HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

10th Report of Session 2022–23

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

Drawn to the special attention of the House

Universal Credit (Transitional Provisions) Amendment Regulations 2022

Includes information paragraphs on:

Draft Drivers' Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations 2022

Draft Merchant Shipping (Safety Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022

Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2022

Russia (Sanctions) (EU Exit) (Amendment) (No. 11) Regulations 2022

Parole Board (Amendment) Rules 2022

Football Spectators (Seating) Order 2022

Occupational Pension Schemes (Climate Change Governance and Reporting) (Amendment, Modification and Transitional Provision) Regulations 2022

Statutory Auditors and Third Country Auditors (Amendment) Regulations 2022

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 13 May 2021, are set out on the website but are, broadly:

To report on draft instruments published under paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018; to report on draft instruments and memoranda laid before Parliament under sections 8 and 23(1) of the European Union (Withdrawal) Act 2018 and section 31 of the European Union (Future Relationship) Act 2020.

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.

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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 https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/

Committee Staff

The staff of the Committee are Sarah Jones (Clerk), Philipp Mende (Adviser), Jane White (Adviser) and Emily Pughe (Committee Operations Officer).

Further Information

Further information about the Committee is available at https://committees.parliament.uk/committee/255/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.

Tenth Report

INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Proposed negative instruments about which no recommendation to upgrade is made

- Animals Food Plant Health Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022
- European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022
- Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Universal Credit (Transitional Provisions) Amendment Regulations 2022 (SI 2022/752)

Date laid: 4 July

Parliamentary procedure: Negative

Among other changes, these Regulations remove the requirement for the Department for Work and Pensions (DWP) to return to Parliament after migrating 10,000 claimants to Universal Credit from legacy benefits. That stage gate in the national rollout programme was inserted in 2019 after concern was expressed by a number of bodies, including this Committee, about DWP's capacity and competence to move up to 3 million claimants onto the new benefit without imposing hardship on them. Gearing up to deal with more claims during the pandemic may well have given DWP more relevant experience, but it provides no evidence in the Explanatory Memorandum (EM) of the current turnaround times or claimant experience to support this view.

Our previous reports included an extensive list of problem areas on the migration process, such as the "hard stop" and the transfer of Employment and Support Allowance claimants from a fortnightly payment to a four-week schedule. Our concerns were not simply an issue about gearing up IT platforms and administrative capacity, but also about the practical impacts that these changes might have on benefit claimants. ***DWP has been entirely silent on these issues in the EM for these Regulations.***

DWP is currently conducting small pilots to gather information to formulate its strategy for the managed migration of claimants. ***The Department does not yet have a firm plan for achieving its objective of completing the transition by the end of 2024, nor does it explain why providing evidence to Parliament after 10,000 claims would obstruct that objective.*** *We therefore still take the view that the House has been given insufficient detail to make an informed decision about DWP's proposals.*

In 2019 the then Secretary of State, Amber Rudd MP, undertook to gather evidence and return with it to Parliament, to seek permission to complete the migration. That undertaking has been overturned by this instrument without explaining either why that promise will not be fulfilled or offering alternative briefing to this House. This is particularly important because ***removing the 10,000 claimant cap also removes the requirement for further legislation before DWP can expand the rollout nationally. In doing this, DWP also removes any obligation to involve Parliament, particularly the House of Lords, in the decision to expand the rollout.***

We wrote to DWP to ask for further justification for the removal of the cap, but the response, published in Appendix 1 to this report, does not provide any additional explanation.

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

1. As a whole these Regulations are a list of minor updates and clarifications to tidy up the Universal Credit legislation prior to the restart of the Department for Work and Pensions' (DWP) "managed migration" of all remaining claimants on "legacy benefits"[1] to the new system. It is a negative instrument that takes effect on 25 July 2022.

2. What caught our attention was that these Regulations also remove the requirement for DWP to return to Parliament with evidence about the pilot stage of the project (capped at 10,000 migration notices issued). That cap was inserted to require DWP to seek permission through further legislation before being able to roll out the migration project nationally. In the Explanatory Memorandum (EM) DWP asserts that, having scaled up rapidly to cope with changes in demand during the pandemic, the concerns that applied in 2018 are redundant, but no hard evidence is provided to support that view.

The previous Regulations

3. Our 8th Report of Session 2017–19[2] raised such extensive concerns about the original *draft Universal Credit (Managed Migration) Regulations 2018* that they were withdrawn. Supported by written evidence from a number of charities and a report from the National Audit Office (NAO), our report questioned whether DWP had the capacity to make the changeover. In particular, there was concern that a claimant should not be forced into debt because they had been given insufficient funds to match their calculated needs for the transfer period. The NAO had reported that in March 2018, 21% of new claimants did not receive their full entitlement on time, and 13% received no payment at all.[3]

4. Our 8th Report concluded:

> "**We take the view that the House has been given insufficient detail to make an informed decision about DWP's proposals.** Given the large number of unknowns, and the particular difficulty and risks involved in transferring three quarters of a million very vulnerable claimants to Universal Credit, **it seems that DWP may have acted prematurely in seeking such extensive powers."**

5. Those Regulations were replaced in January 2019 by the Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 (SI 2019/10) ("the 2019 Regulations") which introduced the capped pilot and removed claimants in receipt of Severe Disability Payments (SDP) from the migration until arrangements for Transitional Protection were in place to prevent them losing money in the changeover (due to the different way the benefits for disability are calculated in Universal Credit). Our 14th Report of Session 2017–19[4] welcomed those changes but reprised the list of other concerns about the migration proposals that had not been addressed. We concluded:

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1 Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Working Tax Credit and Child Tax Credit.

2 Secondary Legislation Scrutiny Committee (SLSC) (Sub-Committee B), 8th Report (Session 2018–19, HL Paper 244).

3 National Audit Office, *Rolling out Universal Credit* (15 June 2018): https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit-Summary.pdf [accessed 19 July 2022].

4 SLSC, (Sub-Committee B), 14th Report (Session 2017–19, HL Paper 273)

> "Both DWP and Parliament will wish to examine the outcome of the pilot carefully before taking a view on whether the rest of the migration should proceed. This Committee will take particular interest in how the result of the pilot shapes the further regulations that DWP will need to bring forward to begin the bulk transfer of legacy claims and will expect that legislation to provide a satisfactory solution to all the issues raised in this report."

The Migration Pilot restarts

6. Unfortunately, due to the pandemic the initial pilot scheme in Harrogate was stopped after only 38 people had been transferred. In a Written Statement5 on 25 April 2022 announcing the recommencement of the migration project, DWP explained that 35 of the 38 people had found themselves better off on Universal Credit, but it also acknowledged that that pilot did not include anyone on Working Tax Credits, a group with whom DWP has no direct relationship.

7. The Written Statement announced that, under the provisions of the 2019 Regulations, DWP would be starting a new pilot in May 2022 for the mandatory migration process, initially with 500 claimants [in Bolton and Medway]. The process would be developed iteratively until being scaled up rapidly in 2024 and completed by the end of that year. The Written Statement indicated that amendments to the 2019 Regulations would be brought forward after their consideration by the Social Security Advisory Committee (SSAC) but did not mention the intention to remove the cap.

8. The Written Statement also announced the publication of a policy paper *Completing the Move to Universal Credit*,[6] which mainly outlines the size of the task rather than giving any detail on how DWP plans to complete the implementation of Universal Credit.

9. That document estimates that there were 2.6 million households on legacy benefits in April 2022. Of those DWP estimates that:

   - around 1.4 million (55%) would have a higher entitlement on Universal Credit;
   - 300,000 would see no change; and
   - approximately 900,000 households (35%) would have a lower entitlement. Of those, DWP estimates that approximately 600,000 households will receive transitional protection through managed migration, while the others will either leave benefits, migrate naturally before DWP asks them to move, or receive a severe disability transitional payment.

10. In this programme DWP identifies three types of transition:

    - **Natural Move**–those on legacy benefits who experience a change in circumstances have to make their revised claim as Universal Credit. DWP estimates this cadre could be up to 1.4 million households.

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5 Written Statement HLWS 757, Session 2022–23.

6 Department for Work and Pensions, 'Completing the move to Universal Credit': https://www.gov.uk/government/publications/completing-the-move-to-universal-credit/completing-the-move-to-universal-credit--2 [accessed 19 July 2022].

- **Voluntary Move**–DWP aims to encourage those who could be financially better off to move to Universal Credit voluntarily.

- **Managed migration**–those that do not choose to move of their own accord will be issued with a letter instructing them to make a claim for Universal Credit. The Minister's letter in Appendix 1 estimates this will apply to 1.6 million households. Those who fail to comply will have their existing benefit stopped after three months ("the hard stop").

11. It should also be noted that people who choose to move voluntarily are not entitled to transitional protection. Transitional protection is a mark time payment to those whose entitlement is lower under Universal Credit to ensure that they will see no difference in their entitlement at the point of changeover. However, the protection element will erode over time. This distinction illustrates why it is important that DWP's communications to claimants are clear and understandable, because once an application to move to Universal Credit is made, there is no reverting to previous benefits. **Finding appropriate ways to communicate with claimants was to be a key objective of the capped pilot** since the charities quoted in our 8th Report told us that there would be a significant number of claimants with health problems or disabilities who would ignore letters and only notice when their money stopped.

The SSAC's concerns

12. For benefits matters the DWP has a statutory consultee, the Social Security Advisory Committee (SSAC). It has received much more information on DWP's plans for the migration than us, but its recent report[7], which focuses mainly on regulation 9 relating to the removal of the cap, still casts doubt on the Department's capacity to meet its ambitions. It notes the following:

- "Having conducted this review, the Committee continues to have concerns about the consequences of the removal from existing legislation of the pilot which would limit the number of migration notices issued to 10,000, and the associated removal of the commitment by a recent Secretary of State to return to Parliament "with the legislation which we will need for future managed migration". **In the absence of such a stage-gate, we are not convinced that the governance arrangements currently in place are sufficiently robust to safeguard against, or put strong mitigations in place for, those risks which have the potential to impact adversely upon up to 1.7million households** and to affect public confidence in the programme."

- **"While we have been given positive feedback about the Department's performance, there is no publicly available evidence to support those claims**. One external expert we interviewed likened the UC Programme to an aircraft's 'black box', with little real-time visibility from the outside of how any of the Programme's decisions are made, or of its performance and milestones achieved."

7 Department for Work and Pensions, *The Universal Credit (Transitional Provisions) Amendment Regulations 2022 (SI 2022/****)* (July 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1087706/universal-credit-transitional-provisions-amendment-regulations-2022-print.pdf [accessed 19 July 2022].

- "There will be a critical moment in time when the UC Programme has ended both the discovery phase and the gradual scaling phase and starts the steep scaling phase. We are told that this is likely to happen in the second half of 2023, and it can best be visualised by comparing it to the upwards trajectory implied by the handle of a hockey stick. There is no question that this presents the most significant risk in the programme by far. Any oversights or missteps could be to the detriment of very large numbers of claimants. **We understand that there is no particular mechanism in place to identify the optimal point in time for that steep scaling phase to begin, nor any currently defined criteria to determine whether or not the UC Programme is ready to make that significant step**."

13. The SSAC's concerns are downplayed in the Department's EM, which simply says "The committee did not recommend any changes to the regulations, though made recommendations on the operation of the migration process." The Secretary of State's response to the SSAC "formally notes" their recommendations on programme governance, operational matters, and engagement with stakeholders, particularly Parliament.

14. Two of the SSAC's key recommendations are that the DWP's Senior Responsible Officer for Managed Migration should provide the House of Commons Work and Pensions Select Committee with periodic reports on the project's performance against key milestones (recommendation 4), and in particular that the scaling-up proposals should be provided for scrutiny and assurance before proceeding (recommendation 9). This does not seem to indicate that the SSAC feels that the removal of "gateways" from the programme is fully justified.

Scrutiny by the House of Commons Work and Pensions Select Committee

15. The House of Commons Work and Pensions Select Committee has already engaged with the Secretary of State, the Rt Hon Dr Thérèse Coffey MP, on this issue. An exchange of correspondence asked questions about many of the issues that our 8th and 14th Reports raised, in particular the "hard stop".[8] In her response of 17 May 2022, Dr Coffey confirms the intention that those who fail to claim after three months will have their benefit stopped, but during the discovery phase DWP will give them a further one month extension to the deadline outlined in their notice, during which staff will undertake proactive engagement with the claimant to understand why they have not claimed.

16. The Work and Pensions Committee also took oral evidence from the Secretary of State on 29 June 2022.[9] The Secretary of State explained that the Department is building a more agile IT system for this purpose as part of a general programme of moving all of DWP's systems to more modern platforms. In response to a question on the removal of the 10,000 cap Dr Coffey said:

> "The work is underway in terms of what we call discovery and developing the process, but in terms of our infrastructure and ability to manage big influxes into universal credit, we demonstrated that to a huge extent

8 Work and Pensions Select Committee, *Correspondence* (17 May 2022): https://committees.parliament.uk/publications/22289/documents/164915/default/ [accessed 19 July 2022].

9 Oral evidence taken before the Work and Pensions Committee, HC 549 (Session 2022–23).

> during 2020 when we had one day where we had over 100,000 people claiming universal credit and we were able to pay and deliver. I am really confident that we are able to manage that claims process.
>
> We are underway on a small-scale approach, just validating approaches to see which is going to be the most effective, so it can be done at scale. Some of the regulations do not allow us to move certain people, so there are certain elements there where we wanted to be able to unlock that and to allow more testing.
>
> We learned a bit in Harrogate, but not a lot. The main thing we learned in Harrogate is not to do it the way it was done in Harrogate."

17. Peter Schofield, a DWP official who gave evidence at the same time, addressed the concerns raised by charities about the needs of vulnerable claimants[10] and Dr Coffey mentioned that DWP is using Employment and Support Allowance (ESA) claimants as an initial proxy for aspects of vulnerability. We find that of interest because one of the specific concerns in our earlier reports was about managing the transitions from ESA, which is paid every two weeks, to Universal Credit, which is paid four-weekly.

Lack of evidence

18. Splitting the migration into two stages was designed to give DWP the time and the opportunity to gather evidence, so that the Department could make a more convincing case to Parliament that it was competent to deliver the migration programme as outlined. **The EM presented fails to address any of the issues of concern or provide any evidence to support DWP's confidence.**

19. We therefore wrote to the Minister seeking a more specific justification for the removal of the 10,000 case cap on the migration. His response is included in Appendix 1 and is disappointing, simply re-iterating general material from earlier statements that did not satisfy our concerns.

Conclusion

20. **We still take the view that the House has been given insufficient detail to make an informed decision about DWP's proposals.** Many things have changed during the pandemic and most people have become more confident with online applications. DWP's assertion that the experience of scaling up for the pandemic has proved its ability to progress the migration programme may be true, but the Department has offered no evidence, for example of current turnaround times or claimant experience, to support this view.

21. The migration to Universal Credit is a huge undertaking: there are currently 2.6 million households still on legacy benefits, and up to half of them are vulnerable long-term claimants such as the sick or disabled. Our previous reports included an extensive list of problem areas on which DWP has been entirely silent: this was never simply an issue about gearing up IT or administrative capacity which appears to be DWP's main focus. **DWP needs to provide stronger evidence both of its competence to communicate successfully with the most vulnerable claimants and of its ability to transfer their claims without disrupting the flow of payments.**

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10 Q 132.

22. The then Secretary of State Amber Rudd undertook to gather evidence and return with it to Parliament, to seek permission to complete the migration.[11] That undertaking has been overturned by this instrument without explaining either why that promise will not be fulfilled or offering alternative briefing to this House. This is particularly important because removing the 10,000 cap also removes the requirement for further legislation before DWP can expand the rollout nationally. Although the House of Commons Work and Pensions Committee may have some degree of continuing influence**, by removing the cap DWP also removes any obligation to involve Parliament in the decision to expand the rollout of the managed migration programme**.

11 Department for Work and Pensions, 'Amber Rudd sets out fresh approach to Universal Credit': https://www.gov.uk/government/news/amber-rudd-sets-out-fresh-approach-to-universal-credit [accessed 19 July 2022].

INSTRUMENTS OF INTEREST

Draft Drivers' Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations 2022

23. This instrument implements some of the international road transport provisions in the Trade and Cooperation Agreement (the TCA) between the EU and the UK that followed Brexit. It applies some specialised international provisions that were removed or amended when the Department for Transport was preparing for a no-deal exit from the EU and removes some access rights for EU operators to reflect the market access conditions in the TCA.

24. These draft Regulations also include provisions to require the introduction of new tachograph equipment in goods vehicles on international journeys (also bringing into scope light goods vehicles weighing more than 2.5 tonnes). The industry has expressed concerns about the cost and availability of the "smart tachograph 2" which is currently in short supply, The capabilities of second generation tachographs include the automatic recording of a vehicle's position, including when it crosses borders and where it is loading or unloading. (This is to help check if a vehicle is being used legally because access rights can depend on whether loads are transported across borders or not.) They also have added features to prevent manipulation and improve enforcement, for example, by allowing officers to download data without stopping a vehicle. Further information is published in Appendix 2.

Draft Merchant Shipping (Safety Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022

25. These draft Regulations would retrospectively apply a number of safety requirements to passenger vessels built before 26 May 1965. Some involve structural changes, for example, measures to keep vessels afloat long enough to evacuate them or the installation of pumps and bilge alarms. Others include such basic measures as carrying adequate firefighting equipment and ensuring there are sufficient liferafts and lifejackets for all on board, including lifejackets with lights for trips at night. Some of these safety recommendations date back to Lord Justice Clarke's Thames Safety Inquiry in 1999 into the Marchioness tragedy.

26. Although the provisions have applied to more modern vessels since 2010, operators of older vessels have failed to apply the measures voluntarily. The Department for Transport (DfT) has "therefore engaged closely with industry over an extended period of time, to ensure that these Regulations address the issues in a proportionate manner". Although we note that there is continuing resistance to the measures,[12] **we find it completely unacceptable that DfT has failed to implement safety recommendations made more than 20 years ago.** In supplementary material DfT informed us that the number of vessels affected differs according to which safety feature is being considered but just over 600 vessels will be required to make changes to their fire protection equipment, 285 will need to comply with the liferaft requirements and 86 will need to comply with the lifejacket requirements. **We find this shocking: The House may wish to ask the Minister to provide a convincing explanation for the extent of the delay.**

12 There was a Westminster Hall debate on 17 March 2021 which challenged the need for the updated standards, on the basis that they could be detrimental to businesses and jobs. HC Deb, 17 March 2021, col136WH.

Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2022 (SI 2022/748)

27. The EU first adopted a sanctions regime against the Republic of Belarus in 2004 for various human rights violations. Those sanctions were reviewed and renewed[13] under the Sanctions and Anti-Money Laundering Act 2018 which facilitated the UK imposing sanctions independently once it had withdrawn from the European Union.

28. These latest Regulations, which mirror the sanctions currently imposed on Russia, came into effect on 5 July 2022 (using the made affirmative procedure). They widened the scope of the existing trade and financial sanctions and introduced a ban on Belarusian aircraft and shipping landing in the UK. These sanctions have been extended because of the Belarusian regime's direct support to Russia since its invasion of the Ukraine, in particular in providing logistical support and in allowing Russian troops to conduct offensive air and land operations from Belarus' territory.

Russia (Sanctions) (EU Exit) (Amendment) (No. 11) Regulations 2022 (SI 2022/792)

29. This instrument is laid to revoke and replace the Russia (Sanctions) (EU Exit) (Amendment) (No. 10) Regulations,[14] which came into effect on 23 June 2022. It corrects a number of errors but otherwise makes the same provisions as that instrument which extended the restrictions on trade with Russia by prohibiting the export, supply, delivery, making available and transfer of more items in the following categories to, or for use in, Russia:

- Chemical and biological goods and technology
- Defence and security goods and technology that could be used in Russia or non-government controlled Ukrainian territory occupied by Russia
- Maritime goods and technology
- Jet fuel and fuel additives
- Oil refining goods and technology
- Sterling or EU denomination banknotes

30. The errors mainly related to prohibitions which were not within the powers of the Sanctions and Anti-Money Laundering Act 2018 in relation to maritime technology and relevant restricted technology and interception and monitoring. The replacement uses the made affirmative procedure and does not disrupt the continuity of the sanctions regime for the other items listed.

Parole Board (Amendment) Rules 2022 (SI 2022/717)

31. As well as making a number of administrative clarifications to the Parole Board Rules system, this statutory instrument implements a manifesto commitment to allow the Parole Board of England and Wales to hold public hearings in some limited circumstances. It will allow anyone including prisoners, victims, members of the public or the media to ask the Board to hold a hearing in public, but it will remain for the Chair of the Parole Board to decide whether it is in the interests of justice to do so. The Government anticipate fewer than five public hearings per year initially—the reasons for

13 Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (SI 2019/600).
14 Russia (Sanctions) (EU Exit) (Amendment) (No. 10) Regulations 2022 (SI 2022/689), see: SLSC, 6th Report (Session 2022–23, HL Paper 31).

that and the criteria to be used are outlined in further information from the Ministry of Justice included at Appendix 3. We note that, in that additional material, the wording of the interests of justice test used in these Regulations mirrors that of the First Tier Tribunal for Mental Health which has only ever heard two cases in public. **The conditions and caveats are so extensive that it is unclear to us whether the policy intention of providing greater transparency into the workings of the Parole Board will be achieved by this instrument.**

32. The instrument also sets out the procedural rules for two provisions of the Police, Crime, Sentencing & Courts Act 2022: the provision for the Parole Board to set aside its own decisions, and a change to the way licence termination is considered for those sentenced to Imprisonment for Public Protection. In addition, the instrument changes the way written reports are presented to the Parole Board. For those convicted of the most serious crimes the Secretary of State will, in future, present the Board with a single view about the suitability of a prisoner for release, which takes account of all the written evidence. For other crimes a dossier of reports from prison and parole staff who have worked with the offender (covering the topics listed in schedule 2 of the main Rules) will still be considered, but it will be the Parole Board's responsibility to reach a decision about whether the prisoner is safe to be released or should stay in prison for the protection of the public.

Football Spectators (Seating) Order 2022 (SI 2022/728)

33. This Order will allow all football clubs which are currently subject to an all-seater policy to admit spectators to their home grounds to watch football matches whilst standing, if certain conditions are met and in areas of the ground where the seating has been adapted with barriers to reduce any safety risks. The Department for Digital, Culture, Media and Sport (DCMS) explains that following the 1989 Hillsborough Stadium disaster, an all-seater policy has been in place in the top two divisions of English football since August 1994,[15] but that following major structural improvements, football grounds are now much safer for spectators. DCMS says that despite the all-seater policy, there have been issues with persistent standing leading to safety risks, such as injury, customer care issues in relation to disabled or young spectators, and crowd management, including the risk of conflict between fans and stewards who attempt to enforce the all-seater policy.

34. According to DCMS, an early adopter programme[16] which allowed standing at five football clubs[17] in the second half of the 2021–22 football season was successful. The programme's independent evaluation[18] concluded that given the positive impact on the safety of fans and the lack of any evidence that it increased disorder or anti-social behaviour, all clubs should be allowed to introduce licensed standing areas. DCMS says that this will help mitigate the risk of progressive crowd collapse and related risks to spectator safety from the persistent standing in conventional seating areas that currently occurs at football grounds in England and Wales.

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15 These are the Premier League and the Championship, the second division of football in England and Wales.

16 Football Spectators (Seating) Order 2021 (SI 2021/1239), see: SLSC, 21st Report (Session 2021–22, HL Paper 109).

17 Cardiff City, Chelsea, Manchester City, Manchester United and Tottenham Hotspur.

18 CFE Research, *Early adopters of licensed standing areas in football stadia* (July 2022): https://sgsa.org.uk/wp-content/uploads/2022/07/Early-adopters-of-licensed-standing-areas-CFE-Research-evaluation-July-2022.pdf [accessed 19 July 2022].

Occupational Pension Schemes (Climate Change Governance and Reporting) (Amendment, Modification and Transitional Provision) Regulations 2022 (SI 2022/733)

35. From 1 October 2022 this instrument introduces additional requirements for trustees of certain occupational pension schemes to calculate and disclose *a "portfolio alignment metric"* describing the extent to which the scheme's assets are aligned with the climate change goal of limiting the increase in the global average temperature to 1.5°C above pre-industrial levels. The Department for Work and Pensions (DWP) states that UK pension schemes' investments are internationally diversified, with overseas investment being a key element of the investment strategy, especially in relation to equities and so are acutely affected by a global transition. This change aims to ensure that the governance of those schemes effectively takes into account the recommendations[19] of the Taskforce for Climate Related Financial Disclosures.[20] We asked DWP for more specific information on what was involved in these calculations and also reiterated our concerns about the cumulative burdens being imposed on trustees and cumulative costs on pension schemes: the department's reply is included at Appendix 4.

36. **We note that the Department gives no explanation of exactly how this legislation is expected to contribute to the goal of limiting the increase in the global average temperature. We therefore take the view that it increases burdens on pensions schemes for an outcome of questionable efficacy, at further cost to pensioners and to the gain only of specialist consultants. At some point the overall value for money and effectiveness of the current regulatory regime will need to be tested in the light of these increased burdens.**

Statutory Auditors and Third Country Auditors (Amendment) Regulations 2022 (SI 2022/762)

37. This instrument makes indefinite the approval of the USA as a fully equivalent third country, and the approval of its audit regulatory authorities as "approved third country competent authorities",[21] on account of the full adequacy of their arrangements for the transfer of audit working papers and investigation reports. The Department for Business, Energy and Industrial Strategy (BEIS) says that the approvals will come into effect before 31 July 2022, when the current time-limited provisional approvals of the USA as an equivalent third country and of its competent authorities as adequate would otherwise expire. This makes permanent arrangements that were originally introduced on a provisional basis to prepare the UK's audit regulatory regime for Brexit. BEIS says that the aim is to ensure that the UK's regime continues to allow for cross-border listing of securities on the UK's regulated markets by companies incorporated overseas, and to ensure that there are no obstacles in the UK framework for regulatory cooperation with overseas competent authorities.

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19 Task Force on Climate-related Financial Disclosures, *Recommendations of the Task Force on Climate-related Financial Disclosures* (June 2017): https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf [accessed 19 July 2022].

20 The TCFD is a global, private sector led group assembled in December 2015 at the instigation of the international Financial Stability Board, an international body that monitors and makes recommendations about the global financial system.

21 These are the Public Company Accounting Oversight Board and the Securities and Exchange Commission.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Draft	Drivers' Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations 2022
Draft	Merchant Shipping (High Speed Craft) Regulations 2022
Draft	Motor Fuel (Composition and Content) (Amendment) (Northern Ireland) Regulations 2022
Draft	Merchant Shipping (Safety Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2022

Made instruments subject to affirmative approval

SI 2022/748	Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2022
SI 2022/792	Russia (Sanctions) (EU Exit) (Amendment) (No. 11) Regulations 2022

Draft instruments subject to annulment

Draft	Epsom and Ewell (Electoral Changes) Order 2022
Draft	North Lincolnshire (Electoral Changes) Order 2022
Draft	South Staffordshire (Electoral Changes) Order 2022
Draft	Stockport (Electoral Changes) Order 2022
Draft	Tonbridge and Malling (Electoral Changes) Order 2022

Instruments subject to annulment

SI 2022/717	Parole Board (Amendment) Rules 2022
SI 2022/718	Building (Approved Inspectors etc.) (Amendment) (England) Regulations 2022
SI 2022/728	Football Spectators (Seating) Order 2022
SI 2022/733	Occupational Pension Schemes (Climate Change Governance and Reporting) (Amendment, Modification and Transitional Provision) Regulations 2022
SI 2022/737	Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations 2022
SI 2022/753	Safety of Sports Grounds (Designation) (Amendment) (England) (No. 2) Order 2022
SI 2022/762	Statutory Auditors and Third Country Auditors (Amendment) Regulations 2022
SI 2022/765	Rural Development (Amendment) (England) Regulations 2022
SI 2022/771	Seal Products (Amendment) Regulations 2022
SI 2022/784	Non-Domestic Rating (Transitional Protection Payments and Rates Retention) (Amendment) Regulations 2022

APPENDIX 1: CORRESPONDENCE: UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) AMENDMENT REGULATIONS 2022 (SI 2022/752)

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to David Rutley MP, Parliamentary Under Secretary of State at the Department for Work and Pensions

The Secondary Legislation Scrutiny Committee intends to conduct its scrutiny of these Regulations at its meeting on 19 July but, to be able to do so, we will require a much clearer justification for DWP's removal of the cap of I0,000 cases on the migration pilot than the few lines currently included in the Explanatory Memorandum to these Regulations.

Our 8th Report of Session 2017–19 raised such extensive concerns on the original draft Universal Credit (Managed Migration) Regulations 2018 that they were withdrawn. That Report proposed a capped pilot stage be completed prior to national roll out, which the Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 (SI 2019/10) introduced. Our 14th Report of Session 2017–19 on those replacement Regulations said:

> "Both DWP and Parliament will wish to examine the outcome of the pilot carefully before taking a view on whether the rest of the migration should proceed. This Committee will take particular interest in how the result of the pilot shapes the further regulations that DWP will need to bring forward to begin the bulk transfer of legacy claims, and will expect that legislation to provide a satisfactory solution to all the issues raised in this report."

In the current economic climate our concerns about ensuring no disruption of benefit payments to vulnerable claimants are just as relevant, but the current Explanatory Memorandum makes no reference to either the issues we identified or the Department's revised plans for the migration. We note that the Social Security Advisory Committee has received a more extensive briefing but has expressed a number of reservations on the DWP's capacity to meet its ambitions.

I would therefore be grateful if you could send the Committee a more comprehensive explanation of the rationale for removing the requirement to evaluate progress and report to parliament after the initial I0,000 claimants have been transferred, and why you consider it safe to do so.

12 July 2022

Letter from David Rutley MP to Lord Hodgson of Astley Abbotts

Thank you for your letter of 12 July 2022 concerning the Universal Credit (Transitional Provisions) Amendment Regulations 2022 seeking further explanation as to why we are removing the statutory limit on migration notices sent to claimants.

When the previous regulations were laid, the full roll out of UC to all Jobcentres had only just completed (December 2018). The UC caseload then was 1.3 million households with an estimated 2 million legacy benefit households that we would need to move over - more than the total UC caseload at the time. Since then, the vast majority of, and from January 2021 all, new claims in Great Britain have been

for UC. The UC caseload in February 2022 was 4.2 million with an estimated 1.6 million legacy benefit households that we will need to move to UC - a significantly smaller proportion compared to the UC caseload.

During the pandemic, we also demonstrated the ability to deal with large volumes of new claims and part of the caseload included legacy benefit claimants naturally migrating to UC, including many from Tax Credits. We now have over 3 years more experience of delivering UC in all Jobcentres, we wish to have an approach that is appropriate to that challenge, whilst not diluting the principle of testing and evaluation introduced with the original pilot.

The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 introduced a statutory limit on the number of claimants that can be notified they must move to Universal Credit (the '10,000 cap'). Whilst we remain committed to the same principles that introduced this statutory cap, not least the need to initially move a small volume of claimants to Universal Credit (UC) in a controlled learning environment, we are not resuming the Harrogate pilot. The context in which we are seeking this shared goal has changed since the original pilot regulations were introduced in 2019. Instead, we now need an approach for testing and learning that is more dynamic and suitable for claimants in 2022, that reflects the fact that the UC service can now deal with higher volumes. The National Audit Office accepted this position, closing their earlier recommendation on ensuring operational performance and costs improvements before increasing caseloads by agreeing the UC Service demonstrated its capability to cope with vastly increased volumes during the pandemic.

As outlined in the Written Statement of 25 April 2022, that accompanied publication of the Department's paper Completing the move to Universal Credit, we are no longer discovering what works with the evaluation strategy, formerly established when the regulations were introduced. Instead, we will follow a more responsive approach that considers a number of factors before scaling up. This includes operational readiness; efficiency of the service; key functionality being in place; and ensuring the Department has processes to support vulnerable claimants.

As set out in the Written Ministerial Statement, we remain committed to making this a responsible and smooth transition. The Secretary of State has taken policy decisions to ensure vulnerable claimants are protected, as highlighted in her recent response to the Work and Pension Select Committee. We have started a multi-site approach currently inviting small numbers of claimants in Bolton and Medway, before moving to test and learn in other areas.

Within the new approach we will have continual assessments of the UC programme's progress, informed by our test and learn approach. We will gather evidence, both qualitative and quantitative, to identify where we need to improve and meet user needs. The comprehensive stakeholder engagement strategy will continue to keep our stakeholders informed of progress.

I hope this explanation supports the Committee's scrutiny of the instrument on the 19 July 2022.

18 July 2022

APPENDIX 2: DRAFT DRIVERS' HOURS, TACHOGRAPHS, INTERNATIONAL ROAD HAULAGE AND LICENSING OF OPERATORS (AMENDMENT) REGULATIONS 2022

Additional information from the Department for Transport

Q1: What is the material difference between the capability of smart tachograph 2 and smart tachograph 1: the Regulations largely express this by reference to EU standards, could you give a short plain English description please?

A1: Smart tachograph 2s have capabilities to record automatically a vehicle's position, including when it crosses borders and where it is loading or unloading (to help check if a vehicle is being used legally because access rights can depend on whether loads are transported across borders or not). Smart tachograph 2s are also designed to prevent manipulation and improve enforcement, in ways additional to smart tachograph 1s.

In slightly more detail the material differences between the capability of the smart tachograph 2 and the smart tachograph 1 are:

- Border crossings - Automatic recording of the vehicle position and related information at border crossings (based on stored digital map);
- Load/unload operations - Recording of the vehicle position and load types during load/unload operations;
- ITS interface (Intelligent Transport Systems)–made mandatory. This allows for data exchange with additional external devices, which allows enforcement officers to download data without stopping a vehicle;
- GNSS (Global navigation satellite system) - Use of authenticated navigation messages (Galileo);
- Software update capability - Minimum hardware resources allocated for future evolutions and digital map update;
- Additional source for motion detection - Independent sensor, internal to the vehicle unit;
- Automatic time adjustment - Uses authenticated GNSS time.

Q2: Can you expand on the consultation summary "However, there were some concerns raised around the implementation of the smart tachograph 2 in the UK, around timings; availability; and technical challenges of fitment into light goods vehicles over 2.5 tonnes. " What are industry's concerns, is it the cost of the new equipment or are there supply issues that will make compliance by the deadline set difficult?

A2: Both. The main concerns are around the potential availability of the smart tachograph 2, making it difficult to comply with the implementation date. Industry sources have indicated that the main tachograph manufacturer will not gain type approval for their version 2 until April 2023; giving only a few months to supply and install into newly registered vehicles.

There were availability/timing issues with the implementation of the smart tachograph 1 in June 2019. The implementation date for the fitment of smart 1 tachographs in newly registered vehicles remained in place for the deadline of 15 June 2019, but manufacturers/operators were allowed to fit digital tachographs into newly registered vehicles provided that these were retrofitted with a smart tachograph 1 once the supply shortage was resolved. This approach meant vehicles could still be delivered to industry and trade was not disrupted.

Similar approaches were taken by EU Member States. If there are difficulties on this occasion, the Department would again work with DVSA and industry to come up with a similar pragmatic solution. If there is a supply issue it would be felt at European level not just in the UK.

In addition, industry sources have raised concerns about the cost of installing a tachograph for the first time into smaller vehicles by 2026 and the lack of knowledge by some smaller operators of this new requirement. The Department will work with industry to raise awareness of the new requirement. The cost of installation is not something that was subject to an impact assessment, as the new requirement was implemented as part of the EU Mobility Package changes in August 2020 (during the Implementation period, when most new EU law was still applied to the UK) and were directly applicable in all EU Member States.

Q3: What does paragraph 10.6 of the EM mean by: "None of these concerns would affect the contents of the SI and will be addressed with industry."?

A3: We are committed to implementing the smart tachograph 2 through the TCA [the Trade and Cooperation Agreement between the European Union and the United Kingdom]. This includes the deadline dates and scope of the use of smart tachograph 2s. The SI is designed to implement the commitments made by the UK in the TCA. Addressing concerns about implementation raised by industry can be done outside the SI. For example, issues about the fitment of tachographs in some light goods vehicles could be addressed by technical developments.

27 June 2022

APPENDIX 3: PAROLE BOARD (AMENDMENT) RULES 2022 (SI 2022/717)

Additional information from the Ministry of Justice

Q1: What are the average number of parole cases considered each year?

A1: Averages are not available but data for the last three financial years is:

	Cases referred to the Board by the Secretary State	Oral hearings conducted
2020/21	18,248	9,202
2019/20	17,172	8,264
2018/19	15,242	7,903

Source: Data taken from the Parole Board's Annual Reports and Accounts published for each of the respective years and are available online. The report for 2021/22 has not been published at the time of writing.

Q2: The EM stated only 3–5 public hearings were expected each year. What is the basis for that very small percentage?

A2: The change to the Parole Board Rules removes the requirement that all parole hearings must he held in private because we think that it would be in the interests of improved transparency to allow for the possibility of a public hearing in some cases. The test the Parole Board will be required to consider is whether it is in the interests of justice to hold a hearing in public. The wording of the rule changes is similar to that used for the First Tier Tribunal for Mental Health which also allows public hearings subject to an interests of justice test. The Parole Board Rules are following that existing example. We understand that there have been very few applications for public hearings for mental health tribunals and we are aware of only two cases ever being heard in public.

In 2020, the government ran a public consultation on whether parole hearings should be more open. The majority of respondents were generally in favour of the increased transparency that open hearings will create but the responses urged a high level of caution over what cases may be suitable to be heard in public, mainly because of the risks to victims, to prisoners and to the participants at hearings (e.g. professional witnesses who may be giving evidence that a very serious offender is safe to be released and may be at risk of reprisals). Many respondents also highlighted, and the government agreed, that there were very good reasons why the majority of hearings should continue to be heard in private, such as the adverse impact a public hearing could have on the candour of the prisoner and the witnesses in responding to the parole panel's questions which, in turn, could make it more difficult for the panel to properly assess the prisoner's risk–and therefore undermine the quality of decision-making. The prospect, therefore, of a fully public hearing will not be right for many prisoners or victims, particularly with the media scrutiny it may bring and the sensitive information about them that could be revealed. Separately, the government is introducing the option for victims to observe parole hearings which is distinct from a fully public hearing and will protect their privacy because no-one else will be admitted.

While it is right that public hearings are being made possible for parole, we expect the Parole Board to apply a high threshold to applications given the sensitive nature of parole proceedings, the risks highlighted above and the need to protect the participants and the integrity of the decision making. Requests for a public hearing

may be made by anyone but in practice we expect them to come from prisoners, victims or the media. When an application is made to hear a case in public, the prisoner (if applicable) and the Secretary of State (on behalf of the victim) will be able to make representations before a decision is made. The Parole Board have said they are unlikely to agree to a public hearing where it may cause the victim or prisoner any unnecessary harm or distress, or where it may harm the prisoner's ability to resettle into the community. No-one will have the outright ability to veto a public hearing and the Parole Board will need to make a decision in response to every application, and the representations received about it, but in practice a public hearing is likely to only take place where there are no substantive objections from either of the parties.

We expect only a small number of prisoners will want their parole hearing to take place in public and therefore make an application. Similarly, we do not expect many applications from victims for a public hearing, particularly given the separate opportunity they will be afforded to attend a hearing as an observer. And the media are likely to apply only in a small number of high-profile, notorious cases which they consider to be in the public interest to be heard in public–and in those cases, as above, the Parole Board will need carefully to consider the potential harm to victims or others.

All the above reasons have led us to conclude that only a very small percentage of parole hearings will be heard in public. Due to the risks, the Board are likely to proceed cautiously when considering applications, particularly to start with. But it is possible that, over time, if public hearings are found to work well and improve transparency–and the attendant risks can be safely managed–the Board may make greater use of them.

Q3: What are the criteria for the Chair of the Parole Board to decide whether a public hearing will be in the interests of justice? (And the converse, are there any situations that might automatically rule out a public hearing?)

A3: As the decision-making body, it is for the Parole Board to set out the criteria they will apply when considering the interests of justice test. The Board's guidance has not yet been published but should be available when the new rules come into force on 21 July.

We have discussed with the Parole Board the types of factors they would likely consider having received an application. These are likely to include but not be limited to:

- If it would assist public understanding of how the decision is reached in a case of particular public interest;
- The participants in the hearings–in particular the prisoner and the victim (where there is one)–are in support of the hearing being heard in public;
- To hold a public hearing would not create an unacceptable risk (of mental or physical harm) to any of the participants;
- Whether the Board consider that the integrity of the evidence may be compromised and prevent a true and accurate assessment of the prisoner's risk being provided by the witnesses;
- The presence of strong and valid objections from participants which could jeopardise their co-operation if the hearing were to be in public.

The rules are drafted in a way that does not automatically exclude any types of cases from being heard in public because we believe it is right that the Board should be able to consider the individual circumstances of any case and whether reasonable adjustments could be made that might allow an open hearing to take place. However, we recognise that there are some circumstances where it may be very difficult to ever to hold a public hearing, such as where the prisoner or victim are under 18; where the panel needs to hear evidence relevant to national security; where the prisoner has a new identity (including gender reassignment); or where the prisoner's disabilities cannot be mitigated by reasonable adjustments.

14 July 2022

APPENDIX 4: OCCUPATIONAL PENSION SCHEMES (CLIMATE CHANGE GOVERNANCE AND REPORTING) (AMENDMENT, MODIFICATION AND TRANSITIONAL PROVISION) REGULATIONS 2022

Additional information from the Department for Work and Pensions

Calculating the portfolio alignment metric

Q1: What is "a portfolio alignment metric"? The definition you give in the EM is just the legal one from the SI, and, because the legislation allows the trustee to select one, I assume there is a range of them, please elucidate.

A1: In complying with requirements imposed by this Statutory Instrument trustees are required to have regard to guidance prepared from time to time by the Secretary of State (see section 41A(7) and 41B(3) of the Pensions Act 1995). The statutory guidance associated with this Statutory Instrument - Governance and reporting of climate change risk: guidance for trustees of occupational schemes (publishing.service.gov.uk)–indicates on page 43 that trustees should22 calculate one of a number of different portfolio alignment metrics currently available to trustees which fall into 3 separate categories:

- Binary target measurements–This tool measures the alignment of a portfolio with a given climate outcome, based on the percentage of investments in that portfolio with declared net zero or Paris-aligned targets. Science Based Targets initiative (SBTi)'s Portfolio Coverage Tool23 for Financial Institutions is an open source24 example of this type of tool.
- Benchmark performance models–These tools assess portfolio alignment by comparing the performance of investments in the portfolio against one or more benchmarks based on climate scenarios. These can be referred to as "benchmark divergence" measures25. Transition Pathway Initiative (TPI)'s26 carbon performance scores and Paris Agreement Capital Transition Assessment (PACTA)27 are examples of open source tools which can be used for this purpose.
- Implied temperature rise (ITR) models–These tools translate an assessment of alignment/misalignment with a benchmark into a measure of the consequences of that alignment/misalignment in the form of a temperature score. SBTi's Temperature Scoring Tool28 for Financial Institutions is an open source example of this type of tool.

22 Defined on Page 6 of the Statutory Guidance "Should" - It is expected that trustees will follow the approach set out in the Guidance and if they choose to deviate from that approach they should describe concisely the reasons for doing so in the relevant section of their TCFD Report.

23 SBTi-tool.xlsx (live.com), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fsciencebasedtargets.org%2Fresources%2Flegacy%2F2018%2F11%2FSBTi-tool.xlsx&wdOrigin [accessed 19 July 2022].

24 Free to use and with a transparent methodology.

25 PAT_Measuring_Portfolio_Alignment_Technical_Considerations.pdf (tcfdhub.org) (see page 27 for illustrative example of the output of this type of portfolio alignment tool) https://www.tcfdhub.org/wp-content/uploads/2021/10/PAT_Measuring_Portfolio_Alignment_Technical_Considerations.pdf [accessed 19 July 2022].

26 Tool - Transition Pathway Initiative, https://www.transitionpathwayinitiative.org/sectors [accessed 19 July 2022].

27 PACTA / Climate Scenario Analysis Program - 2DII (2degrees-investing.org), https://2degrees-investing.org/resource/pacta/. [accessed 19 July 2022].

28 Financial Institutions - Science Based Targets, https://sciencebasedtargets.org/finance-tool [accessed 19 July 2022].

Q2: There is also no indication in the legislation of how to calculate the chosen metric in relation to the scheme: is there associated guidance? Is it a simple mathematical weighting or does the trustee have to take local climate or geographical factors into account?

A2: Guidance on how to calculate a portfolio alignment metric is provided on pages 43 to 45 of the associated statutory guidance. The guidance outlines the three types of portfolio alignment metrics trustees should select from and provides an explanation of each as well as an example of an available tool for each. It also explains how they should consider different asset classes within their portfolio and what they should do where there are data gaps for certain sections of their portfolio. The way alignment is calculated and outputted is determined by the type of metric a trustee decides to use e.g., a 'binary metric' such as the Science Based Targets Initiative tool will give an outcome, based on the percentage of investments in that portfolio with declared net zero or Paris aligned targets. There is no specific requirement to take local climate or geographical factors into account. The requirement to calculate a portfolio-alignment metric "as far as they are able" recognises that there may be gaps in the data trustees are able to obtain about their scheme assets for the purposes of calculating metrics. Trustees are required to take all such steps as are reasonable and proportionate in the particular circumstances taking into account: (a) the costs, or likely costs, which will be incurred by the scheme; and (b) the time required to be spent by the trustees, or any person to whom the trustees have delegated responsibility, in taking such steps (see paragraph 26 of the Schedule to the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021. We do not propose that trustees should be expected to pay excessive sums for access to the data. As we set out in the statutory guidance, if trustees are able to obtain data or analysis in a format which is usable but only at a cost–whether directly or indirectly via liaison with advisers–which they believe to be disproportionate, they may make the decision to treat this data or analysis as unobtainable. A robust justification for doing so should be set out in their TCFD report.

Q3: I note that the consultation responses expressed concerns whether the data required for the calculation is actually available - can you please explain what sort of data they are referring to?

A3: The coverage of underlying climate risk data is a key challenge, particularly for alternative assets such as real estate holdings or derivatives where data gaps can be more extensive than for publicly-listed assets. This is acknowledged in our statutory guidance which sets clear expectations for how to calculate these asset classes. There may also currently be issues obtaining data for holdings in other jurisdictions, particularly in emerging markets, where data reporting standards are still evolving and are not as robust as in the UK. Again, our statutory guidance sets out how to account for data gaps (see pages 44–45 of the Statutory Guidance).

Q4: Respondents to the consultation also thought that a likely outcome was that pension schemes would have to employ consultants to do this at a cost of £7–30k (per annum?). You say that it is a voluntary choice and therefore not included in the IA but how likely is it that the average businessman who is a trustee will have the technical knowledge to make this calculation, and to do so accurately?

A4: It was not explicitly stated in the consultation responses that the fees quoted are per annum. We assume the responses intended to indicate such a fee could be incurred each time trustees are required to calculate and report a portfolio

alignment metric. Our measures apply to the largest occupational pension schemes in the market including those which have relevant assets totalling £1 billion or more and authorised master trusts, which to be authorised must meet minimum governance standards and whose assets under management are growing quickly. Therefore, it is the government's position that all trustees in scope of these Regulations should have the necessary governance capacity and expertise to calculate a binary portfolio alignment metric using the open source tools available, and being guided by the 'as far as they are able' principle when calculating the metric.

Cumulative Burdens

Q5: The Committee has recently commented on the cumulative burdens being imposed on pension schemes on the grounds that additional costs reduce the money available to be paid in pensions. How would DWP respond to that concern.

A5: Climate risk presents a systemic and macro-economic risk to pensions schemes and their members. We therefore believe that the regulatory burdens with regards to managing climate risk are proportionate given the potential benefits, and, conversely, the potential damages to members long term savings if left unaddressed. There is also a need to deliver accountability. A recent survey conducted by the Pensions and Lifetime Savings Association found that almost three quarters (74%) of pension schemes now have net zero plans in place, or will do within the next two years.29 Therefore, it is only right that pension schemes should be measuring their alignment against these targets and monitoring the extent to which their investments are sustainable.

With regards to the Committee's broader point about cumulative burdens being imposed on pension schemes it's worth noting that pensions are extremely and increasingly complex. The policy measures we have introduced are all designed to minimise risks and maximise opportunities for schemes and their members.

Good governance is about having motivated, knowledgeable, and skilled people running schemes. Recent TPR evidence30 shows the larger the scheme, the more likely they were to assess value for members. 15% of small schemes made this assessment compared to 81% of Master Trusts and 57% of large schemes. Government's position on this issue has been clear; consolidation with the benefits that scale, and professionalism, can bring is the right answer for schemes struggling with their regulatory requirements.

Q6: The Committee has expressed the view that all these additional duties are likely to restrict the supply of trustees capable or willing to run a pension scheme. How would DWP respond to that concern?

A6: We expect those responsible for pension savers' money to meet their legal duties and be equipped with the skills and knowledge needed to deal with increasingly complex pension issues. With this in mind, we are considering, along with The Pensions Regulator, a number of measures that could help trustees and we will be providing further details in due course.

12 July 2022

29 Around three quarters of pension schemes have, or soon will have, Net Zero plans in place | PLSA. https://www.plsa.co.uk/Press-Centre/Press-Releases/Article/Around-three-quarters-of-pension-schemes-have-or-soon-will-have-Net-Zero-plans-in-place[accessed 19 July 2022].

30 https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/dc-trust-based-pension-schemes-research-report-2021.ashx [accessed 19 July 2022].

APPENDIX 5: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at https://members.parliament.uk/members/lords/interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 19 July 2022 and included in this report, Members declared the following interests:

Draft Drivers' Hours, Tachographs, International Road Haulage and Licensing of Operators (Amendment) Regulations 2022

The Earl of Lindsay

Wife has a Heavy Goods Vehicle licence

Attendance:

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord De Mauley, Lord German, Lord Hodgson of Astley Abbotts, Lord Hutton of Furness, the Earl of Lindsay, Lord Lisvane, Lord Rowlands and Baroness Watkins of Tavistock.