



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

3rd Report of Session 2019–21

Includes information paragraphs on:

Draft Crown Court (Recording and
Broadcasting) Order 2020

Andrey Lugovoy and Dmitri Kovtun Freezing
Order 2020

Draft Employment Allowance (Excluded
Persons) Regulations 2020

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HL Paper 10

Secondary Legislation Scrutiny Committee

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

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

And, to scrutinise –

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

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

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

Members

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>The Earl of Lindsay</u>
<u>Rt Hon. Lord Chartres</u>	(Chair)	<u>Lord Lisvane</u>
<u>Rt Hon. Lord Cunningham of Felling</u>	<u>Lord Kirkwood of Kirkhope</u>	<u>Lord Sherbourne of Didsbury</u>
<u>Viscount Hanworth</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 <http://www.parliament.uk/seclegpublications>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Helen Gahir (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Further Information

Further information about the Committee is available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://statutoryinstruments.parliament.uk/>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Third Report

INSTRUMENTS OF INTEREST

Draft Crown Court (Recording and Broadcasting) Order 2020

1. With the objective of increasing public understanding of what happens in the courts, the proceedings of the Supreme Court have been broadcast since it was established in 2009, and some television broadcasting in the Court of Appeal has been possible since 2013. This Order extends broadcasting to the Crown Courts but, because victims and witnesses may be present, tight rules are to be applied. Following a pilot test in eight locations, this Order would allow the recording and broadcast of sentencing remarks made by specified judges in any Crown Court. Such recording or live broadcast can only be done by persons who have been given specific permission by the Lord Chancellor and may only take place with the permission of the judge presiding over the case. Article 5 of the Order requires that only the judge will be filmed and normal reporting restrictions will continue to apply to protect victims or witnesses involved. Further information on how this will work is published in Appendix 1.

Draft Employment Allowance (Excluded Persons) Regulations 2020

2. This instrument proposes to restrict access to the Employment Allowance, a relief of up to £3,000 per tax year for businesses and charities on their secondary Class 1 National Insurance contributions (NICs) liabilities, to those employers whose liabilities were below £100,000 in the previous tax year. HM Revenue & Customs (HMRC) explains that the Employment Allowance was introduced in 2014 to incentivise businesses, especially smaller ones, to take on new employees, but that at a flat rate of £3,000 per employer it does not provide real incentives for larger employers. According to HMRC, the instrument therefore seeks to focus the relief on smaller businesses, as originally intended. The reform was announced in the 2018 Budget. HMRC says that because of the new restriction, the Employment Allowance will in future be administered as de minimis State aid, in order to ensure compliance with the EU's State aid rules, which will continue to apply during the Implementation Period following the UK's withdrawal from the EU. To comply with State aid monitoring requirements, HMRC will require additional information from employers who wish to claim the Employment Allowance. From April 2020, they will need to confirm annually that they have space in their relevant de minimis State aid ceiling to include the full annual amount of the Employment Allowance. The requirements will be contained in a statutory notice. In terms of impact, HMRC says that while larger employers will lose up to £3,000 per tax year, 93% of all businesses will remain eligible for the Employment Allowance. HMRC expects total one-off costs across 1.2 million businesses of around £9.2 million, with additional ongoing costs of around £0.6 million per year. At the same time, HMRC anticipates additional revenue for the Exchequer of £225 million in the financial year 2020-21, rising to £320 million in 2023-24.

Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020 (SI 2020/36)

3. This instrument puts in place a two-year freezing order that prohibits persons from making funds available to, or for the benefit of, Andrey Lugovoy and Dmitri Kovtun, who were found by the Litvinenko Inquiry to have deliberately poisoned Alexander Litvinenko in November 2006. HM Treasury (HMT) explains that the Anti-terrorism, Crime and Security Act 2001 (“the Act”) empowers the UK to take action to freeze assets of overseas persons or governments where there is a threat to the life or property of UK nationals or residents. HMT says that the Order aims to act as a deterrent and that, as required by the Act, it consulted the Home Secretary. The instrument is the third two-year freezing Order with regard to Andrey Lugovoy and Dmitri Kovtun, the first one having been laid following the publication of the Litvinenko Inquiry report in 2016. It replaces a second freezing Order from 2018 which expired on 19 January 2020. The instrument ensures that the asset freezing provisions do not lapse. The Order has been laid before Parliament under the ‘made affirmative’ procedure which means that it cannot remain in force unless it is approved by Parliament within 28 days, beginning with the day on which the instrument was made.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Crown Court (Recording and Broadcasting) Order 2020
 Employment Allowance (Excluded Persons) Regulations 2020
 Extradition Act 2003 (Amendments to Designations) Order 2020
 Legal Services Act 2007 (Approved Regulator) Order 2020
 Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2020
 Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2020
 Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2020
 Police and Crime Commissioner Elections (Amendment) Order 2020

Made instruments subject to affirmative approval

SI 2020/36 Andrey Lugovoy and Dmitri Kovtun Freezing Order 2020

Draft instruments subject to annulment

Modifications to the Smart Energy Code and the Smart Meter Communication Licences (Smart Meters No.1 of 2020)
 Pendle (Electoral Changes) Order 2020

Instruments subject to annulment

SI 2020/23 Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) Regulations 2020
 SI 2020/27 Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2020
 SI 2020/28 Public Lending Right Scheme 1982 (Commencement of Variation) Order 2020
 SI 2020/29 Child Trust Funds (Amendment) Regulations 2020
 SI 2020/32 Criminal Procedure (Amendment) Rules 2020
 SI 2020/33 Administration of Estates Act 1925 (Fixed Net Sum) Order 2020
 SR 2020/14 Housing Benefit and Universal Credit Housing Costs (Executive Determinations) (Amendment) Regulations (Northern Ireland) 2020

APPENDIX 1: DRAFT CROWN COURT (RECORDING AND BROADCASTING) ORDER 2020

Further information from the Ministry of Justice

Q1: Is the intention to always present the film as a recording – or could it be done live and in real time (the concern being that if someone nudged the camera, or someone shouted out, more than is permitted by article 5 could be transmitted, albeit accidentally.)?

A1: It is the intention to present the film as a recording the majority of the time. Live broadcast would be extremely rare: possibly in very high-profile cases. There will only be one cameraman assigned to live broadcasts and he is very experienced and currently deals with Court of Appeal broadcasts. There will be a 10 second delay to enable a broadcast to be stopped if some such incident happened.

Q2: Who does the filming? Is it the court itself or can any TV company that has the requisite permission do so? Is there some sort of pooling agreement for companies to share the film from a particularly interesting case?

A2: The three broadcasters that currently film in the Court of Appeal will be subject to the contract, ie Sky, ITN and BBC. They do indeed pool resources. They finance one cameraman currently in the Court of Appeal but would pool resources to pay for several cameramen to cover the Crown Courts sites.

Q3: What about transmitting edited versions or extracts of the remarks – is there any concern that the outcome could be misrepresented by the way it is cut?

A3: In addition to the general conditions contained at s 10 of the Order, we will ensure that the full footage of sentencing remarks is available to the public on a specific internet site alongside extracts in any news report. This will be in a format which makes it very difficult to tamper with or manipulate the images and sound.

Q4: Is there any appeal process for the film company if the Judge decides s/he does not want the sentencing to be filmed?

A4: No – section 32(4) of the 2013 Act bars such an appeal; and it will also be made clear in the contract that a judge's decision cannot be appealed.

Q5: This Order only allows the recording of sentencing remarks – is there a longer-term intention to move towards recording judgements/convictions at the end of trials?

A5: We have limited broadcasting to sentencing remarks only because of concerns about the impact on victims, witnesses and defendants and the integrity and dignity of the court process. We, therefore, have no longer term plans at this stage to extend beyond that.”

20 January 2020

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 28 January 2020, Members declared no interests.

Attendance:

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