Includes information paragraphs on:

- Statement of Changes in Immigration Rules
- Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019
- Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019
- Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019
- National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019
- Connecting Europe Facility (Revocation) (EU Exit) Regulations 2019
- Merchant Shipping (Registration of Ships) (Amendment) (EU Exit) Regulations 2019
- National Health Service (Charges to Overseas Visitors) (Amendment etc.) (EU Exit) Regulations 2019
- Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2019

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HL Paper 319
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 hlseclegscrutiny@parliament.uk.
The main changes introduced by this Statement of Changes in Immigration Rules (HC 1919), laid by the Home Office, are to:

- introduce new Start-up and Innovator categories for those coming to the UK to set up a business, replacing the Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) categories following a review of what elements were most effective;
- make reforms to the Tier 1 (Investor) category to protect better against financial crime and ensure investments are of greater benefit to the UK economy;
- increase the initial period of limited leave for the stateless from 30 months to five years, while clarifying that this is dependent on the person showing that they cannot acquire nationality or a right to permanent residence in another country to which they may be entitled; and
- to provide for the full opening of the EU Settlement Scheme from 30 March 2019 for resident EU, EEA and Swiss citizens and their family members to obtain UK immigration status. Further detail was included in a Written Statement on 7 March,¹ and guidance is available on the Gov.uk website.²

2. HC 1919 is accompanied by two Statutory Instruments, also laid by the Home Office:

- the Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019, which remove the application fee for the EU Settlement Scheme from 30 March and allow fees already paid to be refunded. They also adjust a number of other fees for immigration processes; and
- the Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019, which, amongst other things, allow “extended family members” to benefit from the EU Settlement Scheme under derivative rights following the European Court of Justice ruling in the case of Banger. They also regulate the entry of EEA nationals to the UK from Ireland.

¹ HL Deb, 7 March 2019, WS1354.
3. Section 1(1) of the Financial Guidance and Claims Act 2018 established a new non-departmental public body, originally referred to as the “single financial guidance body” (SFGB). On 1 January 2019, the SFGB began discharging its functions, which include providing money guidance, pensions guidance and debt advice. This was previously carried out by the Money Advice Service, The Pensions Advisory Service, and the Department for Work and Pensions, under the ‘Pension Wise’ banner. These Regulations now name the SFGB as the ‘Money and Pensions Service’. The new body’s main objective will be to assist an estimated 12 million people who are not saving enough for their retirement, and just over four million people in the UK who are struggling with debt.

4. Following several court judgements, these Regulations, laid by the Department for Health and Social Care (DHSC), make adjustments to provisions of the NHS Pension Scheme. Several changes relate to survivor benefits being paid to same-sex spouses or unmarried partners, and the employee contribution rate is to be frozen for two years while an alternative structure is agreed. The most significant change is to raise the employer’s contribution from 14.3% to 20.6%. This is the result of the quadrennial actuarial valuation which assessed the cost of past and future pension benefits accruing within the scheme. The Explanatory Memorandum to the Regulations adds, however, that in December 2018, the Court of Appeal handed down a judgement in the cases of McCloud and Sargeant that may increase the cost of pension benefits for some scheme members from 1 April 2015. The Court held that the “transitional protection” afforded to older members when major reforms were introduced to public service pension schemes in 2015 amounted to unlawful discrimination. The Government are seeking permission to appeal this decision. Irrespective of whether or not the judgment stands, the cost of NHS pension benefits is set to become more expensive from 1 April 2019 and DHSC states that the employer contribution rate should reflect this. DHSC told us that, in June 2018, the Government committed to provide, in 2019-20, £1.25 billion of additional funding of for NHS England to address this. Following consultation, further analysis is being undertaken and a final figure for the actual additional funding, to reflect this commitment, will be confirmed in due course. (See also SI 2019/520 below.)

5. The Connecting Europe Facility for Transport (CEF) is the funding instrument for European transport infrastructure policy. It aims at supporting investments in building new transport infrastructure projects in Europe or rehabilitating and upgrading existing ones. When the UK leaves the EU, CEF funding which has previously been agreed by or on behalf of the European Commission may not be paid out if a withdrawal agreement is not
in place. This instrument, laid by the Department for Transport, grants the Secretary of State power to make good any shortfall in funding encountered by UK participants. It is based on the HM Government Guarantee (“HMG Guarantee”) that was announced in 2016 and extended in 2018. The HMG Guarantee, together with this instrument, works to ensure that no shortfall in funding for CEF-funded projects is caused as a result of EU exit. Powers under the instrument will also allow the Secretary of State to make similar payments up to 2020 where if, exceptionally, EU grants under CEF are awarded to UK participants on a “third country” basis but EU payments are not made following a ‘no deal’ exit.

**Merchant Shipping (Registration of Ships) (Amendment) (EU Exit) Regulations 2019 (SI 2019/509)**

6. These Regulations, laid by the Department for Transport (DfT), deal with three aspects of merchant shipping:

- First, they extend the eligibility to register a ship on the UK register to Commonwealth citizens and countries, citizens and companies of countries listed in an Annex to the Regulations, and to persons settled in the UK.

- Second, the UK currently allows ‘Bareboat Charter In’ to the ship register, but does not provide ‘Bareboat Charter Out’ which other competitive Flag States offer. Currently, the only way for this to be accomplished is for the ship to terminate its registration from the UK flag in order to transfer to another flag. These Regulations make amendments to allow ships to Bareboat Charter Out to another register whilst remaining able to return to the UK register at the end of the charter-party. During the charter period, the vessel’s UK registry will be suspended, but the ship can be restored to the register by a simple process at the end of the charter-party.

- Third, the Regulations make the amendments required following the passage of Sanctions and Anti-Money Laundering Act 2018 (SAMLA). They enable the Registrar General of Shipping and Seamen to refuse to register a ship, or to remove a ship from the register, if the registration of that ship is prohibited by sanctions regulations.

7. In the Explanatory Memorandum to the Regulations, DfT explains that, while the instrument is not being made under the European Union (Withdrawal) Act 2018, it relates to the UK’s withdrawal from the EU because parts of this instrument are required as a consequence of the passage of SAMLA, which was itself required due to the UK’s withdrawal.

**National Health Service (Charges to Overseas Visitors) (Amendment Etc.) (EU Exit) Regulations 2019 (SI 2019/516)**

8. These Regulations, laid by the Department for Health and Social Care, provide that, until 31 December 2020, EU/European Economic Area and Swiss citizens (and their family members) who have arrived before exit day,
and who are eligible for leave to remain under the EU Settlement Scheme, will remain eligible for free NHS treatment. This fulfils the Government's commitment made in the policy paper entitled “Citizens' Rights - EU citizens in the UK and UK nationals in the EU”, published on 6 December 2018, that in a 'no deal' scenario, EU citizens lawfully resident in the UK by 29 March 2019 will retain their entitlement to healthcare. When free movement ends with the commencement of the Immigration and Social Security Coordination (EU Withdrawal) Bill, further Home Office regulations will ensure that people with settled or pre-settled status under the EU Settlement Scheme will retain longer term access to free NHS care, so long as they are ordinarily resident. In particular, these Regulations provide an exemption from charging for healthcare for Irish citizens, and British citizens who are ordinarily resident in the Republic of Ireland, when visiting England. The Regulations also transpose into domestic legislation the existing right (derived from EU law) of UK-insured persons residing in an EEA state or Switzerland to receive NHS care without a charge, should they return temporarily to the UK. That exemption, however, will not apply to those who choose to move to the EU after exit day.

Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2019 (SI 2019/520)

9. The Civil Service Pension Scheme is affected in the same way as the NHS Pension Schemes (See SI 2019/418 above) by the Court of Appeal judgement in the cases of McCloud and Sargeant,7 and in consequence this instrument simply extends the current member contribution rates (at an average of 5.6%) and salary bands without alteration for one year until 31 March 2020 as an interim measure. The Chief Secretary to the Treasury announced on 30 January 2019 that the mechanism for assessing the value of these pensions was being paused. This was because the ongoing actuarial valuation of the Scheme had identified that the cost had fallen below target, which triggers a requirement to amend the Scheme through changes to member benefits or contributions. Amendments cannot currently be made, however, because the value of the current public service pensions arrangements cannot be assessed. Once the outcome of the Government’s appeal is known, further consideration as to how the Civil Service Scheme should be amended will follow. The Chief Secretary to the Treasury’s announcement said: “It is therefore prudent to pause this part of the valuations until there is certainty about the value of pensions to employees from April 2015 onwards. The value of public service pensions will not be reduced as a result of this suspension. If the Government is successful in court, we will implement the changes to employee benefits as planned. If the Government is defeated, employees will be compensated in a way that satisfies the judgment.”8

Draft Plant Health (Amendment) (England) (EU Exit) Regulations 2019

10. This instrument has been re-laid by the Department for Environment, Food and Rural Affairs. The Sub-Committee reported on the instrument in its 13th Report.9

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8 HC Deb, 30 January 2019, HCWS1286.
Draft Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019

11. This instrument is one of two instruments intended to supersede the draft Trade etc. in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019 which the Sub-Committee reported on in its 18th Report\(^\text{10}\) and which has been withdrawn by the Department for International Trade.

\(^{10}\) 18th Report, Session 2017-19 (HL Paper 298).
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

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

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APPENDIX 1: 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 19 March 2019, Members declared no interests.

Attendance:
The meeting was attended by Lord Cunningham of Felling, Baroness Donaghy, Lord Goddard of Stockport, Lord Kirkwood of Kirkhope, Lord Janvrin, Baroness O’Loan, Baroness Redfern, Lord Rooker, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.