

# HOUSE OF LORDS

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

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22nd 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 Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019**

Includes information paragraphs on:

Draft Geo-Blocking Regulation  
(Revocation) (EU Exit) Regulations  
2019

Higher Education (Registration Fees)  
(England) 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](mailto:hseclegscrutiny@parliament.uk).

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

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### Instruments recommended for upgrade to the affirmative resolution procedure

*International Road Passenger Transport (Amendment) (Northern Ireland) (EU Exit) Regulations 2019*

*Date laid: 11 March 2019*

*Sifting period ends: 26 March 2019*

1. This proposed negative instrument enables the current access rights for EU bus and coach operators into, and within, Northern Ireland to remain in place after exit day. However, reciprocal rights for UK operators operating in the EU market after exit day cannot be guaranteed. As a result, the Government intend the UK to join the Interbus Agreement (“Interbus”) as a contracting party in its own right.<sup>1</sup> Interbus is a multilateral treaty between the EU and seven other contracting parties and allows for “occasional” coach travel between the parties. The Committee considered these issues in the Draft Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019.<sup>2</sup>
2. The UK is due to accede formally to Interbus on 1 April 2019. However, the Department for Transport has clarified that “Engagement is ongoing with the Interbus depository to ensure alignment between the end of the formal accession period for Interbus and any extension to Article 50”. Interbus does not, however, provide for “regular” and “special regular” services (cross-border services taking specific passengers to school or work) and it also does not allow for cabotage services (operation of domestic journeys in one contracting party by an operator based in another).
3. The Department for Infrastructure in Northern Ireland explained that a Regulation has been proposed by the European Commission to establish a temporary set of contingency measures to enable operators licensed by the UK to carry passengers between the UK and an EU27 Member State in the event that the withdrawal agreement is not adopted before the UK leaves the EU. This will allow existing “regular” and “special regular” services delivered by UK operators to the EU to continue for a period of up to nine months in the event of a ‘no deal’. The Regulation will also provide for limited cabotage operations. It has been agreed by the EU27 and has now been adopted by the European Council.
4. EU operators providing “occasional” services will be allowed to access the UK with vehicles holding a certified copy of their operator’s Community Licence, and a control document. EU operators providing “regular” services, and “special regular” services must apply for an authorisation directly to the Driver and Vehicle Agency Northern Ireland. Given the potential impact on cross-border services, 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.**

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

2 [20th Report](#), Session 2017-19 (HL Paper 314).

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019

*Date laid: 25 February 2019*

*Parliamentary procedure: affirmative*

*The Department for Education (DfE) has laid these draft Regulations to underpin the requirement, from September 2020, for schools in England to teach all primary pupils Relationships Education, and all secondary pupils Relationships and Sex Education. Schools other than independent schools will also be required to teach primary and secondary pupils Health Education. In teaching the new subjects, schools must have regard to the statutory guidance which DfE is issuing in parallel with these Regulations. The Department states that the new subjects will enable schools to address effectively issues such as internet safety and unhealthy relationships and ensure pupils are taught in an age-appropriate way about respectful and healthy relationships, including friendships and family relationships. The Sub-Committee is aware that these Regulations raise highly sensitive issues about which many people feel very strongly. We are grateful to those who have provided written evidence to the Sub-Committee expressing their deeply held views. The evidence, from over 430 correspondents, is referred to under the correspondence heading in this report and summarised in Appendix 2.*

**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*

5. The Department for Education (DfE) has laid these draft Regulations with an Explanatory Memorandum (EM) and Impact Assessment (IA).
6. The Sub-Committee is aware that these Regulations raise highly sensitive issues about which many people feel very strongly. The purpose of this report is to explain the content of the Regulations and to provide additional information to assist the House in its deliberation on them. The decision on whether to support the policy intentions of the Regulations is, of course, a matter for the House.

#### *Current situation*

7. As DfE explains in the IA, the subject of Sex Education has been compulsory in all maintained secondary schools since 1993. Some aspects of Sex Education also form part of the national curriculum for science for 5-16 year olds. For example, pupils in primary schools are taught about the main external body parts and changes to the human body as it grows from birth to old age, including puberty. Pupils in secondary schools are taught about reproduction in humans, for example the structure and function of the male and female reproductive systems, menstrual cycle, gametes, fertilisation, gestation and birth, and about HIV/AIDS.
8. Maintained schools must have an up-to-date policy that sets out the school's approach to Sex Education. Schools should consult their pupils'

parents on this and must make the policy available to parents. Parents have the right to withdraw their children from all or parts of Sex Education, except those aspects that are part of the national curriculum for science in maintained schools.

9. Academies and free schools are not required to teach Sex Education but they are encouraged to do so.
10. When teaching Sex Education, including where academies and primary maintained schools choose to do so, schools are required to have regard to the statutory Sex and Relationship Education (SRE) guidance. The guidance was last updated in 2000.
11. Personal, Social, Health and Economic Education (PSHE) is compulsory in independent schools. PSHE teaching should reflect the school's aims and ethos, and encourage respect for other people having regard to their protected characteristics. It is not a statutory subject in maintained schools or academies, but they are encouraged to teach it. It can encompass many areas of study. In some primary and secondary schools, Sex Education is taught as part of PSHE.
12. Teachers have the freedom to design lessons in Sex Education and PSHE that meet their pupils' needs, taking account of pupil and parent views. Teachers are encouraged to develop their practice with the support of specialist organisations, such as the Sex Education Forum and the PSHE Association.

*Provisions under sections 34 and 35 of the Children and Social Work Act 2017*

13. The Department states in the IA that it is required under section 34 of the Children and Social Work Act 2017 ("the 2017 Act") to make regulations (and publish associated guidance) relating to Relationships Education and Relationships and Sex Education. The Department has powers under the 2017 Act to consider making PSHE, or elements of PSHE, mandatory in state-funded schools.

*New policy*

14. The Department states that the key aim of the policy is to support schools to deliver high-quality Relationships Education to all primary pupils, Relationships and Sex Education to all secondary pupils, and Health Education to all primary and secondary pupils (except those in independent schools) to ensure that young people are taught to stay safe and are prepared for life in modern Britain. Independent schools are already required to teach the subject of PSHE and will continue to adhere to the independent school standards, and in particular the standard which requires them to teach PSHE.
15. In the EM, DfE states that the Government acknowledge that many schools are already teaching these subjects and, in some cases, doing so very well. However, it justifies the decision to make Relationships Education mandatory for all primary pupils, Relationships and Sex Education mandatory for all secondary pupils, and Health Education mandatory for all primary and secondary pupils in state-funded schools on the ground that "it was important to ensure universal coverage for all pupils and improved quality."<sup>3</sup>

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3 Explanatory Memorandum, para 7.4.

16. In the IA, DfE states that it “is committed to maintaining flexibility for all schools in their approach, enabling them to have regard to the age and religious background of their pupils”.

*Age-appropriateness*

17. We asked the Department how age-appropriateness of content will be determined, particularly for the youngest age group.<sup>4</sup> In response, DfE stated that:

“We trust schools to consider this based on their knowledge of their pupils and working in partnership with parents, as has always been the case for SRE, which was made compulsory for maintained secondary schools in 1993. The guidance is clear that the content must be taught to pupils by the end of primary school. The guiding principles for these subjects have been that all of the compulsory subject content must be age appropriate and developmentally appropriate. It must be taught sensitively and inclusively, with respect to the backgrounds and beliefs of pupils and parents whilst always with the aim of providing pupils with the knowledge they need, including the relevant legal provisions.”

18. The Department added that:

“Specifically on resources, schools should assess each resource that they propose to use to ensure that it is appropriate for the age and maturity of pupils, and sensitive to their needs. Schools should also ensure that, when they consult parents, they provide examples of the resources that they plan to use as this can be reassuring for parents, and enables them to continue the conversations started in class at home.”

*Consulting parents on content*

19. We asked DfE what the requirements are on schools to consult parents on proposed content and what format this would take. The Department responded that they are proposing that schools will be required (as set out in the draft Regulations) to consult parents on their Relationships Education and Relationships and Sex Education policy, and that:

“[o]ne key purpose is to help minimise any misconception about the subjects and what will be taught, and to enable parents to decide whether to request that their child is withdrawn from sex education. Schools should engage proactively with parents, to set out how and when they plan to cover topics included in Relationships Education and RSE so that parents can understand clearly what is going to be taught.”<sup>5</sup>

20. The Department added that they believe schools are best placed to decide how best to consult parents on their proposed policies and that schools already communicate and consult parents on a number of school matters and they may want to use existing practices to inform parents on the availability of their proposed policies. The Department stated that it expects to share some good practice examples of effective and regular consultation with parents, to support schools to do this well and draw out core principles such as consultation being done for each year group where this is taught.

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4 See Q8 in Appendix 1 to this Report.

5 See Q5 in Appendix 1 to this Report.

*Right for parents to withdraw their child*

21. DfE states that currently parents are free to withdraw their children from sex education provision in maintained schools – and from academies that choose to teach SRE - if they wish to do so. The only exceptions to this are the elements of sex education that are part of the national curriculum for Science in maintained schools. The Department states that “[w]hile we have no up-to-date figures on withdrawal rates, an Ofsted report from 2002 reported that only four in every 10,000 pupils are withdrawn from provision”.<sup>6</sup>
22. Currently, when a school receives a parental request for their child to be excused from some or all of Sex Education, the school must comply with the request until the request is withdrawn. DfE explains in the EM, however, that a right for parents to withdraw their child up to 18 years of age is no longer compatible with English case law or the European Convention on Human Rights. It also states that allowing parents to withdraw their child up to age 16 would not allow the child to opt in to Sex Education before the legal age of consent
23. Under the new policy, the following will apply:<sup>7</sup>
- For primary education, DfE has told us that “a parent of a pupil at a maintained school who is receiving primary education will continue to be entitled to request that the pupil is excused from any sex education delivered by the school (other than as part of the national curriculum), and that request must be granted (section 405 of the Education Act 1996). The same provision applies to academies via their funding agreements”.
  - For those pupils in secondary education, aged up to three terms before they turn 16, the DfE states that “[t]he new statutory provisions provide that a parent of a child at any school will be entitled to request that their child be excused from sex education delivered as part of statutory relationships and sex education (which will be compulsory for all secondary pupils). If a parent makes a request, the pupil must be so excused until the request is withdrawn, unless or to the extent that the head teacher considers that the pupil should not be so excused. The draft statutory guidance states as follows – “except in exceptional circumstances, the school should respect the parents’ request to withdraw the child, up to and until three terms before the child turns 16.”<sup>8</sup>
  - For those pupils in secondary education, after that age, “if the child wishes to receive sex education rather than be withdrawn, the school should make arrangements to provide the child with sex education during one of those terms. To that extent, the right of the parent to withdraw their child will no longer be absolute. This is because the current right to withdraw – in which a parent may request their child

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6 Impact Assessment, p 4. Ofsted (2002) Sex and Relationships.

7 See Q5 in Appendix 1 to this report.

8 Department for Education, *Relationships Education, Relationships and Sex Education (RSE) and Health Education: Draft statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers* (February 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/781150/Draft\\_guidance\\_Relationships\\_Education\\_Relationships\\_and\\_Sex\\_Education\\_RSE\\_and\\_Health\\_Education2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781150/Draft_guidance_Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education2.pdf) [accessed 27 March 2019].

be withdrawn from sex education and this must be granted in all cases, up to the age of 18 – is no longer compatible with English case law or the European Convention on Human Rights. The new right preserves the parental right in most cases, but also balances it with the child’s right when they are competent to make their own decisions.”

24. **Given the complexity of the new policy, the House may wish to invite the Minister to provide further clarification about how it will operate in practice in relation to these three age ranges.**

25. DfE has also told us that:

“There will be no right to withdraw from Relationships Education – the primary legislation (the Children and Social Work Act 2017) did not allow for a right to withdraw from Relationships Education in primary schools and we have decided that there should also not be a right to withdraw from relationships in RSE at secondary. The content of Relationships Education at primary focuses on building blocks needed to support children to have healthy relationships with their family, build caring friendships and show respect for others – it does not include content on sex. At secondary, it continues to focus on family and friendships, but also widens out to reflect that secondary age pupils are embarking on independent relationships of their own. Any content on intimate aspects of relationships would fall under sex education.”

#### *Teaching materials*

26. We asked DfE whether standardised teaching materials would be provided to help teachers deliver the content set out in the guidance. The DfE replied that as is the case with other curriculum subjects, the Department does not provide schools with standardised teaching materials. For example, the programmes of study for national curriculum subjects set out the key knowledge that pupils should be taught. Schools develop the schemes of work and lesson plans that meet the needs of their cohort of pupils. The Department also stated that “[w]e know that there are many good quality resources available to schools already, and schools have the freedom to use teaching materials from, for example, subject associations who quality assure materials they produce for schools.” The Department added that “...we do also intend to produce a supplementary guide, best practice and training for schools to support their delivery of the subjects and expect this to, amongst other things, cover advice on how to select appropriate materials. Our implementation support will also include targeted support on materials to help teachers where we find gaps on content for the new subjects.”

#### *Physical health and mental wellbeing*

27. The draft statutory guidance sets out that the aim of teaching pupils about physical health and mental wellbeing is to give them the information that they need to make good decisions about their own health and wellbeing, and that it should enable them to recognise what is normal and what is an issue in themselves and others and, when issues arise, know how to seek support as early as possible from appropriate sources.<sup>9</sup>

28. We note that, according to the draft statutory guidance, issues to do with sexual relationships, including sexual health, fall under the heading of

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9 *Ibid.*

“relationships and sex education”. Sexual health, however, is closely connected with physical health and mental well-being. **The House may wish to ask the Minister for a fuller explanation of the interrelationship between these two subject areas.**

### *Consultation*

29. In the EM, DfE gives details of its programme of stakeholder engagement and consultation to help shape the new relationships and sex education curriculum. Between October 2017 and March 2018, the Department’s programme included round-table sessions with national and local groups representing interested parties such as parents, religious bodies, teachers and subject specialists. Between December 2017 and February 2018 the Department conducted a call for evidence to seek views from adults (including parents, teachers, educational professionals and organisations) and young people on the content of the new subjects. There were 23,000 responses.
30. The Department consulted on the draft regulations, guidance and regulatory impact assessment from 19 July to 7 November 2018. Over 40,000 responses were received. 4,788 participants answered questions on whether they agreed or disagreed that the draft regulations clearly set out the requirements on schools to teach the new subjects: there was an equal proportion of respondents who agreed or strongly agreed (37%) and disagreed or strongly disagreed (37%). In the EM, DfE states that many of the responses were in relation to the content of the guidance rather than the draft regulations, and that the consultation did not highlight any specific issues with the technical drafting of the regulations.

### *Cost breakdown*

31. In the EM, DfE states that the impact on business, charities or voluntary bodies is estimated to be £4.6 million, and this will apply to independent schools. The impact on the public sector is estimated to be £29 million and will apply to all state-funded schools - maintained schools, academies, pupil referral units and non-maintained special schools.
32. We asked the Department whether any additional funding was being made available in relation to the new policy covered by the Regulations and how allocations to individual schools will be decided. The Department responded that it had announced a budget of £6 million in the 2019-20 financial year to develop a programme of support for schools, with funding beyond 2019-20 being a matter for the forthcoming Spending Review.<sup>10</sup>

### *Timing*

33. While schools will be required to teach the new subjects from September 2020, they will be encouraged to follow the new guidance from September 2019.
34. In response to our questions,<sup>11</sup> DfE stated that it will be working with schools, unions, other education providers and expert organisations to encourage early adopter schools, who will begin teaching to the content of the new guidance from September 2019:

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<sup>10</sup> See Q1 in Appendix 1 to this report.

<sup>11</sup> *Ibid.*

“The lessons we learn from these early adopter schools will be shared with schools working to the September 2020 timetable. We will identify a sub-set of early adopter schools to develop case studies and good practice and will provide them with some funding to do so. We will also work with early adopter schools to support the design of the training programme and to refine a supplementary guide. The development and testing of the training programme is where we envisage the bulk of the £6m allocated in 2019-20 will be deployed. We feel that the production of such a high-quality resource will deliver better value and benefit for schools than simply distributing the £6m across all schools in the system.”

### *Correspondence*

35. We have received over 430 submissions of evidence in response to this instrument.<sup>12</sup> The evidence expresses a range of concerns which are set out in a summary published at Appendix 2 of this report. We are aware that these Regulations raise highly sensitive issues about which many people feel very strongly. We are grateful to those who have provided evidence to the Sub-Committee expressing their deeply held views.
36. Appendix 1 contains additional information received from DfE, including responses on issues raised by certain submissions.

### *Conclusion*

37. **Given the significance of these draft Regulations, 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.**

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<sup>12</sup> This evidence is published on the Sub-Committee’s publications page: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-b/publications/>

## INSTRUMENTS OF INTEREST

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### Draft Geo-Blocking Regulation (Revocation) (EU Exit) Regulations 2019

38. The purpose of these draft Regulations, laid by the Department for Business, Energy and Industrial Strategy (BEIS), is to revoke the EU’s Geo-Blocking Regulation<sup>13</sup> (“the EU Regulation”) as retained in UK law and the Geo-Blocking (Enforcement) Regulations 2018 (“the 2018 Regulations”), which introduced enforcement provisions as required under the EU Regulation and on which the Sub-Committee reported.<sup>14</sup> The Department explains that ‘geo-blocking’ is the term used to describe traders discriminating against customers on the basis of the customer’s nationality or location, for example by automatically re-directing customers to country-specific versions of their website with different terms and conditions. BEIS says that while the EU Regulation prohibits certain forms of geo-blocking, the current reciprocal arrangements would not function if the UK left the EU without a deal: EU traders would not be obliged to treat UK customers in line with the EU Regulation, there would be no requirement on EU regulators to bring actions against businesses through EU mechanisms for cross-border cooperation, and UK civil and commercial judgments would no longer be enforced automatically in the courts of EU member states. BEIS highlights that, in contrast, UK businesses would continue to have obligations to EU customers and that these draft Regulations aim to prevent such asymmetrical arrangements in the EU’s favour. The Department expects the impact of revoking the 2018 Regulations to be insignificant, as the current obligations have only been in place for around four months. BEIS estimates that there will be one-off familiarisation costs of less than £1.2 million for some 75,000 businesses that will be affected by the changes.

### Higher Education (Registration Fees) (England) Regulations 2019 (SI 2019/543)

39. The Higher Education and Research Act 2017 (“the 2017 Act”) establishes the Office for Students (OfS) as the new regulator for English higher education (HE) providers. Since its creation on 1 January 2018, the OfS has been fully funded by the government for a transitional period. This instrument makes provision under the 2017 Act in relation to the fees which the OfS may charge to HE providers for their registration in the register of English HE providers established under that Act. These Regulations will enable the OfS to fund the majority of its operating costs using income from registration fees, thereby shifting most of the cost of regulation on to the sector from 1 August 2019, when the new regulatory regime will become fully operational. The fee model set out in this instrument will be reviewed after two years, during academic year 2021-22. The registration fees in this instrument are set in relation to the size of a provider, as calculated by reference to the full-time equivalent number of HE students. The Department for Education states that the Regulations will allow for the OfS to charge reduced fees to new institutions and also that a Micro Entity Exemption has been devised. The Explanatory Memorandum (EM) states that: “The government will provide funding for these reductions and exemption in 2019/20, while considering how the OfS can move to a full cost recovery basis”. The EM also references

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13 Regulation (EU) [2018/302](#).

14 [7th Report](#), Session 2017–19, (HL Paper 239).

a consultation on OfS Monetary Penalties which included a question on what should happen in the case of late payment of registration fees. The Department states that: “There was no objection to the OfS charging interest on late fees of 5% above the base rate, as this instrument stipulates”.

**Draft Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2019**

40. This instrument is the second of two instruments intended to supersede the draft Trade etc. in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019 on which the Sub-Committee reported in its 18th Report<sup>15</sup> and which has been withdrawn by the Department for International Trade.

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

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

Animal Health, Seed Potatoes and Food (Amendment)  
(Northern Ireland) (EU Exit) Regulations 2019

Geo-Blocking Regulation (Revocation) (EU Exit) Regulations  
2019

Trade in Torture etc. Goods (Amendment) (EU Exit)  
Regulations 2019

### **Instruments subject to annulment**

SI 2019/522 National Health Service (Dental Charges) (Amendment)  
Regulations 2019

SI 2019/526 Environment, Food and Rural Affairs (Miscellaneous  
Amendments etc.) Regulations 2019

SI 2019/529 Food (Amendment) (EU Exit) Regulations 2019

SI 2019/543 Higher Education (Registration Fees) (England) Regulations  
2019

## APPENDIX 1: DRAFT RELATIONSHIPS EDUCATION, RELATIONSHIPS AND SEX EDUCATION AND HEALTH EDUCATION (ENGLAND) REGULATIONS 2019

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### Additional Information from the Department for Education

*Q1: Is any additional funding being made available in relation to the new policy covered by the Regulations? How will allocations to individual schools be decided?*

A1: Sex education is already compulsory subject in secondary maintained schools, and we know many other schools choose to teach it. Schools are also already encouraged to teach Personal, Social, Health and Economic education (PSHE) and many schools do so, embedding their sex education into this subject. PSHE is already compulsory in fee paying independent schools. As many schools already teach the above subjects and many are doing so well, we expect that a number of them will adapt their current provision to ensure they have regard to the new guidance and will be able to do so quite quickly and confidently.

The Department for Education is, of course, committed to ensuring that all schools are supported and ready to teach these subjects to a high quality, and that is why we will continue to work with subject experts to ensure schools are supported to improve their practice, focusing on a supplementary guide, targeted support on materials, and training. Our intent is to ensure there is a universal offer of high-quality resources and good practice for all schools, with additional support for schools that need it.

We announced a budget of £6m in the 2019/2020 financial year to develop a programme of support for schools. Funding beyond 2019/20 is a matter for the forthcoming Spending Review.

We are finalising plans and will be working with schools, unions, other education providers and expert organisations to encourage early adopter schools, who will begin teaching to the content of the new guidance from September 2019. The lessons we learn from these early adopter schools will be shared with schools working to the September 2020 timetable. We will identify a sub-set of early adopter schools to develop case studies and good practice and will provide them with some funding to do so. We will also work with early adopter schools to support the design of the training programme and to refine a supplementary guide.

The development and testing of the training programme is where we envisage the bulk of the £6m allocated in 2019-20 will be deployed. We feel that the production of such a high-quality resource will deliver better value and benefit for schools than simply distributing the £6m across all schools in the system.

*Q2: Will the Government be providing standardised teaching materials to help teachers deliver the content set out in the guidance?*

A2: As is the case with other curriculum subjects, the Department does not provide schools with standardised teaching materials. For example, the programmes of study for national curriculum subjects set out the key knowledge that pupils should be taught. Schools develop the schemes of work and lesson plans that meet the needs of their cohort of pupils.

We know that there are many good quality resources available to schools already, and schools have the freedom to use teaching materials from, for example, subject

associations who quality assure materials they produce for schools. As described above, we do also intend to produce a supplementary guide, best practice and training for schools to support their delivery of the subjects and expect this to, amongst other things, cover advice on how to select appropriate materials. Our implementation support will also include targeted support on materials to help teachers where we find gaps on content for the new subjects.

*Q3: The February 2019 Statutory Guidance is marked as draft – are any further processes required before finalising the guidance and when does DfE expect to bring the guidance into effect?*

A3: We have no plans to make any changes to the draft guidance, published on 25 February when the regulations were laid, subject to parliamentary process. The guidance reflects responses from the consultation that ran from July to November 2018 and which attracted 40,000 responses. We have marked it as draft to be clear to schools that we will publish the final version when the regulations are made, as it is the regulations which provide for the statutory guidance.

*Q4: What are the requirements on schools to consult parents on the proposed content and what format would this take?*

A4: We are proposing that schools will be required (as set out in draft regulations) to consult with parents on their Relationships Education and Relationships and Sex Education policy. One key purpose is to help minimise any misconception about the subjects and what will be taught, and to enable parents to decide whether to request that their child is withdrawn from sex education. Schools should engage proactively with parents, to set out how and when they plan to cover topics included in Relationships Education and RSE so that parents can understand clearly what is going to be taught.

We believe schools are best placed to decide how best to consult parent on their proposed policies. Schools already communicate and consult with parents on a number of school matters and they may want to use existing practices to inform parents on the availability of their proposed policies. We expect to share some good practice examples of effective and regular consultation with parents, to support schools to do this well and draw out core principles such as consultation being done for each year group where this is taught.

*Q5: Does this impinge on the right of parents to withdraw their children from sex education?*

A5: A parent of a pupil at a maintained school who is receiving primary education will continue to be entitled to request that the pupil is excused from any sex education delivered by the school (other than as part of the national curriculum), and that request must be granted (section 405 of the Education Act 1996). The same provision applies to academies via their funding agreements.

The new statutory provisions provide that a parent of a child at any school will be entitled to request that their child be excused from sex education delivered as part of statutory relationships and sex education (which will be compulsory for all secondary pupils). If a parent makes a request, the pupil must be so excused until the request is withdrawn, unless or to the extent that the head teacher considers that the pupil should not be so excused. The draft statutory guidance states as follows – “except in exceptional circumstances, the school should respect the parents’ request to withdraw the child, up to and until three terms before the child turns 16. After that point, if the child wishes to receive sex education rather than

be withdrawn, the school should make arrangements to provide the child with sex education during one of those terms.”

To that extent, the right of the parent to withdraw their child will no longer be absolute. This is because the current right to withdraw – in which a parent may request their child be withdrawn from sex education and this must be granted in all cases, up to the age of 18 – is no longer compatible with English case law or the European Convention on Human Rights. The new right preserves the parental right in most cases, but also balances it with the child’s right when they are competent to make their own decisions.

*Q6: Can parents withdraw their children from relationships education?*

A6: The right to withdraw will only apply to sex education (apart from sex education given as part of the science curriculum). If a primary school chooses to teach sex education parents will have a right to withdraw their child – this right carries over from the original sex education legislation in the Education Act 1996. For sex education in RSE at secondary, this is provided for in these new regulations.

There will be no right to withdraw from Relationships Education – the primary legislation (the Children and Social Work Act 2017) did not allow for a right to withdraw from Relationships Education in primary schools and we have decided that there should also not be a right to withdraw from relationships in RSE at secondary.

The content of Relationships Education at primary focuses on building blocks needed to support children to have healthy relationships with their family, build caring friendships and show respect for others – it does not include content on sex. At secondary, it continues to focus on family and friendships, but also widens out to reflect that secondary age pupils are embarking on independent relationships of their own. Any content on intimate aspects of relationships would fall under sex education.

*Q7: Who can overrule a parent’s request to withdraw their child from sex/ relationships education?*

A7: The new provisions continue to give responsibility for the decision to the head teacher. As with all school activities, including the curriculum, we expect schools to act professionally and reasonably, having regard to the statutory guidance issued by the Secretary of State. The headteacher will consider parental requests for their child to be withdrawn from sex education. Before granting any such request it would be good practice for the head teacher to discuss the request with parents and, as appropriate, with the child to ensure that their wishes are understood and to clarify the nature and purpose of the curriculum.

Good practice is also likely to include the headteacher discussing with the parents any detrimental effects that withdrawal might have on the child, including any social and emotional effects of being excluded e.g. receiving information from peers or from the internet. We believe that the new framework is the best way to secure the proper balance between parents’ rights and the rights of young people once they are competent to make their own choices.

We expect there to be very limited instances where requests to withdraw from sex education may be declined. Whilst data is not formally collected on this, SRE as is currently taught has been compulsory in maintained schools since 1993 and levels of withdrawal have been very low. The Catholic Education Service does

collect this data from its schools and notes presently, the rate of withdrawal is extremely low. In catholic schools in England the current rate is one in every 7,800 pupils (0.01%). They note that there is no reason to suggest that this figure would increase when statutory RSE is rolled out in our schools.

*Q8: How will the age-appropriateness of content be determined particularly for the youngest age group?*

A8: We trust schools to consider this based on their knowledge of their pupils and working in partnership with parents, as has always been the case for SRE, which was made compulsory for maintained secondary schools in 1993. The guidance is clear that the content must be taught to pupils by the end of primary school. The guiding principles for these subjects have been that all of the compulsory subject content must be age appropriate and developmentally appropriate. It must be taught sensitively and inclusively, with respect to the backgrounds and beliefs of pupils and parents whilst always with the aim of providing pupils with the knowledge they need, including the relevant legal provisions.

Specifically on resources, schools should assess each resource that they propose to use to ensure that it is appropriate for the age and maturity of pupils, and sensitive to their needs. Schools should also ensure that, when they consult with parents, they provide examples of the resources that they plan to use as this can be reassuring for parents, and enables them to continue the conversations started in class at home.

*Q9: What is the impact on schools or teachers if they refuse to comply?*

A9: The key driver for these reforms were about safeguarding pupils and supporting them to navigate challenges e.g. around online safety and mental health. We know that many schools teach these subjects already and support widely their compulsory introduction and the update to the guidance.

Schools are required to provide a broad and balanced curriculum. Schools will be required to teach the new subjects of Relationships Education, Relationships and Sex Education and Health Education under the relevant legal provision that apply to them, e.g. section 80 of the Education Act 2002 (Basic Curriculum) makes curriculum provision for maintained schools, and the curriculum for other types of school are set out in Statutory Instruments or funding agreements that apply to them. A school which does not comply with the requirement to teach these subjects will be acting unlawfully.

It is for schools to decide which members of staff deliver the lessons, and to ensure they receive appropriate support and training to teach the curriculum effectively

*Q10: If a parent objects on religious grounds can they be overruled?*

A10: There will be no requirement for a parent to give a reason for requesting that their child is excused from sex education. As such, if a parent makes a request on religious grounds, that will not of itself be a reason to refuse the request. It would be good practice for the headteacher to discuss any questions raised by parents and schools must consult parents, and this is set out in the guidance.

*Q11: A number of submissions expressed concern that this is undermining the rights of parents to educate their children on these matters. In particular, whether there is conflict with:*

*Article 2 or Protocol 1 of The European Convention on Human Rights*

*Article 18(4) of The International Covenant on Civil and Political Rights.*

A11: The draft guidance recognises that parents and carers are the prime teachers for children on many of the matters covered in the new subjects. Furthermore, the new statutory provisions expressly require the Secretary of State to give guidance about the provision of education with a view to ensuring that the education is appropriate having regard to the age and the religious background of the pupils. The draft guidance does so – for example at paragraph 64 it states that “Schools must also ensure that their teaching and materials are appropriate having regard to the age and religious backgrounds of their pupils”.

The new provisions also require schools to make and keep up to date statements of their policy with regard to the provision of education in relation to the new subjects, and to consult parents of registered pupils before making or revising such statements. We are therefore satisfied that there is no conflict with either of the provisions mentioned.

**8 March 2019**

## APPENDIX 2: DRAFT RELATIONSHIPS EDUCATION, RELATIONSHIPS AND SEX EDUCATION AND HEALTH EDUCATION (ENGLAND) REGULATIONS 2019

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### Summary of submissions received by the Secondary Legislation Scrutiny Committee of the House of Lords

#### *Background*

After these draft Regulations were laid before Parliament, the Committee received evidence from over 430 members of the public. They were referred to Sub-Committee B. All expressed concern about the Regulations: none voiced uncritical support. Many of those who submitted comments, including several members of the clergy, made it clear that they were Christians, and that their concern arose out of their religious belief.

The Committee did not invite comments on the Regulations, although it welcomes the willingness of members of the public to provide them. The Department for Education had previously carried out a process of consultation on the draft regulations and related statutory guidance, between July and November 2018. In February 2019, it published the Government consultation response.

#### *Main issues*

Set out below are the main issues raised in the submissions, illustrated by a selection of quotations from the comments themselves.

There was a very widespread concern to protect *the right of parents to educate their own children on matters such as relationships and sexual health*. One correspondent said, for example:

“The assumption seems to be growing that it is the state which educates children, assisted by parents. It should always be the other way round. It is the parents’ job to educate, train and guide their children and the state should not take this upon itself”.

A number of those who commented referred to *international conventions which, in their view, protect parents’ rights in these areas*. One of the correspondents addressing this issue wrote:

“I believe these new regulations would be contrary to Article 18 of the United Nations Convention on the Rights of the Child (1990) which states that parents have the primary responsibility for the upbringing and development of their children and that the state should assist them in this. I believe they are also contrary to the 1st Protocol of the European Convention of Human Rights, which guarantees parents the right to determine how to teach their children about morals, religious beliefs, sexuality and gender ‘in conformity with their religious and philosophical convictions’.”

This concern was linked to unhappiness voiced over the *changes proposed in the Regulations to the rights of parents to withdraw their children from relationships and sex education, and to the possibility for schools to overrule a parent’s request to withdraw their children*. For example, a correspondent wrote that:

“... parents will no longer have the right to withdraw their own children from lessons on the grounds that what is being taught conflicts with their faith-based convictions about sexuality. This seems to me to go directly against the European Convention of Human Rights which states that “In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

One correspondent set this concern in the context of variations in teaching practice:

“... I work with many decent, sensitive teachers who would tackle subjects like this carefully, taking into account the backgrounds of their pupils. Unfortunately, I have also worked with teachers who would use the opportunity to very forcefully push opinions and beliefs that would be contrary to what children had learnt at home or within their religious community. In these circumstances, it is vital that parents reserve the right to withdraw their children.”

Many voiced their concern about the *age-appropriateness of the content of what would be taught in primary and secondary schools, and about the psychological vulnerability of children*. For example, one correspondent’s comments, echoed by others, were about:

“...concern regarding the erosion of parental rights for their children, especially for those with children as young as 4 being exposed to inappropriate material about marriage, sex and relationships. They cannot understand the concepts being taught about adult relationships and certainly teachers should not replace the role of parents in such matters. To see explicit materials at the age of 4-11 is not helpful to their moral development and can seriously damage their normal growth in all relationships.”

One correspondent highlighted wider problems:

“Child mental health problems and self-harm issues was virtually unheard of when I started my teaching career in the 1980s, now they are at epidemic proportions. The breakdown in morality and family life is the main cause of these problems and this legislation will only make it worse, as each successive SRE legislation has to date.”

Some of those who wrote to us flagged up the *potential impact on schools or teachers who refused to comply with the new approach to relationships and sex education*. One correspondent, for example, wrote that:

“... teachers with religious beliefs may find it extremely difficult to go along with this new guidance in all of its aspects. I would hate to see good teachers facing discipline because they found it difficult to comply with all aspects of the guidance. This would in effect amount to a new ‘test’ requiring teachers to assent to official ‘doctrine’ – in this case of a secular state, rather than a national church.”

In a related point, another correspondent wrote: “I have no confidence that schools are the right place to impart moral guidance dominated as they are, in large part, by secular humanistic thinking which has no moral standard to promote but only a subjective position.”

A number of those submitting comments saw the changes proposed in the Regulations as demonstrating an undesirable intrusion by the state into the family sphere. Correspondents wrote: “What is being proposed is nothing less than the ‘nationalisation’ of childhood by removing parental responsibilities and rights and giving these to the state. This will make the shaping of children’s moral and ethical world-views hostage to the legislation of future governments of any stripe.”

Another correspondent voiced a similar concern:

“My comments on this proposed change have to do with the damage that it will do to the free exercise of religion and to the natural right of parents over the rearing of their own children. It has always been under authoritarian regimes, of either the right or the left, that such rights have suffered most in the past. It is alarming that such a threat is happening here in Britain today.”

Some reference was made to the *Government’s earlier consultation exercise*, and to what was seen as a failure to give due consideration to views expressed there. For example, a correspondent wrote that:

“[The] Regulations completely ignore the results of the formal consultation upon which they are supposed to be based: in that consultation no less than 64 per cent of responses declared that the proposed content for Relationships & Sex Education at secondary-school level was not “age-appropriate,” while 58 per cent voiced an identical concern about Relationships Education at primary level. Additionally, “a large proportion” disagreed with the position on teaching about alternative lifestyles as set out in the proposed Regulations...”

Finally, very many of those who wrote stressed their *wish to see the changes proposed in the Regulations debated in the House of Lords*. For example, a correspondent commented:

“I’m extremely concerned that the government has put forward through secondary legislation a matter that is worthy of debate and discussion as primary legislation. The legislation appears to bypass the protections afforded to parents to opt out of sex education lessons by including sex education matters as ‘relationships’ education ... If this matter is to be implemented it should be through proper debate and only through primary legislation.”

### *Conclusion*

The Committee is grateful for the comments on the draft Regulations which it has received. Since the Regulations are subject to the draft affirmative resolution procedure, they will be debated by the House of Lords before they come into force.

### **APPENDIX 3: 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 26 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 Abbots, Baroness O'Loan, Baroness Redfern, Lord Rooker, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.