

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee (Sub-Committee B)

24th Report of Session 2017–19

Drawn to the special attention of the House:

Draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2019

Includes information paragraphs on:

Draft Buckinghamshire (Structural Changes) Order 2019	Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019
Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019	Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019
Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019	Rail Safety (Amendment etc.) (EU Exit) Regulations 2019

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Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

- (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
- (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Lord Cunningham of Felling (Chairman)	Rt Hon. Lord Janvrin	Lord Sherbourne of Didsbury
Baroness Donaghy	Lord Kirkwood of Kirkhope	Rt Hon. Lord Rooker
Lord Goddard of Stockport	Baroness O'Loan	Baroness Watkins of Tavistock
Lord Hodgson of Astley Abbotts	Baroness Redfern	

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Sub-Committee's Reports are published on the internet at <http://www.parliament.uk/seclegapublications>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Helen Gahir (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant), Ben Dunleavy (Committee Assistant) and Paul Bristow (Specialist Adviser).

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Twenty Fourth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2019

Date laid: 1 April 2019

Parliamentary procedure: affirmative

This draft Order amends legislation under the Rehabilitation of Offenders Act 1974 to allow the disclosure of spent convictions before an inquiry held under the Inquiries Act 2005. The Explanatory Memorandum presents a strong argument for the protection to be waived in relation to the current Undercover Policing Inquiry, however the Order takes the broader step of making this same provision for any future inquiry. This report includes additional information which the House may find useful when debating whether the exception proposed finds the right balance between the public interest and protecting the rights of the individual. This Sub-Committee had some concerns over the breadth of the power and what impact it might have on the lives of those who have been rehabilitated.

We draw this Order 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.

1. Article 2 of this Order amends legislation under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) by adding a new exception to Schedule 3 to allow the disclosure of spent convictions before an inquiry where disclosure is necessary to allow that inquiry to fulfil its terms of reference under the Inquiries Act 2005 (“the 2005 Act”). The Order is laid by the Ministry of Justice (MoJ) and is accompanied by an Explanatory Memorandum (EM).

Background

2. The 1974 Act affords offenders protection from having to disclose their convictions and cautions once they have become ‘spent’ under the terms of the Act. Section 4(1) of the 1974 Act states that spent convictions cannot be admitted into evidence for judicial proceedings and paragraph 3(1) of Schedule 2 to the Act has the same effect for spent cautions. However, the Act gives the Secretary of State the power to make an order to disapply these provisions for certain proceedings, meaning that spent convictions and cautions can be admitted into evidence for those proceedings.

The Undercover Policing Inquiry

3. Paragraphs 6.6 and 7.3 of the EM present a strong argument for the protection to be waived in relation to the current Undercover Policing Inquiry. The EM states that the legislative change was initially requested by Sir John Mitting, the chair of that inquiry, because the inquiry would be unable to fulfil its terms of reference without it.
4. Although section 7(3) of the 1974 Act allows judicial authorities to consider evidence of spent convictions and cautions where justice cannot otherwise be

done, Sir John raised the question of whether an inquiry would fall within the Act's definition of "justice", and whether without an exception that limitation might inhibit his inquiry from fulfilling its terms of reference. He also stated that without an exception his inquiry would need to consider each admission of evidence on a case by case basis, which would take up significant time and resources. We find these arguments persuasive.

Blanket exception

5. However, rather than just making an exception for the *Undercover Policing Inquiry*, the Order takes the broader step of giving this same exception from the 1974 Act to any future inquiry held under the 2005 Act. The power is qualified so that its use is limited to "the purposes of fulfilling the terms of reference of that inquiry".
6. We have obtained the following additional information to help the House evaluate the likely effects of this blanket exception:
 - There have been 23 inquiries established under the 2005 Act, or converted into 2005 Act inquiries, since that Act's introduction;
 - Ministers may establish an inquiry under the 2005 Act where there appear to be events that have caused or may cause public concern or where there is public concern that particular events have occurred. An inquiry's terms of reference are set by the minister, in consultation with the chairman of the inquiry;
 - These are public inquiries, so a person's past convictions could also be made public—we asked what provision there was for the person to ask for the information to be revealed to the panel only and excised from the record/transcript. The MoJ responded:

"We would expect all inquiries to preserve the anonymity of individuals as far as is necessary to respect their rights to privacy. In particular, the Chairman has the power under section 19 of the Inquiries Act 2005 to restrict the publication of information. They will take decisions on a case by case basis, taking into account in particular the need to balance openness with any competing public interest in restriction or private interest in privacy."
 - If a former offender believes his or her past convictions are being revealed unnecessarily or unfairly their route of appeal is to request a Judicial Review of the decision of the inquiry to consider the evidence, on the ground that the individual's Article 8 rights (under the European Convention on Human Rights) are being breached.

Conclusion

7. The House may find this additional information useful when debating whether the exception proposed finds the right balance between the public interest and protecting the rights of the individual. This Sub-Committee had some concerns over the breadth of the power and what impact it might have on the lives of those who have been rehabilitated.

INSTRUMENTS OF INTEREST

Draft Buckinghamshire (Structural Changes) Order 2019

8. On 1 November 2018, the Secretary of State for the Ministry of Housing, Communities and Local Government (MHCLG) announced the decision “... to implement, subject to Parliamentary approval, the locally-led proposal to replace the existing five councils across Buckinghamshire—the two tier structure of Buckinghamshire County Council and the district councils of Aylesbury Vale, Chiltern, South Bucks and Wycombe—by one new single unitary district council ... ”.¹ In the Explanatory Memorandum MHCLG notes that the Order gives effect to Buckinghamshire County Council’s proposal for the establishment of a single tier of local government for Buckinghamshire.² The existing district areas are to be abolished as local government areas and all five councils in Buckinghamshire are to be wound up and dissolved. They will be replaced by a single unitary council called Buckinghamshire Council which, from 1 April 2020, will be the sole local authority for the local government area of Buckinghamshire.³ Additional arrangements, including preparing for the transition to the new Council, are also set out in the Order.

9. MHCLG notes that, in making their proposal, Buckinghamshire County Council estimated savings of £18.2 million per annum⁴ and that:

“The benefits of the single unitary proposal are anticipated to be: enhanced social care and safeguarding services through closer connection with related services such as housing, leisure and benefits; improved strategic decision making in such areas as housing, planning and transport; improvements to local partnership working with other public sector bodies; establishment of nineteen community boards, each with a community hub, enabling local councillors to take decisions on issues such as funding for community groups and local roads maintenance; and providing a single point of contact.”⁵

10. MHCLG notes that “It is expected that there will be job losses as duplicated roles are removed, and in the short term there will be costs associated with implementation”.⁶ MHCLG refers to earlier Regulations⁷ which paved the way for this Order.

1 Written Ministerial Statement, 10 November 2018, [HCWS1058](#).

2 Explanatory Memorandum (EM), para 2.1; and Buckinghamshire Council, *Modernising Local Government in Buckinghamshire* (September 2016): https://www.buckscc.gov.uk/media/1314/mlg-in-bucks_final_low-res.pdf [accessed 1 May 2019].

3 EM, para 2.1. The EM also notes that “For these purposes ‘local authority’ does not include a parish council”.

4 EM, para 12.2; and Buckinghamshire Council, *Strategic Options Appraisal: Reorganising Local Government in Buckinghamshire* (September 2016): https://www.buckscc.gov.uk/media/1315/j2844-options-appraisal_final_lowres-1.pdf [accessed 1 May 2019].

5 EM, para 7.4.

6 *Ibid.*

7 EM, para 3.1. “The Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019 (SI 2019/332) were made on 21 February 2019 and came in to force on 22 February 2019. They modify provisions relating to local authority structural and boundary change in the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) as they apply to councils in Buckinghamshire, and so paved the way for this Order”.

Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (SI 2019/811)

11. The purpose of these Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra) on behalf of the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland, is to ensure that Northern Ireland legislation relating to the controls and standards for trade in live animals, products of animal origin, germplasm, animal by-products and bees, and the non-commercial movement of pets can continue to operate effectively after the UK's withdrawal from the EU. The Sub-Committee considered the Regulations when they were laid initially as a proposed negative instrument under the European Union (Withdrawal) Act 2018. At the time, the Sub-Committee recommended an upgrade to the affirmative procedure, concluding that the House may wish to debate the potential impact of a 'no deal' scenario and of additional administrative requirements and potential costs for the commercial movement of animals and animal-related products and the non-commercial movement of pets in the unique circumstances in Northern Ireland.⁸ The Department has now laid the instrument under the urgent 'made affirmative' procedure to ensure that it can come into force by exit day, which, at the time of making the instrument, was 12 April. Under this procedure the instrument cannot remain in force unless it is approved by Parliament within 28 days, beginning with the day on which the instrument was made. We asked DAERA why, given the importance of the instrument, the Regulations had not been laid earlier following the Sub-Committee's report in January. DAERA told us that the introduction of the Regulations "was kept under careful review pending completion of the UK Government's position on future [Northern Ireland] trade arrangements and its discussion with the European Commission on the package of measures required to secure agreement on third country status". DAERA says that such an agreement has now been secured.⁹

Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (SI 2019/820)

12. The purpose of this instrument is to ensure that Northern Ireland law which implements current EU protections against organisms which are harmful to plants or plant products remains effective after the UK leaves the EU. The instrument complements Regulations which introduced equivalent provisions for England, and on which the Sub-Committee reported.¹⁰ Under the new arrangements, current EU plant passports are replaced with a UK plant passport regime to facilitate the monitoring of plant material moving within the UK. Plants and plant products that currently require an EU plant passport and are imported into Northern Ireland from the EU and Switzerland after exit will need to be pre-notified and accompanied by a plant health certificate issued by the country of export. The relevant UK plant health authority will carry out documentary and identity checks to ensure traceability of the material. Plants and plant products which currently do not require an EU plant passport will not be subject to these checks, on the understanding that biosecurity risks will not change immediately on

⁸ *12th Report*, Session 2017–19 (HL Paper 264).

⁹ HM Government, *Press release: UK listed status application approved to assure animal and animal product movements in a no-deal Brexit* (10 April 2019): <https://www.gov.uk/government/news/uk-listed-status-application-approved-to-assure-animal-and-animal-product-movements-in-a-no-deal-brex-it> [accessed 1 May 2019].

¹⁰ *13th Report*, Session 2017–19 (HL Paper 268).

exit. Imports of high-risk plant and plant products from third countries into Northern Ireland which have travelled through the EU before entering the UK without having been checked at an EU border will require documentary, identity and physical checks at authorised premises in Northern Ireland. The Department of Agriculture, Environment and Rural Affairs (DAERA) expects the additional plant health requirements to affect some 67 businesses. The instrument also introduces a new criminal offence to ensure that failures to comply with restrictions in relation to plant health emergencies, such as compliance with demarcation areas, can be enforced. DAERA explains that the instrument has been laid under the urgent ‘made affirmative’ procedure to ensure that it comes into force by exit day, which, at the time of making the instrument, was 12 April. Under this procedure, the instruments cannot remain in force unless it is approved by Parliament within 28 days, beginning with the day on which the instrument was made.

Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (SI 2019/825)

Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (SI 2019/826)

Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/837)

13. According to the Department for Transport (DfT), these three sets of Regulations ensure that the legislative framework for rail safety can operate effectively if the UK leaves the EU without a withdrawal agreement. The Department says that the intention is to preserve the status quo, including in relation to requirements and procedures for obtaining safety certificates and authorisations in Great Britain and Northern Ireland, with one set of the Regulations specifically maintaining the train operator and train driver licensing regime in Northern Ireland. The Sub-Committee previously considered the Regulations when they were laid as proposed negative instruments, and recommended they be subject to the affirmative resolution procedure because of the potential impact of the proposed changes on cross-border rail operations, especially in relation to Northern Ireland.¹¹ DfT accepted the Sub-Committee’s recommendation and has laid the instruments under the urgent ‘made affirmative’ procedure to ensure that the Regulations can come into force by exit day, which, at the time of making the instruments, was 12 April. Under this procedure the instruments cannot remain in force unless they are approved by Parliament within 28 days, beginning with the day on which the instrument was made.
14. We note that Regulation (EU) 2019/503 was adopted by the Council of Ministers on 22 March 2019, which will ensure that if the UK leaves the EU without a deal, mutual recognition of key certificates and licences will continue in cross-border areas in France and Ireland for a nine-month transition period after exit. DfT told us that “[it remains] confident about concluding negotiations to put in place long term agreements either before the end of the Transition Period, or before the end of the 9-month period provided for by the Regulation, so that these mutually-beneficial cross-border services continue”.

¹¹ *19th Report*, Session 2017–19 (HL Paper 305).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft Buckinghamshire (Structural Changes) Order

Draft Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019

Instruments subject to affirmative approval

- SI 2019/806 Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) (No. 2) Regulations 2019
- SI 2019/811 Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- SI 2019/812 Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019
- SI 2019/820 Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- SI 2019/825 Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019
- SI 2019/826 Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019
- SI 2019/837 Rail Safety (Amendment etc.) (EU Exit) Regulations 2019

Instruments subject to annulment

- HC 2099 Statement of Changes in Immigration Rules
- SI 2019/682 Social Housing Rents (Exceptions and Miscellaneous Provisions) (Amendment) Regulations 2019
- SI 2019/861 Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019
- SI 2019/872 Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019
- SR 2019/86 Allocation of Housing and Homelessness (Eligibility) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019
- SR 2019/89 Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations (Northern Ireland) 2019

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 30 April 2019, Members declared no interests.

Attendance:

The meeting was attended by Lord Cunningham of Felling, Baroness Donaghy, Lord Goddard of Stockport, Lord Hodgson of Astley Abbotts, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Baroness Redfern, Lord Rooker, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.