HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

14th Report of Session 2019–21

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

Drawn to the special attention of the House:

Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020

Includes information paragraphs on:

8 instruments relating to Covid-19

Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020

Direct Payments to Farmers (Crop Diversification Derogation) (England) Regulations 2020

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2020

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Secondary Legislation Scrutiny Committee

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 Union (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 Bakewell of Hardington Mandeville
Rt Hon. Lord Chartres
Rt Hon. Lord Cunningham of Felling
Viscount Hanworth
Lord Hodgson of Astley Abbotts (Chair)
Lord Kirkwood of Kirkhope
Lord Liddle
The Earl of Lindsay
Lord Lisvane
Lord Sherbourne of Didsbury
Baroness Watkins of Tavistock

Registered interests

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

Publications

The Committee's Reports are published on the internet at http://www.parliament.uk/seclegpublications

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Further Information

Further information about the Committee is available at https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/

The progress of statutory instruments can be followed at https://statutoryinstruments.parliament.uk/

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

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.

Fourteenth Report

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

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

- Cross-border Parcel Delivery Services (Amendment) (EU Exit) Regulations 2020

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (SI 2020/471)

Date laid: 30 April 2020

Parliamentary procedure: negative

This instrument relaxes timescales that apply to Education, Health and Care needs assessment and plan processes for children and young people with special educational needs and disability (SEND) where, according to the Department for Education, those timescales cannot be met during the pandemic. The purpose of the instrument is to enable the services which are involved in those processes to deploy their resources more flexibly in response to the pandemic and focus their resources on those with the greatest needs. The changes are time-limited until 25 September 2020. The Department says that it discussed its approach with specialist organisations, representatives of parents of children with SEND and the Children's Commissioner, and that the feedback received informed the instrument and is reflected in updated guidance. Given the vulnerability of those affected by the changes, the House may wish to further explore these issues.

The 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.

1. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). The instrument relaxes temporarily the timescales contained in four sets of Regulations[1] that deal with Education, Health and Care (EHC) needs assessment and plan processes for children and young people with special educational needs and disability (SEND) where, according to DfE, those timescales cannot be met during the pandemic.

Background

2. DfE explains that EHC plans are for children and young people (up to the age of 25) with complex special educational needs. These plans set out the provision that a local authority (for education and social care needs) and health commissioning bodies (for health needs) must secure or arrange so that an individual's needs are met. The processes for applying for EHC needs assessments, preparing and issuing EHC plans and keeping those plans up to date are set out in legislation. The legislation requires local authorities, health bodies, education settings, educational psychologists and a range of other services to act within prescribed timescales. According to DfE, the pandemic has put significant additional pressure on those involved in the EHC needs assessment and plan processes, with some resources having been redeployed to work relating to the pandemic. The Department says that stay at home rules and social distancing have also affected how services can be delivered, and that while education settings remain open for vulnerable children and young people and those with EHC plans are classed as vulnerable for this purpose, many are at home.

1 Special Educational Needs and Disability Regulations 2014 (SI 2014/1530); Special Educational Needs (Personal Budgets) Regulations 2014 (SI 2014/1652); Special Educational Needs and Disability (Detained Persons) Regulations 2015 (SI 2015/62); and Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 (SI 2017/1306).

Urgency

3. The instrument does not comply with the convention that statutory instruments should be laid before Parliament for at least 21 days prior to coming into force. DfE explains that the aim is to "reduce pressures on local authorities, health commissioning bodies and others involved in EHC needs assessment and plan processes", to enable them to focus on the response to the pandemic and direct their resources where most needed. DfE says that local authorities in particular have asked for "urgent changes to the timescales […] because of the amount of time involved in this work and the difficulties in undertaking it" during the pandemic. Following the announcement of the lockdown in March, the Department says it was not able "to assess the extent and impact of the 'stay at home' rules on the EHC needs assessment and plan processes immediately", as it needed to engage with the sector to understand the impact before taking legislative action.

Changes made by this instrument

4. The instrument modifies the statutory timescales, primarily those that relate to EHC needs assessment and plan processes, so that where the pandemic has reduced the ability of relevant public relevant services to meet them, they may instead complete the processes "as soon as is reasonably practicable". While the amended timelines are not set out in the EM, they are explained in updated guidance[2] that the Department has published alongside the instrument.

5. DfE emphasises that the instrument relaxes the timescales for EHC needs assessment and plan processes rather than changing the substance of those processes, and that services must still "ensure that they provide an appropriate level of service to children and young people with SEND and their families". According to DfE, the instrument builds on precedent in existing Regulations which allow some exceptions to timescales, for example when a child is away from the local area for four weeks or more.

Consultation

6. The Department states that while it was not able to consult formally during the pandemic, it discussed the principle of amending the timescales and the need for urgent action with representatives of local authorities, parents of children with SEND and a number of specialist SEND organisations. DfE also told us that it discussed its approach with the Children's Commissioner. According to DfE, local authorities were strongly supportive of the Department's approach, while representatives of families with SEND children and SEND organisations recognised the need for legislative changes during the pandemic, provided that those changes were proportionate. DfE says that there was strong consensus about the need for clear guidance and clarity as to what level of service could be expected during the pandemic.

7. We asked the Department for further information about its discussions with SEND organisations and representatives of parents of children with SEND. DfE told us that these groups "stressed the need for the changes to be proportionate and for there to be appropriate safeguards (such as the changes

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2 Department for Education, *Changes to the law on education, health and care needs assessments and plans due to coronavirus* (30 April 2020): https://www.gov.uk/government/publications/changes-to-the-law-on-education-health-and-care-needs-assessments-and-plans-due-to-coronavirus [accessed 6 May 2020].

not continuing for any longer than necessary)". The Department said that the "Regulations were drafted with these points in mind" and that other points made, for example about the need for continued adequate funding for SEND Information, Advice and Support Services and for local authorities and health bodies to continue to work closely with the families of those with SEND were "explicitly addressed in the guidance". We are publishing the Department's response at Appendix 1.

8. **The Committee welcomes that the Department has discussed its approach with specialist organisations, representatives of families with children with SEND and the Children's Commissioner and has published updated guidance alongside the instrument, providing greater clarity to all those involved. This appears to be in contrast to the approach taken with Regulations which relaxed statutory timescales in relation to children in care and which the Committee reported to the House recently.**[3] **We urge the Department to return to normal timescales at the earliest opportunity and, after the pandemic, to prioritise the vulnerable children and young people affected by the temporary changes to help ensure that they are not disadvantaged further**.

Monitoring & review

9. The instrument will remain in force until 25 September 2020, reflecting the review provision in the Coronavirus Act 2020. The instrument places an obligation on the Secretary of State to keep the changes under review and DfE explains that it will monitor closely the operation of the EHC needs assessment and plan processes and other SEND services through systematic engagement with representatives of local authorities, the families of those with SEND, health bodies, education settings and other relevant services. The Department says that a further statutory instrument would be needed to revoke the changes should the social distancing guidance or stay at home rules be lifted earlier, or to extend the period during which the temporary changes apply, should this become necessary.

Conclusion

10. This instrument makes changes that will affect vulnerable children and young people with SEND. While the changes are temporary, the House may welcome an opportunity to further consider their impact. **The 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**.

3 Adoption and Children (Coronavirus) (Amendment) Regulations 2020, 13th Report, Session 2019–21 (HL Paper 57).

INSTRUMENTS RELATING TO COVID-19

11. One instrument relating to the Covid-19 pandemic, the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 (SI 2020/471), is drawn to the special attention of the House in this report (see pages 2 to 4 above)

Changes to business practice and regulation

Competition Act 1998 (Health Services for Patients in Wales) (Coronavirus) (Public Policy Exclusion) Order 2020 (SI 2020/435)

12. This Order temporarily lifts prohibitions of certain types of anti-competitive activity, as set out in Chapter 1 of the Competition Act 1998 ("the 1998 Act"), in relation to independent and public healthcare providers in Wales. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the Welsh Health Specialised Services Committee (a joint committee of Local Health Boards in Wales) has commissioned independent healthcare providers to provide extra capacity for the treatment of patients in Wales and that this Order aims to assist these arrangements. The Order mirrors the measures introduced in an earlier statutory instrument in relation to England.[4] According to BEIS, the Order specifies the types of activities and agreements between the different providers that are temporarily excluded from anti-competitive behaviour provisions under the 1998 Act, such as sharing information about capacity, coordinating staff deployment or the joint purchasing of goods, facilities or services. The exemptions apply retrospectively from 1 March. BEIS says that the direct sharing of sensitive information relating to costs or prices or future business planning is not exempt, to ensure that competition law is disapplied only where this is necessary to deal with the current crisis. BEIS expects the exemptions to be in place for less than 12 months. The Order enables the Secretary of State to end the exemptions once health services are no longer disrupted. The Secretary of State will have to give a minimum of 28 days' notice to enable the orderly winding down of any temporary arrangements. BEIS told the Committee that the "regulation of anti-competitive practices and agreements is a reserved matter and it will be for the Secretary of State to determine for the purposes of this Order when the 'healthcare disruption period' has ended", but that "UK Government officials have worked closely with the Welsh Government in its development, and we hope to continue this co-operation through any monitoring and follow up". The Department added that they "have made Scottish Government and Northern Ireland Executive colleagues aware of the order made in England but have not yet had requests for assistance in this area".

Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/477)

13. This instrument extends the initial application deadline for Direct Payments for 2020 and the 2020 payment claim deadline for the Countryside Stewardship (CS), Environmental Stewardship (ES) and woodland grant schemes (WGS) from 15 May to 15 June 2020. The Department for Environment, Food and Rural Affairs (Defra) says that this extension will provide farmers and land

4 Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020 (SI 2020/368), see: 11th Report, Session 2019–21 (HL Paper 49).

managers with additional time to submit the necessary paperwork at a time when they may be unable to complete forms and gather evidence due to illness, to meet with agents because of social distancing measures or to hand in correspondence and supporting documents at the Rural Payment Agency's drop-in centres which have closed temporarily. The instrument is linked to the Direct Payments to Farmers (Legislative Continuity) Act (Consequential Amendments) Regulations 2020 (SI 2020/463) (see paragraph 20 of this Report) which had to come into force before Defra could use powers under the Direct Payments legislation to extend these deadlines.

Financial Services and Markets Act 2000 (Regulated Activities) (Coronavirus) (Amendment) Order 2020 (SI 2020/480)

14. The purpose of this instrument is to remove loans of £25,000 or less from the scope of the UK's consumer credit regulatory regime, where these loans are made by commercial lenders to sole traders, unincorporated associations and partnerships of fewer than four people under the Bounce Back Loan Scheme (BBLS).[5] HM Treasury (HMT) says that the changes are needed because the current highly prescriptive consumer credit regulatory regime is inhibiting lenders from granting loans to small businesses under the BBLS; the changes are intended to make it easier for small businesses to access BBLS loans during the pandemic. The instrument includes an exemption so that the existing regulatory regime continues to apply for the specific activity of debt collecting in relation to BBLS loans. According to HMT, the instrument will cease to have effect once loans made under the scheme have been satisfied.

Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020 (SI 2020/481)

15. This Order temporarily lifts prohibitions of certain types of anti-competitive activity, as set out in Chapter 1 of the Competition Act 1998 ("the 1998 Act"), in relation to UK dairy producers, traders and their logistic services providers. BEIS says that reduced demand from the hospitality sector during the pandemic has led to an over-supply of raw milk which cannot be processed into other milk products because of limited processing capacity. According to BEIS, this Order aims to support the dairy industry during the pandemic to ensure that capacity is maintained to meet future demand, while mitigating the environmental damage to land and waterways caused by the disposal of an oversupply of raw milk. The Order specifies the types of activities and agreements between the different providers that are temporarily excluded from anti-competitive behaviour provisions under the 1998 Act, such as sharing information about surplus milk quantities, stock and customer demand and coordinating staff deployment and the temporary reduction of milk production. The exemptions apply retrospectively from 1 April. BEIS says that the direct sharing of sensitive information relating to costs or prices or future business planning is not exempt, to ensure that competition law is disapplied only where this is necessary to deal with the current crisis. BEIS expects the exemptions to be in place for less than 12 months. The Order expires three months after coming into force and also enables the Secretary of State to end the exemptions once the dairy sector is no longer disrupted, giving a minimum of 28 days' notice.

5 The BBLS scheme helps small and medium-sized businesses to borrow between £2,000 and £50,000 for up to six years, with the Government guaranteeing 100% of the loan and no fees or interest due for the first 12 months.

Public services—Health

National Health Service (Quality Accounts) (Amendment) (Coronavirus) Regulations 2020 (SI 2020/466)

16. The National Health Service (Quality Accounts) Regulations 2010[6] specify the information which must be contained in the Quality Accounts of providers of NHS services in England. They also require providers to obtain assurance of their draft reports by the lead NHS commissioner (NHS England or the relevant Clinical Commissioning Group), Local Healthwatch, and the appropriate Overview and Scrutiny Committee by 30 April each year, publish Quality Accounts by 30 June each year, and send a copy to the Secretary of State for Health and Social Care. These Regulations suspend these requirements for the reporting year 1 April 2019 to 31 March 2020 only. The Department for Health and Social Care states that revised timelines and guidance in relation to the production and publication of Quality Accounts for the reporting period 2019–20 are expected to be issued by NHS England and NHS Improvement as soon as it is appropriate to do so.

Misuse of Drugs (Coronavirus) (Amendments Relating to the Supply of Controlled Drugs During a Pandemic Etc.) Regulations 2020 (SI 2020/468)

17. These Regulations make **a permanent change** to the law so that, in the time of a serious risk to health or a pandemic, the Secretary of State can make alternative arrangements for the issuing of certain controlled drugs by pharmacies in order to relieve the burden on GPs. This mirrors arrangements enabled by the Human Medicines Regulations 2012 for the emergency supply of prescription-only medicines, but does not extend to all controlled drugs. Following the announcement of a pandemic by the Secretary of State, this instrument would enable registered pharmacies to supply controlled drugs from Schedule 2 to Part 1 of Schedule 4 of the Misuse of Drugs Regulations 2001[7] without a prescription, if the patient had been receiving them as part of on-going treatment. Although the power is permanent, its use would be geographically and time limited: the specified period must initially be for no more than three months, but may be renewed. The instrument has been laid by the Home Office but it is likely that the Health Secretary would be the person to activate this contingency mechanism if required.

Changes to benefits

State Pension Credit (Coronavirus) (Electronic Claims) (Amendment) Regulations 2020 (SI 2020/456)

18. This instrument adds the ability to make an electronic claim for State Pension Credit to the existing methods of claiming by post and by telephone. The ability to claim digitally on the Gov.uk website will relieve the strain that the Covid-19 outbreak has put on the Department for Work and Pension’s telephone system. It will also allow people to make a claim at a time of their own choosing and without having to leave their homes. **This will be a permanent change**.

6 National Health Service (Quality Accounts) Regulations 2010 (SI 2010/279).
7 Misuse of Drugs Regulations 2001 (SI 2001/3998).

Law and Order

Criminal Legal Aid (Coronavirus, Remuneration) (Amendment) Regulations 2020 (SI 2020/472)

19. The coronavirus pandemic has led to a reduction in the number of cases proceeding through the criminal justice system and courts, which has in turn reduced the income of criminal legal aid practitioners. In order to pay for work done and help improve the cash flow of the profession, this amendment will provide earlier access to hardship payments. These Regulations reduce the threshold at which a financial hardship payment may be made from the current amount of £5,000 to £450 and reduce the time interval before practitioners may claim from six months following instruction to one month following instruction. The Ministry of Justice will review the need for the instrument after six months.

INSTRUMENTS OF INTEREST

Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (SI 2020/463)

Direct Payments to Farmers (Crop Diversification Derogation) (England) Regulations 2020 (SI 2020/475)

20. These two sets of Regulations deal with Direct Payments for farmers. SI 2020/475 exempts farmers in England from the need to follow crop diversification requirements in order to receive Direct Payments for 2020. The Department for Environment, Food and Rural Affairs (Defra) explains that the crop diversification requirement is removed for 2020 only, in response to the recent prolonged period of wet weather and the flooding from Storm Ciara and Storm Dennis which have made it difficult for farmers to access their land and to plant. Failure to meet crop diversification requirements usually make a claim ineligible for the greening element of Direct Payments, which accounts for around 30% of the total value of payments, but SI 2020/475 ensures that farmers in England will not be required to plant more than one crop for the 2020 Direct Payments scheme year. As the instrument has been laid under the urgent 'made affirmative' procedure, it needs to be approved by Parliament within 28 days of having been made to remain in force. It is linked to SI 2020/463 which needed to come into force before Defra exercised powers under retained Direct Payments legislation to make the exemption under SI 2020/475. Defra explains that this is because EU law governing the 2020 Direct Payment schemes was originally incorporated into UK law on exit day, rather than at the end of the Implementation Period. SI 2020/463 ensures that regulations made under powers in retained Direct Payments legislation during the Implementation Period are treated in the same way as regulations under powers in retained EU law under the European Union (Withdrawal) Act 2018.

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2020 (SI 2020/469)

21. This instrument increases the rates that the NHS pays to care homes to cover the costs of services that must be carried out by a registered nurse ("the FNC rate"). (Accommodation and social care costs are the responsibility of either the local authority and/or the individual, subject to the outcome of a needs assessment and financial assessment). The appropriate level of payment has been contentious. Our 47th Report of Session 2017–19[8] provided additional information on the issues of concern in relation to SI 2019/789 which set the payments as £165.56 per week for the flat rate payment and £227.77 per week for the high band payment for financial year 2019–20.

22. The Explanatory Memorandum accompanying these new Regulations explains that the 2019–20 FNC rate was challenged. Following a review, the Department of Health and Social Care (DHSC) has removed the limits on the use of agency nurses and the 3.1% required efficiency gain, and increased the rate in line with the recommendations of an independent study produced by LaingBuisson. In consequence, the NHS-funded Nursing Care flat rate for 2019–20 has been increased to £180.31, (which is an increase of £14.75 per week on the rate set in SI 2019/789) and the high band payment

8 See SI 2019/789 on page 1 and Appendix 1 of 47th Report, Session 2017–19 (HL Paper 354).

to £248.06. This uplift will be dealt with administratively by NHS England and Improvement.[9]

23. The new Regulations therefore act on the revised 2019–20 rate to increase the rate for 2020–21 in line with NHS wage inflation at 2%, that is, to £183.92 per week for the flat rate payment and £253.02 for the high band payment. DHSC state that although the legislation will take effect on 20 May 2020, the revised rates for 2020–21 will be backdated to 1 April 2020.

9 These payments will be made under section 2 of the NHS Act 2006, which is a power for the Secretary of State, NHS England or Clinical Commissioning Groups to "do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on that person by this Act".

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

	Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2020

Made instruments subject to affirmative approval

SI 2020/475	Direct Payments to Farmers (Crop Diversification Derogation) (England) Regulations 2020

Instruments subject to annulment

SI 2020/435	Competition Act 1998 (Health Services for Patients in Wales) (Coronavirus) (Public Policy Exclusion) Order 2020
SI 2020/456	State Pension Credit (Coronavirus) (Electronic Claims) (Amendment) Regulations 2020
SI 2020/460	Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020
SI 2020/463	Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020
SI 2020/466	National Health Service (Quality Accounts) (Amendment) (Coronavirus) Regulations 2020
SI 2020/468	Misuse of Drugs (Coronavirus) (Amendments Relating to the Supply of Controlled Drugs During a Pandemic Etc.) Regulations 2020
SI 2020/469	National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2020
SI 2020/472	Criminal Legal Aid (Coronavirus, Remuneration) (Amendment) Regulations 2020
SI 2020/477	Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (Coronavirus) (Amendment) (England) Regulations 2020
SI 2020/480	Financial Services and Markets Act 2000 (Regulated Activities) (Coronavirus) (Amendment) Order 2020
SI 2020/481	Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020

APPENDIX 1: SPECIAL EDUCATIONAL NEEDS AND DISABILITY (CORONAVIRUS) (AMENDMENT) REGULATIONS 2020 (SI 2020/471)

Additional information from the Department for Education

Q1: The EM refers to discussions with a range of stakeholders, including representative bodies for local authorities and parents of children with SEND and a number of specialist SEND organisations. Did SEND parents and specialist SEND organisations raise any objections or concerns, and, if so, how were these addressed?

A1: Over the last few weeks the Department has been in regular contact with a range of SEND stakeholders, including the Council for Disabled Children, the National Network for Parent Carer Forums and Contact. One of the matters discussed in depth has been the emergency legislation and the drafting of the guidance to accompany it. These groups recognised that there was a need in the current circumstances for emergency legislation, but they had concerns about the impact for children and young persons with SEND. They stressed the need for the changes to be proportionate and for there to be appropriate safeguards (such as the changes not continuing for any longer than necessary). The Regulations were drafted with these points in mind.

Other points made by these stakeholders included the need for:

- clear and user-friendly guidance, to give clarity and to empower parents of children with Education, Health and Care (EHC) plans in their discussions with local authorities and health commissioning bodies about what support can be given. This guidance needed to reflect the reality that many of those with EHC plans were not currently attending the setting named in their plan;
- local authorities to continue adequately to resource their SEND Information, Advice and Support Services;
- local authorities and health bodies to work closely with the families of those with SEND, so that co-production continues to be a key feature of the SEND system at both the strategic level and of decisions over the support for individuals;
- encouragement to local authorities and health bodies to be innovative in how provision was delivered and not to withdraw support entirely; and
- local authorities to make decisions on the facts of each case, rather than to have blanket policies.

All of these points were explicitly addressed in the guidance that the Department subsequently published to accompany the legislative changes.

We routinely work closely with these organisations and the wider SEND stakeholder community. As part of this, and as part of reviewing the impact of the changes to the Regulations, we will be exploring with them the impact of the temporary changes to the law.

Q2: Was the Children's Commissioner consulted?

A2: Senior officials discussed the proposed temporary changes to SEND law with the Commissioner and her team in March and April, but given the urgent need for the emergency legislation did not formally consult her on the drafting of the Regulations or guidance.

We also wrote to the Commissioner on 17 April, in response to concerns she had raised about the Coronavirus Act 2020. In this letter we explained our rationale for proposals to relax some statutory duties relating to children with SEND and additional care needs.

We are having ongoing discussions with the Commissioner about the need to balance the delivery of duties for children with the pressures that local authorities are under during this pandemic, and the best way to achieve this.

5 May 2020

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 12 May 2020, Members declared the following interests:

Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (SI 2020/463)

Direct Payments to Farmers (Crop Diversification Derogation) (England) Regulations 2020 (SI 2020/475)

Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/477)

Lord Hodgson of Astley Abbotts

Controlling shareholder of a company which owns farmland

Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/477)

Lord Lisvane

Recipient of payments under Farm Woodland Scheme

Attendance:

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Viscount Hanworth, Lord Hodgson of Astley Abbotts, Lord Liddle, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.