

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

24th Report of Session 2019–21

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

Drawn to the special attention of the House:

Draft Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

Draft Greenhouse Gas Emissions Trading Scheme Order 2020

**Correspondence: Flow and volume of Brexit-related
secondary legislation**

Includes information paragraphs on:

16 instruments relating to COVID-19

Draft Immigration (Health Charge)
(Amendment) Order 2020

Court Fees (Miscellaneous Amendments)
Order 2020

Marriage and Civil Partnership (Northern
Ireland) Regulations 2020

Family Procedure (Amendment No. 2) Rules
2020

Criminal Procedure Rules 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>Viscount Hanworth</u>	<u>The Earl of Lindsay</u>
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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.

Twenty Fourth Report

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

Instruments recommended for upgrade to the affirmative procedure

Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020

1. The purpose of this proposed negative instrument is to end the application of directly effective rights that flow from EU Treaty provisions which prohibit the imposition of quantitative restrictions, such as administrative or regulatory requirements, that restrict free movement of non-harmonised goods within the EU, or between the EU and Switzerland or the EU and Turkey. The Department for Business, Energy and Industrial Strategy (BEIS) says that the UK intends to have its own regulatory regime for goods after the end of the Transition Period (TP) and that the intention of this instrument is to ensure that there is no barrier to diverging from EU rules should Great Britain (GB) chose to do so after the end of the TP. BEIS adds that repealing the rights that flow from the prohibition of quantitative restrictions is necessary as the rights could otherwise form the basis for claims by GB manufacturers if regulatory divergence does create trade barriers.
2. The Department also states that the instrument will not be of practical application in Northern Ireland (NI), as the NI Protocol to the Withdrawal Agreement will govern NI, and the movement of goods between the EU and NI and between NI and GB will be provided for in accordance with the Protocol and UK domestic law. At the same time, BEIS says that it engaged with the Devolved Administrations as some goods potentially affected by this instrument fall under devolved competence, and that it was waiting for formal consent from all three Devolved Administrations. The Department told us that NI had questioned how this instrument would impact on the flow of goods between NI and GB and that while the instrument would not remove any protections in relation to the flow of goods between NI and GB, these protections are to be confirmed in a future instrument and in the upcoming UK Internal Market Bill. **Given the sensitivities around NI's access to the GB market and the political significance of any future diversion from EU regulations and potential trade barriers, the House may welcome an opportunity to explore these issues. On balance, therefore, the Committee is of the view that the instrument should be subject to the affirmative procedure.**

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

- Cross-border Parcel Delivery Services (Amendment) (No.2) (EU Exit) Regulations 2020
- Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

Date laid: 15 July 2020

Parliamentary procedure: affirmative

The purpose of these draft Regulations is to establish a debt respite scheme for people in problem debt. Under this scheme, people who receive professional debt advice may access a 60-day ‘breathing space’ in which fees, charges and interest are frozen and enforcement action is paused. The instrument also proposes an alternative route by which people receiving mental health crisis treatment may access these protections for the duration of their crisis treatment. This is a welcome policy that will provide significant protection for many people in vulnerable situations. As the Explanatory Memorandum (EM) provides limited information about the scope of the new scheme and how it will operate in practice, in particular how to ensure that people under pressure with problem debt can easily access appropriate advice, we have obtained additional material which is included in this report in Appendix 1. We have asked HM Treasury to revise the EM to reflect this material and provide a fuller explanation of the scheme.

These draft 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. HM Treasury (HMT) has laid these draft Regulations with an Explanatory Memorandum (EM) and Impact Assessment (IA). The purpose of the instrument is to establish a debt respite scheme for people in problem debt who receive professional debt advice. Under this scheme, people may access a 60-day moratorium, also referred to as ‘breathing space’, in which fees and charges and certain interest are frozen and enforcement action is paused. The instrument also proposes an alternative route by which people receiving mental health crisis treatment may access these protections for the duration of their crisis treatment. HMT intends for the new scheme to launch on 4 May 2021. It will be managed by the Insolvency Service.

Background

4. Estimates provided by HMT suggest that there are around nine million overindebted people in the UK, of which only around 1.1 million receive advice each year, and that an additional 0.65 to 2.9 million people would benefit from debt advice. HMT says that people who need debt advice often do not seek it and those who do often experience “sub-optimal outcomes” because they get the advice at a late stage, when they are already at crisis point. According to HMT, many debtors are only prompted to seek advice when their creditors start court proceedings or take enforcement action, leading to stress and anxiety and debtors choosing the quickest rather than the most appropriate solution.

How the new scheme will operate

5. According to HMT, this instrument aims to encourage more people who are in problem debt to access professional debt advice; to do so sooner; and to enable them to enter the debt solution that is most appropriate in their circumstances. The instrument proposes a 60-day moratorium during which fees and charges and certain interest are frozen and enforcement action is paused. This is to “give debtors time to engage fully with professional advice by reducing the stress caused by spiralling debt and impending enforcement action”. HMT says that improving the engagement between debtors and debt advisers will improve debt advice outcomes, including more creditor recoveries. The protections provided by the moratorium will be accessible only via professional debt advice in order to encourage more people to seek debt advice sooner. Debtors may access the moratorium once in each 12-month period.
6. The EM provides limited information about the scope of the scheme and how it may be accessed. Asked about the types of debt that qualify for the moratorium, HMT told us that all of an individual’s debts will be included, unless it is a non-eligible debt under regulation 5(4), and that there will be no maximum or minimum limits. An individual’s business debts will not be eligible if the debtor’s business is registered for VAT, or if they are in partnership with anyone else, and the debt they have accrued relates solely to the business. We asked whether the moratorium will cover arrears owed to central and local government, including council tax arrears, personal tax debts and benefit overpayments. HMT confirmed that such debts will be included and clarified that:

“Some specific public sector debts are excluded by regulation 5(4), mirroring the position in bankruptcy (e.g. debts incurred as a result of fraudulent behaviour; fines imposed by a court, including criminal fines; confiscation orders; child maintenance payments and debts that arise after an order made in family proceedings; social fund loans; student loans and personal injury liabilities).

If an individual enters breathing space in arrears on monthly council tax payments before the full outstanding annual bill has been requested, only outstanding monthly arrears owed on the debt will be included in the protections. The individual would continue to face enforcement action if they did not pay their ongoing monthly bill for council tax, given that council tax is an ‘ongoing liability’. However, if the individual had been served with a notice requiring payment of the full remaining bill by the time they enter breathing space, the whole of the amount contained in that notice will be included in the protections of breathing space.

Universal Credit [UC] advances and UC third party deductions are currently excluded, but will be included in the protections on a phased basis as early as possible following the start of the policy in early 2021, to ensure that IT changes required align with other requirements of the wider Universal Credit programme.”

7. We also sought clarification of the status of ongoing liabilities, such as utility bills, during the moratorium. HMT advised that:

“Breathing space is not a payment holiday. The person should keep paying their ongoing liabilities (defined in regulation 2, including mortgage, rent, insurance, taxes and utility bills) as they fall due. If they do not, and the debt adviser considers they have the means to do so, the debt adviser must decide to cancel their moratorium at the midway review unless the debtor’s personal circumstances would make it unfair or unreasonable.”

8. We asked who will be qualified to provide professional debt advice. HMT explained that a moratorium may only be initiated by an authorised person who has permission to do so (under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) or is exempt from this requirement, such as a local authority. HMT added that the moratorium “would be an option that any debt adviser meeting this description could offer, via online, telephone or face-to-face advice, provided the debtor met the eligibility criteria. The debt adviser would not be able to charge a fee.”
9. Given the large number of people who are under pressure with problem debt and could benefit from the new moratorium and the limited number of people who are authorised to provide professional debt advice, **the Committee believes that it will be important for people to be given clear and timely advice as to who is qualified to initiate a moratorium. The Committee urges the Government to consider establishing a register of authorised professional debt advisers that may help in directing people to where they can receive the appropriate support.**
10. We also asked how the 60-day moratorium period had been identified as the best option and whether it could be extended, for example in hardship cases. HMT said that:

“Campaigners originally proposed a six-week breathing space, which the Government proposed to extend to 60 days in its 2018 consultation. As set out in the 2019 consultation response, almost all consultation respondents welcomed the extension of the length of breathing space to sixty days, suggesting that this was a realistic length to enable an individual to seek debt advice and enter a sustainable debt solution. Breathing space cannot be extended, as the fixed period provides certainty to creditors. The only exception to this is in the mental health crisis moratorium, where the protections last for as long as the individual’s crisis treatment lasts, plus a further 30 days.”

Mental health crisis moratorium

11. HMT says that people receiving mental health crisis treatment will receive the same protections but will be able to access the moratorium without having to seek professional debt advice to reflect the fact that they may struggle to engage with such advice. The protections under the mental health crisis moratorium will apply for the duration of the crisis treatment, plus an additional 30 days. If people take professional debt advice subsequently, they may then also have access to the regular 60-day moratorium. HMT explains that as mental health problems may recur, no limit is proposed on the number of times that people may enter a mental health crisis moratorium.
12. We asked HMT about the process for accessing the mental health crisis moratorium and how people will be made aware of the new scheme. HMT responded that:

“As set out in the 2019 consultation response, Approved Mental Health Professionals (AMHPs) will be the professional group able to produce an assessment that an individual is receiving mental health crisis care to enter a mental health crisis moratorium. AMHPs may do this themselves, or because they are requested to do so, by the debtor or someone else involved in their care. This assessment will be the evidence that debt advisers then use to determine an individual’s eligibility for a mental health crisis moratorium and enter them into the protections of the scheme. The government will publish guidance for AMHPs later this year and work to make this a straightforward and low burden process for AMHPs, including by developing a standard form to use for assessments as part of professional guidance on the scheme.”

Register

13. While not mentioned in the EM, the instrument proposes the establishment of a register of individuals who make use of a moratorium. The register will be private. Creditors identified by the debt adviser will receive a notification when an individual enters the moratorium and they will have access to the register for that individual but will not be able to access details of other debtors in a moratorium. The register will be managed by the Insolvency Service.

Consultation

14. The Government conducted two public consultations on the debt respite scheme. An initial call for evidence between October 2017 and January 2018 received over 80 responses which were mostly supportive.¹ While many respondents suggested that individuals in problem debt should have to seek debt advice before entering a moratorium, it was also noted that this would be inappropriate for people experiencing a mental health crisis. A subsequent consultation between October 2018 and January 2019 received over 130 responses from a wide range of stakeholders, including creditors, trade bodies, local authorities, charities, debt advice providers, credit reference agencies, utility companies and telecoms providers.² According to HMT, the issues raised included the duration of the moratorium, eligibility criteria, the types of debts covered, the need for a register and the treatment of business debts. HMT says that responses were mostly supportive, including on the proposed eligibility criteria and protections for debtors. Following consultation, HMT engaged further with experts from the creditor and debt advice sectors.

Guidance

15. HMT says that non-statutory guidance will be published in due course to assist creditors, creditor agents, debt advice providers and AMHPs. HMT will also use other forms of publicity and work with the Money and Pensions Service, other government departments, creditors and debt advice providers to raise awareness of the scheme amongst users.

1 HMT, *Consultation outcome: Breathing space: call for evidence* (last updated 18 June 2018): <https://www.gov.uk/government/consultations/breathing-space-call-for-evidence/breathing-space-call-for-evidence> [accessed 22 July 2020].

2 HMT, *Breathing space scheme: response to policy proposal* (June 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810058/17June_CLEAN_response.pdf [accessed 22 July 2020].

Impact

16. The IA estimates that, over a 10-year period, an additional 1.3 million debtors will seek advice because of the moratorium. The total costs for business, charities or voluntary bodies is forecast to be £2.1 billion over 10 years, including foregone interest and charges, delayed repayments and familiarisation, dissemination and administration costs. At the same time, the IA estimates the economic benefits to businesses, charities and voluntary bodies to be £6.1 billion, including higher recoveries for creditors, productivity benefits for employers and reduced negative mental and physical health outcomes amongst debtors. HMT estimates the impact on the public sector to be £7 million over the same 10-year period, and the wider benefits on society (net present social value) to be £9.2 billion.

Further changes

17. We asked about the second part of the scheme which the EM refers to without providing further information. HMT explained that:

“The second part is the Statutory Debt Repayment Plan, a statutory agreement that will enable a person in problem debt to repay their debts to a manageable timetable, with legal protections from creditor action for the duration of their plan. As set out in last June’s consultation response the Government intends to implement the SDRP over a longer timeframe, but has not set a specific implementation date for this part of the scheme.”

Conclusion

18. The purpose of these draft Regulations is to establish a debt respite scheme that offers temporary protection for people in problem debt who receive professional debt advice or mental health crisis treatment. This is a welcome policy that will provide significant protection for people in vulnerable situations. As the EM provided limited information about how the scheme will operate in practice, we have asked HM Treasury to revise it to give a fuller explanation of the new scheme. **The draft 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.**

Draft Greenhouse Gas Emissions Trading Scheme Order 2020

Date laid: 13 July 2020

Parliamentary procedure: affirmative

This draft Order proposes the establishment of a UK-wide greenhouse gas emissions trading system (UK ETS) as a possible replacement for the current EU Emissions Trading System (EU ETS) in which the UK will cease to participate at the end of the Transition Period. According to the Department for Business, Energy and Industrial Strategy, a replacement is necessary to help achieve the UK's emissions reduction targets and the goal of net zero greenhouse gas emissions by 2050. The establishment of a UK ETS falls within devolved competence. Its development has therefore been one of several policy areas in which a Common Framework is being developed together with the Devolved Administrations. Proposals for an alternative carbon pricing policy, a Carbon Emission Tax, are being consulted on currently; a final decision on the replacement of the EU ETS from 1 January 2021 will be made as soon as possible to allow businesses enough time to make final preparations. The Department says that a link between a future UK ETS and the EU ETS may also be considered.

The draft Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.

19. The Department for Business, Energy and Industrial Strategy (BEIS) has laid this draft Order with an Explanatory Memorandum (EM) and Impact Assessment (IA). The purpose of the instrument is to establish a UK-wide greenhouse gas emissions trading system (UK ETS) as a possible replacement for the EU Emissions Trading System (EU ETS) in which the UK will cease to participate at the end of the Transition Period (TP) on 31 December 2020. The UK ETS is to be operational from 1 January 2021.

Background

20. According to BEIS, the EU ETS currently covers around 33% of UK emissions and contributes significantly to the UK's emissions reduction targets and the goal of net zero greenhouse gas emissions by 2050. The underlying idea of an ETS is that placing a price on carbon creates the incentive for emissions to be reduced in a cost effective and technology-neutral way, while encouraging the private sector to invest in emissions reduction technologies and measures. ETS schemes work on the 'cap and trade' principle, where a cap is set on the total amount of certain greenhouse gases that can be emitted by those taking part in the scheme. Within the cap, participants receive or buy emission allowances which they can trade with one another. This cap is reduced over time, so that total emissions fall.
21. The UK will cease to take part in the EU ETS at the end of the TP, subject to obligations in the Withdrawal Agreement in respect of 2020 compliance³ and the Protocol on Ireland/Northern Ireland. This draft Order proposes a potential replacement for the EU ETS.

3 HM Government, *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* (19 October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf [accessed 22 July 2020].

Key characteristics of the UK ETS

22. The instrument covers the scope of the UK ETS, monitoring and reporting requirements, the total level of emissions permitted (cap), the rate at which the cap declines (trajectory) and the roles of the regulators in monitoring and enforcing the rules of the UK ETS:
- The scope of the UK ETS includes the electricity generation sector, aviation and energy intensive industries, such as refining, heavy industry and manufacturing.
 - The UK ETS allows for two levels of derogation, reflecting the derogations under the EU ETS: the first derogation for “hospitals and small-emitters” will cover hospitals or installations that emit fewer than 25,000 tonnes of CO₂ (or other equivalent greenhouse gases) per year and, if applicable, have a thermal input of fewer than 35 megawatt (MW). The second derogation for “ultra-small emitters” will cover installations that emit fewer than 2,500 tonnes of CO₂ (or other equivalent greenhouse gases) per year. Installations in the first category will still be required to continue to reduce their emissions through emissions targets, and installations in both categories may have to change their status if their circumstances change.
 - In relation to aviation, the UK ETS will cover UK domestic flights, flights between the UK and Gibraltar as well as flights from the UK to the EEA. Any aircraft operator that meets the thresholds for inclusion will have to report and surrender allowances for emissions from qualifying flights on these routes.
 - The annual cap on allowances under the UK ETS will initially be set at 5% below what would be the UK’s expected notional share of the EU ETS cap if the UK continued to take part in the EU ETS. This initial cap will be reduced annually so that it will remain 5% below where the UK’s notional share of the EU ETS cap would have been year on year. BEIS says that this provides the appropriate balance between the UK’s climate ambition in the context of the UK’s net zero commitment and any risks of disproportionate costs to businesses. BEIS says that this is intended to be a temporary cap, and that it will consult on an appropriate trajectory for the cap for the remainder of the first phase of the UK EST within nine months of the Committee on Climate Change (CCC) publishing its advice on the Sixth Carbon Budget.⁴ BEIS says that the aim is to align the cap with a net zero trajectory by January 2023, and no later than January 2024, while aiming to give industry at least one year’s notice.
 - UK ETS participants will be subject to a system of Monitoring, Reporting and Verification (MRV) of their emissions. BEIS says that the rules for current EU ETS participants are set out in the EU’s Monitoring and Reporting Regulation (MRR) and Accreditation and Verification Regulation (AVR). As the rules for UK ETS participants will reflect EU ETS requirements, this instrument adapts the MRR

⁴ The Sixth Carbon Budget, required under the Climate Change Act 2008, will provide advice on the volume of greenhouse gases the UK can emit between 2033 and 2037. It will set the path to the UK’s net-zero emissions target in 2050. It is expected to be published in December 2020.

and AVR regulations to ensure they can work effectively in the UK ETS context.

- The enforcement of UK ETS rules will be carried out by the relevant environmental regulators in the Devolved Administrations which will have powers to serve enforcement notices on participants which do not meet their obligations. BEIS says that to “provide continuity and a smooth transition, the enforcement system in the UK ETS will be delivered in much the same way as operators have experienced under the EU ETS”, adding that all “the regulators who will be monitoring compliance against these obligations have years of enforcement experience under the EU ETS and will be developing updated public enforcement and sanction policies for the UK ETS”. BEIS says that following public consultation in 2018, the Environment Agency in consultation with the other regulators “concluded that some penalties were too low to be considered dissuasive compared to the seriousness of the breach”, so the maximum penalty amount has been increased for some penalties to provide an appropriate incentive for operators to comply.
- UK participants will continue to be able to appeal against decisions by regulators. The appeal bodies will be different depending on which regulator in the four nations of the UK has made the decision that is appealed.

Devolution

23. BEIS says that climate policy, including the establishment of a UK ETS, falls within devolved competence, and that the development of the UK ETS is therefore one of several policy areas in which a Common Framework is being developed. The Devolved Administrations will be laying this instrument before their respective Devolved Parliaments.⁵

Consultation

24. The UK Government and Devolved Administrations conducted a joint public consultation on the UK’s future carbon pricing policy between 2 May and 12 July 2019. The consultation presented a UK ETS that is linked to the EU ETS as the UK Government and Devolved Administrations’ preferred carbon pricing policy and sought views on alternative options including a standalone UK ETS, a carbon emissions tax or remaining in the EU ETS. BEIS said that alongside the consultation, the UK Government and Devolved Administrations commissioned the CCC for advice on both a standalone and linked UK ETS. The consultation received more than 130 responses, from a range of stakeholders including current EU ETS participants and NGOs. According to BEIS, a majority expressed support for most of the proposals on the design of a UK ETS, and a large proportion of stakeholders expressed a preference to link the UK ETS to the EU ETS.⁶

5 Common Frameworks seek to establish a common approach and an agreement on how the UK Government and Devolved Administrations will manage a policy area jointly in future.

6 HM Government and Devolved Administrations, *The future of UK carbon pricing: UK Government and Devolved Administrations’ response* (June 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889037/Government_Response_to_Consultation_on_Future_of_UK_Carbon_Pricing.pdf [accessed 22 July 2020].

Potential link with the EU ETS

25. BEIS states that the “UK Government is open to considering a link between a future UK Emissions Trading System (ETS) and the EU ETS, if such a linking agreement is in both sides’ interests, and recognises both parties as sovereign equals with our own domestic laws”, adding that “a link between the UK and EU trading schemes could help to establish a much larger carbon market, which could increase opportunities for emissions reduction and cost-efficiency of emissions trading”. According to BEIS, establishing the UK ETS before the end of the TP will enable the UK to negotiate a linking agreement with the EU, but that if such a link cannot be secured, the UK ETS could operate on a stand-alone basis or the UK could introduce a Carbon Emission Tax as an alternative carbon pricing mechanism. HM Treasury launched a consultation on the design of such a tax in July which will run until September.⁷
26. BEIS says that developing two alternative options provides maximum assurance that a carbon pricing policy will be in place in all scenarios after the end of the TP. We asked when a final decision would be made on the preferred carbon pricing policy. The Department said that:
- “A decision on the preferred fallback will be made as soon as possible ahead of the end of year, to allow businesses enough time to make final preparations. This decision will be communicated widely through the most appropriate means at the time. This decision will be made collectively by the UK Government, ensuring the views of interested Departments and parties are taken into account.”

Further legislation

27. According to BEIS, a second affirmative instrument will be laid before the House of Commons under the Finance Act 2020 (subject to the Finance Bill receiving Royal Assent in its current form) to establish rules for the auctioning of emissions allowances and mechanisms to support market stability. A third instrument will be laid before Parliament under the negative procedure in November 2020 to introduce provisions for free allocation⁸ and an UK ETS registry.⁹ Additionally, a further affirmative instrument will be laid to enable the trading of emissions allowances in the UK ETS and to establish an oversight role for the Financial Conduct Authority in relation to the auctioning process and secondary market trading to prevent market abuse. Further secondary legislation would be required to make any agreement on a link with the EU ETS operational which BEIS would expect to lay in the first half of 2021.

Impact

28. The IA sets out the expected costs and benefits of the UK ETS in its initial years of operation (from 2021 to 2024) in a stand-alone scenario where it is not linked to the EU ETS. The IA estimates an overall range of

7 HMT, Consultation on a *Carbon Emissions Tax*, (21 July 2020): <https://www.gov.uk/government/consultations/carbon-emissions-tax> [accessed 22 July 2020].

8 Free Allocation involves free allowances given to UK ETS participants most at risk of carbon leakage which occurs when businesses transfer production to other countries with less stringent emissions constraints. Free Allocation aims to maintain the competitiveness of certain sectors covered by the UK ETS and to support the transition towards a low-carbon economy. The approach to free allocation in the UK ETS aligns with that under the EU ETS.

9 The UK ETS registry will hold UK ETS emissions allowances in registry accounts.

monetised costs of between £36 million and £70 million, consisting of cost incurred by firms reducing their emissions to meet the cap (£25 million to £59 million), administrative costs to firms in complying with the new policy (£4 million) and the administrative cost to government, including regulators in establishing and administering the policy (£7 million). As the UK ETS is expected to lead to a greater reduction in emissions than if the UK had continued to participate in the EU ETS, the IA estimates the monetised benefit to be in the range of £102 million to £162 million.

Conclusion

29. This draft Order proposes a UK emissions trading system as a possible replacement for the EU system, which is currently a key element in the UK's strategy for tackling climate change. The establishment of this new system falls within devolved competence and represents one of the policy areas in which a Common Framework is being developed with the Devolved Administrations. With a final decision on the future carbon pricing policy to be taken later this year and a potential future link with the EU system also to be considered, this instrument raises significant policy issues that the House may wish to explore. **The draft Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.**

CORRESPONDENCE

Flow and volume of Brexit-related secondary legislation

30. As we approach the end of the Transition Period, we anticipate that there will be a surge in EU Exit-related secondary legislation. We wrote to the Leader of the House of Commons to seek information about the expected volume and flow of EU Exit-related statutory instrument in the forthcoming months. This correspondence is published in Appendix 2 of this report. We welcome the information that the Government have provided and will ask for an update of these figures in due course.

INSTRUMENTS RELATING TO COVID-19

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (SI 2020/750)

31. As the UK's Covid Alert Level has been downgraded from four to three, the Government are seeking to move away from national measures. These Regulations make provision for a local authority in England to give directions relating to premises, events and public outdoor places in its area. A direction may only be given if the local authority considers that there is a serious and imminent threat to public health, and the direction is necessary and proportionate to deal with it (regulation 2). The local authority must review any direction given under these Regulations at least once every seven days. Regulation 3 also gives the Secretary of State power to require a local authority to make or revoke a direction under these Regulations, but must consult the Chief Medical Officer or one of the Deputy Chief Medical Officers of the Department of Health and Social Care before doing so. A local authority designated officer or a constable (including a police community support officer) may take such action as is necessary to enforce a direction made under these Regulations and those who breach them may be liable to a fixed penalty notice of £100 for a first offence doubling on each repeat offence up to a maximum of £3,200. These Regulations expire at the end of 17 January 2021 (after six months).

Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) Regulations 2020 (SI 2020/754)

32. The Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 ("the original Regulations"),¹⁰ which came into effect on 4 July 2020, imposed stricter restrictions on Leicester than are in place in the rest of England because of higher risk of contracting COVID-19 in that area. The original Regulations are subject to fortnightly review and meetings between Government Ministers, Leicester leaders and officials took place on 16 July to consider a range of evidence including public health, health service and non-health metrics. As a result, with effect from 18 July, regulation 3 of these Regulations amends the geographic boundary of the special restrictions to the city of Leicester and the Borough of Oadby and Wigston, removing Blaby and Charnwood from the protected area. Regulations 4 to 7 of this instrument also amend the original Regulations to clarify that premises or places are covered by these restrictions, if any part of the premises or place is in the protected area.

Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) (No. 2) Regulations 2020 (SI 2020/787)

33. This instrument has been made in part to correct errors in the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 which came into force on 4 July 2020 and was modified on 18 July to reduce the area covered by additional lockdown restrictions.¹¹ These Regulations also lift some of the additional restrictions within the revised protected area of Leicester City and the Borough of Oadby and Wigston, where prevalence

¹⁰ Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 ([SI 2020/685](#)).

¹¹ [SI 2020/685](#) as modified by Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) Regulations 2020 ([SI 2020/754](#)).

of the virus has been high. From 24 July, non-essential businesses in the protected area will be permitted to reopen (as listed in the instrument).

Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 2) Regulations 2020 (SI 2020/788)

34. These Regulations amend the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020¹² to permit the reopening of indoor swimming pools, including indoor facilities at water parks, indoor fitness and dance studios, indoor gyms and sports courts and facilities. They also correct some minor errors. The original Regulations will still expire at the end of six months beginning with 4 July 2020 (the day on which they came into force).

Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (SI 2020/791)

35. The Government state that while face coverings are not a substitute for distancing and hand hygiene, there is evidence to suggest that when used correctly they may have some benefit in reducing the likelihood of those with coronavirus passing it on to others, particularly if they are asymptomatic. These Regulations therefore require members of the public to wear face coverings whilst inside shops, shopping centres and transports hubs in England. The conditions, enforcement provisions and “reasonable excuses” for non-compliance broadly mirror the pre-existing legislation requiring masks to be worn on public transport.¹³
36. We have received a letter questioning how those with a disability may be affected by these Regulations.¹⁴ The Explanatory Memorandum (EM), at paragraph 7.6, addresses this issue in the following way: “Nobody who has a reasonable excuse as set out in regulation 4 should be prevented from visiting a shop or supermarket or other setting covered by these Regulations.” Section 3 of the guidance to the public published on GOV.UK¹⁵ also offers a link to an Exemption Card template, for those who would feel more comfortable having a document to show they do not have to wear a face covering.
37. Although enforcement is a matter for the police and specified officials, government guidance says: “Businesses should take reasonable steps to encourage customer compliance”.¹⁶ Regulation 3(2)(b), however, exempts shop managers and their employees from an obligation to wear a face covering. We can reasonably anticipate that this provision may present compliance and enforcement challenges where a shop worker, who is not wearing a mask, asks a member of the public to put one on.

12 Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 ([SI 2020/684](#)).

13 Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 ([SI 2020/592](#)).

14 From Dr M Reynolds, dated 17 July 2020 and published on our website: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee>.

15 Cabinet Office, ‘Face coverings: when to wear one and how to make your own’ (last updated 23 July 2020): <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own> [accessed 24 July 2020].

16 HM Government, *Keeping workers and customers safe during COVID-19 in shops and branches* (23 July 2020): <https://assets.publishing.service.gov.uk/media/5eb9703de90e07082fa57ce0/working-safely-during-covid-19-shops-230720.pdf> [accessed 27 July 2020].

We recognise that there are technical reasons for this difference in requirement¹⁷ between members of the public and shop workers, but, given the potential challenges, suggest the policy’s effectiveness and any sensitivities arising from it are kept under close scrutiny.

38. Finally, in our 19th Report of this session,¹⁸ we commented on the problems caused by instruments being made just before they come into effect. On this occasion, the Regulations were laid less than 12 hours before they came into effect. Whilst we acknowledge that the seriousness of the pandemic has necessitated urgent action, Parliament must also be given adequate opportunity to scrutinise these changes in law. **The Committee might have wished to explore these issues in more depth had they been given more time.**

Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Luton) Regulations 2020 (SI 2020/800)

39. In response to the elevated number of positive COVID-19 tests in both Blackburn with Darwen and Luton, these Regulations apply stricter restrictions on those areas than currently apply in the rest of England. These Regulations require the closure of businesses listed in the Schedule (largely indoor sports and entertainment venues) and impose restrictions on gatherings both inside and outside, of more than 30 people. The closures and restrictions last until they are terminated by a direction given by the Secretary of State. The instrument will expire six months after coming into effect and the need for the restrictions in these Regulations must be reviewed by the Secretary of State every 14 days, with the first review taking place by 8 August 2020.

Changes to business practice and regulation

Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (SI 2020/744)

40. This Order applies company insolvency rescue legislation, as introduced by the Corporate Insolvency and Governance Act 2020 (“the 2020 Act”), to co-operative and community benefit societies¹⁹ and credit unions. HM Treasury (HMT) says that the changes aim to provide these businesses with the flexibility and breathing space they need to continue trading during the pandemic. The provisions for a moratorium under Part A1 are applied to registered co-operative and community benefit societies, excluding societies which are providers of social housing and credit unions, while Part 26A for a restructuring plan is applied to co-operative and community benefit societies and credit unions, excluding societies which are providers of social housing. The Order also makes consequential amendments to secondary legislation on financial services and markets. HMT advises that, as of June 2020, there were approximately 8,000 co-operative and community benefit societies, and approximately 280 credit unions in Great Britain.

17 Businesses already have legal obligations under existing employment law to protect their staff by taking appropriate steps to provide a safe working environment. See GOV.UK Guidance for Shops and branches above.

18 [19th Report](#) (Session 2019–21, HL Paper 84).

19 A co-operative society is a business owned and run by, and for the benefit of, its members. A community benefit society must satisfy the same cooperative principles as a co-operative society and must be operated for the benefit of the community in which it works.

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 3) Regulations 2020 (SI 2020/799)

41. These Regulations amend the Health Protection (Coronavirus, International Travel) (England) Regulations 2020,²⁰ which set out which people arriving in England are required to self-isolate. Based on the latest information from the Joint Biosecurity Centre, and Public Health England, these Regulations add Estonia, Latvia, Saint Vincent and the Grenadines, Slovakia and Slovenia to the list of exempt countries in Schedule A1 of the original Regulations. Therefore, any passengers arriving in England after 28 July from any of those countries will not be required to self-isolate on arrival.

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 4) Regulations (SI 2020/805)

42. The Joint Biosecurity Centre, with Public Health England, have reviewed the latest assessment of public health risk presented by arrivals to England and, in consequence, the Government are acting to re-impose self-isolation requirements on passengers arriving from Spain as a matter of urgency. These Regulations amend Schedule A1 of the Health Protection (Coronavirus, International Travel) (England) Regulations 2020²¹ to require any passengers who arrived from Spain on or after 26 July to self-isolate for 14 days. The original Regulations must be reviewed every 28 days.

Public Services

Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/731)

43. This instrument removes until 31 December 2020 the requirement on local planning authorities to make certain documents available for physical inspection by the public at local premises and to provide hard copies of those documents on request. Instead, the documents may be made available on the local planning authority's website. The documents relate to the preparation of local development documents which deliver the spatial planning strategy for a local planning authority's area. The Ministry of Housing, Communities and Local Government says that the temporary change is needed to ensure that progress of local development documents is not delayed due to difficulties during the pandemic in making these documents available for physical inspection or providing hard copies.

Environmental Assessment of Plans and Programmes (Coronavirus) (Amendment) Regulations 2020 (SI 2020/734)

44. This instrument modifies temporarily until 31 December 2020 obligations on responsible authorities and the Secretary of State with respect to documents relating to strategic environmental assessments (SEA).²² Under the Environmental Assessment of Plans and Programmes Regulations 2004 ("the SEA Regulations"), responsible authorities at local, regional and national level and the Secretary of State are required to make available documents relating to SEA for physical inspection by the public at an address; for consultees to be informed of that address; and for a copy of those

20 Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)) which are due to expire on 7 June 2021.

21 [SI 2020/568](#), as above.

22 SEA involves an assessment of the wider environmental, social and economic impacts of alternative proposals at the beginning of a project.

documents to be available to be obtained from that address. This instrument temporarily replaces this requirement with a duty to make the documents available for online inspection, and for consultees to be informed of the website address where the documents can be inspected. The temporary changes apply to all plans and programmes, and modifications to them, that are covered by the SEA Regulations. The Ministry of Housing, Communities and Local Government (MHCLG) says that while these changes could temporarily reduce access to documents for those without access to the internet at home, guidance will encourage responsible authorities to continue to provide physical copies for physical inspection where this is still possible during the pandemic. MHCLG also highlights that the instrument does not modify the obligation on responsible authorities or the Secretary of State to notify individuals who could be affected by any plans, programmes or modifications covered by the SEA Regulations.

Immigration and Nationality (Fees) (Amendment) (No. 3) Regulations 2020 (SI 2020/736)

45. These Regulations provide for reduced fees for applicants for a “Health and Care Visa” and their dependents to enter the UK and the Isle of Man. Health and Care Visas are available to qualified doctors, nurses and allied health and social care professionals working for an eligible organisation or business. The eligibility criteria are set out in “Tier 2 of the Points Based System—Policy Guidance” for the UK and in the “Confirmation of Employment Guidance” for the Isle of Man. Applicants for Health and Care Visas and their dependants are to be provided with fast-track entry and support of a dedicated team in processing visa applications and they will be exempt from paying the Immigration Health Surcharge.

Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) Order 2020 (SI 2020/776)

Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) (No. 2) Order 2020 (SI 2020/777)

46. Section 93(1) of the Scotland Act 1998 enables a Minister of the Crown to make agency arrangements for any of that Minister’s specified functions to be exercised on that Minister’s behalf by Scottish Ministers and vice versa. Under section 93(3) the functions must be specified in an Order in Council. These provisions are simply enabling and the extent to which those functions are exercised is dependent on Scottish Ministers and the Secretary of State for Health and Social Care electing to enter into subsequent arrangements.
47. The first of these Orders (SI 2020/776) would allow the use of an application software (an “app”) developed by, or on behalf of, the Secretary of State, in Scotland, designed to notify users where they may have been exposed to coronavirus and the provision of advice on what to do next. It will also enable users to report that they appear to have developed symptoms of COVID-19 and to request a test. The second (SI 2020/777) relates to the operation of the Joint Biosecurity Centre (JBC), established on 1 June 2020, including arrangements for the gathering and analysing of data concerning rates of coronavirus infection in Scotland. This will inform decision-makers’ choices in acting to prevent or mitigate the effects of further outbreaks in Scotland, and will allow the JBC to set, and to communicate to the public of Scotland (and the rest of the UK), the level of the risk of coronavirus infection on a scale of 1 (low) to 5 (critical).

Law and Order

Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 (SI 2020/751)

48. Practice Direction 51Z was introduced on a pilot basis on 27 March to protect renters and homeowners in England and Wales from eviction during the pandemic, and was later extended until 22 August 2020. This instrument implements a new, temporary, Practice Direction 55C, drawn up by a working group composed of government agencies, the judiciary, legal representatives, and members of the advice sector, to put appropriate arrangements in place for the resumption of proceedings on 24 August. As well as managing how the courts handle the backlog, it aims to make sure that all parties' interests are properly protected: tenants, landlords, lenders, local authorities, and other court users, particularly where people are vulnerable. These arrangements will be temporary until 28 March 2021, with a facility to review them in the meantime.

Delayed or revoked legislation

Motor Vehicles (Tests) (Amendment) (Coronavirus) (No. 2) Regulations 2020 (SI 2020/790)

49. In anticipation of disruption to the MOT testing regime, the Motor Vehicles (Tests) (Amendment) (Coronavirus) Regulations 2020²³ introduced a six-month exclusion to the test certificate requirement for light vehicles due to be tested between 30 March 2020 and 29 March 2021. The Department for Transport (DfT) states that as COVID-19 related restrictions are now being eased when safe to do so, and a majority of garages are now open and conducting testing, the final date on which a six-month exclusion can begin is being brought forward. The test certificate requirement will again apply to vehicles due to be tested on or after 1 August 2020. The Explanatory Memorandum states that DfT considers that the public announcement of this policy on 29 June has provided adequate notice to interested persons, but we note that the instrument arrived nearly a month later and after the Commons had risen for the Summer—thus preventing scrutiny before the legislation came into effect.

23 Motor Vehicles (Tests) (Amendment) (Coronavirus) Regulations 2020 ([SI 2020/382](#)).

INSTRUMENTS OF INTEREST

Draft Immigration (Health Charge) (Amendment) Order 2020

50. The immigration health charge is payable by non-European Economic Area nationals who enter the UK for more than six months, subject to certain exemptions listed in Schedule 2 of the Immigration (Health Charge) Order 2015. Those who pay the immigration health charge can access NHS services for free (apart from any standard charges UK residents must also pay, such as for prescriptions and dental treatment in England). In our 11th Report of this session²⁴ we particularly noted that the version of this instrument laid on 19 March 2020 proposed to bring the health charge up to the level of the average cost of use (“full cost recovery”), which is normal practice for all government fees and charges.
51. On 21 July, the draft instrument was withdrawn and replaced by a new version which, in addition, exempts NHS and care workers who apply for a Tier 2 (General) Health and Care Visa from this charge. (This links with SI 2020/736 described [above in the Report].) However, the Home Office failed to inform Parliament adequately in the Explanatory Memorandum of how and why the text of the instrument had been changed; in the interests of transparency, we have therefore asked for it to be revised.

Court Fees (Miscellaneous Amendments) Order 2020 (SI 2020/720)

52. The Ministry of Justice has undertaken a review of civil and family fees using volume and cost data for 2018–19 and then applying inflation rates to uprate them to anticipate costs for 2020–21. This mapping exercise has identified a number of fees which have recovered above cost without the necessary Parliamentary approval. This instrument therefore regularises the position for items including certain fees for Non-contentious Probate, Family Proceedings, Civil Proceedings and Magistrates’ Courts set out in Annex A to the Explanatory Memorandum (EM). Resetting these fees to full cost recovery level is expected to reduce HM Courts and Tribunal Service’s fee income by around £1.3–1.6 million per annum.
53. Many of the fees are reduced by more than half and the reduction is often £60–£70. We note that, according to the EM, at paragraph 7.5, “a refund scheme will not be launched in respect of the fees that are reduced in this instrument”—the reason given being “because they were at or below a reasonable predictive estimate of costs, based on the information available at that time”. **The House may wish to ask the Minister for further information about the decision not to refund those who had paid fees above cost, and what estimate MoJ has made of the number of people affected who have paid fees above cost and what the total cost would have been had a decision been taken to allow refunds.**

Marriage and Civil Partnership (Northern Ireland) Regulations 2020 (SI 2020/742)

54. The Northern Ireland (Executive Formation etc) Act 2019 imposed duties on the Secretary of State to make regulations on marriage and civil partnership in the absence of a restored Northern Ireland Executive by

24 [11th Report](#), (Session 2019–21, HL Paper 49).

21 October 2019. The first stage of implementation was for civil unions;²⁵ these Regulations set out the arrangements for same-sex religious marriage under Northern Ireland Law. The Regulations also provide protections for those religious bodies and officiants who do not wish to perform same-sex religious marriages, or otherwise celebrate same-sex marriages or civil partnerships. This includes amending the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006²⁶ to provide that it is not unlawful discrimination for organisations relating to religion or belief to impose sexual orientation restrictions in connection with the solemnisation of marriage. The Explanatory Memorandum (EM) states those protections are broadly similar to those in England and Wales. The proposals were subject to extensive consultation and the EM states they received strong support from a large number of individuals and organisations.²⁷

Family Procedure (Amendment No. 2) Rules 2020 (SI 2020/758)

55. These Rules amend the Family Procedure Rules 2010²⁸ and supporting Practice Directions by substituting a new Part 37 that streamlines and simplifies the process for proceedings for contempt of court. This mirrors the changes made by the Civil Procedure (Amendment No. 3) Rules 2020.²⁹ Stimulated by issues arising in the case of *R v Stephen Yaxley-Lennon (aka Tommy Robinson)* in 2018³⁰, the Civil Procedure Rule Committee ran a public consultation from 9 March 2020 to 11 May 2020 on the codification and simplification of contempt rules in civil cases. **We regard the reviewing and updating of procedure in this way as improving transparency and as illustrating best practice.**

Criminal Procedure Rules 2020 (SI 2020/759)

56. The rules for the conduct of criminal cases in the courts are regularly updated to reflect new legislation, relevant judgments and best practice. To aid clarity, the Criminal Procedure Rules Committee has decided to issue a consolidated version every five years. This is the latest such consolidation. It includes the various temporary measures put forward for the pandemic period. It also removes duplications and clarifies certain issues that have been identified during the compilation process and makes further revisions that have arisen during the last six months (see full list in the Explanatory Memorandum). In between these five-yearly reviews an informal consolidated text is available to the public free of charge on the Ministry of Justice website.³¹ **We regard both these actions as best practice as they ensure that the Rules are clear, up to date and accessible to all.**

25 Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (SI 2019/1514), see our [1st Report](#) (Session 2019–2021, HL Paper 6).

26 Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR 2006/439).

27 HM Government, *Same-sex religious marriage in Northern Ireland: UK Government consultation responses* (16 July 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901458/FINAL_Government_response_to_the_same_sex_marriage_consultation_16_July_2020.pdf [accessed 22 July 2020].

28 Family Procedure Rules 2010 (SI 2010/2955).

29 Civil Procedure (Amendment No. 3) Rules 2020 (SI 2020/747) (rule 15 and Schedule); also considered this week.

30 Court of Appeal (Criminal Division), *R v Stephen Yaxley-Lennon (aka Tommy Robinson)*, [EWCA Crim 1856](#).

31 Presently at Ministry of Justice, Rules and Practice Directions (last updated 14 July 2020): <http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu2015> [accessed 22 July 2020].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

European Structural and Investment Funds Common Provisions and Common Provisions Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020

European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020

Immigration (Health Charge) (Amendment) Order 2020

Infrastructure Planning (Electricity Storage Facilities) Order 2020

Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020

Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020

Square Kilometre Array Observatory (Immunities and Privileges) Order 2020

Made instruments subject to affirmative approval

SI 2020/750 Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020

SI 2020/754 Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) Regulations 2020

SI 2020/783 Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment) Regulations 2020

SI 2020/787 Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) (No. 2) Regulations 2020

SI 2020/788 Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 2) Regulations 2020

SI 2020/791 Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020

SI 2020/800 Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Luton) Regulations 2020

Draft instruments subject to annulment

London Borough of Enfield (Electoral Changes) Order 2020

Instruments subject to annulment

- SI 2020/720 Court Fees (Miscellaneous Amendments) Order 2020
- SI 2020/721 M23 Motorway (Gatwick Spur 50 Miles Per Hour Speed Limit) Regulations 2020
- SI 2020/731 Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020
- SI 2020/733 Yemen (Sanctions) (EU Exit) Regulations 2020
- SI 2020/734 Environmental Assessment of Plans and Programmes (Coronavirus) (Amendment) Regulations 2020
- SI 2020/735 Motor Vehicles (International Motor Insurance Card) (Amendment) Regulations 2020
- SI 2020/736 Immigration and Nationality (Fees) (Amendment) (No. 3) Regulations 2020
- SI 2020/738 Official Feed and Food Controls (England) (Amendment) Regulations 2020
- SI 2020/739 Home Loss Payments (Prescribed Amounts) (England) Regulations 2020
- SI 2020/742 Marriage and Civil Partnership (Northern Ireland) Regulations 2020
- SI 2020/744 Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020
- SI 2020/751 Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020
- SI 2020/753 Sudan (Sanctions) (EU Exit) Regulations 2020
- SI 2020/758 Family Procedure (Amendment No. 2) Rules 2020
- SI 2020/759 Criminal Procedure Rules 2020
- SI 2020/776 Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) Order 2020
- SI 2020/777 Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) (No. 2) Order 2020
- SI 2020/790 Motor Vehicles (Tests) (Amendment) (Coronavirus) (No. 2) Regulations 2020
- SI 2020/799 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 3) Regulations 2020
- SI 2020/805 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 4) Regulations 2020

APPENDIX 1: DRAFT DEBT RESPITE SCHEME (BREATHING SPACE MORATORIUM AND MENTAL HEALTH CRISIS MORATORIUM) (ENGLAND AND WALES) REGULATIONS 2020

Additional information provided by HM Treasury

Q1: Subject to Parliamentary approval, most of the proposals will come into force on 4 May 2021. The EM refers to an implementation date in ‘early 2021’ at para 6.2. When does HMT plan to launch the new moratorium?

A1: 4 May 2021 – apologies, para 6.2 should also include this date.

Q2: The EM says that the instrument represents the first part of a debt respite scheme—what is the second part and when does HMT plan to implement it?

A2: The second part is the Statutory Debt Repayment Plan, a statutory agreement that will enable a person in problem debt to repay their debts to a manageable timetable, with legal protections from creditor action for the duration of their plan. As set out in last June’s consultation response the Government intends to implement the SDRP over a longer timeframe, but has not set a specific implementation date for this part of the scheme.

Q3: Which types of debt qualify for the moratorium – only financial debt (e.g. bank or consumer loans, gambling) or are other liabilities such as from utilities or in relation to personal or council tax or benefit repayments also covered? Are there any minimum debt thresholds and maximum debt limits below/above which the moratorium cannot be used?

A3: All of an individual’s debts can be included in a breathing space, unless it is a non-eligible debt under regulation 5(4). There are no maximum/minimum limits.

Q4: Are there types of debts which are exempt from the moratorium, if so, what types are excluded?

A4: See answer above – non-eligible debts are set out in regulation 5(4).

Q5: Do debts of a small business also qualify for the moratorium and, if so, are there any thresholds and limits?

A5: As set out in regulation 5(6)(d) an individual’s business debts are not eligible if the debtor’s business is registered for VAT, or if they are in partnership with anyone else and the debt they have accrued relates solely to the business.

Q6: What happens with ongoing liabilities, such as utility bills – are they also frozen during the moratorium?

A6: Breathing space is not a payment holiday. The person should keep paying their ongoing liabilities (defined in regulation 2, including mortgage, rent, insurance, taxes and utility bills) as they fall due. If they do not, and the debt adviser considers they have the means to do so, the debt adviser must decide to cancel their moratorium at the midway review unless the debtor’s personal circumstances would make it unfair or unreasonable.

Q7: Is there any difference in the types of debt that qualify for a regular moratorium as opposed to the mental health crisis moratorium?

A7: No.

Q8: How is professional debt advice defined that needs to be in place for the moratorium – can this only be provided by certain accredited organisations and how easily can debtors access it? Is there a process how the moratorium is then accessed via the professional debt advice?

A8: As set out in regulation 3, a moratorium may only be initiated by an authorised person who has Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt-counselling) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or by exempt persons in relation to that activity (such as a local authority). The moratorium would be an option that any debt adviser meeting this description could offer, via online, telephone or face-to-face advice, provided the debtor met the eligibility criteria. The debt adviser would not be able to charge a fee.

Q9: What is the rationale for the 60-day period—how was this period identified as the best option? Can it be extended, e.g. where a repayment plan is still in the process of being set up or in special hardship cases?

A9: Campaigners originally proposed a six-week breathing space, which the Government proposed to extend to 60 days in its 2018 consultation. As set out in the 2019 consultation response, almost all consultation respondents welcomed the extension of the length of breathing space to sixty days, suggesting that this was a realistic length to enable an individual to seek debt advice and enter a sustainable debt solution. Breathing space cannot be extended, as the fixed period provides certainty to creditors. The only exception to this is in the mental health crisis moratorium, where the protections last for as long as the individual's crisis treatment lasts, plus a further 30 days.

Q10: What is the process for people for accessing the mental health crises moratorium—how are people made aware of it?

A10: As set out in the 2019 consultation response, Approved Mental Health Professionals (AMHPs) will be the professional group able to produce an assessment that an individual is receiving mental health crisis care to enter a mental health crisis moratorium. AMHPs may do this themselves, or because they are requested to do so, by the debtor or someone else involved in their care. This assessment will be the evidence that debt advisers then use to determine an individual's eligibility for a mental health crisis moratorium and enter them into the protections of the scheme. The government will publish guidance for AMHPs later this year and work to make this a straightforward and low burden process for AMHPs, including by developing a standard form to use for assessments as part of professional guidance on the scheme.

Q11: Para 11.1 of the EM refers to guidance and other forms of publicity. Is there more specific information about how the Government will raise awareness of the new moratorium?

A11: The Government intends to publish non-statutory guidance for creditors, debt advice providers and (in the case of the mental health crisis moratorium) for AMHPs later this year. The Government will work with the Money and Pensions Service, other Government departments, creditors and debt advice providers to raise awareness of the scheme.

20 July 2020

Q12: Could you confirm whether the moratorium covers arrears owed to central and local government, including council tax arrears, personal tax debts and benefit overpayments?

A12: Yes, these debts are included. For the avoidance of doubt:

Some specific public sector debts are excluded by regulation 5(4), mirroring the position in bankruptcy (e.g. debts incurred as a result of fraudulent behaviour; fines imposed by a court, including criminal fines; confiscation orders; child maintenance payments and debts that arise after an order made in family proceedings; social fund loans; student loans and personal injury liabilities)

If an individual enters breathing space in arrears on monthly council tax payments before the full outstanding annual bill has been requested, only outstanding monthly arrears owed on the debt will be included in the protections. The individual would continue to face enforcement action if they did not pay their ongoing monthly bill for council tax, given that council tax is an 'ongoing liability'. However, if the individual had been served with a notice requiring payment of the full remaining bill by the time they enter breathing space, the whole of the amount contained in that notice will be included in the protections of breathing space.

Universal Credit advances and UC third party deductions are currently excluded, but will be included in the protections on a phased basis as early as possible following the start of the policy in early 2021, to ensure that IT changes required align with other requirements of the wider Universal Credit programme.

Q13: Para 7.7 suggests with regard to the mental health crisis moratorium that the protections will apply for the duration of the crisis treatment and then for a further 30 days. It then says that "If eligible, debtors will then have access to the 60-day Breathing Space moratorium." Does that mean that in total the moratorium for those in a mental health crisis could be the period of the crisis treatment + 30 days + (potentially) 60 days?

A13: Yes, although this would only be the case if the debtor were to receive debt advice and be considered to be eligible for a breathing space moratorium once their mental health crisis moratorium ended.

Q14: Does the instrument propose a private register along the lines set out in the consultation response? And does proactive notification mean that an individual's creditor will be alerted when that individual enters a moratorium? Who will manage the register?

A14: Part 4 sets out how the electronic system (including the register) will work.

It will be a private register as set out in the 2019 consultation response (regulation 35(4) sets out entitlements to information held by the register, and regulation 35(5) limits the information a creditor may access.

Creditors identified by the debt adviser will receive a notification when an individual enters breathing space (regulation 35(2)).

The duties/powers re: the electronic system and register lie with the Secretary of State; in practice this will be BEIS, acting through the Insolvency Service.

22 July 2020

APPENDIX 2: CORRESPONDENCE: FLOW AND VOLUME OF BREXIT-RELATED SECONDARY LEGISLATION

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Jacob Rees-Mogg MP, Leader of the House of Commons

Following my letter to you of 1 July, I am writing on behalf of the Secondary Legislation Scrutiny Committee (SLSC) to seek information about the volume and flow of Brexit-related legislation in the forthcoming months. As we approach the end of the transition period, we anticipate that there will be a surge in Brexit-related instruments. We have in the past been given estimates of the volume and flow of instruments by the Government. See, for example, our 42nd Report, Session 2017–19, HL Paper 214 in we publish correspondence from Mr Heaton-Harris MP, on behalf of the former Department for Exiting the European Union, about the volume and flow during October 2018 to March 2019. This information enabled us to resource the committee appropriately so that we were able to scrutinise instruments effectively for the assistance of the House and at a pace that met the needs of the Government.

So that we can ensure thorough and timely scrutiny of forthcoming Brexit-related instruments, I would be grateful if you could provide the following information for each of the months of **September, October, November and December 2020**:

- Approximately how many instruments will be laid in each of those months?
- Of the total laid each month, how many will be Brexit-related and how many will be non-Brexit?
- Of the total laid each month, how many will be affirmative instruments, and of those how many made affirmative instruments, and how many negative instruments?
- Approximately how many proposed negative instruments will be laid?

Please could you also indicate which departments are likely to laying the preponderance of instruments.

I understand that you may only be able to provide indicative figures at this stage. We will invite you provide further figures as the programme of laying crystallises. I have no doubt that these figures will be of assistance also to the Joint Committee on Statutory Instruments and the European Statutory Instruments Committee. I am therefore copying this letter to their respective Chairs, Jessica Morden MP and Andrew Jones MP.

Finally, I know that you will understand that it would assist the various scrutiny committees if the flow of instruments, over what is likely to be a busy period, were as even as possible. While we know that it will be necessary to accommodate some fluctuations in the rate of laying, we would urge the Government to make every effort to ensure these are at a minimum.

16 July 2020

Letter from Jacob Rees-Mogg MP to Lord Hodgson

Thank you for your letter of 15 July regarding the upcoming programme of Transition Period statutory instruments (SIs) between September and December 2020. The Government is keen to assist your Committee and the Joint Committee on Statutory Instruments in its scrutiny function.

The Parliamentary Business and Legislation (PBL) Committee works with all departments to prepare the Government's legislative programme. We expect to lay between 250–300 Brexit-related SIs before the end of the year to ensure readiness for the end of the Transition Period. Of these, we expect approximately 55% will be subject to the affirmative procedure and 45% subject to the negative procedure.

As negotiations continue and policy positions become clearer, departments are working to finalise their programmes and the required procedures. Currently the biggest departmental programmes are likely to be HMRC and the Department for Environment and Rural Affairs. You will understand that it is difficult to provide precise details at this stage but I hope that the indicative figures below provide assurances to the Committee and assist in your planning. The laying of draft affirmative instruments is likely to be concentrated in September and October due to the policy content of the majority of SIs being dependent on the outcome of negotiations. It is therefore not possible to lay these earlier than in Autumn.

The current breakdown is as follows:

- 40–50 SIs in September
- 80–100 SIs in October
- 30–40 SIs in November
- 50–60 SIs in December

The PBL Committee continues to work closely with departments to ensure that they only prioritise critical legislation between September and December. However, it is not possible to provide an indicative figure of the number of non-Brexit-related SIs we expect to lay at this time. Not least because further secondary legislation will be needed as the Government continues to respond to the Coronavirus pandemic on which we continue to provide regular updates.

21 July 2020

APPENDIX 3: 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 28 July 2020, Members declared no interests.

Attendance:

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord German, Viscount Hanworth, Lord Hodgson of Astley Abbotts, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.