

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

18th Report of Session 2019–21

Drawn to the special attention of the House:

Health Protection (Coronavirus, International Travel) (England) Regulations 2020

Includes information paragraphs on:

5 instruments relating to COVID-19

Draft Direct Payments Ceilings Regulations
2020

Direct Payments Penalty Simplification
(England) Regulations 2020

Census 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>
<u>Rt Hon. Lord Cunningham of Felling</u>	<u>Lord Liddle</u>	<u>Baroness Watkins of Tavistock</u>
<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 hlseclegscrutiny@parliament.uk.

Eighteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (SI 2020/568)

Date laid: 3 June 2020

Parliamentary procedure: negative

*These Regulations require passengers arriving in England from outside the UK to provide their travel information and contact details and to self-isolate for 14 days. Concerns have been raised about the effectiveness of a system based on spot checks and the likelihood of visitors actually complying with requirements. There have been numerous reports in the media that the travel industry is concerned that these measures will delay its economic recovery. **While alert to the need to prevent infection from external sources, the House may wish to press the Government on the financial cost to the travel industry and the effectiveness of this system in protecting public health.***

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

1. These Regulations have been laid by the Department of Health and Social Care (DHSC) with an Explanatory Memorandum (EM). They require passengers arriving in England from outside the UK to provide their travel information and contact details and to self-isolate for 14 days. A parallel instrument, SI 2020/567,¹ sets out the information that travel firms must provide to all passengers about COVID-19 and the duties which currently apply to the general population in England — for example when to wear masks. The Regulations will lapse 12 months after coming into force, and their application must be reviewed every 21 days. **The House may wish to enquire how the results of these reviews will be promulgated.**
2. Regulation 3 requires all passengers arriving in England, by plane, boat or train, from outside the Common Travel Area² or arriving from another part of the Common Travel Area who have been to a different country in the previous 14 days, to provide their travel information and contact details (as described in Schedule 1) on a “Passenger Locator Form”.³ No hard copy version is generally available but, where a person arrives at a place staffed by Immigration Officers, they will be provided with the ability to complete the form electronically on their arrival in England if it has not been completed in advance. In supplementary information, DHSC explained that assistance will be available for completion of the electronic form if required and information explaining how to self-isolate and why will be available in several languages including: French, Dutch, Punjabi (Gurmukhi), Bulgarian,

¹ SI 2020/567 is described on page 4 of this Report.

² The Common Travel Area is an open borders area comprising the United Kingdom, Ireland, the Isle of Man, and the Channel Islands.

³ Available from the gov.uk website, *Public Health Passenger Locator Form*: <https://visas-immigration.service.gov.uk/public-health-passenger-locator-form> [accessed 10 June 2020].

German, Hungarian, Lithuanian, Polish, Portuguese, Romanian, Slovak, Turkish, Urdu, Italian, Spanish, Bulgarian, Czech, Lithuanian, Portuguese, Arabic (Egypt), Standard Chinese/Mandarin (simplified), Russian, Hebrew and Welsh.

3. Regulation 4 requires passengers to self-isolate for a period of 14 days, generally at one address. Information on how to self-isolate is provided on the gov.uk website.⁴
4. The EM states that the objective is to prevent reinfection from external sources now that cases from domestic transmission are beginning to fall. Once someone who has travelled to England recently is confirmed as infected with COVID-19, the data they have provided will be used to identify the people around them as they travelled.

Exemptions

5. Part 1 of Schedule 2 lists those exempt from both these requirements, principally diplomats and people carrying out essential defence activities. Part 2 of Schedule 2 lists people exempt from the requirement to self-isolate—this list is quite extensive and includes passengers in transit, people such as merchant seamen, air crew or lorry drivers who are travelling to maintain essential supply chains, those involved in emergency works on essential services and infrastructure, and those giving or receiving healthcare. Paragraph 38 of Schedule 2 also sets out a modified self-isolation scheme for Seasonal Agricultural Workers within the bounds of a specified farm.
6. Regulation 4(9) provides specified exceptions from the requirement to remain in self-isolation. These include, for example, leaving the place of self-isolation to seek urgent medical assistance, to fulfil a legal obligation and, in exceptional circumstances, to obtain basic necessities. People who temporarily cross over the border from Wales or Scotland into England for a reason falling within these exceptions do not have to self-isolate (regulation 4(12)).

Enforcement

7. The instrument provides that failure to provide contact details or providing false or misleading information or seeking wilfully to obstruct a person carrying out functions under the Regulations will be an offence subject to a penalty notice. The amount of the fixed penalty will be £100, doubling in amount with each subsequent fixed penalty notice, up until the sixth and subsequent notices, for which the penalty will be £3,200. For offences relating to the requirement to self-isolate, the amount of the fixed penalty will be £1,000 for the first and all subsequent fixed penalty notices.
8. The EM provides no detail about how compliance with these requirements will be checked. In supplementary information DHSC explained:

“The form can be completed online up to 48 hours before individuals enter the UK. Across the UK at all ports of entry Border Force Officers will conduct spot checks on arriving passengers and may refuse entry

⁴ Department for Health and Social Care, ‘Coronavirus (COVID-19): how to self-isolate when you travel to the UK’ (updated 11 June 2020): <https://www.gov.uk/government/publications/coronavirus-covid-19-how-to-self-isolate-when-you-travel-to-the-uk/coronavirus-covid-19-how-to-self-isolate-when-you-travel-to-the-uk> [accessed 10 June 2020].

where the individual is neither a British citizen nor a non-British citizen resident in the UK and refuses to comply with these regulations. Levels of checking will be sufficient to ensure compliance and may vary at different times and different ports.”

We note that DHSC refers to entry “across the UK at all ports of entry”, but these Regulations only apply to England; there is considerable potential for inefficiency if the constituent parts of the UK operate a different regime or relax the same regime at different times.

9. We also asked how the data would be stored and used. DHSC replied:

“Public Health England and other devolved public health agencies will process the data, as will UK border force. Home Office will store the data.

Public Health England has set up an assurance service that will contact a random sample of non-exempted arrivals. They will ensure that they understand the restrictions as well as how to recognise symptoms, and what to do if they are experiencing them. Calls will also include an assurance check as to whether individuals are complying with restrictions. In England, where there is evidence to suggest that an individual is not complying with the requirements, details will be passed to Border Force and the police for potential follow-up and enforcement action. Enforcement measures will be set individually by the Devolved Administrations.

The assurance service set up by Public Health England will contact approximately 20% of those required to self-isolate via a phone call or SMS. This service has already started making calls. Attempts to contact arrivals will be made on days 2, 3, 4 & 5 of entry into the UK. If contact has not been made after this period, details will be passed to Border Force.”

Impact

10. The number of passengers arriving in the UK has fallen by 95%, year on year, due to the virus itself and to international travel restrictions which have been applied in the majority of jurisdictions across the world, but numbers can be expected to rebound as social distancing measures are relaxed. The travel industry has expressed concern that these restrictions will delay that rebound. The Department has not calculated the cost of these measures as they state it would be impossible to disaggregate the impact of these restrictions from the wider effects of the pandemic.

Conclusion

11. Concerns have been raised about the effectiveness of a system based on spot checks and the likelihood of visitors actually complying with requirements. There have been numerous reports in the media that the travel industry is concerned that these measures will delay its economic recovery. **While alert to the need to prevent infection from external sources, the House may wish to press the Government on the financial cost to the travel industry and the effectiveness of this system in protecting public health.**

INSTRUMENTS RELATING TO COVID-19

Changes to business practice and regulation

Draft Contracts for Difference (Electricity Supplier Obligations) (Amendment) (Coronavirus) Regulations 2020

12. This instrument proposes changes to the Contracts for Difference (CFD) scheme, the main mechanism for supporting new renewable electricity generation projects in Great Britain. According to the Department for Business, Energy and Industrial Strategy (BEIS), the aim is to limit the negative short-term impact on electricity suppliers of an unexpected increase in the costs of the CFD scheme during the pandemic. Under the CFD scheme, the government owned Low Carbon Contracts Company (LCCC) manages CFD contracts with electricity generators and collects payments from electricity suppliers which pass on the costs to their customers. The LCCC expects a shortfall in funds required to pay generators in quarter 2 (April to June) 2020, following a sharp fall in electricity demand during the pandemic and a reduction in the amount collected from suppliers. There has also been a lower wholesale price of electricity, which has led to higher payments to generators who are paid ‘top up’ payments between the wholesale price and the strike price.⁵ BEIS says that because of the unexpected increase in suppliers’ obligations in quarter 2 of 2020, it has agreed a one-off loan to LCCC to enable it to pay generators without increasing the financial burden on suppliers. This instrument proposes to reduce each supplier’s obligation in quarter 2 2020 in respect of payments to generators by the amount of any government assistance to the LCCC in that quarter in proportion to the supplier’s market share in that quarter; and to increase each supplier’s obligation in quarter 2 2021 by the same amount to enable repayment of the financial assistance previously provided. The instrument proposes further changes to the CFD scheme, including to enable the LCCC to repay any government assistance using revenue collected from suppliers. BEIS says that while the loan to the LCCC is intended to be a one-off response to the current crisis, **the changes made by the instrument are not time-limited** and allow the same mechanism to be used if a similar event arose in the future or if the impacts of the pandemic last longer than expected.

Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 (SI 2020/567)

13. This instrument requires operators of commercial transport services for passengers travelling to England by sea, air or rail, from outside of the Common Travel Area,⁶ to ensure that information is provided to all passengers about coronavirus, and the related duties and public health guidance in the UK. The information must be provided to passengers before they book their travel, when they check in and whilst they are on board the vessel, aircraft or train. Failure to do so will be an offence. Around 140 travel operators will be directly affected by the Regulations, but the Department for Transport states that, as operators already have systems in place to provide information to passengers at each of the relevant stages of their journey, additional costs should be minimal.

5 The strike price for electricity is fixed and reflects the cost of investing in a particular low carbon technology.

6 See footnote 2 above.

14. The Regulations last for 12 months but the Secretary of State may, from time to time, suspend the requirement by making a statement on the gov.uk website. The Secretary of State may also specify the information to be provided and the manner in which it is to be provided at each stage of the passenger journey. The Regulations impose a duty to review the need for the requirement at least once every 21 days.

Public services

Draft Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020

15. This instrument proposes temporary changes to tuition fee limits and tuition fee loan amounts in England. The Department for Education (DfE) explains that the pandemic has placed a significant financial strain on the higher education sector and that, to mitigate the financial losses caused by potentially fewer students wishing to go to university in the next academic year, some higher education providers have adopted admissions practices, such as the large-scale use of unconditional offers, to recruit a greater share of domestic students than in previous years. Such practices allow providers to secure the tuition fee income attached to these students and to draw down a greater share of the public funding available in the next academic year, but, according to DfE, leave a smaller pool of prospective students for other providers which are put under financial pressure. The proposed changes seek to ensure that where a provider has recruited first year students starting courses above the level that the Department has allocated to that provider for the academic year 2020–21 (through temporary student number controls or SNC), reduced tuition fee limits will apply to that provider’s full-time undergraduate courses in the following academic year 2021–22. This is to ensure that if providers exceed their allocated SNC, the sums available to them through the student finance system in the subsequent academic year will be reduced proportionately. The instrument also proposes a proportionate reduction of the maximum tuition fee loan amounts available to English-domiciled students starting full-time courses at institutions in Scotland, Wales or Northern Ireland in the academic year 2021–22 where the number of students exceeds the SNC for that institution in the academic year 2020–21.

Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) (Coronavirus) Regulations (SI 2020/566)

16. The statutory scheme for the storage by fertility clinics of gametes (sperm and eggs) and embryos intended for future use in fertility treatment or research has a time limit of 10 years (extendable on the basis of medical authorisation). In response to the COVID-19 pandemic, the Human Fertilisation and Embryology Authority issued General Direction 0014 to all NHS and private clinics which had the effect of suspending treatment services from 23 March 2020. To address this, these Regulations extend the time limit to 12 years for those with material in storage who, because of the effects of the pandemic, have either not been able to access treatment or a written medical opinion to permit an extension in the normal way. These Regulations do not apply to embryos or gametes that are placed in storage after 1 July 2020 to which the normal 10-year statutory storage period will apply.

Law and order*Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2020 (SI 2020/562)*

17. By 7 May 2020 more than 12,000 fixed penalty notices had been issued under the Health Protection (Coronavirus, Restrictions) Regulations in England and Wales. A person who does not pay a fixed penalty notice becomes liable to prosecution 28 days later under the “single justice procedure”, which permits a court to deal with the case on the paperwork, without the accused attending court. Under normal legislation the Crown Prosecution Service (CPS) is required to conduct all proceedings, but this Order excludes routine proceedings in relation to the penalty notices from that requirement. The Attorney General considers that it is not proportionate for the CPS to have conduct of these cases where the accused pleads guilty or does not respond to the notice and evidence served upon them. However, if the defendant pleads not guilty, wishes to challenge the fixed penalty notice or does not consent to the single justice procedure the CPS will, as a matter of practice, take conduct of it.

INSTRUMENTS OF INTEREST

Draft Direct Payments Ceilings Regulations 2020

Direct Payments Penalty Simplification (England) Regulations 2020 (SI 2020/551)

18. These two instruments make changes to the 2020 Direct Payment schemes, the main current form of income-support for UK farmers. The draft Regulations propose amendments to the UK's national ceiling and net ceiling for Direct Payments for the claim year 2020.⁷ The Department for Environment, Food and Rural Affairs (Defra) says that the proposed changes take account of policy decisions made by Defra and the Scottish and Welsh Governments to reduce their share of the UK's national ceiling for claim year 2020 by 12%, 9.5% and 15% respectively, so that these funds can be made available for rural development measures instead, continuing the approach taken in previous claim years since 2014. In total, around €386.4 million are being transferred from Direct Payments to rural development measures in 2020. As in previous years, the Northern Ireland authorities have decided not to make a transfer. According to Defra, the draft Regulations also reflect the findings of the Bew Review,⁸ which considered the fair allocation of farm support across the UK between 2020 and 2022, by proposing additional funding to Scottish and Welsh farmers of €60.43 million and €6.11 million respectively over the 2020-22 period.
19. SI 2020/551 simplifies the penalties that are applied to farmers in England where they have made small over-declarations of land under the Direct Payments schemes. According to Defra, small over-declarations occur where the area a farmer declares is more than either two hectares or 3%, but no more than 10%, larger than the area that meets the scheme eligibility rules. Defra says that it remains committed to phasing out Direct Payments in England over a transition period, as provided for in the Agriculture Bill, and that in the lead up to this transition, it intends to simplify the existing schemes where possible.⁹ This instrument simplifies the system so that all small over-declarations will attract a penalty of 0.75 times the size of the over-declaration, rather than some receiving a higher penalty as has been the case previously. Over-declarations of 10% or more will continue to attract a higher penalty rate of 1.5 times the over-declaration to maintain a deterrent. Defra says it will consider further simplifications to the Direct Payment schemes for the 2021 claim year.

7 The national ceiling comprises the total value of all allocated payment entitlements, national reserves and regional reserves and all the financial ceilings calculated for the individual Direct Payment schemes in the UK, while the net ceiling delimits the value of Direct Payments which can be made in the UK in a claim year.

8 The findings of the Bew Review were published in September 2019 alongside the Government's response. See Department for Environment, Food & Rural Affairs (Defra), *Domestic farm support funding (Bew Review): government response* (6 September 2019): <https://www.gov.uk/government/publications/domestic-farm-support-funding-bew-review-government-response> [accessed 10 June 2020].

9 See Defra, *Farming for the future: policy and progress update* (25 February 2020): <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2020> [accessed 10 June 2020].

Census (England) Regulations 2020 (SI 2020/560)

20. The Census (England and Wales) Order 2020 (SI 2020/532)¹⁰ set the broad topics and the date of 21 March 2021 for the next Census. These Regulations set out the operational mechanics for running the Census and, in Schedule 2, provide the detail of the questionnaires to be used in England. The devolved legislatures will be putting similar statutory instruments in place. In particular, these Regulations set out how the UK Statistics Authority (ONS) must divide England into administrative districts for the purposes of the Census and appoint people to act in various census roles within those administrative districts;¹¹ make arrangements regarding the confidentiality of census data; and describe the system to be used to send out and track census questionnaires whether in paper or electronic form. Online questionnaires will require the use of a 16-digit Unique Access Code (UAC). The ONS tested these arrangements in October 2019, by means of a “rehearsal” in four local authority areas within England and Wales: Carlisle, Ceredigion, Hackney and Tower Hamlets.

¹⁰ Described when in draft in our [9th Report](#), Session 2019-21 (HL Paper 38).

¹¹ The Census Co-ordinator Areas (the operational term for the administrative districts) are created to cover areas that are expected to require the same number of hours of work per week for census staff; each Area is within existing Local Authority boundaries.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Contracts for Difference (Electricity Supplier Obligations) (Amendment) (Coronavirus) Regulations 2020

Direct Payments Ceilings Regulations 2020

Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020

Instruments subject to annulment

- SI 2020/546 Police (Amendment) Regulations 2020
- SI 2020/551 Direct Payments Penalty Simplification (England) Regulations 2020
- SI 2020/552 Official Controls (Plant Protection Products) Regulations 2020
- SI 2020/559 Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2020
- SI 2020/560 Census Regulations 2020
- SI 2020/562 Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2020
- SI 2020/563 Energy Efficiency (Building Renovation and Reporting) (Amendment) Regulations 2020
- SI 2020/566 Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) (Coronavirus) Regulations 2020
- SI 2020/567 Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020
- SI 2020/569 Electricity (Individual Exemption from the Requirement for a Supply Licence) (E.ON UK CHP Limited) (England) Order 2020

APPENDIX 1: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 16 June 2020, Members declared the following interests:

Draft Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020

Lord Liddle

Pro-Chancellor, University of Lancaster

Attendance:

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