

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

27th Report of Session 2019–21

Drawn to the special attention of the House:

Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020

Includes information paragraphs on:

16 instruments relating to COVID-19

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

Criminal Procedure and Investigations Act
1996 (Code of Practice) Order 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 <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

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://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.

Twenty Seventh Report

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

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

- Aviation Safety (Amendment) (EU Exit) Regulations 2020

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/953)

Date laid: 7 September

Parliamentary procedure: negative

*Because there is a large backlog of trials in the Crown Court, these Regulations extend the maximum remand period by 56 days (eight weeks) to 238 days, to allow the courts to manage the delays due to COVID-19. The case backlog that necessitates this extension of remand periods delays justice for both the defendant and the victim and may add to the difficulties that prisons are facing during the pandemic. Extending remand can have extremely detrimental effects on the mental health of the individual and on the welfare of their families, every effort should be made to reduce it as soon as possible. **The House may therefore wish to ask the Minister what other measures are being taken to address the backlog of trials.***

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

1. The Prosecution of Offences (Custody Time Limits) Regulations 1987¹ (the 1987 Regulations) set the maximum period that a defendant awaiting trial in the Crown Court can be held on remand. If the trial cannot be heard before the limit expires, the court must release the person on bail unless the prosecution successfully applies to extend it on an individual basis. These Regulations extend the Custody Time Limits (CTLs) currently provided in the 1987 Regulations by 56 days (eight weeks): from 182 days to 238 days for all triable either-way² and indictable only criminal offences awaiting trial on indictment at the Crown Court; and from 112 days to 168 days, in the rarer cases where a voluntary bill of indictment³ is preferred, or a fresh trial has been ordered by the Court of Appeal.
2. This temporary extension to the maximum time on remand will apply to any defendant remanded in custody for the first time after 28 September and will apply for nine months to 28 June 2021. It should be noted that for those remanded towards the end of the period, the longer remand periods will continue in effect after these Regulations have lapsed.
3. The Ministry of Justice (MOJ) says that the COVID-19 pandemic has presented unprecedented challenges for the criminal court process, including the Crown Court's ability to hear jury trials for all defendants within their CTL. While the Government are taking action to increase capacity to pre-

1 Prosecution of Offences (Custody Time Limits) Regulations 1987 ([SI 1987/299](#)).

2 Offences that can be tried in either the magistrates' court (as a summary offence) or the Crown Court (as an indictable offence) depending on the seriousness of the offence and the likely sentence: for example for theft where it was tried might depend on the value of the items stolen. The decision is made by the magistrates' court.

3 A voluntary bill of indictment is where the Crown Prosecution Service applies to a judge of the High Court to have a case heard in the Crown Court rather than the magistrates' court. It enables a crown Court trial without preliminary procedures in the magistrates' court.

COVID levels, these extensions to the remand period are to allow courts to effectively manage these unavoidable delays.

4. The type of offences in question are serious; the current CTL of 182 days would apply to indictable only offences (such as murder, robbery, sexual assault), and some either-way offences (such as burglary, drug trafficking and firearm offences). The nature of these offences means that, if found guilty, a defendant should incur a sentence greater than the amount of time they spent in custody awaiting trial. However, it should also be noted that MOJ states that if the remanded person is subsequently found not guilty and acquitted, or given a non-custodial sentence, there is no provision or reason to award compensation as long as the indictment was lawful.

Capacity within prisons

5. This Committee has seen a number of instruments where we have questioned whether prisons currently have the capacity to deal with additional occupants and it seems self-evident that extending time on remand must increase the prison population. We asked MOJ how this would be addressed but were not entirely convinced by their reply:

“Her Majesty’s Prison and Probation Service (HMPPS) closely monitor prison population forecasts and they are committed to always having enough prison places to accommodate those remanded in custody by the courts. Currently, CTL extensions are being routinely granted and, under this SI, it would remain possible to apply for bail. As such, whilst the SI changes the starting point, it does not necessarily lead to a substantial increase in the remand population – a figure that will be affected by many things, including defence behaviour. However, the MOJ and HMPPS will continue to assess any anticipated impacts to effectively manage the number of prison places available.”

6. MOJ also explained that:

“Defendants who are remanded in custody pre-trial should be held in separate accommodation from convicted prisoners (as well as offenders awaiting sentencing, who have been remanded in custody post-conviction) where Governors consider this can be reasonably done. Cell sharing is permitted between unconvicted and convicted prisoners if the unconvicted prisoner’s consent has been obtained.”

The House may wish to ask the Minister for further information about the process for obtaining an unconvicted person’s consent and what safeguards will be in place to ensure that an unconvicted person is not put under any pressure to give it.

7. We asked why people on remand were not being allowed to stay in the community on bail at a time when prisons are supposed to be releasing as many prisoners as possible to reduce COVID-19 infections. MOJ replied:

“Decisions about whether to grant bail or remand in custody are solely a matter for the courts/judiciary acting in accordance with the law. The courts always start with the presumption that a defendant should be granted bail. This recognises that a person should not be deprived of his or her liberty unless that is necessary for the protection of the public or the delivery of justice.

In deciding whether or not to grant bail, the court will consider various factors, such as the nature and seriousness of the crime, the character of the defendant, past criminal records, associations and ties with the community, and the defendant's previous record of abiding by bail conditions. The main reasons for refusing bail are that the defendant is accused of an imprisonable offence and the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, would abscond, commit further offences while on bail, interfere with witnesses or otherwise obstruct the course of justice."

8. We also asked how many people on remand charged with serious crimes have already been released on bail because they have exceeded their 182-day CTL. MoJ replied:

"The Crown Prosecution Service review all CTLs in cases where they expire before the trial has taken place, to determine whether they wish to apply for an extension. In these circumstances it will be for the court to decide whether to grant an extension of the CTL or to release the defendant on bail. This is decided on a case by case basis. Data on the number of defendants released on bail is not correlated or published."

We were surprised to hear that this data is not collected. We question how the trial process and prison population can be managed effectively if there is no clarity about the numbers awaiting trial, their location and the length of time they have been on remand.

Conclusion

9. While we understand why the pandemic has delayed court hearings, it has added to a backlog that existed before the outbreak of COVID-19. Although the current extension of remand to a maximum of 238 days is intended to be temporary, it appears to us to be a way of working round a problem rather than solving it.
10. The backlog that necessitates this extension of remand periods delays justice for both the defendant and the victim and may add to the difficulties that prisons are facing during the pandemic. Extending remand can have extremely detrimental effects on the mental health of the individual and on the welfare of their families, especially where the prisoner is a parent or has dependants, every effort should be made to reduce it as soon as possible. **The House may therefore wish to ask the Minister what other measures are being taken to address the backlog of trials.**

INSTRUMENTS RELATING TO COVID-19

11. One instrument relating to the COVID-19 pandemic, the Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/953), is drawn to the special attention of the House in this report (see pages 2 to 4 above).

Restrictions on businesses and public gatherings: local restrictions

Health Protection (Coronavirus, Restrictions) (Blackburn With Darwen and Bradford, Leicester, and North of England) (Amendment) Regulations 2020 (SI 2020/954)

12. These Regulations amend the main “protected area” regulations⁴ to lift certain additional restrictions so that provisions applied to the rest of England could apply there too (with the exception of Bolton, which is subject to a discrete regime; see SI 2020/974 below).
13. After spending 15 paragraphs describing the accumulated SIs that have affected these areas since March 2020, the Explanatory Memorandum (EM) laid with this instrument concluded with the following description of what this particular SI does:

“7.16 The number of positive Covid-19 cases has continued to decline in Leicester, Blackburn and Darwen and North of England’s (with the exception of the area of Bolton Metropolitan Borough Council) protected areas. As a result, this instrument will apply easements made elsewhere in England on 25 July to the areas covered by the Blackburn and Bradford Regulations and Leicester Regulations. In addition, the instrument will apply the easements made elsewhere in England on 15 August to the areas covered by the Blackburn and Bradford Regulations and North of England Regulations, apart from the area of Bolton Metropolitan Borough Council.”

14. No clearer reference is given to which instruments of 25 July and 15 August are intended, or to what businesses may now operate. As different restrictions are eased in each area, we found the original EM vague and inadequate, and have requested the Department for Health and Social Care to revise it to include a much more specific explanation of the changes to the law which it makes. **When law is imposed with immediate effect in this way it is even more important that the explanatory material provided is clear and fit for purpose.**

Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020 (SI 2020/974)

15. Bolton Metropolitan Borough Council was previously included in restrictions on the North of England⁵ but, because infection rates in the area have remained significantly higher than the average, these special measures were applied from 10 September.

4 Health Protection (Coronavirus, Restrictions) (Leicester) (No.2) Regulations 2020 (SI 2020/824), Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020 (SI 2020/822) and the Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020 (SI 2020/828).

5 See Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020 (SI 2020/828).

16. The instrument retains the prohibition on mixing between households in private dwellings and gardens (except for linked households) and reduces gatherings in a public outdoor place to six people. As the highest infection rates are among young adults, the instrument requires certain venues, such as nightclubs, to stay closed. Restrictions on food and drink establishments limit them to takeaway services. The instrument also prevents listed businesses from operating between 22.00 and 5.00, with certain exemptions. These restrictions must be reviewed by the Secretary of State every 14 days, with the first review due by 24 September 2020.

Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) (No.4) Regulations 2020 (SI 2020/986)

17. Due to rising infection rates, these Regulations amend the original Regulations⁶ so that people may not participate in social gatherings, in any place, in groups of more than six, unless they are members of the same household, two linked households, or exceptions apply. This change applies throughout England, but, regulation 1(4ZA) is inserted into the original Regulations to provide that the tighter restrictions on gatherings in private dwellings in protected areas covered by more specific regulations such as Blackburn with Darwen, Bolton and Leicester remain in place.

Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) (Amendment) (No. 2) Regulations 2020 (SI 2020/987)

18. Due to falling levels of infection in the protected area of Leicester City Council, these Regulations amend the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020⁷ to permit casinos, indoor skating rinks, indoor play areas (including soft play areas), bowling alleys, conference centres and exhibition halls to reopen in the area from 15 September 2020.

Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) Regulations 2020 (SI 2020/988)

19. Although a requirement in England limiting groups meeting in or outdoors to no more than six people came into effect on 14 September,⁸ data from the Joint Biosecurity Centre indicated that the incidence rates of COVID-19 around Birmingham were significantly above the national average and increasing. The data also indicated that a high proportion of the new cases were due to transmission either within or between households. These Regulations therefore impose tighter restrictions on those living within the “protected area” of Birmingham City Council, Sandwell Metropolitan Borough Council and Solihull Metropolitan Borough Council. They prohibit those living within the protected area from gatherings of two or more persons from different households in private dwellings either within or outside the protected area (except for linked households as defined.) The need for these restrictions must be reviewed by the Secretary of State every 14 days, with the first review taking place by 29 September 2020
20. Alongside these Regulations, care homes were also advised to only allow visits in exceptional circumstances.

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

7 Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020 ([SI 2020/824](#)).

8 Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) (No.4) Regulations 2020 ([SI 2020/986](#)).

Health Protection (Coronavirus, Restrictions) (North East of England) Regulations 2020 (SI 2020/1010)

Health Protection (Coronavirus, Restrictions) (North East of England) (Amendment) Regulations 2020 (SI 2020/1012)

21. Due to rising infection rates in the North East, SI 2020/1010 imposes tighter restrictions on the areas of Northumberland, North Tyneside, South Tyneside, Gateshead, Newcastle, Sunderland and Durham County. It prohibits people from inside those areas gathering with one or more people from a different household (apart from linked households) in a private dwelling whether inside or outside the protected area. The instrument requires certain venues to stay closed, such as nightclubs and does not allow the entertainment, leisure and hospitality businesses listed in the schedule to operate between 22:00 and 5:00. Additionally, listed businesses may only sell food or drink for consumption on the premises if it is served to customers sitting at a table.
22. SI 2020/1012 was made immediately after to correct some defects in the previous instrument “due to a system error”.

Changes to business practice and regulation

Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (SI 2020/1005)

23. This instrument requires designated hospitality and leisure venues to collect certain contact details from customers, visitors and staff and store them for 21 days. The information is to be shared with NHS Test and Trace or local public health officials, if requested, with the aim of breaking potential chains of transmission. Although this system has been in place on a voluntary basis for two months, the government has now made it a legal requirement due to non-compliance. Surveys show that, under the voluntary system, 67% and 69% of respondents (YouGov and BMG surveys respectively) were asked for their contact details some or all the time but only 43% of people said they were asked for contact details in all the places they visited. This instrument puts a legal duty on specified venues to ask all customers and visitors to provide contact details, and to display an official NHS QR code poster so that customers and visitors can alternatively scan the QR code using their NHS COVID-19 app. The Regulations also place a duty on the venue to deny entry to anyone who refuses to comply. Venues found to be in breach of these Regulations will be subject to a fixed penalty notice of £1,000 rising by £1,000 for each subsequent offence to a maximum of £4,000.

Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020 (SI 2020/1008)

24. This instrument implements the “rule of six”⁹ in the hospitality sector by requiring pubs, restaurants, cafes and other businesses that provide food for consumption on the premises to take all reasonable measures to ensure that customers are limited to parties of six, different parties do not mingle and tables are set apart at an appropriate distance, defined as two metres, or at least one metre if certain measures are in place, such as barriers or screens. The Department for Business, Energy and Industrial Strategy says that designated local authority officers, police officers or persons designated by

⁹ Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) (No.4) Regulations 2020 (SI 2020/986), see paragraph 17.

the Secretary of State may enforce the requirements. Fixed penalty notices of £1,000 may be issued for the first breach, £2,000 on the second occasion, rising to £4,000 for a third and any subsequent occasion. An arrest by a police officer may be made without warrant to maintain public health and public order. The Regulations will be in force for a year, with a requirement on the Secretary of State to review the measures within six months of coming into force.

Changes to business practice and regulation: travel

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 12) Regulations 2020 (SI 2020/959)

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 13) Regulations 2020 (SI 2020/980)

25. These two sets of regulations further amend the principal Regulations¹⁰ to add or remove specific countries from the lists in the Schedules that set out whether passengers arriving in England from those destinations will be required to self-isolate for 14 days. All changes are based on the latest assessment by the Joint Biosecurity Centre of COVID-19 infection rates in those countries:
- SI 2020/959 keeps mainland Greece on the exempt list but requires passengers from the islands of Lesbos, Tinos, Serifos, Crete, Mykonos, Santorini and Zakynthos to self-isolate with effect from 9 September 2020. It also updates the list of exempt elite sports events in Schedule 3.
 - SI 2020/980 removes French Polynesia, Hungary, Portugal (not including the islands that make up the Azores and Madeira), and Réunion from the exempt list but adds Sweden to it with effect from 12 September 2020.

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 14) Regulations 2020 (SI 2020/1013)

26. Having reviewed the latest public health assessments provided by the Joint Biosecurity Centre, the Government has decided to remove Guadeloupe and Slovenia from the list of exempt countries (that is passengers arriving from those countries will now be required to self-isolate for 14 days). Conversely, Singapore and Thailand are added to the exempt list, so the self-isolation requirement is removed. All changes take effect from 19 September 2020.

Public services

Education (Information About Individual Pupils) (England) (Amendment) Regulations 2020 (SI 2020/965)

27. This instrument extends the range of data collected through the School Census to include all categories of individual pupils' school attendance and non-attendance, rather than just absences, where this is recorded in the school's electronic management information system. The additional data will include information on the recently introduced category of non-attendance in circumstances relating to coronavirus,¹¹ such as whether a

¹⁰ Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)).

¹¹ Education (Pupil Registration) (England) (Coronavirus) (Amendment) (No. 2) Regulations 2020 ([SI 2020/816](#)); [25th Report](#), Session 2019-21 (HL 123).

pupil is not attending school due to following public health guidance, for example on shielding, self-isolation or quarantining. The Department for Education (DfE) explains that the data collected through the School Census is used to produce statistics which help to gain a better understanding of the level of, and the reasons for, absence. According to DfE, bringing this instrument into force before the School Census takes place in January 2021 will provide a national view of the scale and distribution of non-attendance and enable the Department to report to the centre of government and the Office of National Statistics, Public Health England and the Scientific Advisory Group for Emergencies (SAGE) about school attendance and absence during the ongoing pandemic, thereby helping to inform policy and operational decisions. The additional insight will also support future policy development on tackling persistent absence and any changes that may be required ahead of the 2021–22 academic year. DfE says the changes do not place any additional burdens on schools, as they will be recording the new non-attendance categories already. This instrument will allow the early daily collection of data directly from school systems in October.

Draft Apprenticeships (Alternative English Completion Conditions and Miscellaneous Provisions) (Amendment) (Coronavirus) Regulations 2020

28. This instrument proposes changes to enable apprentices to complete their training without an apprenticeship agreement if they have completed at least 75% of their apprenticeship when they are made redundant. The Department for Education (DfE) explains that, at present, the Education and Skills Funding Agency continues to fund the apprenticeship to completion if an apprentice is made redundant within six months of their final day of training. This is to ensure that apprentices who are close to the end of their apprenticeship can continue their training while they look for another employer or complete their training without an employer if they are unable to find one. DfE expects an increase in the number of apprentices being made redundant as a result of the pandemic at a time when there may be fewer new training opportunities available. In addition, the average duration of apprenticeships has increased from around 16 months in 2015–16 to around 20 months in 2018–19, so that there are a growing number of apprentices who may have completed most of their apprenticeship when they are made redundant but who are still six months or more from completion. This instrument proposes to extend the current scheme, so that all apprentices are funded to completion if they are at least 75% of their way through their training when they are made redundant. This change is to be permanent. DfE says that the new 75% threshold has been chosen as “it will not generally be practicable [for apprentices] to attain occupational competence if more than a quarter of their apprenticeship is still to be completed at the point of redundancy. This is because access to on-the-job training and experience is a crucial element of an apprenticeship.” We asked DfE whether any support will be available for apprentices who have not completed 75% of their training at the point of redundancy and are unable to find a new employer. DfE told us that:

“Where an apprentice has been made redundant, our funding rules require the provider to make reasonable efforts to find the apprentice a new employer. We have launched a support service to make sure that apprentices who have lost their jobs can get the help they need to access financial, legal, health and wellbeing support, as well as

careers advice. In addition we have introduced a new vacancy sharing service to put redundant apprentices in touch with employers offering new apprenticeship opportunities. For those unable to secure new employment, DWP has introduced the Kickstart programme and increased the capacity of sector based work academies. Kickstart will offer a subsidised six-month work placement for 16 to 24 year olds who otherwise might not have got into work or be ready for an apprenticeship. We have also made three times more funding available to providers in 2020-21 to support 30,000 new traineeship places, and introduced payments of £1,000 per trainee for employers who offer new or additional work placements (up to 10 trainees).”

Law and order

Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 (SI 2020/952)

29. This Order amends section 9 of the Wills Act 1837 to allow the witnessing of wills to take place via videoconferencing or other visual transmission during the pandemic. This requires a multi-step process which is described in Ministry of Justice (MOJ) Guidance.¹² In the event of suspected fraud or mistakes being made in this process, all existing mechanisms and safeguards for challenging a will using the contentious probate route apply. The Order only permits the use of video witnessing for wills made between 31 January 2020 and 31 January 2022 and as long as probate has not been granted before this instrument comes into force. MOJ explained that this does not make the legislation “retrospective” because the validity of any will is not considered until it is submitted for probate or tested in a UK court, which is the point at which any rights become crystallised. MOJ stressed that this video witnessing system has been designed as a COVID-19 response measure for the exceptional circumstances prevailing, their guidance remains that where a will can be made in the conventional way (with testator and both witnesses physically present) it should be.

Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) (No. 2) Regulations 2020 (SI 2020/973)

30. Biometric samples, such as fingerprints or DNA, taken in relation to the Police and Criminal Evidence Act 1984 can normally only be kept for a maximum of three years. Samples are automatically destroyed unless a specific exemption is agreed on the grounds of national security. However, the Counter-Terrorism Policing Command has confirmed that, due to the ongoing impact of coronavirus, it is unable to conduct the necessary reviews within the normal timescales.
31. Section 24 of the Coronavirus Act 2020 allowed the deadline for retention of fingerprints and DNA profiles that are relevant to national security to be extended by a maximum of 12 months. A previous instrument¹³ extended the deadline up to 1 October 2020, this instrument further extends it up to the limit allowed by the Act, 24 March 2021. The independent Biometrics Commissioner has confirmed that in his view the extension is reasonable and proportionate. The police estimate that SI 2020/391 has prevented the

12 MoJ, ‘Guidance on making wills using video-conferencing’ (20 August 2020): <https://www.gov.uk/guidance/guidance-on-making-wills-using-video-conferencing> [accessed 17 September 2020].

13 Coronavirus (Retention of fingerprints and DNA profiles in the interests of national security) Regulations 2020 (SI 2020/391).

destruction of 870 biometric samples with national security determinations. Such samples have in the past linked individuals to unidentified crime stains, provided evidence of potential terrorist offences and resulted in individuals being refused entry to the UK.

INSTRUMENTS OF INTEREST

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

32. These draft Regulations supersede an earlier instrument which the Committee reported to the House.¹⁴ The new draft Regulations correct two drafting errors in the earlier instrument. The policy remains unchanged: the draft Regulations propose a debt respite scheme for people in problem debt who receive professional debt advice. They are to be given 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. We welcome that HM Treasury (HMT) has revised the Explanatory Memorandum, as we requested in our report on the earlier instrument, to provide a fuller explanation of the new scheme. In our report, we also highlighted that, 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, it would be important for people to be given clear and timely advice as to who is qualified to initiate a moratorium. We urged 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. The new draft Regulations do not include proposals for such a register. HMT told us that:

“The Government considered the SLSC’s recommendation on a register of debt advice providers. [The Money and Pensions Service] MaPS’ existing free tools (their Debt Advice Locator Tool, and Money Navigator Tool) have been developed for the purpose of helping to direct people to free money advice that is appropriate for their needs whether they have sought debt advice specifically or support with their finances more generally. MaPS is also supporting the Money Adviser Network to deliver PACE, a pilot scheme to help creditors to direct individuals in financial difficulty to free debt support. MaPS’ provision across these different channels is intended to cater for the specific needs of individuals facing problem debt. The Government considers that these tools will be sufficient but recognises the need, identified by the committee, to make sure that these tools are clearly signposted to those who search for information about the Breathing Space scheme. MaPS, the FCA and Insolvency Service have been consulted on this approach.”

33. **We note HMT’s commitment to ensure effective signposting to professional debt advice and the new debt respite scheme: Parliament should be kept informed of the work undertaken to achieve this. We also take the view that HMT should consider bringing forward the launch of the new scheme, currently intended for May 2021: there is a particular urgency as a result of the serious impact the pandemic has had on many people’s income and finances.**

¹⁴ [Draft Debt Respite Scheme \(Breathing Space Moratorium and Mental Health Crisis Moratorium\) \(England and Wales\) Regulations 2020](#), see: [24th Report](#), Session 2019-21 (HL 116).

**Criminal Procedure and Investigations Act 1996 (Code of Practice)
Order 2020**

34. This Code sets out the way police officers are to record, retain and reveal to the prosecutor material obtained in the course of a criminal investigation. This affirmative instrument is to bring into effect a revised Code that implements the recommendations of the Attorney General's Review of the efficiency and effectiveness of disclosure in the criminal justice system, which was published in November 2018. The Review found that there are certain items of material that almost always assist the defence and therefore meet the test for disclosure, but which are sometimes not disclosed until there has been significant correspondence and challenge from the defence, wasting time and resources. Revisions to the code therefore introduce a rebuttable presumption that certain types or categories of unused material meet the disclosure test. The opportunity has also been taken to make other amendments designed to improve clarity.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Adjacent Waters Boundaries (Northern Ireland) (Amendment) Order 2020

Apprenticeships (Alternative English Completion Conditions and Miscellaneous Provisions) (Amendment) (Coronavirus) Regulations 2020

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

Immigration Skills Charge (Amendment) Regulations 2020

Made instruments subject to affirmative approval

Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020

SI 2020/951 Sanctions (EU Exit) (Miscellaneous Amendments) (No.4) Regulations 2020

SI 2020/954 Health Protection (Coronavirus, Restrictions) (Blackburn With Darwen and Bradford, Leicester, and North of England) (Amendment) Regulations 2020

SI 2020/974 Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020

SI 2020/986 Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) (No.4) Regulations 2020

SI 2020/987 Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) (Amendment) (No. 2) Regulations 2020

SI 2020/988 Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) Regulations 2020

SI 2020/1005 Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

SI 2020/1008 Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020

SI 2020/1010 Health Protection (Coronavirus, Restrictions) (North East of England) Regulations 2020

SI 2020/1012 Health Protection (Coronavirus, Restrictions) (North East of England) (Amendment) Regulations 2020

Draft instruments subject to annulment

City of Westminster (Electoral Changes) Order 2020

London Borough of Richmond upon Thames (Electoral Changes) Order 2020

Instruments subject to annulment

HC 707	Statement of Changes in Immigration Rules
SI 2020/923	Social Security (Contributions) (Amendment No. 4) Regulations 2020
SI 2020/940	Transfer of Functions (Digital Government) Order 2020
SI 2020/942	Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020
SI 2020/945	Motor Vehicles (Compulsory Insurance and Rights against Insurers) (Amendment) (EU Exit) Regulations 2020
SI 2020/946	Civil Enforcement of Parking Contraventions Designation (No. 2) Order 2020
SI 2020/948	Afghanistan (Sanctions) (EU Exit) Regulations 2020
SI 2020/950	Sanctions (EU Exit) (Miscellaneous Amendments) (No.3) Regulations 2020
SI 2020/952	Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020
SI 2020/956	M1 Motorway (Junctions 13 to 16) (Variable Speed Limits) Regulations 2020
SI 2020/959	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 12) Regulations 2020
SI 2020/963	Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) (No. 2) Order 2020
SI 2020/964	Cleaner Road Transport Vehicles (Amendment) (EU Exit) Regulations 2020
SI 2020/965	Education (Information About Individual Pupils) (England) (Amendment) Regulations 2020
SI 2020/966	Immigration and Nationality (Replacement of Tier 4 and Fees) and Passport (Fees) (Amendment) Regulations 2020
SI 2020/973	Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) (No. 2) Regulations 2020
SI 2020/980	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 13) Regulations 2020
SI 2020/982	Football Spectators (Seating) Order 2020
SI 2020/1013	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 14) Regulations 2020

APPENDIX 1: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 22 September, 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 Liddle, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.