

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

33rd Report of Session 2019–21

Drawn to the special attention of the House:

Statement of changes in Immigration Rules

Correspondence: Missing DfE instruments

Includes information paragraphs on:

10 instruments relating to COVID-19

Draft Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

Draft Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020

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Draft Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Draft Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No.2) Regulations 2020

Draft Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2020

Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020

Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2020

Draft Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Road Vehicles (Construction and Use) (Amendment) 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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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.

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Statement of Changes in Immigration Rules (HC 813)

Date laid: 22 October 2020

Parliamentary procedure: negative

*Summary: This Statement of changes to the Immigration Rules in part implements simplifications requested by the Law Commission, in part deals with matters relating to the end of the Transition Period and in part deals with new policy. The instrument is lengthy, at 507 pages, and covers a large number of policy areas. We made clear our opposition to large, wide-ranging instruments when we reported on certain EU Exit instruments last year and, in debate, members of the House strongly supported that view. **In reporting on this instrument, we reiterate our view that combining so many policy areas in one very large instrument is wholly unjustified.***

*Not only does its complexity make effective parliamentary scrutiny virtually impossible, but it ignores a key criterion of the Government's definition of "good law", in that it makes the law less accessible to the citizen. **We have no doubt that the House will wish to press the Minister to explain why this approach was taken; why it would not have been possible to deal with the issues in a series of themed instruments; and to give an undertaking that this approach will not be repeated.***

We acknowledge that the Home Office has made considerable efforts to provide a comprehensive description of the changes that are being made. It was disappointing, however, that the Explanatory Memorandum, which is itself 50 pages long, was not clearer on the policy aims of these changes and what the impact will be.

This instrument is drawn to the special attention of the House on the ground that it is politically or legally important or contains policy likely to be of interest to the House.

1. This instrument is subject to the negative procedure and has been laid by the Home Office accompanied by an Explanatory Memorandum (EM).¹ Its provisions mainly come into effect on either 1 or 31 December 2020.
2. The instrument is 507 pages long and wide-ranging. In the main, it follows up the policy statement on the Future Borders and Immigration System² and responds to the Law Commission report on Simplifying the Immigration Rules.³ **It is disappointing that the EM, while providing a comprehensive description of the changes, assumes the reader is well versed in both documents and often fails to make connection between the change being made and the explicit policy ambition it fulfils.**
3. The instrument also covers adjustments to do with navigating the end of the Transition Period (TP), adjustments to support three draft affirmative

¹ See also the Immigration and Nationality (Replacement of Tier 2 and Fees) (Amendment) (EU Exit) Regulations 2020 (SI 2020/1147), which amends fees for some of the items in this instrument.

² HC Deb, 19 December 2018, col 806.

³ Law Commission, *Simplifying the Immigration Rules*: <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/> [accessed 28 October 2020].

instruments on Citizen’s Rights,⁴ and provisions to implement the change in policy on Hong Kong British National (Overseas) (BNO) status announced on 22 July 2020.⁵

4. Our guidance to government departments,⁶ published on our website, has a section on “miscellaneous amendments” instruments. It states: “... Such wide-ranging instruments should only be used for tidying up the statute book and not include any major new policy developments; the Committee has been very critical in the past of SIs that attempted this mix.” (para 25)
5. This instrument illustrates why — it is very difficult to identify new policy in the mass of material that simplifies the status quo.
6. Dealing with this volume of legislation, even where it is simplifying matters, is challenging. Without an expert knowledge of the subject, and the ability to compare old and new Rules side by side, it is impossible for us — and any other lay reader — to tell whether any important protections have been lost in the course of the simplification. **Although the Home Office’s ultimate goal is a simpler set of Rules, in this transitional phase this instrument ignores a key criterion of the Government’s definition of “good law” in that it makes the law less accessible to the citizen.**

Simplification

7. The EM explains that this instrument restates, in a simplified form, the provision for a large number of immigration categories (for example, student, sports person, seasonal worker), and some of the qualifying requirements (for example, English language, continuous residence, finance). Where a route is being simplified, this instrument adds it to an appendix to reduce the need for cross-referencing. The EM states that this is a transitional measure and when the Immigration Rules are fully consolidated and simplified, the routes will be in the body of the rules as separate Parts.
8. We have frequently criticised the length and complexity of the Immigration Rules, and therefore welcomed the Law Commission’s review of them. The Home Office responded to the Law Commission report on 25 March 2020, accepting almost all of the recommendations.⁷
9. In that response, the Home Office set out its objectives:

“Our aim is for consolidated and simplified Rules to be in force from January 2021. They will provide the foundation for a global points-based immigration system that is fair, firm, effective and humane.

The Rules will be:

- consolidated and simplified

4 Mentioned in our *29th Report*, (Session 2019-21 HL Paper 138).

5 Prime Minister Boris Johnson MP, ‘PM Boris Johnson article on Hong Kong: 3 June 2020’: <https://www.gov.uk/government/speeches/pm-boris-johnson-article-on-hong-kong-3-june-2020> [accessed 28 October 2020].

6 SLSC ‘Guidance for Departments laying instruments for the Secondary Legislation Scrutiny Committee’: <https://publications.parliament.uk/pa/ld5801/ldselect/downloads/Guidance-for-departments-on-statutory-instruments-Feb-2020.pdf>.

7 UK Visas and Immigration, and the Home Office, ‘Simplifying the Immigration Rules: a response’ (25 March 2020): <https://www.gov.uk/government/publications/simplifying-the-immigration-rules-a-response> [accessed 28 October 2020].

- restructured so that they are easy to use and understand
- drafted in plain English

As we simplify the Rules we will look at how we strike the right balance between prescription and discretion, in line with the Law Commission's recommendations on evidence.

We will put in place mechanisms to make Rules changes more transparent, and we will improve the digital publication of Rules online.” (p. 3)

10. The changes made by this instrument are, however, only the first step. The Home Office states that there will be further Statements of changes before the recommendations are fully implemented. Given the stated aim of having those changes in place by January 2021, **the House may wish to ask the Minister to explain how many instruments will be required to achieve this goal, when they will be laid before Parliament, and to give an undertaking that this portmanteau approach will not be repeated.**

EU Withdrawal

11. The instrument includes changes to the EU Settlement Scheme (EUSS) and EU (Family Permits) arising from the end of the TP and because EEA nationals resident in the UK before 31 December 2020 can apply under the EUSS and so do not need to apply under the Rules.
12. The introduction of new routes for S2 Healthcare Visitors (who come to the UK for authorised medical treatment) and Service Providers from Switzerland arise from the Withdrawal Agreements. The provisions on the European Communities Association Agreement (ECAA) arise because the UK will no longer be bound by that agreement to provide preferential treatment to Turkish nationals, although an appendix largely replicates arrangements for Turkish workers already in the UK.

Other matters

13. The only change that relates directly to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill are the provisions on Irish Citizens in the Introduction chapter. They confirm that, as part of the Common Travel Area arrangement between the UK and Ireland, Irish citizens will have the right to enter, live and work in the UK without requiring permission and without restriction on their stay (unless they are subject to a deportation order, exclusion decision or international travel ban): any applications under the Immigration Rules will therefore be invalid.
14. The Hong Kong British National (Overseas) route has two routes — the BN(O) Status Holder route and the BN(O) Household Member route — which apply to a citizen who is ordinarily resident in Hong Kong or the UK. Both routes allow work and study in the UK and are routes to settlement. The EM states:

“The introduction of a new immigration route for BN(O)s may increase migration to the UK. Given that migration happens for a myriad of reasons, there is significant uncertainty about the number of BN(O) citizens who may migrate, as well as the characteristics of this cohort which will influence demand for public provision (age, employment status etc).”

Conclusion

15. We have long suggested that the Immigration Rules needed consolidation and simplification, and we fully support that objective. This instrument, however, is so large and wide-ranging that it is difficult to be clear about the importance and effect of each item. **Many of these policy areas are individually of significant interest to the House and to the public, so they would have been presented better as a series of themed instruments that would make effective scrutiny easier.**
16. In reporting on this instrument, we reiterate our view that combining so many policy areas in one instrument is wholly unjustified. We made clear our opposition to large, wide-ranging instruments when we reported on certain EU Exit instruments last year and, in debate, members of the House strongly supported that view.⁸ **We have no doubt that the House will wish to press the Minister to explain why this approach was taken; why it would not have been possible to deal with the issues in a series of instruments; and to give a undertaking that this approach will not be repeated.**

⁸ For example, the Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020, HL Deb, 12 March 2019, [cols 185–197](#), with further debate on the approval motion HL Deb, 18 March 2019, [cols 1310–1320](#).

CORRESPONDENCE

Missing DfE instruments

17. On 21 October we wrote to the Permanent Secretary of the Department for Education to ask about two statutory instruments which were not sent to the Committee for scrutiny. The Department also failed to send the two instruments to the Joint Committee on Statutory Instruments. In her response of 2 November, the Acting Permanent Secretary apologises for the oversight and explains that it was caused by human error. We welcome the fact that the Department has reviewed and strengthened the protocols in place for digital-only submissions, and that additional checks have been put in place to prevent the oversight from happening again. The correspondence is published at Appendix 1.

INSTRUMENTS RELATING TO COVID-19

Local restrictions and movement between tiers

Health Protection (Coronavirus, Local Covid-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No.2) Regulations 2020 (SI 2020/1176)

18. This instrument moves the Warrington Borough Council area from Local Covid Alert Level High (Tier 2) to Very High (Tier 3), for 28 days. The blanket statement of general factors to be considered is cited, rather than any specific explanation being given for moving this area into tighter restrictions. In addition to the baseline business closures set out in the Local Covid Alert Very High Regulations, betting shops, adult gaming centres, casinos and soft play facilities will also be required to close in Warrington.

Health Protection (Coronavirus, Local Covid-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No. 3) Regulations 2020 (SI 2020/1183)

19. This instrument moves the following areas in Nottinghamshire from High (Tier 2) to Very High Covid Alert Level (Tier 3) for 28 days: Ashfield, Bassetlaw, Newark & Sherwood and Mansfield District Councils, Broxtowe, Gedling and Rushcliffe Borough Councils and Nottingham City Council. The Explanatory Memorandum (EM) states that Local Covid Alert Level Very High is triggered when Local Covid Alert Level High measures have not contained the spread of the virus or where there has been a significant rise in transmission.
20. In addition to the baseline closures provided in the original Tier 3 regulations,⁹ these Regulations close an extensive list of indoor leisure and tourism activities and personal care services (such as nail bars, tanning salons or tattoo or piercing parlours). The Regulations also prohibit the sale of alcohol for consumption off the premises between 21:00 and 05:00 from supermarkets, corner shops, etc. The EM states that the local area predicts that staggered closing times may ease transport pressures associated with the 22:00 closure of pubs and restaurants.

Health Protection (Coronavirus, Local Covid-19 Alert Level) (High) (England) (Amendment) (No. 2) Regulations 2020 (SI 2020/1189)

Health Protection (Coronavirus, Local Covid-19 Alert Level) (High) (England) (Amendment) (No. 3) Regulations 2020 (SI 2020/1192)

21. The Explanatory Memorandum states that, “in response to recent data”, SI 2020/1189 moves a number of local authority areas from various parts of England from Medium (Tier 1) to High Local Alert Level (Tier 2). The Tier 2 restrictions limit social contact, particularly indoor social contact (with the exception of some life events and sporting activities) and are aimed primarily at targeting household to household transmission.
22. The council areas affected are: Amber Valley, Bolsover, Cannock Chase, Charnwood, Derby City, Derbyshire Dales, Dudley, East Riding of Yorkshire, East Staffordshire, High Peak, Hull, Lichfield, Luton, Newcastle-

⁹ Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 (SI 2020/1105).

under-Lyme, North Lincolnshire, North East Lincolnshire, Oxford City, South Derbyshire, South Staffordshire, Stafford, Staffordshire Moorlands, Tamworth, and Telford and Wrekin.

23. SI 2020/1192 was made on the same day as the previous instrument to correct an error (Telford and Wrekin Council was originally attributed to Herefordshire rather than Shropshire) and to add Carlisle City Council to the list of areas in Tier 2.

Changes to business practice and regulation

Health Protection (Notification) (Amendment) (Coronavirus) Regulations 2020 (SI 2020/1175)

24. Existing Public Health legislation requires diagnostic laboratories and GPs to inform Public Health England (PHE) of suspected cases of notifiable diseases. However, the growing use of “point of care tests” from private providers means data is not being captured. These Regulations require the results of all tests for SARS-CoV-2 (the virus which causes COVID-19) or for the detection of influenza, to be notified to PHE (whether that result is positive, indeterminate, negative, or void). The test provider is required to send with it specified personal information, including phone number and email address where known, to assist with contact tracing.
25. Positive and indeterminate test results for COVID-19 must be reported to PHE within 24 hours, negative and void results for COVID-19 and all results for influenza must be reported within seven days of the result becoming available. The Department for Health and Social Care states that having the full testing history of a patient will also help scientists understand the length of episodes of infection or carriage of the virus and the potential for repeat infection. It will also improve understanding of the transmission risks in communities, workplaces and other settings to inform the public health response to COVID-19.

Travel

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 20) Regulations 2020 (SI 2020/1161)

26. This instrument amends the original International Travel Regulations¹⁰ to add the Canary Islands, Denmark, Maldives and the Greek island of Mykonos to the list of countries from which passengers arriving in England do not have to self-isolate, with effect from Sunday 25 October 2020. However, from the same date, Liechtenstein is added to the quarantine list.
27. Following the fifth statutory review of the travel restrictions, completed on 19 October 2020, these Regulations also make minor amendments to certain exempt occupations in Schedule 2 and edit the detail in the passenger information to be provided on arrival in England; in particular to provide a seat number and coach number where applicable and to provide a vessel name where appropriate.

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

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 21) Regulations 2020 (SI 2020/1190)

28. In response to the latest assessment of public health risk data, these Regulations amend the original International Travel Regulations¹¹ to re-impose the 14-day self-isolation requirement on passengers arriving from Cyprus and Lithuania with effect from 1 November 2020.

Public services

National Health Service (Charges and Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2020 (SI 2020/1126)

29. This instrument amends existing legislation to meet the year 2 requirements of the five-year Community Pharmacy Contractual Framework. Many of these relate to improved use of Information Technology by pharmacies; others include the introduction of the new Discharge Medicines Service which requires particular monitoring of the first prescription presented post-discharge and requires the pharmacist to raise any issues of concern with the patient or their carer but also with the GP.
30. These Regulations also make certain contingency arrangements related to the COVID-19 pandemic to enable a more flexible provision of immunisation services and the distribution of potential COVID-19 or other pandemic illness treatments through dispensing contractors, should the need arise.

Changes to benefits

Social Security (Coronavirus) (Prisoners) Amendment Regulations 2020 (SI 2020/1156)

31. This instrument extends the provisions of the original instrument by six months so that social security benefits remain available in England and Wales to prisoners temporarily released to manage infection during the second wave of the coronavirus pandemic. The provision is now due to expire in May 2021.

Law and Order

Draft Coronavirus Act 2020 (Expiry of Mental Health Provisions) (England and Wales) Regulations 2020

32. This instrument revokes provisions in Schedule 8 to the Coronavirus Act 2020 which would have made temporary changes to certain requirements under the Mental Health Act 1983 (the MHA), so as to maintain a viable service if there were a significant reduction in relevant staffing during the pandemic. These measures included the extension or removal of certain time limits relating to the detention and transfer of patients with mental health conditions and allowing for one, rather than two, doctors to recommend that a person be detained and treated or assessed under the MHA. Both the Joint Committee on Human Rights and the Public Administration and Constitutional Affairs Committee raised objections to the provisions. It was not necessary to use the powers during the first wave and the Department for Health and Social Care states that other means of increasing capacity and resilience have now been introduced. The Minister therefore announced on

11 *Ibid.*

30 September that the provisions would be removed in England.¹² Certain provisions are also revoked in Wales, but the Welsh government has asked to keep others available as a contingency, during the second wave.

12 HC Deb, 30 September 2020, [cols. 392-393](#).

INSTRUMENTS OF INTEREST

Draft Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

33. The main purpose of these draft Regulations is to introduce a regulatory framework for Geographical Indication (GI) schemes¹³ in the UK after the end of the Transition Period (TP). The instrument also proposes amendments for (non-GI) standards in relation to wines and the spirits sector and implements the Northern Ireland Protocol (“the Protocol”), so that for the duration of the Protocol, the territorial extent of the new UK GI schemes will not include Northern Ireland, which will remain under the EU arrangements.
34. The Department for Environment, Food and Rural Affairs (Defra) says that, amongst other changes, the instrument provides for the continued protection in Great Britain (GB) of established UK GIs and non-UK GIs that are recognised under the EU GI schemes on 31 December 2020. The instrument consolidates amendments contained in earlier instruments and, together with other EU Exit legislation,¹⁴ will enable the UK to meet its obligations under the World Trade Organisation’s Agreement on Trade-Related Aspects of Intellectual Property Rights. The instrument also proposes the establishment of GB GI registers and new domestic GI logos and, specifically in relation to established GB GIs in the agri-food sector, provides for a three-year transition period before the new GI logos become mandatory, while the requirement for the use of EU GI logos is removed. The instrument further introduces an appeals procedure, enabling appeals against GI scheme decisions made by the Secretary of State to be made to the First-tier Tribunal.
35. Asked whether the EU will reciprocate and continue to recognise established UK GIs, the Defra confirmed that this was “the expectation and will be the default position” at the end of the TP, adding that the Department did “not expect the position to change as a result of the ongoing future relationship negotiations with the EU”.

Draft Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020

36. These draft Regulations propose changes to ensure that animal welfare legislation can operate effectively after the end of the Transition Period (TP). The legislation covers the protection of animals at the time of their killing, during transport and the criteria for animals being kept in control posts; the use of leghold traps, the import of pelts and manufactured goods of certain wild animals; and the prevention and management of the introduction and spread of invasive non-native species.
37. The Department for Environment, Food and Rural Affairs (Defra) says that the proposed changes are needed to maintain the strict protections that are currently in place and to implement the Northern Ireland Protocol in these

13 GIs are a form of intellectual property protection for the names of food, drink and agricultural products with qualities or characteristics which are attributable to the place they are produced and/or the traditional methods by which they are made. UK examples include Scotch Whisky and Welsh Lamb.

14 For example, the [Draft Common Organisation of the Markets in Agricultural Products \(Producer Organisations and Wine\) \(Amendment etc.\) \(EU Exit\) Regulations 2020](#).

policy areas. Amongst other changes, the instrument proposes to end the recognition in Great Britain (GB) of Transporter Authorisations, driver and attendant Certificates of Competence (CoC), Vehicle Approvals and Journey Logs which have been issued by an EU Member State. This means that EU transporters will need to apply for these documents to be issued by a competent authority in GB, if they wish to continue to transport animals in GB after the end of the TP.

38. Defra told us that this was reciprocal, and the EU would also cease to recognise GB-issued documents in this area. The Department explained that:

“Although EU and GB standards will remain aligned at the end of the transition period, we have ambitions to strengthen welfare in transport standards in the near future. We want to ensure that, going forward, EU transporters who move live animals into GB adhere to our standards. Requiring them to have authorisations issued in GB will enable us to ensure effective enforcement against non-compliance and create a level playing field to ensure that GB transporters are not commercially disadvantaged.”

39. Asked about the impact of the changes, Defra told us that:

“The process to obtain and apply for these documents will not change. The only difference will be the country in which they are now obtained. Drivers and attendants undertake the training and assessment for the species in which they wish to transport in order to obtain Certificate of Competences (CoC), while the vehicle(s) undergoes inspection for approval. Upon receipt of these documents, the transporter will apply to [the Animal and Plant Health Agency] for the Transporter Authorisation (TA). Upon receipt of the TA, the transporter is eligible to transport in GB.”

40. Defra added that while TA’s and Journey Logs are currently issued free of charge, CoCs cost around £360 per certificate, including training, while Vehicle Approvals cost around £200 per vehicle.

Draft Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

41. These draft Regulations propose changes to enable the enforcement of the UK’s obligations under several provisions of the EU’s Common Fisheries Policy (CFP) which will continue to apply directly in Northern Ireland (NI) after the end of the Transition Period (TP) under the NI Protocol (“the Protocol”). These changes will enable the UK to fulfil its obligations under a number of international fisheries agreements, including the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) which aims to combat illegal, unreported and unregulated (IUU) fishing by regulating access of foreign fishing vessels to the ports of contracting parties.¹⁵

¹⁵ The other international agreements dealt with by this instrument are the Bluefin tuna catch documentation programme adopted by International Commission for the Conservation of Atlantic Tunas (ICCAT) and the catch documentation scheme for *Dissostichus* spp. (toothfish) adopted by the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR).

42. The Department for Environment, Food and Rural Affairs (Defra) explains that the EU is a contracting party to the PSMA and that the UK intends to accede to the PSMA in its own right after the end of the TP. While EU law that implements the EU's PSMA obligations will continue to apply in NI by virtue of the Protocol, this will not regulate access by EU vessels, as such vessels are not foreign fishing vessels under the EU's PSMA obligations. This instrument therefore proposes that once the UK accedes to the PSMA as an independent contracting party after the end of the TP, retained EU law will apply to NI specifically in relation to the use of ports by EU fishing vessels to ensure full compliance with the UK's obligations under the PSMA. This will enable the UK to impose controls on all non-UK vessels, including those flying the flag of EU Member States. According to Defra, these controls include requirements to use designated ports, to obtain authorisation prior to using ports and to submit certain documents in advance of using ports as well as a regime of inspection.
43. We received a submission from ClientEarth which raised a number of questions and concerns about this instrument. We note that, as highlighted by ClientEarth, certain delegated powers currently held by the EU have not been transferred to the UK. Defra explains that these powers have never been used by the EU and that the Government anticipate being able to use other powers, including under what is now clause 36 of the Fisheries Bill, to implement international obligations relating specifically to the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) catch documentation scheme for Antarctic and Patagonian Toothfish. We are publishing the submission by ClientEarth and Defra's full response on our website.¹⁶

Draft Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Draft Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No.2) Regulations 2020

44. These two sets of draft Regulations share an Explanatory Memorandum and propose changes to retained EU law and domestic law relating to the Common Organisation of Agricultural Markets (CMO) to ensure that the legislation can work effectively after the end of the Transition Period. The proposed amendments are also needed to implement the Northern Ireland Protocol.
45. Amongst other changes, different transitional provisions are proposed for different commodities: transitional provisions for the import of hops and hops products, for example, are to be shortened to align them with the Border Operating Model¹⁷ which will introduce new border controls in three stages up until 1 July 2021. This means that EU forms and certificates from third countries attesting that hops or hops products meet marketing standards requirements will only be accepted until 1 July 2021, rather than for a period of two years as originally intended, provided that the EU's standards remain at least equivalent to standards in Great Britain. We asked the Department for Environment, Food and Rural Affairs (Defra) why these

¹⁶ Secondary Legislation Scrutiny Committee, scrutiny evidence page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

¹⁷ Cabinet Office, *The Border Operating Model* (13 July 2020): <https://www.gov.uk/government/publications/the-border-operating-model> [accessed 28 October 2020].

specific transitional provisions were being amended whilst those for other commodities were not, adding complexity to the new arrangements. The Department's response suggests that there are differing levels of preparedness for different commodities. Defra told us that:

“The provision for the import of hops and hops products will be amended to align with the Border Delivery Model. [...] This is not the approach that has been adopted for all of the transitional provisions, for example, EU certificates of conformity for imports of fruit and vegetables and the use of optional indication certificates for poultrymeat imports. For fruit and vegetables, we have retained the two-year transitional period [...] in order to allow policy teams to deliver the necessary IT system changes and recruit additional HMI inspectors. For poultrymeat, we have retained a 12-month transitional period [...] as we do not currently enforce poultrymeat marketing standards, so will need sufficient time to operationalise the regime before being in a position to conduct the associated checks. We are aware that the different approaches for different commodities will attract scrutiny. The CMO transitional provisions have been reviewed on a case by case basis to see where it would be practically possible to reduce the transitional period in order to align with the Border Operating Model.”

46. **In the light of public interest in food imports, we draw the attention of the House to the Department's explanation that poultry meat marketing standards are currently not being enforced, and that a 12-month transitional period is needed to enable the future import regime and the associated checks to become operational.**

Draft Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2020

Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020 (SI 2020/1155)

Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2020 (SI 2020/1146)

47. These three instruments amend the 2019 regulations of the same name¹⁸ relating to Operation Brock, the arrangements for managing lorries going to the Channel Ports after the end of the Transition Period. In particular, they postpone the expiry date for the arrangements from 31 December 2020 to 31 October 2021. They also refine existing provision, following consultation with the Kent Resilience Forum, to:
- impose fines to enforce the *Check an HGV is ready to cross the Border service*, which is designed to reduce the volume of HGVs that travel to ports without the relevant customs documentation;
 - require HGV drivers to have a Kent Access Permit to drive on specific motorways in Kent and modify the list of roads on which they can drive;
 - allow for prioritisation of HGVs carrying single loads of specific perishable goods, for example live or fresh seafood for human consumption, in order to bypass the Operation Brock queues; and

18 [SI 2019/1210](#), [SI 2020/1388](#) and [SI 2020/1394](#).

- to clarify to whom Local Haulier Permits may be issued, that is a permit to allow hauliers based in East Kent and Faversham to use local roads when they would be otherwise restricted to using the specified motorway network.

Draft Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

48. These draft Regulations propose changes to ensure a functioning system for the import of animals and animal products after the end of the Transition Period (TP). The legislation that is to be amended covers animal health requirements in relation to the movement of live animals, including equines, pets and circus animals, and trade in products of animal origin (including meat), animal by-products and germplasm (semen, ova and embryos).
49. The Department for Environment, Food and Rural Affairs (Defra) says that the amendments reflect the status of the European Economic Area (EEA) as a third country after the end of the TP, and give effect to the Government's policy of phasing in third country checks on imports from the EEA. According to Defra, no substantive change is being made to policy: the new arrangements seek to maintain the existing import regime, using a risk-based approach to protect biosecurity and welfare standards. Defra says that as Great Britain is currently part of the EU's Sanitary and Phytosanitary regime, the risk from EEA imports after the TP is very low, and that the new regime will identify risk through the pre-notifications of imports.
50. The new arrangements are being phased in from the end of the TP to give businesses time to adjust: from 1 January 2021, importers of animal by-products and live animals will be required to pre-notify via the new Import of Products, Animals, Food and Feed system (IPAFFs), which will replace TRACES, the EU's electronic notification system. From 1 April 2021, importers of products of animal origin will also be required to pre-notify via IPAFFs.

Road Vehicles (Construction and Use) (Amendment) Regulations 2020 (SI 2020/1178)

51. Following eight fatalities from collisions where Coroners concluded that old tyres were a factor, this instrument will ban the use of tyres aged 10-years and older on the front axles of heavy goods vehicles, buses and coaches. The ban will also apply on any axle of a minibus if the tyres are fitted in single configuration (that is, when only one wheel is fitted on each side of the axle). Equivalent restrictions are placed on the use of retreaded tyres if their retreading took place 10-years or more ago. The instrument will also introduce a requirement for the "date of manufacture" marking on the tyre to be legible. The Explanatory Memorandum states that this provision has been in guidance for a number of years but sampling by the Driver Vehicle and Standards Agency indicated that a small percentage of vehicles were on the road with at least one tyre more than a decade old. These Regulations seek to improve compliance by making it an offence subject to a fine.

Other instruments

52. The Feed-in Tariffs (Amendment) (Coronavirus) (No. 2) Order 2020 was laid before Parliament on 8 September 2020 and came into force on 30 September 2020. We should have scrutinised the Order at our 27th meeting

on 22 September 2020 but, due to an oversight, we did not consider the instrument then or at any subsequent meeting. Unfortunately, we only became aware of this oversight after the prayer period of the instrument had expired.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020

Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020

Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No.2) Regulations 2020

Control of Mercury (Amendment) (EU Exit) Regulations 2020

Coronavirus Act 2020 (Expiry of Mental Health Provisions) (England and Wales) Regulations 2020

Detergents (Amendment) (EU Exit) Regulations 2020

Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2020

Human Medicines (Amendment etc.) (EU Exit) Regulations 2020

Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020

Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020

Waste and Environmental Permitting etc. (Amendment etc.) (EU Exit) Regulations 2020

Made instruments subject to affirmative approval

SI 2020/1155 Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020

SI 2020/1176 Health Protection (Coronavirus, Local Covid-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No.2) Regulations 2020

SI 2020/1183 Health Protection (Coronavirus, Local Covid-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No. 3) Regulations 2020

SI 2020/1189 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 21) Regulations 2020

SI 2020/1192 Health Protection (Coronavirus, Local Covid-19 Alert Level) (High) (England) (Amendment) (No. 3) Regulations 2020

Draft instruments subject to annulment

London Borough of Merton (Electoral Changes) Order 2020

Instruments subject to annulment

- SI 2020/1126 National Health Service (Charges and Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2020
- SI 2020/1132 Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) Regulations 2020
- SI 2020/1135 M25 Motorway (Junction 5) (50 Miles Per Hour Speed Limit) Regulations 2020
- SI 2020/1136 M1 Motorway (Junction 2) (50 Miles Per Hour Speed Limit) Regulations 2020
- SI 2020/1141 British Nationality (General) (Amendment) Regulations 2020
- SI 2020/1142 Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) (Revocation) Regulations 2020
- SI 2020/1143 Marriage and Civil Partnership (Northern Ireland) (No.2) Regulations 2020
- SI 2020/1147 Immigration and Nationality (Replacement of Tier 2 and Fees) (Amendment) (EU Exit) Regulations 2020
- SI 2020/1152 National Health Service (Charges to Overseas Visitors) (Amendment) (No.3) Regulations 2020
- SI 2020/1156 Social Security (Coronavirus) (Prisoners) Amendment Regulations 2020
- SI 2020/1161 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 20) Regulations 2020
- SI 2020/1166 Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations 2020
- SI 2020/1175 Health Protection (Notification) (Amendment) (Coronavirus) Regulations 2020
- SI 2020/1178 Road Vehicles (Construction and Use) (Amendment) Regulations 2020
- SI 2020/1181 Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020
- SI 2020/1190 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 21) Regulations 2020

APPENDIX 1: CORRESPONDENCE: MISSING DFE INSTRUMENTS

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to Susan Acland-Hood, Acting Permanent Secretary at the Department for Education

I am writing to you on behalf of the House of Lords Secondary Legislation Scrutiny Committee (SLSC), of which I am Chair, about the following statutory instruments which were made and laid before Parliament under the negative resolution procedure in August:

- Education (Induction Arrangements for School Teachers) (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/842)
- Education (National Curriculum Assessment Arrangements, Attainment Targets and Programmes of Study) and (Pupil Information and School Performance Information) (Amendment) (England) Regulations 2020 (SI 2020/844)

Unfortunately, the Department did not send us copies of these instruments and we only became aware of this oversight after the prayer period had expired. The instruments did not therefore receive the scrutiny that our Committee carries out on behalf of the House. While we recognise that the pandemic is an exceptionally challenging time for Departments, it is nevertheless important that robust processes are in place to ensure that the SLSC is presented with copies of all secondary legislation laid before Parliament.

The Committee would welcome your assurance that measures will be taken to prevent recurrence of such an oversight.

21 October 2020

Letter from Susan Acland-Hood to Lord Hodgson

Thank you for your letter on 21st October regarding the statutory instruments below, which were both laid before Parliament on Tuesday 11 August:

- Education (Induction Arrangements for School Teachers) (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/842)
- Education (National Curriculum Assessment Arrangements, Attainment Targets and Programmes of Study) and (Pupil Information and School Performance Information) (Amendment) (England) Regulations 2020 (SI 2020/844)

I understand that we failed to copy these to you and to the JCSI. I know how important it is that you receive copies in good time, and I am very sorry indeed that this happened. I have looked carefully in to how this occurred and understand it was the result of an oversight – a piece of human error I deeply regret, related to our not having in place strong enough protocols given the change to digital-only submission.

We have reviewed the guidance we are using internally, and our processes, and strengthened them. I am reassured that they are robust and that additional checks have been put in place to help prevent this happening again.

I am copying this letter to the Chair of the Joint Committee on Statutory Instruments, to provide similar assurances.

2 November 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 3 November 2020, Members declared the following interests:

Draft Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Attendance:

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

