival.

If EEA citizens then wanted to stay in the UK for more than 36 months, they would need to apply for an immigration status under the new skills-based immigration system, which will come into effect from January 2021. Those who did not qualify would need to leave the UK when their European temporary leave to remain expired.

The European temporary leave to remain scheme will be delivered using infrastructure created for the EU Settlement Scheme. The inflow of EEA citizens is expected to be no greater than would have arrived during the implementation period (from exit to 31 December 2020) in a 'deal' scenario and been eligible for the EU Settlement Scheme, therefore the Home Office expects to have sufficient capacity to process applications.

Q6: Will those who overstay without additional documentation be deported? Banned from returning to the UK? This all seems rather unenforceable.

A6: These are transitional arrangements to provide continuity and effective running of the border in the event that the UK leaves the EU without a deal, until the new immigration system is introduced in 2021. If EEA and Swiss nationals are found not to have European temporary leave to remain more than three months after arrival, they will be here unlawfully and may be liable to enforcement action. They will be strongly encouraged to make an application, otherwise they would need to leave the UK.

The enforcement approach will of course need to take into account that the resident population of EEA and Swiss citizens will have until 31 December 2020 to make an application to the EU Settlement Scheme, and will be able to reside lawfully in the UK in the interim. These transitional arrangements are intended to facilitate the granting of a UK immigration status to all EEA citizens and their family members by January 2021 ready for introduction of the future skills-based immigration system. Under the future immigration system, all EEA nationals and their dependants will require permission be here.

Q7: Paragraph 7.12 of the EM says that "the UK does not operate routine immigration controls on journeys from within the Common Travel Area to the UK". What is to stop the 3-month limit being subverted by EEA travellers going to the Irish Republic first and then freely crossing into the UK via the Common Travel area? Again how is this enforceable?

A7: When entering the UK from Ireland, where the conditions set out in the Order are met, leave to enter by order will be granted automatically on arrival in the UK. This supports, in particular, movement across the land border from Ireland into Northern Ireland. For example, those living in Ireland but working in Northern Ireland will be able to do so with this automatic leave to enter. Those EEA nationals who want to remain and work long-term in the UK will need to apply for European temporary leave to remain.

When entering the UK from the Crown Dependencies, the leave granted by the Islands will be recognised as leave to enter the UK, in line with the existing approach under Schedule 4 to the Immigration Act 1971.

Q8: Article 8 allows that when a person from the EEA is granted indefinite leave to remain, that leave does not lapse unless they have been out of the country for 5 years continuously (with certain exceptions) – again how will they or the authorities know how long the person has been out of the country if there is no stamp in their passport etc.?

Q9: Thinking about the issues raised by the Windrush scheme, how does someone provide acceptable evidence that they have (or have not) been resident in the UK for a certain amount of time?

A8 and A9: The Order simply increases, from two to five years (with certain exceptions), the continuous period of absence permitted before the lapse of indefinite leave granted under the EU Settlement Scheme (and recorded in all cases in the form of a secure digital status). It does not make changes to how absence from the UK is assessed, nor the evidential requirements should an individual need to show that they have not exceeded the period of absence permitted. Relevant guidance will be updated to reflect the change made by the Order.

More generally, a flexible approach is being taken under the EU Settlement Scheme to the evidence of UK residence which may be relied upon. More information is available here: https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence."

Q10: Article 9 will the requirement for fingerprints and a photo apply to all people without UK passports who apply for long-term leave to remain/residence after 30 March 2019? Can you confirm that that will include EEA and Swiss? What about those with dual nationality?

A10: The provisions made by the Order in relation to enrolment of biometrics are made in respect of applications to the EU Settlement Scheme made overseas, including by EEA and Swiss nationals.

The requirement would be a facial photograph for EEA and Swiss nationals and, in the case of non-EEA national family members, this could also be their fingerprints. Dual EEA/non-EEA citizens will be able to rely on their EEA nationality in applying under the scheme.

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APPENDIX 2: DRAFT NON-DOMESTIC RATING (RATES RETENTION AND LEVY AND SAFETY NET) (AMENDMENT) AND (LEVY ACCOUNT: BASIS OF DISTRIBUTION) REGULATIONS 2019

Additional Information from Ministry of Housing, Communities and Local Government

Q1: Paragraph 7.1 of the Explanatory Memorandum (EM) says that there have been pilot areas since 2017-18 - what lessons has MHCLG learnt from the pilots?

A1: We are currently conducting an evaluation of the pilot programme. We would hope to report on its findings later this year.

Some detail on the early findings from the 2017-18 pilots has already been published on the LGA website (https://www.local.gov.uk/sites/default/files/documents/190917%20Learning%20lessons%20from%20100%25%20Business%20Rates%20Retention%20pilots%20FINAL%20interim%20summary%20note.pdf).

The Government will be taking the lessons learned from the pilots into account in the design of the future business rates retention system.

Q2: Paragraph 7.1 of the EM lists the authorities involved in the 75% retention pilot. How have they been chosen? How many other authorities applied to take part? Why were those others not included?

A2: The 2019-20 pilot programme (which will be implemented through the above Regulations) was announced following a competitive process. In [July] we published a "prospectus" (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728722/BRR_Pilots_19-20_Prospectus.pdf) setting out the terms on which we would create pilots for 2019-20 and inviting interested authorities to submit applications. Ongoing business rates retention pilots in devolution deal areas and London authorities were excluded from this process as they were expected to have separate discussions with the department.

As you will see from the prospectus, we set out primary and secondary criteria on which we would select pilots in the event that we had to select between competing bids.

In the event, both sets of criteria were applied in the selection of successful pilot areas. As per the primary criteria, the department selected proposals from local authorities that "pooled" resources across functional economic areas, and demonstrated how any additional business rates income resulting from the pilot would be used to boost further growth or support financial sustainability (or a combination of these). Selected pilots also needed to demonstrate that they had in place robust governance arrangements for strategic decision-making across the pooled area. As per the secondary criteria, where the department had to select between applications that met the primary criteria, it looked for innovative proposals, for example in relation to piloting different types of tier splits, in order to ensure that a variety of useful pilots would be created in a range of areas across the country to inform future local government finance reforms.

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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 5 March 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, Baroness O'Loan, Baroness Redfern, Lord Rooker, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.