

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

29th Report of Session 2019–21

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

Drawn to the special attention of the House:

Draft Common Rules for Exports (EU Exit) Regulations 2020

School Teachers' Pay and Conditions (England) Order 2020

Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020

Includes information paragraphs on:

8 instruments relating to COVID-19

Draft Citizens' Rights (Application Deadline
and Temporary Protection) (EU Exit)
Regulations 2020 and two related instruments

Draft Communications Act (e-Commerce)
(EU Exit) Regulations 2020

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Union (Withdrawal) Act 2018.

And, to scrutinise –

- (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
- (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Viscount Hanworth</u>	<u>The Earl of Lindsay</u>
<u>Rt Hon. Lord Chartres</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>Lord Lisvane</u>
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<u>Lord German</u>	<u>Lord Liddle</u>	<u>Baroness Watkins of Tavistock</u>

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at <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) 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 Ninth Report

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

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

- Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Common Rules for Exports (EU Exit) Regulations 2020

Date laid: 21 September 2020

Parliamentary procedure: affirmative

The purpose of these draft Regulations is to ensure that retained EU law on common rules for exports can operate effectively in Great Britain after the end of the Implementation Period (IP). This includes transferring from the EU to the Secretary of State a power to impose export controls or restrictions where this is necessary to prevent a critical situation arising due to a shortage of essential products or to meet international obligations. In Northern Ireland, the relevant EU Regulations will continue to apply directly under the European Union (Withdrawal) Act 2018 and the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement. While this will enable the Commission to impose export restrictions in Northern Ireland after the end of the IP, the Department for International Trade says that this will be limited “to the extent strictly required by [the EU’s] international obligations”, for example in relation to the movement of endangered species. It is not clear, however, which other international obligations may be relevant here. Given the sensitivities around the future trade between Northern Ireland and the rest of the UK, the House may wish to explore these issues further.

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

1. The Department for International Trade (DIT) has laid these draft Regulations with an Explanatory Memorandum (EM). The purpose of the instrument is to ensure that a retained EU Regulation¹ on common rules for exports (“the EU Regulation”) can operate effectively in Great Britain after the end of the Implementation Period (IP). In Northern Ireland, the EU Regulation will continue to apply directly under the European Union (Withdrawal) Act 2018 and the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement.

The changes proposed by this instrument

2. According to DIT, the EU Regulation sets out procedures and measures to be adopted by the European Commission (“the Commission”) and EU Member States where unusual developments on the market require temporary quantitative restrictions on certain exports. The procedures include a notification and consultation procedure as well as rules for the imposition of quantitative restrictions.
3. DIT explains that the instrument proposes to remove the notification and consultation procedures as well as information sharing and reporting requirements involving the Commission which will not be appropriate after the end of the IP as the Commission will no longer have jurisdiction over export controls in Great Britain. DIT says that the instrument would also transfer from the Commission to the Secretary of State the power to implement measures to control certain exports by way of requiring an

¹ Regulation (EU) [2015/479](#) of the European Parliament and of the Council of 11 March 2015 on common rules for exports.

export authorisation and/or imposing quantitative export restrictions. Such controls and restrictions are used to prevent a critical situation arising due to a shortage of essential products, or to meet international obligations. The controls and restrictions would cover, for example, the export of primary products, such as unprocessed agricultural products and raw materials.

Potential impact

4. We asked the Department when the Commission had used these powers. DIT told us that:

“This EU Regulation has rarely been used. However, the European Commission recently used powers under Regulation (EU) 2015/479 to implement export restrictions on Personal Protective Equipment (PPE) from 14 March 2020 to 26 May 2020. [...] Under these restrictions, Member States and the United Kingdom were required to authorise any exports of PPE products in scope of the EU Regulation, following a review of licence applications from exporters. The European Commission considered these measures an appropriate response to shortages arising from the response to the COVID-19 pandemic.”

5. We also asked DIT whether the continued direct application of the EU Regulation in Northern Ireland after the end of the IP could potentially impact on trade between Northern Ireland and Great Britain, by allowing the Commission to control the export of certain goods from Northern Ireland to the rest of the UK under the retained EU Regulation. The Department explained that:

“Article 6(1) of the Protocol on Ireland/Northern Ireland makes clear that nothing in the Protocol shall prevent Northern Ireland businesses from enjoying unfettered market access for the movement of goods to other parts of the United Kingdom internal market. That Article also provides that any provisions of Union law which prohibit or restrict the exportation of goods shall only be applied to trade between Northern Ireland and other parts of the United Kingdom to the extent strictly required by international obligations of the Union.

This means that any export restriction applied by the EU will not be implemented on qualifying Northern Ireland goods (the meaning of which will be defined in regulations to be made under section 8(6) of the European Union (Withdrawal) Act 2018) moving from Northern Ireland to Great Britain, except to the extent strictly required by international obligations of the Union.

Rules on exporting from Northern Ireland are administered by UK authorities, who retain operational responsibility and are able to exercise their discretion as appropriate.”

6. We asked the Department for an example of the type of international obligations that could require the EU to make use of its power to impose export restrictions in Northern Ireland. DIT told us that:

“There are a very limited number of procedures relating to specific international obligations of the EU, which UK authorities may need to administer on goods moving into Great Britain. There are, for example, obligations on the movement of endangered species under

the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

As has been stated in the Government's Command Paper 'UK's Approach to the Northern Ireland Protocol', we will ensure that the necessary procedures apply only to very minimal volumes of relevant trade necessary to comply with those obligations. For goods affected, the processes put in place in these very specific cases will have negligible implications for trade as a whole."

Conclusion

7. While we note the Department's explanation that the Commission could impose export controls or restrictions on Northern Ireland only in very limited circumstances, such as in relation to the movement of endangered species, it is not clear what other circumstances may allow the Commission to exercise its powers. These are issues that the House may wish to explore further, given the sensitivities around future trade between Northern Ireland and the rest of the UK. **The draft Regulations are drawn to the special attention of the House on the grounds that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House.**

School Teachers' Pay and Conditions (England) Order 2020 (SI 2020/1020)

Date laid: 23 September 2020

Parliamentary procedure: negative

*The purpose of this Order is to introduce new pay and allowance ranges in the national pay framework for school teachers in maintained schools in England. As in previous years, organisations that were consulted during the statutory process raised concerns about the timing of the consultation over the summer. While we note the link to the wider public sector pay process and that the Department provided an eight-week consultation period, with some of this time falling outside the summer holidays, we are nevertheless disappointed that the consultation once again clashed with the holidays. This was also a time when schools and teachers were under particular pressure preparing for the new school year and the many special measures required to make schools safe during the pandemic, making it more difficult for them to engage with the proposed changes to teachers' pay. **We urge the Department to consider how the statutory process could be timed more effectively in 2021.***

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

8. The Department for Education (DfE) has laid this Order with an Explanatory Memorandum (EM). The Order introduces new pay and allowance ranges in the national pay framework for school teachers in maintained schools in England, as set out in section 2 of the "School Teachers' Pay and Conditions Document 2020 and Guidance on School Teachers' Pay and Conditions" ("the Document").² The revised Document will come into force on 14 October 2020, with the effect of its provisions backdated to 1 September 2020. While non-maintained schools, including Academies and Free Schools, have the freedom and flexibility to adopt pay and conditions arrangements for their teachers "which best reflect their local circumstances", DfE says that many follow the conditions for maintained schools.

The statutory process

9. DfE explains that the Order is made annually, following a statutory process. Under this process, the Secretary of State formally refers matters concerning the pay and/or other conditions of employment of school teachers to the School Teachers' Review Body (STRB), which subsequently reports on those matters. DfE and the national representatives of teachers and teachers' employers have the opportunity to submit evidence before the report is finalised, and then published by DfE. The Secretary of State determines how and to what extent the recommendations in the report should be implemented, and then conducts a statutory consultation on the proposals before the Order is made.
10. According to DfE, the Secretary of State asked the STRB on 18 September 2019 to consider the application of the 2020 pay award in the context of promoting recruitment and retention within the bounds of affordability across

² DfE, 'School teachers' pay and conditions document 2020 and guidance on school teachers' pay and conditions' (September 2020): <https://publications.parliament.uk/pa/ld5801/ldselect/ldsecleg/123/12306.htm> [accessed 30 September 2020].

the school system. He also asked the STRB to have regard to the Government's commitment to a £30,000 teacher starting salary by September 2022, and for the STRB's advice on pay progression, including the performance-related pay progression pathway for classroom teachers and advisory pay points on the main and upper pay ranges, with the aim of addressing recruitment and retention challenges and reward good performance.

11. DfE told the Committee that it received the STRB's report on 12 June 2020. This is around a month later than in previous years. DfE published and laid the STRB's 30th report³ and its proposed response⁴ to that report before Parliament on 21 July 2020, following the submission of evidence by the Secretary of State⁵ and certain representative bodies.

The new pay arrangements

12. The STRB report recommended a 5.5% increase to the minimum of the main pay range, and that the maximum of the main pay range and the minima and maxima of all other pay and allowance ranges for teachers and school leaders should be uplifted by 2.75%. The STRB also recommended advisory pay points for teachers on the main pay range and upper pay range to support "a transparent and coherent career pathway and to assist with recruitment and retention". The Secretary of State accepted the STRB's recommendations in full and the Document has been revised to include the new pay and allowance ranges. In addition, a new Annex 3 has been inserted into the Document setting out the advisory pay points for the upper and main pay ranges.
13. According to DfE, the changes mean "a substantial above-inflation increase to the pay ranges for all teachers and leaders, the largest since 2005" and, with regard to the 5.5% increase for the minimum of the main pay range, represent a "significant first step towards the commitment to increase starting salaries nationally for teachers to £30,000 by 2022/23".
14. DfE says that until recently, the annual pay order was laid by 10 August to enable the pay award and any other changes to the Document to come into force and have effect from 1 September. The Department adds that since 2018, however, it has been necessary to consider the teachers' pay award in the context of the wider public sector pay process and awards and that, in order to allow "a meaningful (8 week) consultation", this year the pay order will come into force on 14 October 2020 and its provisions will have effect retrospectively from 1 September 2020. **The Department may wish to consider whether it is desirable to have a system in which pay awards are made retrospectively, and whether the process can be organised so that if changes are to take effect from 1 September the statutory process starts and finishes earlier.**

3 School Teachers' Review Body, 'School Teachers' Review Body 30th report: 2020' (21 July 2020): <https://www.gov.uk/government/publications/school-teachers-review-body-30th-report-2020> [accessed 30 September 2020].

4 HC Deb, 21 July 2020, [Col 102WS](#) [Commons written ministerial statement].

5 DfE, 'Government evidence to the STRB: 2020 pay award for school staff', (21 January 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859208/STRB_Written_Evidence_2020.pdf [accessed 30 September 2020].

Consultation

15. DfE invited consultees who contributed to the STRB process to comment on the STRB's 30th report and the revised draft Document during an eight-week statutory consultation which ran from 21 July to 14 September 2020. DfE says that all eight of the consultees to the process responded, either individually or through a joint response.
16. As in previous years, the Association of School and College Leaders (ASCL), National Association of Headteachers (NAHT), the National Education Union (NEU) and Voice submitted a joint response, as well as providing individual responses, which, according to DfE, largely reiterated the messages of the joint response. While the joint response welcomed the 5.5% increase for early career teachers, it also highlighted that the majority of teachers would receive around 2.75% which would not be enough to address the recruitment and retention concerns expressed by the STRB. This was also highlighted by the British Association of Teachers of the Deaf (BATOD). The joint response also emphasised that additional funding would be required to ensure the pay awards were affordable for all schools, and that while the introduction of advisory spine points was a step in the right direction, performance related pay itself should be abolished and mandatory spine points reintroduced to establish a fair and transparent pay system for all. Responses from the National Employers Organisation for School Teachers (NEOST) and the National Governors Association (NGA) highlighted the financial pressures on schools and raised concerns over affordability and impact on budgets and redundancies.
17. With regard to funding, the Department states that “the pay award will be affordable, on average, nationally for schools as a result of the three-year investment package announced at the 2019 Spending Round”, which will be “increasing core schools funding by £2.6 billion this year, £4.8 billion in 2021-22 and £7.1 billion in 2022-23, compared to 2019-20”. The EM states that the increases to starting pay “will help ensure teaching is rightly regarded as a well-rewarded and prestigious profession, enabling us to attract the most able graduates and career changers into teaching to support improved outcomes for pupils”, adding that the pay award also takes a “decisive step towards a pay structure which better supports teacher retention, with large increases to early career pay where we know retention is most challenging”.
18. As in previous years, the consultees, including the National Association of Schoolmasters Union of Women Teachers (NASUWT), criticised the timing of the publication of the STRB report and the consultation over the school holiday period and highlighted the detrimental impact this had on school planning. The Committee has raised concerns about the timing of the consultation on teachers' pay since 2017.⁶ Asked why the consultation had taken place again over the summer, DfE told us that:

“this year, like last HMT and No 10 took a much more hand-on approach to handling public-sector pay review body reports than in previous years. So, unlike previous years where, once we had agreed the recommendations with HMT and No10, we were then free to consult at a time of our choosing (which wouldn't normally coincide with school holidays), HMT and No10 wanted to publish all pay review body reports

⁶ [1st Report](#), Session 2019 (HL 3); [41st Report](#), Session 2017-19 (HL 190); [5th Report](#), Session 2017-19 (HL 20).

on the same day. We had no control over when that date was. In order to mitigate the impact of consulting over the summer holidays we did increase the consultation period to 8 weeks, thereby giving consultees approximately 3 weeks of consultation period outside of the school holidays.”

Conclusion

19. While we note the link to the wider public sector pay process and that the Department received the STRB report later than in previous years and offered an eight-week consultation period, we are nevertheless disappointed that the consultation once again clashed with the holidays. This was also a time when schools and teachers were under particular pressure preparing for the new school year and the many special measures required to make schools safe during the pandemic, making it more difficult for them to engage with the proposed changes to teachers’ pay. Given that several consultees raised the timing as problematic again this year and that this has been a matter of concern, including to this Committee, since 2017, **we urge the Department to consider how the statutory process could be timed more effectively in 2021.**
20. **The Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.**

Health Protection (Coronavirus, Restrictions) (Self-isolation) (England) Regulations 2020 (SI 2020/1045)

Date made: 27 September 2020

Parliamentary procedure: made affirmative

These Regulations introduce fines rising to £10,000 for those who fail to self-isolate following a notification of a positive test or contact with someone who has COVID-19. Because those using the NHS App have anonymity, we are concerned that its users could breach isolation requirements without incurring fines. This raises questions about inequalities as certain groups, for example the elderly or those on low income, may not have the necessary technology to use the NHS App and therefore be more likely to be subject to fines. Furthermore, we question the effectiveness of fines in deterring those prepared to ignore public health advice because they have taken the disease lightly or are asymptomatic.

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

21. These Regulations follow the made affirmative procedure and were made on 27 September and brought into effect on 28 September. They have been laid by the Department for Health and Social Care (DHSC) and are accompanied by an Explanatory Memorandum (EM).

Stricter duties and fines

22. The Regulations strengthen the duties on those who are required to self-isolate and increase the penalties for non-compliance. Regulation 2 states that adults who have been notified, otherwise than through the NHS App, that they have tested positive for coronavirus, or have been in close contact with someone who has tested positive, must self-isolate in their home or another suitable place. Those who test positive are required to self-isolate for 10 days and those who live in the same household or have been in contact with someone who has tested positive must self-isolate for 14 days. They are also responsible for ensuring any child under 18 in their household self-isolates.
23. Regulations 7 to 9 require a worker or agency worker to notify their employer of their requirement to self-isolate as soon as reasonably practicable, and prohibit employers or agencies from allowing them to work in any place except the place where they are self-isolating. Fines are also introduced for employers who knowingly breach this requirement.
24. Fines are substantially increased, rising rapidly to £10,000, particularly where the breach of self-isolation is reckless; that is, where those doing so know that they will come into contact with other people (see regulation 11(2)).

Policy rationale

25. DHSC says that these Regulations are intended to slow or prevent a rise in the rate of reproduction (R) of COVID-19, and to reduce the total number of infected people by restricting the movement of people most at risk of spreading the virus. However, the BBC reports that these stronger measures are required because a study commissioned by the Government

found just 18% of people who had symptoms went into isolation.⁷ **We were surprised that the EM failed to mention either this figure or give the Government’s own estimate of the numbers breaching quarantine, in support of the policy change.**

Potential for Discrimination

26. Regulation 2, which requires someone to self-isolate where their sample has tested positive for coronavirus or where they have been in close contact with someone who has tested positive, applies “where an adult is notified, *other than by means of the NHS COVID 19 smartphone app developed and operated by the Secretary of State.*” We asked DHSC whether those using the app might therefore be able to ignore such information with impunity. DHSC said:

“The NHS COVID-19 app has been explicitly designed to protect the anonymity of its users. The legal duty and associated fines do not, therefore, apply to people notified through the app that they have been in contact with someone who has tested positive for COVID-19.”

27. In response to supplementary questions, DHSC also said:

“The NHS COVID-19 app has been designed to protect the anonymity of its users alongside its role in protecting public health. An app user who needs to book a test will be redirected to the standard test booking system, where (independently of the app) they have to provide their personal details. Anyone who tests positive (whether or not they are an app user) will therefore be subject to the legal duty to self-isolate.

The legal duty to self-isolate does not apply where the app notifies someone anonymously that they have been in close contact with another app user who has tested positive. However, this does not prevent that person becoming subject to the legal duty if, through the standard contact tracing process and independently of the app, the person who has tested positive identifies them as a recent contact. This means there is no discriminatory effect: the legal duty to self-isolate applies equally to anyone identified as a contact through standard contact tracing processes, whether or not they also happen to be an app user.”

Potential for avoidance

28. While that offers some clarification of the position about equal liability for fines if a person has been tested, we were concerned that there might be a risk that this new regime might discourage people who had been notified of a contact from taking a test, thereby enabling them to continue to move about freely without incurring fines. DHSC responded:

“It is not possible to provide a reliable quantitative estimate of this potential impact. There will continue to be a strong programme of communications and engagement to promote the importance of having a test if someone has symptoms of coronavirus and the benefits of doing

7 ‘Covid-19: Up to £10,000 fine for failure to self-isolate in England’, *BBC* (28 September 2020): <https://www.bbc.co.uk/news/uk-54320482> [accessed 28 September 2020]. The research cited is Louise E Smith PhD, Henry WW Potts, PhD, Richard Amlôt, PhD, Nicola T Fear, DPhil (Oxon), Susan Michie, DPhil, G James Rubin, PhD ‘Adherence to the test, trace and isolate system: results from a time series of 21 nationally representative surveys in the UK (the COVID-19 Rapid Survey of Adherence to Interventions and Responses [CORSAIR] study)’ *medrxiv* 18 September 2020): <https://www.medrxiv.org/content/10.1101/2020.09.15.20191957v1.full.pdf>.

so – and to ensure people are aware of the support available to them if they have to self-isolate. The new Test and Trace Support Payment is specifically designed to help ensure that people on low incomes are not disincentivised from taking a test.”

Conclusion

29. These fines are substantial and depend on the effectiveness of the contact tracking system in all its forms. While Track and Trace can follow up the people that an individual with COVID-19 can identify, the NHS App works on the proximity of enabled phones to identify strangers, for example on a bus or in the supermarket queue. There are also concerns over the ability of Bluetooth to measure two metres accurately – leading to a number of false positives.
30. DHSC has announced that more than 12 million people in England have downloaded the NHS App. It is, however, only accessible to people whose phones have more modern software, thereby excluding those who have older handsets — typically, the poorer or the older members of society. Those groups are therefore more likely to be identified by Track and Trace than the NHS App, and consequently more likely to be subject to fines, compared to those with the latest smart phones.
31. The policy intention is that anyone notified that they have been in contact with an individual who has tested positive should go into self-isolation for 14 days. However, the Government cannot track those who have been informed by the NHS App. There is, therefore, the potential for those informed by the App to avoid being fined for failing to self-isolate, if they do not follow up the notification by applying for a test. Furthermore, we question the effectiveness of fines in deterring those prepared to ignore public health advice because they themselves have taken the disease lightly or are asymptomatic.

INSTRUMENTS RELATING TO COVID-19

32. One instrument relating to the COVID-19 pandemic, the Health Protection (Coronavirus, Restrictions) (Self-isolation) (England) Regulations 2020 (SI 2020/1045), is drawn to the special attention of the House in this report (see pages 9 to 11 above).

Restrictions on businesses and public gatherings: local restrictions

Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) Etc.) (Amendment) Regulations 2020 (SI 2020/1057)

33. These Regulations make changes to the restrictions on the protected areas throughout the north of England⁸:
- To address rising infection rates in the areas specified, this instrument prohibits household mixing in all indoor settings in Durham County, Gateshead, Newcastle, Northumberland, North Tyneside, South Tyneside and Sunderland.
 - Regulation 3 inserts new provisions 6A-C into the Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020 (SI 2020/1010) (“NENW Regulations”) to provide a much tighter definition of what constitutes a gathering and what the exemptions from the general prohibition are. It also requires the organiser of a permitted gathering to conduct a risk assessment first.
 - Regulation 4 amends the NENW Regulations to oblige undertakings in the hospitality industry to take measures to ensure their customers follow the rules on the group sizes, social distancing and singing in public.

Health Protection (Coronavirus, Restrictions) (North of England and North East and North West of England Etc.) (Amendment) Regulations 2020 (SI 2020/1074)

34. The North of England Regulations⁹ impose restrictions on households mixing in private dwellings and gardens for those local authorities in the protected area.
35. The Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020 (“NENW Regulations”)¹⁰ impose restrictions on households mixing in all indoor settings, so would prohibit mixing in pubs and restaurants, for example, as well as in private houses (subject to some exemptions set out in the Regulations).
36. The Department for Health and Social Care’s (DHSC) current approach is to move councils between the two sets of Regulations as the infection rate

8 Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020 ([SI 2020/828](#)) and Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020 ([SI 2020/1010](#)): both as amended.

9 Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020 (SI 2020/828 as amended).

10 [SI 2020/1010](#) as amended.

in that area fluctuates. The latest incidence rates for areas of concern are published on the Public Health England surveillance data webpage.¹¹

37. Due to rising infection rates, this instrument moves seven local authorities from the North of England regime into the stricter regime of the NENW Regulations: Halton, Sefton St Helens and Warrington Borough Councils, Knowsley Metropolitan Borough Council, Liverpool City Council, and Wirral Metropolitan District Council. It also adds two new local authorities into the NENW regime: Hartlepool Borough Council, which in specimens taken from 18 to 24 September had an incidence of 121.1 per 100,000 population, and Middlesbrough Council, which had an incidence rate over the same period of 102.5 per 100,000 population.
38. The data also suggest a stabilisation of the incidence rate in Bolton. As a result, the specific Regulations¹² have been revoked and Bolton has been included in the general measures in the North of England Regulations. DHSC has also lifted additional business restrictions in Bolton to enable bars, restaurants, cafes and pubs to open between the hours of 5:00 and 22:00 in line with national restrictions.

Changes to business practice and regulation

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020 (SI 2020/1031)

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Early Termination of Certain Temporary Provisions) Regulations 2020 (SI 2020/1033)

39. These two instruments make changes to the temporary provisions introduced by the Corporate Insolvency and Governance Act 2020 (“the CIG Act”). SI 2020/1031 extends the duration of some of the temporary measures beyond their current expiry date of 30 September 2020. Specifically, the instrument extends: the relaxation of company annual general meeting (AGM) requirements to 30 December 2020; the restrictions on use of statutory demands and winding up petitions to 31 December 2020; the modifications to moratorium provisions and temporary moratorium rules to 30 March 2021; and the small supplier exemption from termination clause provisions to 30 March 2021. According to the Department for Business, Energy and Industrial Strategy (BEIS), the extensions ensure that the measures continue to be available to companies which may be in financial difficulties at a time when coronavirus related restrictions remain in place, including social distancing and regional lockdowns, and while the Government are starting to wind down their financial support packages.
40. SI 2020/1033 carves-out some of the temporary moratorium provisions that would otherwise fall within scope of the extension under SI 2020/1031. Specifically, SI 2020/2033 terminates the temporary modifications to the conditions for having a moratorium which allows the supervising insolvency practitioner to disregard aspects of the company’s financial position that relate to coronavirus when considering whether the company is rescuable for the purposes of having a moratorium; and the relaxation of the conditions for extending, monitoring and terminating the moratorium on the grounds that

11 Public Health England, ‘Contain framework Local authority watchlist’ (1 October 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/923658/Contain_Watchlist.pdf [accessed 30 September 2020].

12 Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020 ([SI 2020/974](#) as amended).

any worsening of the company’s financial position because of coronavirus should be disregarded. As a result of these changes, the lowered threshold for obtaining a moratorium will no longer apply and, when considering whether the company is rescuable, the monitor will not be able to disregard the economic impact of coronavirus. BEIS says that these changes will ensure that the requirements for obtaining a moratorium will start to revert back to the original policy intent of the CIG Act.

Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) (Amendment) Regulations 2020 (SI 2020/1046)

41. These Regulations amend earlier instruments to extend requirements in relation to the “rule of six”¹³ to all premises where track and trace requirements apply¹⁴ and to introduce additional requirements on certain hospitality businesses.¹⁵ Specifically, the instrument ensures that requirements in relation to bookings of no more than six people, admission of parties of no more than six people, and mingling now apply in all premises subject to the track and trace requirements. The instrument imposes additional requirements on pubs, cafés, restaurants or bars, including bars in a hotel or members’ club, to take reasonable measures to stop customers from singing in groups of more than six. The Department for Business, Energy and Industrial Strategy (BEIS) confirmed that several groups will be allowed to sing on the same premises as long as each group does not consist of more than six people. We were also told that amateur choirs, orchestras or drama groups can continue to rehearse or perform together in line with the performing arts guidance,¹⁶ if they can do so in a way that ensures there is no interaction between any sub-groups of six at any time.
42. The instrument also requires businesses to stop customers dancing, with the exception of couples at their wedding or civil partnership ceremony or reception. BEIS told the Committee that they alone will be permitted to dance, but not their guests. The instrument also requires these businesses to limit noise levels to 85 A-weighted decibels when measured at the source of the sound. Live music is exempt.
43. The instrument further requires either signage at all “relevant areas” where face coverings are required¹⁷ to inform people of the requirement to wear a face covering unless an exemption applies or there is a reasonable excuse, or other measures to be taken to ensure that people are informed of the requirement. The instrument also prohibits businesses from preventing anyone from wearing a face covering where this is required.

13 Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 ([SI 2020/684](#)) (“the Principal Regulations”), see: [22nd Report](#), Session 2019-21 (HL 104), as amended most recently by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 5) Regulations 2020 ([SI 2020/1029](#)), see: [28th Report](#), Session 2019-21 (HL 135).

14 Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 ([SI 2020/1005](#)) (“the Track and Trace Regulations”), see: [27th Report](#), Session 2019-21 (HL 131).

15 Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations ([SI 2020/1008](#)), see: [27th Report](#), Session 2019-21 (HL 131).

16 Cabinet Office, *Coronavirus outbreak FAQs: what you can and can’t do*, (22 September 2020): <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do> [accessed 30 September 2020].

17 Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) Regulations 2020 ([SI 2020/791](#)), see: [24th Report](#), Session 2019-21 (HL 116).

44. BEIS explains that fixed penalty levels for not complying with these measures are £1,000 on a first occasion, £2,000 on a second occasion and £4,000 on a third occasion. The instrument increases the fixed penalty to £10,000 for a fourth and any subsequent occasion. The instrument also makes changes so that when the level of fixed penalty notice is calculated under these Regulations, any fixed penalty notices issued under the Track and Trace Regulations and the Principal Regulations are taken into account.
45. Given the extent of the restrictions imposed by this instrument and their increasing complexity, the EM should have been clearer. It is not evident, for example, whether the statement at paragraph 7.8 that “Certain behaviours, can pose significant disease transmission risks” refers to singing and dancing and/or other behaviours or activities. As the legislation and rules introduced to deal with the pandemic become more complex and locally varied, it is essential that EMs provide a clear rationale for any restrictions that are imposed and set out how exactly the restrictions will be applied in practice. **We are concerned about the growing complexity of the rules, and in particular about how this complexity may affect the public’s understanding of what is required and people’s willingness to follow new restrictions.**

Changes to benefits

Statutory Sick Pay (Coronavirus) (Funding of Employers’ Liabilities) (Amendment) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers’ Liabilities) (Northern Ireland) (Amendment) Regulations 2020 (SI 2020/1030)

46. These Regulations amend earlier instruments¹⁸ to ensure employers can continue to access support with the costs of paying eligible Statutory Sick Pay (SSP) to their employees. HM Revenue & Customs (HMRC) says that the European Commission has amended its definition of when a small and medium-sized enterprise (SME)¹⁹ is in difficulty and eligible to claim State aid under the UK’s Temporary State Aid Framework. This instrument ensures that the SSP rebate scheme remains aligned with the details agreed by the UK and the Commission regarding the UK’s programmes of support and intervention during the pandemic. According to HMRC, the changes may enable some SME employers who were previously ineligible to claim, because they were already in difficulty on 31 December 2019, to make a claim for eligible costs from 29 June 2020, if they meet certain conditions. The Regulations also change how employers must correct a claim which has been previously overstated, by providing a more straightforward process for employers involving a single point of contact. The instrument also ensures that employers can claim for coronavirus related SSP for those employees who were required to shield and formed part of an extended or linked household and are therefore eligible for SSP in line with the changes made by the Department for Work and Pensions²⁰ to extend eligibility.

18 Statutory Sick Pay (Coronavirus) (Funding of Employers’ Liabilities) Regulations 2020 ([SI 2020/512](#)) and the Statutory Sick Pay (Coronavirus) (Funding of Employers’ Liabilities) (Northern Ireland) Regulations 2020 ([SI 2020/513](#)), see: [16th Report](#), Session 2019-21 (HL 69).

19 SMEs are businesses with fewer than 250 employees and either turnover below €50 million or balance sheet total below €43 million.

20 Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) (No.2) Regulations 2020 ([SI 2020/681](#)), see: [22nd report](#), Session 2019-21 (HL 104).

Travel

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 16) Regulations 2020 (SI 2020/1070)

47. These Regulations amend the original International Travel Regulations²¹ to increase the fixed penalty payable by a person who fails to self-isolate when required to on their return to England from abroad. In line with other recent changes designed to increase compliance, this instrument introduces a “laddering” system, whereby the amount payable increases for repeated breaches of the requirement. Although the fixed penalty payable for a first offence remains £1,000 from 2 October 2020, it will increase to £2,000, £4,000, then £10,000 for subsequent offences.

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 17) Regulations 2020 (SI 2020/1076)

48. The instrument also amends the original International Travel Regulations (as above) to remove Bonaire, Sint Eustatius and Saba, Poland and Turkey from the list of exempt destinations. From 3 October, passengers arriving from those destinations will be required to self-isolate on arrival.
49. In addition, it corrects an error in Part 2 of Schedule 2 to the original Regulations which relates to the exemption of certain persons from the requirement to self-isolate.

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

INSTRUMENTS OF INTEREST

Draft Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

Draft Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020

Draft Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020

50. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill, if enacted in its current form, will require new border controls in the UK after 31 December 2020 when EU free movement arrangements end and European Economic Area (EEA) citizens²² will be subject to UK immigration control in the same way as non-EEA citizens. These three draft affirmative Regulations set out some of the practical details that will be required:
- The *Application Deadline and Temporary Protection Regulations* establish a six-month “grace period” up to 30 June 2021 for EEA citizens and their families already resident in the UK before 31 December 2020 to apply to the EU Settlement Scheme. The Regulations also provide that their entitlement to benefits and public services will continue to apply until that application has been decided.
 - The *Restrictions of Rights of Entry and Residence Regulations* provide for the handling of deportation cases. The instrument saves certain provisions of the current EU arrangements implemented by the Immigration (European Economic Area) Regulations 2016²³, which will lapse on 31 December 2020, so that those whose deportation is ordered on the basis of conduct which occurred before 30 December 2020 will still be treated in accordance with the former EU arrangements and have full rights of appeal.
 - The *Frontier Workers Regulations* set up a system so that EEA nationals who are working or self-employed in the UK but living elsewhere (“frontier workers”) may continue to work in the UK after 31 December 2020. Regulations 8 to 11 establish a scheme for frontier worker permits, which will be valid for two or five years and will be renewable indefinitely as long as the person remains a frontier worker. The instrument also sets out the circumstances in which a protected frontier worker’s rights can be restricted, and a permit can be refused or revoked but also includes statutory rights of appeal.

Draft Communications Act (e-Commerce) (EU Exit) Regulations 2020

51. This instrument proposes to end the direct effect of Article 3 of the Electronic Commerce Directive (“eCD”) on certain parts of the Communications Act 2003 (“the 2003 Act”) which deal with information society services and which would otherwise become retained EU law after the end of the Transition Period (TP). Article 3 of the eCD sets out “country of origin” rules which provide that these services must be regulated by the law of the

22 For these regulations “EEA citizens” means citizens of the European Union (EU), countries of the European Economic Area (EEA) (Iceland, Liechtenstein and Norway) and of the European Free Trade Association (EFTA) (the EEA countries and Switzerland).

23 Immigration (European Economic Area) Regulations 2016 ([SI 2016/1052](#)).

EEA state in which the provider of the services is established, rather than the law of the EEA state in which the services are received. Member States have to notify the Commission and other Member States to get permission to derogate from this principle. The Department for Digital, Culture, Media and Sport says that after the end of the TP, UK businesses will no longer benefit from the country of origin principle when operating in the EEA and that retaining the principle unilaterally in the UK would give EEA based businesses preferential market access. The instrument therefore proposes to remove the direct effect of the country of origin principle on sections of the 2003 Act which set out the enforcement powers of UK regulators in relation to premium rate telephone services and persistent misuse of telephone networks. As a result of these changes, the regulators would be able to enforce breaches of the relevant UK law by EEA businesses in the same way as they enforce breaches by UK and non-EEA businesses, and without applying for permission to derogate from the EU's country of origin rules. UK businesses would only have to comply with the law of the EEA state in which they provide the service and not UK law as well. There is some uncertainty regarding the impact of the changes. The Department expects small annual net direct costs to business of £0.6 million over 10 years but told the Committee that no data were available on how many of the 75,000 UK businesses that potentially fall into the scope of the instrument will be affected in practice, and that wider costs to UK businesses as a result of the UK becoming a third country in relation to the eCD will be a consequence of leaving the single market and customs union, rather than the instrument itself. The Committee first considered the Regulations when they were laid before Parliament as a proposed negative instrument and concluded that they should be subject to the affirmative procedure because of the uncertainty about their impact.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020

Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020

Communications Act (e-Commerce) (EU Exit) Regulations 2020

Flags (Northern Ireland) (Amendment) (No. 2) Regulations 2020

Taking Account of Convictions (EU Exit) (Amendment) Regulations 2020

Made instruments subject to affirmative approval

SI 2020/1031 Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020

SI 2020/1046 Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) (Amendment) Regulations 2020

SI 2020/1057 Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) Etc.) (Amendment) Regulations 2020

SI 2020/1074 Health Protection (Coronavirus, Restrictions) (North of England and North East and North West of England Etc.) (Amendment) Regulations 2020

Instruments subject to annulment

SI 2020/1014 Official Controls (Plant Health and Genetically Modified Organisms) (England) (Amendment) (No.2) Regulations 2020

SI 2020/1030 Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Amendment) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Amendment) Regulations 2020

SI 2020/1033 Corporate Insolvency and Governance Act 2020 (Coronavirus) (Early Termination of Certain Temporary Provisions) Regulations 2020

SI 2020/1070 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 16) Regulations 2020

SI 2020/1076 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 17) 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 6 October 2020, Members declared the following interests:

Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) (Amendment) Regulations 2020 (SI 2020/1046)

Lord Lisvane

Patron of the Chepstow Male Voice Choir

Board Member of the VOCES8 Foundation

Board Member of the Royal College of Organists

Attendance:

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Lord Cunningham of Felling, Lord German, Viscount Hanworth, Lord Liddle, the Earl of Lindsay, Lord Lisvane and Baroness Watkins of Tavistock.

