

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee (Sub-Committee A)

17th Report of Session 2017–19

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

Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

Includes 3 Information Paragraphs on 4 Instruments:

Draft Conservation (Natural Habitats, etc.) (Amendment) (Northern
Ireland) (EU Exit) Regulations 2019

Draft Conservation of Habitats and Species (Amendment) (EU Exit)
Regulations 2019

Draft Licensing of Operators and International Road Haulage
(Amendment etc.) (EU Exit) Regulations 2019

Draft Railway (Licensing of Railway Undertakings) (Amendment
etc.) (EU Exit) Regulations 2019

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Secondary Legislation Scrutiny Committee (Sub-Committee A)

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

Baroness Bowles of Berkhamsted	Lord Haskel	Rt Hon. Lord Trefgarne (Chairman)
Rt Hon. Lord Chartres	Lord Hogan-Howe	Rt Hon. Lord Walker of Gestingthorpe
Lord Faulkner of Worcester	Rt Hon. Lord Lilley	Lord Wood of Anfield
Baroness Finn	Lord Sharkey	

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

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Seventeenth Report

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

Instruments recommended for upgrade to the affirmative procedure

Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

Date laid: 4 February 2019

Sifting period ends: 20 February 2019

1. This proposed negative instrument is part of a wider package of statutory instruments laid by HM Treasury since July 2018 to ensure that the UK continues to have a functioning financial regulatory framework after exit from the EU. The instrument addresses errors and omissions in earlier instruments, and makes amendments that do not fall within the remit of changes made by other instruments. The legislation proposed to be amended by the instrument includes: four Acts of Parliament; seven “pre-EU Exit” statutory instruments; 12 “EU Exit” statutory instruments that have been considered by the House during the last six months; and several items of retained EU legislation (details are given in section 2 of the Explanatory Memorandum). Given the number and significance of the Acts and instruments being amended, and of the policy area (financial services regulation) concerned, we consider that the House may wish to have the opportunity to debate the instrument, and **we therefore recommend that it should be made subject to the affirmative resolution procedure.**

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

- Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 (Nadine)
- European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019
- Sanctions (Amendment) (EU Exit) No 2) Regulations 2019

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

Date laid: 15 January 2019

Parliamentary procedure: affirmative

*These Regulations have been laid by the Home Office as a contingency measure in case of ‘no-deal’ with the EU. The instrument consists of 24 disparate Parts which range over policy areas relating to security, justice and policing matters. Correspondence with the Home Office has not persuaded us that so wide-ranging an instrument, covering policy areas which are individually of significant concern to the House, can be justified. Effective scrutiny is further inhibited by the failure of the Home Office to provide any contextual explanation, with estimated numbers or an indication of the degree of usage, to illustrate the impact of the changes that this instrument addresses. **Without such information we cannot determine the significance of a policy change and, as a result, advise the House accordingly.***

These draft Regulations are drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

2. These draft Regulations have been laid by the Home Office as a contingency measure in case of a ‘no deal’ Brexit. They range over a number of policy areas relating to security, justice and policing matters. The instrument was laid with an Impact Assessment (IA) and an Explanatory Memorandum (EM1). At the Committee’s request a revised Explanatory Memorandum was laid on 11 February (EM2). Correspondence with the Government about the instrument is published at Appendix 1. The Regulations transfer a significant number of legislative powers back from the EU to the Home Secretary.
3. The Regulations consist of 24 disparate Parts, some of which include more than one aspect of the topic set out in the heading:

**Table 1: Draft Law Enforcement and Security (Amendment) (EU Exit)
Regulations 2019 Parts**

Part	
2	Child Pornography
3	Counter-Terrorism
4	Cross Border Surveillance
5	Drug Precursors and Psychoactive Substances
6	Eurojust
7	European Agency for Law Enforcement Training (CEPOL)
8	European Criminal Record Information System (ECRIS)
9	European Judicial Network

Part	
10	eu-LISA
11	Europol
12	Exchange of Information and Intelligence between Law Enforcement Authorities and Disclosure in Foreign Proceedings
13	Explosive Precursors
14	Extradition
15	Firearms
16	Football Disorder
17	Joint Investigation Teams
18	Mutual Legal Assistance in Criminal Matters
19	Passenger Name Record Data
20	Proceeds of crime
21	Prüm
22	Schengen Information System (SIS II)
23	Serious Crime and Fraud
24	Miscellaneous—which includes amendments to Acts and SIs on: <ul style="list-style-type: none"> • Human Trafficking • Licensing • Anti-Social Behaviour • Police Pensions • Investigatory Powers • International Agreements and • Atlas (cooperation between special intervention units).

Source: *Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019*

4. The rationale for this “portmanteau” approach was not explained in EM1 and, in the absence of any justification, the Sub-Committee took the view that the diverse range of this instrument far exceeded what the House could be reasonably expected to consider in the usual time allotted to debating a statutory instrument. “Bundled” instruments from other Departments have at least had some more obvious connection between their component parts. We therefore asked the Minister, the Rt Hon. Nick Hurd MP, to explain why, on this occasion, the Home Office had chosen to combine so many policy areas into one instrument. The Minister’s reply, published in full at Appendix 1, grouped the component Parts into three broad groups:
- (a) Security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation;
 - (b) Security-related EU regulatory systems for which the Home Office is responsible; and
 - (c) Domestic legislation on the police and on investigatory powers made deficient by EU exit.

5. While the Minister’s reply provides some insight into the relationship between the items within the three groups, the effects of the changes can differ greatly between individual components. **We were not persuaded that so wide-ranging an instrument, covering policy areas that are individually of significant concern to the House, can be justified. Effective scrutiny is inhibited by the wide range of issues included.**

Quality of Explanation

6. The need for contingency arrangements for the possibility of a ‘no deal’ Brexit affects all Departments. Some have responded with large numbers of instruments, others have produced larger instruments that link several related policy areas. A key factor in demonstrating whether policy areas are suitable for combination in a single instrument is how coherently that approach can be justified in the EM. Sub-Committee B recently commended the Health and Safety Executive for an instrument which combined changes to the regulatory regimes for chemicals, biocides and genetically modified organisms because it explained the links and the effects of those changes in a clear and thorough EM.¹
7. This was not the case with the explanation originally laid with the instrument, EM1.² The instrument itself is 75 pages long and EM1 was even longer. It dealt with each component of the instrument separately and took a legalistic approach listing all the individual EU Directives and Regulations that were involved. While we cannot fault the Home Office for the effort it put in, we found the resulting text impenetrable.
8. We therefore asked it to produce a revised version, EM2. This is rather more user-friendly, indicating, for example, that certain provisions deal with potential gaps in the statute book in case of a ‘no deal’ Brexit, that certain provisions make transitional arrangements (so that cases or investigations that are already in progress on exit day can be completed) and that the Regulations introduce a new legal structure to enable extradition under the 1957 Council of Europe Convention in lieu of the European Arrest Warrant. **While we appreciate the efforts made by the Home Office to provide a more accessible EM, as with the Minister’s letter, we are left unpersuaded that combining such a wide range of policy areas in one instrument is justified.**

Impact of these changes

9. An IA was laid with this instrument. Unfortunately, we found it to be of little practical use. In a few instances it states that a provision has not been used and therefore there is no actual change (for example, Part 7 CEPOL, Part 21 Prüm) but for the most part the impact is categorised as “B2: there could be some practical impacts arising if legislative deficiencies are not addressed through these Regulations”. No information is given about the frequency with which the provision is currently used, whether an alternative route to the information is available at a different cost, or what effect the loss of this intelligence or information will be. Neither the financial nor the societal cost is quantified.

1 Secondary Legislation Scrutiny Committee (Sub-Committee B), [15th Report](#), Session 2017–19 (HL Paper 281) on the [Draft Chemicals \(Health and Safety\) and Genetically Modified Organisms \(Contained Use\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#).

2 Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019, [Original Explanatory Memorandum](#) [accessed 19 February 2019].

10. The Secondary Legislation Scrutiny Committee’s approach is to consider the practical effects of secondary legislation. We therefore expect an EM to include some contextual explanation, preferably with estimated numbers or an indication of the degree of usage, illustrating how the system will operate differently after the legislative change has happened. **Without such information we cannot assess the significance of a policy change and, therefore, advise the House accordingly.**

Real world effects

11. When we approached the Home Office for supplementary information on how often the powers affected by the Regulations were currently used and the effect of losing the EU facility, our request was declined, with the argument that:

“... the EU arrangements in question would cease to be available to the UK on exit day in any event—by virtue of the UK having left the EU. Any associated costs (or benefits) to society or industry would therefore be incurred regardless of whether the Regulations are approved.”

12. We have seen this argument advanced in respect of other instruments, and we find it wholly unconvincing.³ The Home Office’s assessment looks only at the moment of transition and ignores how data exchange and the transfer of information about crimes and criminals will operate after exiting the EU. **We take the view that the purpose of contingency regulations is to address the consequences of a ‘no deal’ exit from the EU. Any accompanying EM should not be treated simply as an academic exercise dealing only with the moment of transition.** As with any other instrument, the House needs sufficient information to understand the context and whether the solution offered by the regulations is an effective one. In order to do that, the House needs practical information on the real world effects before and after exit day.
13. The Home Office’s revised EM, EM2, still adopts this “moment of transition” approach for the most part although it does give a broad-brush outline of the effect of a ‘no deal’ Brexit:

“Should the UK leave the EU without an agreement in March 2019 (the ‘no deal’ scenario), the UK’s access to EU security, law enforcement and criminal justice tools would cease ... The UK would rely instead on alternative, non-EU mechanisms, where they exist. The assessment concludes that these mechanisms, which include Interpol and Council of Europe Conventions, *would not provide the same level of capability as those envisaged in a deal scenario, and would risk increasing pressure on UK security, law enforcement and judicial authorities.* [emphasis added]” (EM2 paragraphs 7.3-7.4)

Such statements raise concerns that cannot be assessed properly without appropriate information on the current scale of usage and how that might change as a result.

3 See, for example, our [14th Report](#), Session 2017–19 (HL Paper 272) in relation to the [Draft Kimberley Process Certification Scheme \(Amendment\) \(EU Exit\) Regulations 2019](#) and the [Draft Motor Vehicles \(International Circulation\) \(Amendment\) \(EU Exit\) Order 2019](#).

Availability of figures

14. Only one Part is described in more detail in EM2, that is, Part 14 of the Regulations which provides a new legal structure to enable extradition requests to operate under the 1957 Council of Europe Convention. Paragraph 12.5 of EM2 notes that in 2017–19 the UK arrested over 1,400 individuals on the basis of European Arrest Warrants and 183 individuals were arrested by other Member States on the basis of such warrants issued by the UK. These figures indicate that the measure is important to international policing.
15. The IA states that, although a replacement system is enabled by this instrument, the new arrangements would “see the cost per incoming extradition case rise” for the operational stakeholders listed and “due to the more complex extradition process set out, it is anticipated that the number of extraditions per year would be lower and each would take longer with resultant implications for outcomes for criminal justice including victims’ interests”. This statement raises concerns but does not put any estimate of scale on the outcome.
16. EM2 instead refers to the Government’s separately published *EU Exit: Assessment of the security partnership*⁴ which provides an assessment of the implications of ‘no deal’ in this policy area compared with the proposed Future UK-EU Security Partnership.⁵ That document does provide illustrative examples of the current usage of some of these services:
 - “the Second Generation Schengen Information System (SIS II) contains almost 76.5 million alerts in relation to people and objects wanted for law enforcement purposes. In 2017 the UK checked SIS II over 500 million times and there were over 16,000 non-UK hits on UK alerts.”
 - “the European Criminal Records Information System (ECRIS) is a secure electronic exchange mechanism that allows EU member states to exchange tens of thousands of pieces of information about criminal convictions. In 2017 the UK sent and received over 163,000 requests and notifications for criminal records. That is over 3,000 a week”
17. However, an article published on the BBC News website provided exactly the sort of impact information that we were looking for:⁶

“One of the effects of leaving the EU without a deal will be that British police officers will lose access to EU criminal justice tools such as the European Arrest Warrant (EAW), the European Criminal Records Information System (ECRIS), the Second Generation Schengen Information System (SIS II) and the European Investigation Order (EIO).

4 HM Government, *EU Exit: Assessment of the security partnership* (November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759760/28_November_EU_Exit_-_Assessment_of_the_security_partnership_2_.pdf [accessed 19 February 2019].

5 As set out in the Political Declaration of 25 November 2018; this is however a basis for future negotiation during the implementation period up to December 2020 rather than detailed agreement, and would not apply in case of no deal.

6 BBC, *Brexit: What preparations are being made for a no-deal?* BBC (9 February 2019): https://www.bbc.co.uk/news/uk-47029602?intlink_from_url=https://www.bbc.co.uk/news/topics/cwlw3xz0lvvt/brexit&link_location=live-reporting-story [accessed 19 February 2019].

To handle the loss of these modern tools, the National Crime Agency - which communicates with overseas forces and Europol - has recruited 87 officers to use the much less effective Interpol system and to use other arrangements that are less automated and more labour-intensive.

An International Crime Co-ordination Centre is being set up by the National Police Chiefs Council as part of what is being called Operation Safety Net to help forces with things like international manhunts and missing people inquiries.”

18. **We question why this information is available generally but not included in the explanatory material laid before Parliament.**
19. We note that the Commons Home Affairs Committee also criticised the Home Office for failing to be transparent on this matter in a report published in December 2018:⁷

“From the evidence we have received, it is clear that no deal would represent a risk to public safety and security ... we do not believe that the Government’s published assessment of the security partnership is a full assessment of the risks that we currently face. Nor do we share the Home Secretary’s view that we will be as safe as we are now if we lose key capabilities or cooperation, or that SIS II is simply “nice to have”. We are extremely concerned that the Government is either being complacent or failing to be transparent about the security implications and it should provide full and accurate information to parliament about the security risks.” (paragraph 48)

Conclusion

20. When reporting on an instrument, it is the practice of the SLSC Sub-Committees to advise the House on areas of doubt and to suggest questions that the House might wish to raise in debate. Because of the lack of information about the policies included in this instrument, we can do little more, on this occasion, than offer a few broad indications about the effect of the Regulations.
21. Some of the Parts (for example, 2, 3, 4, 6) of this instrument entail the UK losing reciprocity—for example, cooperation with EU police and justice counterparts and the loss of information exchange which may (or may not) currently have significant benefits in crime prevention, the obtaining of prosecution evidence or the apprehension of suspects or the proceeds of crime. We would expect some description of how the loss of that information, albeit an unavoidable loss in the event of a ‘no-deal’ Brexit, will affect police and court operations. The EM provides no scale of current usage against which we can measure the loss.
22. Other Parts (for example, 14 and 18) indicate that processes will continue but possibly at a slower pace because the UK will be treated as a ‘third country’. Neither EM1 nor EM2 provide any insight into whether this change matters: will the end result be the same, or do the police risk losing contact with suspects abroad, and will the courts risk evidence arriving too late to be of use in a prosecution?

⁷ Home Affairs Committee, *Home Office preparations for the UK exiting the EU* (Twelfth Report, Session 2017–19, HC 1674).

23. We were sceptical that so wide-ranging an instrument could be scrutinised effectively. With concise, well-focused briefing it might have been possible. Unfortunately, neither EM1 nor EM2 has proved adequate. The lack of contextual detail inhibits a proper understanding of the significance of the impact of the various components of the Regulations. **We therefore draw this instrument to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.**

INSTRUMENTS OF INTEREST

Draft Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Draft Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

24. These two sets of draft Regulations propose amendments to UK domestic legislation which transposes the EU’s Habitats and Wild Birds Directives, to ensure that the legislation can operate effectively after the UK’s withdrawal from the EU. The Department for Environment, Food and Rural Affairs (Defra) explains that no changes to policy are proposed and that the instruments seek to ensure that habitat and species protection and standards as set out under the EU Directives are implemented in the same or equivalent way in the UK after exit. The Secondary Legislation Scrutiny Committee (Sub-Committee B) cleared a previous set of the draft Regulations from scrutiny⁸ which Defra later withdrew in response to concerns by the Royal Society for the Protection of Birds (RSPB) about the level of protection for Special Protection Areas (SPAs).⁹ According to Defra, the draft Regulations have now been amended to provide “absolute legal clarity” that the management objectives of the new national site network to protect wild bird species and their SPAs will remain equivalent to those in the Wild Birds Directive. We have also received a submission from Green Alliance on behalf of Greener UK and Wildlife and Countryside Link which raises concerns about the draft Regulations, including in relation to reporting requirements and the requirements for expert scientific advice. We have obtained a response from Defra to Green Alliance’s submission, which also provides further information on the changes the Department has made to the earlier instruments. We are publishing the submission and the response on our website.¹⁰

Draft Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019

25. EU Regulations¹¹ set out a framework for the licensing of road haulage and public transport operators. Operators from EU Member States can operate in other Member States under a ‘Community licence’ issued by the Member State in which the haulier is established. This instrument provides that the UK will continue unilaterally to accept EU27 Community Licences and offer their hauliers cabotage rights. However, after exit day, UK authorities will not be able to issue Community Licences, as the UK will no longer be a Member State. Instead, the relevant UK authorities (the Traffic Commissioners and the Northern Ireland Department for Infrastructure)¹² will issue an equivalent document referred to as a “UK licence for the Community.” In

8 Secondary Legislation Scrutiny Committee (Sub-Committee B), [11th Report](#), Session 2017–19 (HL Paper 261).

9 SPAs are strictly protected sites under the EU’s Wild Birds Directive, designated for rare and vulnerable birds and for regularly occurring migratory species.

10 Secondary Legislation Scrutiny Committee (Sub-Committee A) Publications page: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-a/publications/>.

11 [Regulation \(EC\) 1071/2009](#) and [Regulation \(EC\) 1072/2009](#).

12 DfT has confirmed that “the requirement on the Traffic Commissioners and the NI Department to issue Licences for the Community directly replaces their current duty to issue Community Licences. Therefore, no additional resources are needed to deal with this, and the one-off adjustments to licence formats etc required on exit day are minor and well in hand.”

the Explanatory Memorandum to these draft Regulations, the Department for Transport (DfT) explains that this is “on the expectation that reciprocal arrangements between the UK and the EU are able to continue on the same terms as exist before the UK exits the EU.” The European Commission (“the Commission”) has published a draft proposal¹³ to offer continued, but temporary, access for UK hauliers to EU markets, which the UK is currently discussing with the Commission and Member States. DfT told us:

“although the published document currently offers to and from journeys only, in discussions the proposal has been expanded to include limited cabotage and cross trade for haulage and passenger transport movements (that is, buses and coaches). Those discussions give us firm confidence that the provisions of the current SI will be reciprocated, at least for the nine months for which the Commission’s proposal would be in force.”

26. Should an agreement with the EU not be reached, a UK haulier could not move around in the EU or carry out cabotage operations. UK Ministers will, however, have the ability to suspend EU cabotage operations in the UK via an administrative order. This would not be subject to Parliamentary scrutiny, as it would be an urgent and temporary measure in the first instance. If it were later deemed necessary to extend this beyond the maximum period of 12 months permitted under an administrative order, the Secretary of State would make provision for this by way of statutory instrument subject to the affirmative resolution procedure.

Draft Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019

27. Existing Regulations¹⁴ set out the rules for the licensing of passenger and freight train operators in Great Britain (GB). The Office of Rail and Road (ORR) issues “European licences”¹⁵ enabling licence holders to provide train services in any European Economic Area (EEA) Member State. In future, any licences issued by the ORR will be known as a “railways undertaking licence.” After exit day, operators that hold licences issued by the ORR and operate in the UK, will not need to take any action and these licences will continue to be valid in GB indefinitely. Operators that provide train services in GB and hold a licence issued by an EEA Member State will continue to have their licences recognised for two years after exit day. At the end of that two-year period, any affected operators will require a licence issued by the ORR to continue to operate legally in GB.¹⁶ However, after exit day, ORR-issued licences will no longer be valid in EEA Member States. Operators with such licences intending to operate in an EEA Member State after exit day will have to apply for a licence from a licensing authority in an EEA Member State. The Department for Transport (DfT) explained that:

“... licensing and certification arrangements for cross-border operators, including Eurostar, would be subject to any bilateral arrangements that the UK negotiates with individual EU countries. On the basis of the

13 Proposal for a Regulation of the European Parliament and of the Council on common rules ensuring basic road freight connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union [COM\(2018\) 295](#).

14 Railway (Licensing of Railway Undertakings) Regulations 2005 ([SI 2005/3050](#)) (“2005 Regulations”).

15 Providing the ORR is satisfied that applicants meet certain conditions regarding their professional competence, financial fitness and insurance cover.

16 The Explanatory Memorandum states that “there is currently only one such operator, Europorte Channel SAS, a freight operator.”

productive discussions with relevant member states to date, we remain confident about appropriate arrangements being in place so that these mutually-beneficial cross border services continue to effectively operate.

As part of sensible contingency planning, the Government is also engaging closely with Eurostar to support their preparations to ensure they hold valid EU licences and certificates to continue operating in the EU in the event of no deal (additional to UK issued licences and certificates). These preparations will help secure smooth operation of services in all scenarios.”

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

Food and Feed Imports (Amendment) (EU Exit) Regulations 2019

General Food Hygiene (Amendment) (EU Exit) Regulations 2019

Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019

Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019

Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

- | | |
|-------------|--|
| SI 2019/158 | Animal Health and Welfare (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 |
| SI 2019/159 | Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2019 |
| SI 2019/162 | Electricity (Individual Exemptions from the Requirement for a Transmission Licence) (England and Wales) Order 2019 |
| SI 2019/166 | Legal Services Act 2007 (Designation as a Licensing Authority) Order 2019 |
| SI 2019/189 | Education (Student Loans) (Repayment) (Amendment) Regulations 2019 |
| SI 2019/190 | Genetically Modified Organisms (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 |
| SI 2019/194 | Driving Licences (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 |

APPENDIX 1: DRAFT LAW ENFORCEMENT AND SECURITY (AMENDMENT) (EU EXIT) REGULATIONS 2019

Letter from the Rt Hon. Lord Trefgarne PC, Chairman of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Nick Hurd MP, Minister of State for Policing and the Fire Service at the Home Office

I am writing as Chairman of Sub-Committee A of the Secondary Legislation Scrutiny Committee which considered these draft Regulations at its most recent meeting.

As you will be aware, these lengthy Regulations cover an exceptionally wide range of subjects. And, unfortunately, we were not assisted in our understanding of them by an Explanatory Memorandum (EM) of even greater length. As a result, we found the instrument somewhat opaque.

The Sub-Committee has therefore asked me to raise the following questions:

- Why your department chose to combine regulations relating to so many subjects in a single instrument, and whether any consideration was given to the impact of doing so on effective parliamentary scrutiny, both by committees and in debate in the Houses.
- Second, given the range of the subjects, why your department did not provide, contrary to best practice, an EM which included a short description of the context and scale of each provision thereby enabling members to understand clearly and quickly their impact and importance.

To be of assistance to Parliament, an EM really must provide a concise, free-standing description of the effect of an instrument that is accessible to a reader with no prior understanding of the subject. Since the EM laid with the Regulations did not comply with this standard, we asked for further information about their ‘real world’ effects. We were disappointed that this request was not met with a positive response but that we were, instead, referred to a range of other documents. This was not helpful.

We would be grateful if you would respond to these questions, including the provision of a revised Explanatory Memorandum more suited to its purpose, by 10 am on Monday 4 February 2019.

29 January 2019

Letter from Nick Hurd MP to Lord Trefgarne

Thank you for your letter of 29 January 2019 about your Sub-Committee’s consideration of the Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (‘the Regulations’).

You asked me to explain why the Home Office chose to include a range of subjects in a single instrument, and what consideration was given to the impact of doing so on effective parliamentary scrutiny.

The legislative changes being made by the instrument are in linked policy areas, and therefore our assessment was that combining them in a single instrument would assist scrutiny by the two Houses and also assist the eventual users of this legislation, which will include law enforcement partners and prosecutors around the UK. I of course accept that the Sub-Committee has taken a different view

and hope that the fuller explanation below, together with the revised EM that we will be laying in response to the Sub-Committee's request, will help to address the concerns raised in your letter and aid understanding and scrutiny of the instrument.

The Regulations cover three subject areas:

- (a) security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation in Parts 2-4, 6-12, 14, and 16- 23;
- (b) security-related EU regulatory systems for which the Home Office is responsible (drug precursors and psychoactive substances, explosive precursors, and firearms) in Parts 5, 13 and 15; and
- (c) domestic legislation on the police and on investigatory powers made deficient by EU exit in Chapters 1 and 2 of Part 24.

In regard to (a), the Regulations address deficiencies in connection with EU measures made under Chapters 4 and 5 of Title V of the Treaty on the Functioning of the European Union. These measures are often referred to as having a Justice and Home Affairs or "JHA" legal base. In EU law, this is a coherent body of law that is often considered together, and is subject to different rules at the EU level (including the availability of the UK's "opt in").

Reflecting this shared underlying legal base, these measures all relate in some way to law enforcement and security in terms of their subject matter, and in many cases interact with each other at an operational level. For example, the operation of the European Arrest Warrant (EAW) is supported by the system of "alerts" circulated on the Second Generation Schengen Information System (SIS II), a Europe-wide IT system which enables the sharing of alerts on wanted/missing persons and objects for law enforcement purposes. As such, the Home Office considered that it would assist scrutiny to present these cognate and inter-related amendments together in a single instrument.

In regard to (b), the underlying EU law in these areas does not have a JHA legal base. However, the purpose of these regulatory systems—on drug precursors and psychoactive substances, explosive precursors and firearms—is similar to the underlying purpose of the JHA measures referred to above—to prevent, detect and prosecute criminal activities and to maintain security. For this reason, the Home Office considered it was appropriate to group these amendments with those relating to the JHA measures.

I should note that the Home Office is also responsible for one other regulatory system that is affected by the withdrawal of the UK from the EU—the use of animals in scientific procedures. Recognising that the purpose of that regulatory regime is not focused on law enforcement and security matters, the Home Office has brought forward a separate instrument to address deficiencies in that regime resulting from EU exit.¹⁷

In regard to (c), the Regulations include a miscellaneous group of small, technical amendments to domestic legislation on the police and on investigatory powers. These amendments seek to ensure that legislation in this area remains operable on exit, and mainly address deficiencies arising from the assumption found in such legislation that the UK is an EU Member State. Given the nature and cognate

¹⁷ The Animals (Scientific Procedures) Act 1986 (EU Exit) Regulations 2019 ([SI 2019/72](#)).

subject matter of this group of amendments, the Home Office considered that it was appropriate to include them in these Regulations, rather than bringing forward a separate instrument. Where EU exit-related amendments are required to Home Office legislation unrelated to law enforcement and security - for example, deficient references in domestic legislation relating to immigration - these are being brought forward in a separate instrument.

You also asked me to explain why the Home Office did not provide a short description of the context and scale of each provision. The detailed information in the Explanatory Memorandum (including short descriptions of what any relevant EU law did before exit day, why it is being changed, and what it will do now) was supplied in good faith, in order to provide the Committee and other users of the EM with a thorough explanation of each provision in the instrument. We anticipated that the level of detail provided would be helpful to anyone with an interest in a specific Part of the instrument.

However, I accept that the Sub-Committee consider that we have not struck the right balance and that the EM is too long. As such, we will be laying a revised EM that is more succinct and will be providing a copy to the Sub-Committee shortly.

As regards the 'real world' effect of the instrument and specific provisions therein, we provided a detailed assessment of the practical effect of each Part in the Impact Assessment² accompanying the Regulations, as well as a summary of the impact of the legislation in Section 12 of the Explanatory Memorandum. The information included in the Explanatory Memorandum and Impact Assessment attempted to isolate and describe the practical effect of the Regulations themselves and is free-standing in that sense.

As you note, further information was requested from my officials on the wider impact of EU arrangements in this area falling away in a 'no deal' scenario. These wider impacts would be the result of the Article 50 notification, rather than the provisions found in the Regulations. We will attempt to clarify this point in the revised EM and will also include a short description of those wider impacts by way of additional background.

I hope that this further information is helpful, and that the revised EM we are providing will meet the Committee's needs.

4 February 2019

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 18 February 2019, Members declared the following interests:

Draft Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Draft Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

Lord Chartres

Associated with Green Alliance

Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019

Lord Faulkner of Worcester

Chair, Great Western Railway Advisory Board (formerly called First Great Western Trains Advisory Board)

Attendance:

The meeting was attended by Lord Chartres, Lord Faulkner of Worcester, Baroness Finn, Lord Lilley, Lord Trefgarne and Lord Walker of Gestingthorpe.