

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

16th Report of Session 2019–21

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

Drawn to the special attention of the House:

Abortion (Northern Ireland) (No. 2) Regulations 2020

Prison and Young Offender Institution

(Coronavirus) (Amendment) (No.2) Rules 2020

Includes information paragraphs on:

11 instruments relating to Covid-19;

Draft Public Service Vehicles (Open Data)
(England) 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

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>Lord Lisvane</u>
<u>Rt Hon. Lord Chartres</u>	(Chair)	<u>Lord Sherbourne of Didsbury</u>
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<u>Viscount Hanworth</u>	<u>The Earl of Lindsay</u>	-

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 hseclegscrutiny@parliament.uk.

Sixteenth Report

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

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

- Environment (Amendment etc.) (EU Exit) (Amendment) (England and Wales) Regulations 2020

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Abortion (Northern Ireland) (No. 2) Regulations 2020 (SI 2020/503)

Date made: 13 May 2020

Parliamentary procedure: made affirmative

These Regulations (“the No. 2 Regulations”) revoke and replace the Abortion (Northern Ireland) Regulations 2020 (SI 2020/345) (“the original regulations”) which were made and laid on 25 March 2020. The No. 2 Regulations are also subject to the made affirmative procedure, and so have the effect of extending the approval period by 28 days from 12 May. Paragraph 3.4 of the Explanatory Memorandum (EM) explains that the Government decided to lay the No. 2 Regulations because of the impact of the current pandemic on parliamentary scrutiny processes and the absence, at that time, of a virtual voting system. Submissions made to the Committee, however, question the legitimacy of the No. 2 Regulations. This legislation has been in effect without debate on an approval motion since 31 March and, during that time, abortions under the new rules have begun to take place.

*The original regulations and the No. 2 Regulations are almost identical. The No. 2 Regulations correct a minor technical defect identified by the Joint Committee on Statutory Instruments which, according to paragraph 3.9 of the EM, makes no practical difference. **In these circumstances, the views we expressed in our 11th Report in relation to the original regulations apply equally to the No. 2 Regulations.** The submissions received in response to the original regulations remain relevant. A number of further submissions, many reacting to the material from the Northern Ireland Office cited in our 11th Report, have also been received. They are all available on the Committee’s webpage.*

These Regulations are drawn to the special attention of the House on the ground that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House.

1. These Regulations (“the No. 2 Regulations”) revoke and replace the Abortion (Northern Ireland) Regulations (SI 2020/345) (“the original regulations”) which were made and laid before Parliament on 25 March 2020 to implement section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 (“the 2019 Act”) by making provision for regulating abortions in Northern Ireland. Because the original Regulations were due to lapse on 17 May, the Minister of State, Northern Ireland Office (NIO), made the No.2 Regulations on 12 May, and they came into effect on 14 May. Like the original regulations, to remain in force they must be approved by both Houses of Parliament within 28 days of having been made.¹
2. The original regulations and the No. 2 Regulations are almost identical. The No. 2 Regulations correct a minor technical defect identified by the Joint Committee on Statutory Instruments,² a cross-referencing error in paragraph 7 of the Schedule (which relates to the certification process). Paragraph 3.9 of

¹ No account is taken of periods when Parliament is dissolved or prorogued or adjourned for more than four days (s12(5) of the 2019 Act).

² See Report on Abortion (Northern Ireland) Regulations (SI 2020/345), Joint Committee on Statutory Instruments (JCS9), [10th Report](#), Session 2019-21 (HL Paper 58). The No. 2 Regulations were cleared without comment in the JCSI’s [12th Report](#), Session 2019-21 (HL Paper 64).

the Explanatory Memorandum (EM) states that the reporting forms issued to practitioners were correct and so the amendment has no practical effect.

3. Other consequential drafting changes are the addition of regulation 1(2) to revoke the original regulations and the addition of regulation 16, which inserts a transitional provision to ensure that revoking and replacing the original regulations does not have any impact on the notification and certification processes done under them.
4. **In these circumstances, the views we expressed in our 11th Report in relation to the original regulations apply equally to the No. 2 Regulations.**³

Procedural considerations

5. Our 11th Report described certain aspects of the administrative process behind the original regulations as “suboptimal”. Particular concerns were the consultation process and issues about timetabling as a result of the Government laying the original regulations so close to the 31 March implementation date required under the 2019 Act.
6. Paragraph 3.4 of the EM explains that the Government decided to revoke and replace the original regulations with the No. 2 Regulations because of the impact of the current pandemic on parliamentary scrutiny processes and the absence, at that time, of a virtual voting system:

“... thereby giving Parliament an additional 28 days to consider the regulations and have the necessary approval debates, and to ensure that proper scrutiny and consideration is given to this instrument once the new parliamentary operating and voting procedures have been put in place ...”.
7. In contrast, concerns have been raised in submissions from Lord Brennan QC and Ian Leist QC about the legitimacy of a second set of regulations, arguing that the original regulations fulfilled the legal obligation under the 2019 Act that had now lapsed. Lord Brennan describes laying a second set of regulations as “constitutionally indefensible”.
8. As a result of having two successive sets of regulations, the legislation has been in effect since 31 March without approval by the two Houses. We always regard it as poor practice to introduce a major policy change just before a recess (which is what happened with the original regulations), “thus denying Parliament an opportunity for scrutiny before the instrument came into effect”.⁴ In our report on the original regulations, we noted — by way of mitigation — that the regulations were only enabling and the NIO’s statement (in paragraphs 3.2-3.3 of the EM to the original regulations) that no services had been formally commissioned in Northern Ireland and that their intention was to introduce service provision gradually.
9. Paragraphs 3.7 and 3.8 of the EM to the No 2 Regulations, however, state:

“3.7 ... whilst abortion has not been a criminal offence in Northern Ireland since 22 October 2019 (subject to the Criminal Justice Act (Northern Ireland) 1945), no services have been formally commissioned

3 [11th Report](#), Session 2019-21 (HL Paper 49).

4 *Ibid.*

in Northern Ireland whilst waiting for the new legislation to come into force. This remains largely the case.

3.8 However, from early April 2020, we understand that some service provision, largely for early medical abortions, has commenced through existing sexual and reproductive health services in the Belfast, Northern and Western Trust areas.”

The House may wish to press the Minister for further information about the extent of the service provision since 1 April 2020.

Response to our 11th Report

10. A number of those who made a submission in relation to the original regulations have written again, and their letters are published in full on our webpage,⁵ many of them reacting to the material from the NIO included in our 11th Report. Concerns raised include the following themes:
- that regulation 3 exceeds the CEDAW recommendations⁶ in particular by setting gestational limits, with a more liberal regime before 12 weeks’ gestation;
 - regulation 7 does not define “severe disability” sufficiently clearly and, by allowing abortion on the ground of fetal abnormality after 24 weeks, is permitting discrimination on the ground of disability; and
 - regulation 12 does not allow those indirectly involved in a termination the scope for conscientious objection.
11. The Attorney General for Northern Ireland wrote on 29 April offering counter-arguments to the NIO’s interpretation of the legal position.⁷ A number of the other new submissions reference and support his letter.

New considerations

12. Amongst others, we received submissions containing legal arguments from Ian Leist QC and Lord Brennan QC and ethical concerns from Dr Calum Miller (a medical ethicist at Oxford University). We have received further letters from MLAs Paul Givan and Carla Lockhart of the Northern Ireland Assembly who, among other issues, highlight the devolution position. We also received a joint submission from Senator Ronan Mullen and Carol Nolan TD of the Irish Parliament about the No.2 Regulations’ wider implications for the Republic of Ireland. Sir John Hayes MP questions whether the maximum penalty for performing an abortion outside these Regulations should only be a level 5 fine, £5000, and describes it as out of step with the English and Irish regimes.
13. Both Lives Matter has also raised concerns, in particular, about the safety aspects of the regime introduced by regulation 8, and Fiona Bruce MP about fetal pain during the process of termination. Joanne Bunting MLA puts

5 Secondary Legislation Scrutiny Committee evidence page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

6 The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) recommendations are set out in full in Appendix 1 to our [11th Report](#).

7 Already published on our website <https://committees.parliament.uk/publications/991/documents/7764/default/>.

forward additional evidence about her concerns over the inspection regime for places undertaking abortions.

14. Several letters mention, as relevant to the context of these regulations, that a young woman with Down's Syndrome and the mother of a young boy with Down's Syndrome are together bringing a legal action to challenge the law on disability-selective abortion in England and Wales on the ground of discrimination.
15. All these submissions can be found on the Committee's webpage. **Given the complexity and sensitivity of the subject matter, and that legal argument is outside the remit of this Committee, we would encourage Members to read them in full, rather than for us to attempt to summarise them in this report, so that the issues they raise can be debated fully by the whole House.**

**Prison and Young Offender Institution (Coronavirus) (Amendment)
(No.2) Rules 2020 (SI 2020/508)**

Date laid: 14 May 2020

Parliamentary procedure: negative

Her Majesty's Prison and Probation Service has taken advice from Public Health England on reducing the risks associated with outbreaks of coronavirus in prisons. In consequence, during the pandemic period, these amendments to the Rules give a power to prevent visits and for disciplinary measures to be heard by the Governor if the Independent Adjudicator is not available.

However, the Explanatory Memorandum (EM) provided by the Ministry of Justice focuses narrowly on the changes being made without giving sufficient information on how the normal regime operates. In consequence, we were unclear about the practicalities and impact of these changes. We obtained extensive additional information on how the new system would operate, which is set out in this Report, including the mitigations that are being put in place. We have asked for the EM to be revised so that the information is available to all readers.

*While understanding the necessity of these protections, we are concerned that other welfare issues may arise if prisoners, particularly young offenders, are denied visits for an extended period of time. We note that each Governor will use their discretion on the particular circumstances at their institution, but MoJ states that visits were temporarily suspended on 24 March at the start of the declared transmission control period. **Even if the transmission control period ended today, these Regulations would potentially allow the continued denial of visits for up to six months during the transition period, that is currently almost until Christmas. We note the mitigations that MoJ is introducing but highlight the need to balance prisoners' mental and physical health appropriately.***

These Rules 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.

16. Her Majesty's Prison and Probation Service (HMPPS) has taken advice from Public Health England on reducing the risks associated with outbreaks of coronavirus in prisons. In consequence, these amendments to the Rules give a power to prevent visits and for disciplinary measures to be heard by the Governor if the Independent Adjudicator is not available. The instrument introduces an enabling power that will remain on the statute book until 25 March 2022, but the powers can only be used during a coronavirus period (that is during a *transmission control period* and subsequent *transition period* as defined).
17. The Explanatory Memorandum (EM) provided by the Ministry of Justice (MoJ) focuses narrowly on the changes being made without giving sufficient information on how the normal regime operates. In consequence, we were unclear about the practicalities and impact of these changes. We therefore asked for the additional information set out below. We have also asked for the EM to be revised so that this information is available to all readers.

Denial of visits

18. We fully understand the necessity of limiting visits to prevent infection, but asked whether such a ban would be imposed on a prison-wide basis, wing by wing, or on individual prisoners. We also asked what factors would inform that decision: is it that the prisoners have Covid-19, that their family or visitors have Covid-19, or that Covid-19 is at a certain level in the surrounding area?

19. MoJ replied:

“Social visits at all prisons were temporarily suspended on 24th March 2020. The decision to suspend social visits reflects UK Government guidelines around social distancing and restrictions on non-essential travel, and was taken as part of the response to COVID-19 with the aim of preventing spread of infection and to protect lives. The amendments provide a clear legal basis to the ongoing suspension of social visits.

The Prime Minister has now set out a conditional roadmap for a step-by-step lifting of restrictions in the community. We aim to take a similar approach, but because prisons are a closed setting with many vulnerable individuals it is right that we proceed cautiously. It may be safe for some prisons to resume visits earlier than others, depending on their local circumstances. We will take a data and evidence-based approach to making decisions about lifting the current restrictions, informed by public health advice.”

20. We asked what assessment is to be made of the risks to the mental health of a prisoner deprived of visits as compared to his or her physical health, and MoJ replied:

“During the period of COVID-19 restrictions, prisons are focusing resources on a number of regime areas including prisoner safety and welfare, and family contact. As such prisons are prioritising essential safer custody arrangements such as Assessment, Care in Custody and Teamwork (ACCT) — which is the care planning process for prisoners identified as being at risk of suicide or self-harm — and alternative ways prisoners can maintain contact with family and friends. Alternative arrangements include:

- Providing 900 locked mobile phones to establishments that do not yet have in-cell telephony.
- Promoting other ways to contact someone in prison, such as writing a letter, using the Email a Prisoner Service or the Prison Voicemail Service, where a voice message can be left for a prisoner.
- Introducing secure video calls to prisons and Young Offender Institutions (YOIs) across England and Wales. Following a successful trial at HMP Berwyn, HMPPS is installing the technology at 10 prisons with a wider rollout in the coming weeks.”

21. We asked what safeguards exist to prevent this power being used as a disciplinary measure rather than a health protection measure. MoJ replied:

“The prisoner discipline — adjudications — system as set out in Prison Service Instruction 05/2018 and underpinned by the Prison Rules 1999 and Young Offender Institution Rules 2000 upholds justice in prisons, ensures actions have consequences and enables governors to

make the right judgments for their circumstances and their prisons. The Prison Rules and YOI Rules expressly provide an exhaustive list of punishments which may be imposed by a governor or Independent Adjudicator. Prisoners' statutory visits entitlement cannot be removed as a punishment under this exhaustive list, although additional visits earned as a privilege can be. We will ensure that operational guidance supporting the reintroduction of visits is clear that visits - other than those earned as a privilege - cannot be removed as a punishment."

Independent Adjudication

22. MoJ further explained that the charges that are referred to an Independent Adjudicator (IA) are those where the charge is so serious that up to 42 additional days' custody could be awarded (Prison Rule 53A/YOI Rule 58A).⁸ IAs are District Judges or Deputy District Judges who attend establishments to hear the cases referred to them and follow the independent punishment guidelines issued by the Chief Magistrate.
23. The normal test for seriousness, as set out in Prison Service Instruction 05/2018, *Prisoner Discipline Procedures*, is whether the offence poses a very serious risk to order and control of the establishment, or the safety of those within it. Each case will be assessed on its merits, but example charges include serious assaults, any offence motivated by a protected characteristic under the Equality Act 2010, fighting, denial of access to any part of the prison, endangering health and safety, escape, possession of unauthorised articles, drug smuggling, refusals to undertake drug tests or obey a lawful order related to control issues.
24. To reduce the build-up of cases during the Covid-19 period, when IA visits would be limited, the normal guidance on cases to be referred has been revised, in agreement with the Chief Magistrate, to a non-exhaustive list including: assault against staff, assault with weapon/sustained attack, racially aggravated assault, detaining any person against their will, denial of access to any part of the prison, fighting with sustained attack/multiple incidents, intentionally endangering health and safety of others, escape and setting fire to any part of the prison.

A shortage of IAs during the pandemic

25. Ordinarily, the Chief Magistrate supplies approximately 100 judges to meet the demand from HMPPS to hear cases. However, many of them fall into the vulnerable category in relation to Covid-19 or have been redeployed to cover the courts in the place of lay judges.
26. In accordance with the Prison and YOI Rules, a prisoner who has been charged is given a full opportunity of hearing what is alleged against them and of presenting their own case. They are also given the opportunity to be legally represented at an inquiry heard by an IA.
27. Under Prison Rule 53(3)(b)/YOI Rule 58(3)(b), IAs are required to first inquire into a charge within 28 days of it being referred to them by the adjudicating governor, save in exceptional circumstances. As an immediate response to the pandemic, MoJ applied the 'exceptional circumstances'

⁸ Following the judgment of the European Court of Human Rights in *Ezeh and Connors v the United Kingdom 2003*, where additional days are in contemplation, Article 6 (right to a fair trial) applies and so the charge must be heard by an independent and impartial tribunal.

provision but it has become apparent that extending the period for inquiry in this way is not an appropriate response over an extended period because cases risked being dismissed due to the amount of time that had passed before the IA was able to hear the charge. That is why these modifying Rules have been put in place.

28. Paragraph 7.5 of the EM states that delay:

“ ... could undermine the integrity of the adjudication system, send a message of impunity in prisons and risk employee relations. The new rule will therefore enable the Chief Magistrate to refer charges back to the governor, who will [have 14 days] to respond in three ways (as they already can under the Prison and YOI Rules): i) a dismissal; ii) continue with the charge at governor adjudication level; or iii) determine the charge is sufficiently serious that it must be dealt with by an IA and refer to the IA again.”

29. Adjudicators (both governors and IAs) must decide whether proceeding after a delay or adjournment would be contrary to the principles of natural justice. The specific factors that need to be considered in making that decision are:

- The availability of witnesses (which includes an assessment of how significant/important a particular witness might be in the context of a particular case);
- Any deterioration in the quality of the evidence as a result of the passage of time, including physical/tangible evidence, and the memory of key witnesses being weakened;
- Any other reason why delay may have caused unfairness, in the sense of having undermined the prisoner’s ability to present his own case properly (e.g. in the intervening period, the prisoner has suffered a serious deterioration in his health).

30. MoJ is exploring video conferencing options: “Virtual Meeting Rooms (VMR) are being delivered to prisons across fixed point and laptop devices in all but 22 prisons, and a phased implementation of live services has started in 26 prisons.”

Timescales

31. These provisions are applied nationally when the conditions of the “coronavirus period” are met, that is during a *transmission control period*, as declared by the Secretary of State for Health, and the subsequent *transition period* (initially three months, with the Secretary of State for Justice able to extend this for up to one month at a time, to a maximum of six months in total).

32. MoJ states in supplementary material that

“the provisions set out in the SI are designed to give Governors the flexibility they need to respond to the coronavirus pandemic; they do not mandate that the Governor must follow a more restricted regime. Therefore, as the situation evolves, it is possible that certain prisons will ease some measures of the restricted regime where these are no longer required to ensure the health of prisoners and staff, as appropriate to the local context of the prison.”

33. While understanding the necessity of these protections, we are concerned that other welfare issues may arise if prisoners, particularly young offenders, are denied visits for an extended period of time. We note that each Governor will use their discretion on the particular circumstances at their institution, but MoJ states that visits were temporarily suspended on 24 March at the start of the declared transmission control period. **Even if the transmission control period ended today, these Regulations would potentially allow the continued denial of visits for up to six months during the transition period, that is currently almost until Christmas. We note the mitigations that MoJ is introducing but highlight the need to balance prisoners' mental and physical health appropriately.**

INSTRUMENTS RELATING TO COVID-19

34. One instrument relating to the Covid-19 pandemic, the Prison and Young Offender Institution (Coronavirus) (Amendment) (No.2) Rules 2020 (SI 2020/508), is drawn to the special attention of the House in this report (see pages 6 to 10 above).

Changes to business regulation and practice

Direct Payments to Farmers (Application Deadlines) (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/510)

35. This instrument extends the deadline for any amendments that can be made to applications for 2020 Direct Payments from 31 May to 30 June, to help farmers and land managers who may be unable to complete forms and gather evidence due to illness or meet with agents because of social distancing measures during the pandemic. This extension builds on the extension of the deadline for submissions of 2020 Direct Payment applications from 15 May to 15 June, as introduced by an earlier instrument.⁹

Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2020 (SI 2020/525)

36. This instrument introduces a temporary disregard (for the 2020–21 tax year only), so that employees who have been encouraged to work from home during the pandemic and have purchased home office equipment will not be liable to a Class 1 National Insurance Contributions charge if the costs are subsequently reimbursed by their employer. Expenditure will be eligible for this relief if: (i) equipment is obtained for the sole purpose of enabling the employee to work from home as a result of the pandemic, and (ii) the provision of the equipment would have been exempt from income tax if it had been provided directly to the employee by or on behalf of the employer. HM Revenue & Customs told the Committee that the “exemption applies to any home office equipment an employee needs to effectively perform the duties of their employment from home as a result of the Coronavirus pandemic, and which the employer is willing to reimburse”. This may include, for example, a desk, laptop or other computer accessories.

Public services: local authorities

Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/505)

37. This instrument amends temporarily certain publicity requirements placed on local planning authorities and applicants for developments where an Environmental Impact Assessment (EIA) is required. The changes will expire on 31 December 2020. According to the Ministry of Housing, Communities and Local Government (MHCLG), the temporary changes give local planning authorities and applicants (in the case of developments that require an EIA) greater flexibility in relation to the way they publicise planning applications if it is not reasonably practical to comply with particular requirements during the pandemic. For example, while local planning

⁹ Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/477). See [14th Report](#), Session 2019-21, para 13, (HL Paper 60).

authorities still need to publicise planning applications so that those with an interest can make representations and participate in the decision-making process, the instrument allows them to only publish their planning register on a website rather than making it also physically available for inspection at a local office. MHCLG says that the temporary changes aim to support timely decision-making and avoid delays to development as a result of the pandemic, while maintaining public participation in the decision-making process. MHCLG has published guidance on the temporary changes.¹⁰ The Committee notes that while the instrument provides for temporary flexibility during the pandemic, where they can, local planning authorities are still required to erect site notices, issue neighbour notification letters and place newspaper adverts to publicise applications.

Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/536)

38. These amendments will streamline the process for authorities in England to make the Traffic Orders needed to deal with the effects of coronavirus, for example, installing cycle lanes or widening pavements to allow for social distancing. The emergency procedure allows the required notices to be published by digital media, for example, websites, online publications, social media or email. Letter or leaflet drops could also be used. Orders can then come into force at the end of seven days and works can start. A further notice should be published within 14 days confirming the duration and effect of the Order. Because of the lockdown, the Regulations also allow Traffic Orders for other purposes such as street works road closures to use digital media where the usual forms of advertising are not available. These amendments will expire on 30 April 2021. We note that consultation responses emphasised the need for clear guidance to ensure the new procedures are correctly used and the importance of liaising with freight and public transport operators when designing traffic measures.

Public services: Changes to benefits

Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020 (SI 2020/512)

Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) Regulations 2020 (SI 2020/513)

39. These two sets of Regulations enable small and medium-size employers (those with fewer than 250 employees) to apply to HM Revenue & Customs for a refund of the cost of paying Statutory Sick Pay (SSP) to employees whose incapacity for work is related to the pandemic. The scheme was first announced in the Budget on 11 March and applies to employees who are unwell having been infected with coronavirus or are self-isolating or shielding in line with government guidance. The instruments make provision for Great Britain and Northern Ireland respectively. Under the scheme, the maximum amount an employer may receive as a refund for a single employee is £191.70, equivalent to two weeks' SSP. In line with other temporary changes that have been introduced in relation to SSP during the pandemic, refunds are available for any periods of incapacity for work starting on or after 13 March. Employers may claim back from both this scheme and the Coronavirus Job

¹⁰ See Ministry of Housing, Communities and Local Government, *Consultation and pre-decision matters* (last updated 13 May 2020): <https://www.gov.uk/guidance/consultation-and-pre-decision-matters#covid19> [accessed 27 May 2020].

Retention Scheme for the same employee but not for the same period of time for that employee. HMRC says that while the instruments are dependent on the Coronavirus Act 2020 and will expire alongside the Act two years after Royal Assent on 14 March 2022, it will consider whether further legislation is needed to close the temporary scheme.

Universal Credit (Coronavirus) (Self-Employed Claimants and Reclaims) (Amendment) Regulations 2020 (SI 2020/522)

Universal Credit (Coronavirus) (Self-Employed Claimants and Reclaims) (Amendment) Regulations (Northern Ireland) 2020 (SR 2020/85)

40. Payments under the Self-employment Income Support Scheme,¹¹ set up in April, are imminent and these Regulations provide how the money is to be taken into account if the self-employed person has claimed Universal Credit in the meantime. In some cases, the support from Universal Credit may end but others, according to need and income, will continue to be ‘topped-up’. The Regulations similarly stipulate how grants and payments from other support schemes are to be treated, for example, from the Coronavirus Job Retention Scheme, the Small Business Grant Fund and the Retail Hospitality and Leisure Grant Fund. The instruments also introduce greater flexibility that allows claimants to be brought back into Universal Credit after an initial claim has failed or an award has ceased because earnings have exceeded entitlement.

Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 (SI 2020/534)

41. This instrument makes changes to the rules on tax credits to protect the entitlement to Working Tax Credits (WTC) of claimants who are affected by the pandemic, such as furloughed workers under the Coronavirus Job Retention Scheme and the self-employed who are receiving support under the Self-Employment Income Support Scheme. The changes made by this instrument include, for example, temporarily increasing the current one-month time limit to three months for claimants who are critical workers to inform HMRC of changes of circumstances that affect entitlement to tax credits, and ensuring that certain payments, such as vouchers or money paid in lieu of free school meals, are disregarded as income for tax credits purposes. The instrument also ensures that the capital from the new NHS and Social Care Coronavirus Life Assurance (England) Scheme, a £60,000 lump sum payment for families of frontline workers in England who die in service as a result of the pandemic, is disregarded for tax credit purposes, while any interest from capital received by the recipient is taken into account as income, in line with the normal treatment of capital in relation to tax credits. Asked about equivalent arrangements for Scotland, Wales and Northern Ireland, HM Revenue & Customs confirmed that the instrument only makes provision for England and that similar schemes to be introduced by the devolved administrations have not been covered. HMRC told us that “in the event that tax credit claimants receive payments under those schemes we would consider the extent to which existing rules would allow for a payment under those similar schemes to be disregarded or additional legislation be required”.

¹¹ HM Revenue and Customs, *Check if you can claim a grant through the Self-Employment Income Support Scheme* (last updated 29 May 2020): <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme> [accessed 27 May 2020].

Law and Order

Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020 (SI 2020/515)

42. This instrument introduces two new standard fees for asylum and immigration (non-asylum) appeals to the First-tier Tribunal (Immigration and Asylum Chamber) which use the new online procedure. Her Majesty's Courts and Tribunal Service (HMCTS) is progressively digitising the First-tier Tribunal (Immigration and Asylum Chamber) and the coronavirus pandemic has accelerated these plans. The online procedure, where appeals are handled digitally from initial application to hearing, is now mandatory and requires additional preparation. These new fees aim to ensure that legal aid providers are appropriately remunerated for their work. The Explanatory Memorandum states that in 2018-19 there were just over 6,000 legally-aided cases of this type. **We note, however, that the required consultation process only began on the day the instrument was laid — we regard this as poor practice.**

Delayed or revoked legislation

Draft Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020

43. These draft Regulations propose to ban the supply of single-use plastic straws, single-use plastic-stemmed cotton buds and plastic drink stirrers in England to prevent environmental pollution and harm to human and animal health. The instrument supersedes an earlier instrument which was laid before Parliament in March 2020 and which we reported on¹² but which was subsequently withdrawn. The new instrument includes the same exemptions for the use of plastic straws and plastic-stemmed cotton buds for medical and certain other specified purposes. The Department for Environment, Food and Rural Affairs (Defra) explains that the earlier instrument was withdrawn because of the huge challenges posed to businesses and local authorities by the pandemic, and that the Government were mindful of introducing new burdens on them at this time. The new draft Regulations delay the introduction of the ban from the end of April until October 2020. While we understand the Government's concerns, we also note that, as the ban was first announced in April 2018, businesses and local authorities have had considerable time to prepare before the pandemic began. Defra told us that the new instrument contains some minor corrections and consequential changes and an updated transitional provision which will enable retailers to continue supplying existing stock obtained before the instrument comes into force, rather than stock obtained before 30 April 2020, as under the previous instrument. We have asked the Department to revise the Explanatory Memorandum (EM) to include this further information. We welcome that in addition to the EM and an Impact Assessment in relation to the ban on plastic straws, the Department has published regulatory triage assessments for the ban on plastic stirrers and plastic-stemmed cotton buds which were not publicly available when we considered the original instrument.

12 See [9th Report](#) of Session 2019-21, paragraph 14, HL Paper 38.

INSTRUMENTS OF INTEREST

Draft Public Service Vehicles (Open Data) (England) Regulations 2020

44. The latest Bus Passenger Survey indicates that the lack of journey planning information is a significant barrier to travel outside London. The Department for Transport (DfT) notes that 51% of all bus journeys take place in London, where information has been readily available through a variety of media since 2007. Elsewhere information is fragmented and less than half of the 87 local authorities across England provide real time information to the NextBus system. There is currently no national dataset for fares information. These Regulations therefore require operators and local transport authorities in England to provide consistent and accurate data on bus timetables, fares, stopping places, location data and punctuality. When the Regulations come into force, the Transport Secretary will be the custodian of a digital service which will be publicly available free of charge. This data will be used by app developers: although DfT will encourage them to make their apps free to users that will not be a legal requirement. Further information is provided in Appendix 1 of this Report. Real time data about delays to individual buses will not be available in the first phase; see DfT's response to Question 4 at Appendix 1.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020

INSPIRE (Amendment) (EU Exit) Regulations 2020

Public Service Vehicles (Open Data) (England) Regulations 2020

Instruments subject to annulment

- CP 232 Statement of Changes in Immigration Rules
- SI 2020/496 Merchant Shipping (Port State Control and Prevention of Pollution of Noxious Substances in Bulk) (Amendment) Regulations 2020
- SI 2020/502 Local Government Pension Scheme (Northumberland and Tyne and Wear Pension Fund Merger) Regulations 2020
- SI 2020/504 Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020
- SI 2020/505 Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020
- SI 2020/509 Electricity (Individual Exemptions from the Requirement for a Generation Licence) (England) Order 2020
- SI 2020/510 Direct Payments to Farmers (Application Deadlines) (Coronavirus) (Amendment) (England) Regulations 2020
- SI 2020/512 Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020
- SI 2020/513 Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) Regulations 2020
- SI 2020/515 Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020
- SI 2020/516 Sea Fishing (Enforcement) (Amendment) Regulations 2020
- SI 2020/522 Universal Credit (Coronavirus) (Self-Employed Claimants and Reclaims) (Amendment) Regulations 2020
- SI 2020/523 Companies and Statutory Auditors etc. (Consequential Amendments) (EU Exit) Regulations 2020
- SI 2020/525 Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2020
- SI 2020/534 Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020
- SI 2020/536 Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020

SR 2020/85 Universal Credit (Coronavirus) (Self-Employed Claimants and Reclaims) (Amendment) Regulations (Northern Ireland) 2020

APPENDIX 1: DRAFT PUBLIC SERVICE VEHICLES (OPEN DATA) (ENGLAND) REGULATIONS 2020

Further information from the Department for Transport

Q1: When will this system come into operation?

A1: The implementing Bus Open Data Digital Service was launched as a partial/Beta service back in January 2020 and operators have been encouraged to become early adopters of the service ahead of the regulations being introduced. The service will be available as a full Beta service in January 2021 to coincide with the regulations commencing for the publication of timetables, fares and location data.

Q2: Will it come into operation all at once or be rolled out county by county?

A2: The service will be available for any operator wishing to, to use it to publish their data however beyond Covid 19 we will be setting up a business change team to run workshops across the country and roll the service out on a regional/local transport authority basis in phases.

Q3: Will it be hosted on one central webpage so you can find out bus information if you move to a different part of the country?

A3: Yes, the Bus Open Data Service is the home for all published information however it is primarily application developers who will use the raw data to build passengers applications, products and service for end users to support journey planning.

Q4 Will it be able to tell you if the bus you are waiting for is delayed?

A4: The raw location information can be used by application developers to illustrate to passengers how far/many minutes away a bus is however delays are covered by disruptions information. This isn't in scope for the first phase of bus open data but we are currently piloting disruptions information tools in the North and subject to the pilots, may introduce this at a later stage in the programme.

In terms of our general plans for turning the legislation into practice, the bus open data programme contains multiple workstreams beyond simply creating legislation to require operators to publish this data. Of primary importance is that operators can create the data and so we have created two data build tools – one for timetables and one for fares. For location data we are currently scoping out plans to equip buses without onboard location monitoring equipment, with this equipment as part of the programme. This will enable operators to create the required data for publishing.

To make it as easy as possible to publish data, we have built a Bus Open Service where operators can publish data as either a CSV upload file or URL/API linking and integrating with existing systems and technology being used to create the required data so supporting automatic data sharing. We have also created new data standards and mandated existing data standards to ensure that Government is offering strong leadership to the industry about the manner and form of data provided. Other measures include providing access to free data quality tools.

We are also setting up a business change team to drive adoption of the service and publication of data. Beyond this, we are working with data consumers or application developers to encourage them to use this data within their existing products and services such as Google, Citymapper, Apple and Moovit.

We will encourage app developers to make their apps free to use and often app monetization strategies come from sponsorship deals and other methods rather than selling the apps themselves. We will encourage this through guidance but we will not legally require this.

Further information is available on twitter @**busopendata**

18 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 2 June 2020, Members declared the following interests:

Direct Payments to Farmers (Application Deadlines) (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/510)

Lord Hodgson of Astley Abbotts

Controlling shareholder of a company which owns farmland

Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 (SI 2020/534)

Baroness Watkins of Tavistock

Registered Nurse (non-practising)

Attendance:

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