



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

35th Report of Session 2019–21

Drawn to the special attention of the House:

**Social Security Contributions (Intermediaries)
(Miscellaneous Amendments) Regulations 2020**

**Health Protection (Coronavirus, International
Travel) (England) (Amendment) (No. 24)
Regulations 2020**

Includes information paragraphs on:

3 instruments relating to COVID-19

Draft Agriculture and Horticulture
Development Board (Amendment) Order
2020

Draft Direct Payments to Farmers (England)
(Amendment) Regulations 2020

Draft Prohibition on Quantitative Restrictions
(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

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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/ukxi>

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.

Thirty Fifth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020 (SI 2020/1220)

Date laid: 6 November 2020

Parliamentary procedure: negative

This instrument implements off-payroll working rules that were introduced in the public sector in April 2017 for medium and large organisations in the private and third sectors. These organisations, rather than individual contractors, will be responsible for determining whether the off-payroll working rules should apply. They, or any agency or third party paying the contractor, will also be responsible for deducting employment taxes and National Insurance contributions. The reform was first announced at Budget 2018, but its introduction has been delayed until April 2021 to give businesses more time to recover from the economic impact of the pandemic. There are considerable concerns about the impact of the reform, in particular about businesses laying off contractors, and the need for a more holistic approach that not only deals with tax on employment but also considers people's rights across different forms of employment. These are issues that we anticipate will be of interest to the House.

The instrument is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.

1. This instrument has been laid by HM Revenue and Customs (HMRC) and HM Treasury (HMT) with an Explanatory Memorandum (EM). The instrument implements off-payroll working rules that were introduced in the public sector in April 2017 for medium and large organisations in the private and third sector. The changes will take effect from 6 April 2021.

Background

2. According to HMT, the off-payroll working rules, also known as IR35, were originally introduced in 2000 to ensure that someone working like an employee, but through a company, pays similar levels of tax to regular employees. HMT says that non-compliance with the off-payroll working rules is widespread, however, and that it is forecast to cost over £1.3 billion a year by 2023-24 in lost tax revenue.¹
3. According to HMT, measures taken over the last 10 years to improve the effectiveness of the rules and to end persistent unfairness between two individuals working in the same way but paying different levels of tax, have had limited success. To address this unfairness and increase compliance, the way in which the rules operate in the public sector was reformed in April 2017. The reform shifted the responsibility for determining employment

¹ HMT, *Review of changes to the off-payroll working rules: report and conclusions* (27 February 2020): <https://www.gov.uk/government/publications/review-of-changes-to-the-off-payroll-working-rules-report-and-conclusions> [accessed 20 November 2020].

status from individual contractors to the organisation engaging them. The underlying rationale was that organisations are better equipped to make the correct employment status assessments, and that this also makes it easier for HMRC to monitor compliance.

4. Separately, the Government commissioned an independent review of modern working practices (“the Taylor review”) which reported in July 2017 and, amongst other findings, concluded that: “Over the long term, in the interests of innovation, fair competition and sound public finances we need to make the taxation of labour more consistent across employment forms while at the same time improving the rights and entitlements of self-employed people.”²

The key changes made by this instrument

5. The Government announced at Budget 2018 that the changes that were introduced to off-payroll working in the public sector in April 2017 would be extended to medium and large organisations in the private and third sectors from April 2020. The Government subsequently announced in March 2020 that the reform would be delayed until April 2021 in response to the COVID-19 pandemic and as part of the Government’s economic response package. This instrument now makes the changes originally announced at Budget 2018.
6. The instrument shifts responsibility for operating the off-payroll working rules from the contractor to medium or large businesses and organisations in the private and third sectors to whom the contractor is supplying a service. This includes responsibility for deciding whether the rules should apply. These businesses and organisations, or any agency or third party which pay the contractor, will also be responsible for deducting the associated employment taxes and National Insurance contributions (NICs) and remitting them directly to HMRC using Real Time Information (RTI) reporting. The instrument implements these changes in social security legislation after the necessary changes were made in primary legislation through Schedule 1 to the Finance Act 2000.³ The changes will take effect from 6 April 2021.
7. The instrument exempts some 1.5 million small businesses⁴ and businesses “without a UK connection”⁵ from the changes, so that contractors, rather than these small businesses, will remain responsible for determining whether the off-payroll working rules apply.
8. The instrument further enables HMRC to recover any unpaid NICs debts from other parties within the labour supply chain, such as an agency with whom a business or organisation has a contract, where there is no realistic prospect of recovering the outstanding NICs liabilities within a reasonable period from those who are deemed to be the employer. The instrument requires HMRC to issue a recovery notice when seeking to recover a debt in

2 See BEIS, *Good work: the Taylor review of modern working practices* (11 July 2017), Chapter 14: <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices> [accessed 20 November 2020].

3 Finance Act 2020, [Schedule 1](#).

4 The definition of a “small business” is based on the Companies Act 2006 and broadly means a company that meets at least two of the following criteria for two consecutive financial years: turnover of no more than £10.2 million; a balance sheet total (assets) of no more than £5.1 million; and an average of no more than 50 employees.

5 Based on the current residence and presence requirements for Class 1 NICs secondary contributors.

this way and also provides for appeal rights for those who have been issued a recovery notice.

9. The instrument provides for any NICs liability to rest with the organisation or business, until it provides the contractor and agency with an assessment of whether the contractor would be an employee if engaged directly. This is called the Status Determination Statement. Organisations and businesses are required to maintain a status disagreement process.
10. While the changes apply to services provided on or after 6 April 2021, the instrument includes transitional provisions about payments made on or after 6 April 2021 for services provided before that date. HMRC told us that it will use a “light touch approach to penalties”, so that businesses and organisations will not have to pay penalties for inaccuracies relating to the off-payroll working rules in the first 12 months unless there is evidence of deliberate non-compliance.

Consultation

11. The EM states that the Government consulted extensively on the reform, most recently on the detailed design of the changes.⁶ Changes that have been made in response to the consultation feedback include the exemption for small businesses and businesses from outside the UK and introducing a status disagreement process. HMRC told us that it has also considered and learnt from the experience of reforming the rules in the public sector in 2017, and that this learning has informed the support that is available to help private and third sector organisations make the correct determinations.

Guidance

12. HMRC has published guidance on the off-payroll working rules⁷ and provides support to those affected, including through one to one engagement, workshops and webinars. The EM states that HMRC also launched an enhanced version of its online Check Employment Status for Tax (CEST) tool⁸ alongside the latest guidance in November 2019.

Impact

13. HMT acknowledges that “shifting responsibility for determining employment status is a major change for employers and other organisations that use contractors and contingent labour”.⁹ The EM estimates that up to 60,000 organisations and businesses which engage off-payroll workers through agencies are in scope of the new rules. The EM identifies making status determinations for any new off-payroll engagements and maintaining a status disagreement process for off-payroll workers who seek to challenge their status determination as ongoing costs. Where these organisations and businesses engage contractors directly, they will also be responsible for

6 HMRC, ‘Draft secondary legislation: off-payroll working rules from April 2020’ (22 January 2020): <https://www.gov.uk/government/consultations/draft-secondary-legislation-off-payroll-working-rules-from-april-2020> [accessed 20 November 2020].

7 HMRC, ‘Understanding off-payroll working (IR35)’ (22 August 2019): <https://www.gov.uk/guidance/understanding-off-payroll-working-ir35> [accessed 20 November 2020].

8 HMRC, ‘Check employment status for tax’ (2 March 2017): <https://www.gov.uk/guidance/check-employment-status-for-tax> [accessed 20 November 2020].

9 HM Treasury, *Review of changes to the off-payroll working rules: report and conclusions* (27 February 2020): <https://www.gov.uk/government/publications/review-of-changes-to-the-off-payroll-working-rules-report-and-conclusions> [accessed 20 November 2020].

deducting tax and NICs and remitting these directly to HMRC through RTI reporting. The EM also estimates that around 20,000 agencies that provide workers to medium or large organisations and businesses will be affected, and that they will need to operate payroll for any contractors they supply who fall within the scope of the rules. At the same time, the EM expects ongoing savings for around 230,000 contractors who will no longer have to determine their status for tax purposes, or the associated accounting burdens.

Concerns

14. The Finance Bill Sub-Committee of the House of Lords Economic Affairs Committee reported on the Government's plans for reform in April 2020, concluding that the Government should use the delay of the reform until April 2021 as a result of the pandemic to "completely rethink this legislation". The Sub-Committee suggested that the Government had not "sufficiently analysed the unintended behavioural consequences of the proposed reforms", raising concerns that contractors were "already being laid off, despite the reforms' delay" and highlighting that witnesses had told the Committee that the rules had made them "zero-rights employees' with none of the rights of being an employee, or the tax advantages of being self-employed". The Sub-Committee called on the Government to "keep its promise on implementing the recommendations of the Taylor Review: that the taxation of labour should be made more consistent across different forms of employment, and that there should be a fair balance between tax, rights and risk".¹⁰
15. Lord Forsyth of Drumlean, who chaired the Finance Bill Sub-Committee, has tabled an annulment motion on the grounds that "the regulations do not reflect the guidance given by Her Majesty's Revenue and Customs, and could result in National Insurance contributions being miscalculated and applied to payments that should not attract a National Insurance charge".
16. We asked HMRC about the progress made with regard to the Taylor Review and why the Government had not chosen a more holistic approach that looked at employment taxes, status and rights in the round. HMRC told us that:

"The Government has already made significant progress in implementing recommendations arising from the independent Taylor Review of modern working practices. This includes legislating for stronger protections for vulnerable agency workers and extending the right to a written statement to workers, ensuring all workers have the right to a written record of their core terms of employment.

The Employment Bill that the Government will bring forward will deliver on a range of Manifesto commitments, including building on existing employment law with measures that protect those in the gig economy.

Work will continue cross-Government on these issues. Given the complexity and importance of the labour market policy, it is clear that careful deliberation is essential before considering any future reforms.

¹⁰ Economic Affairs Committee Finance Bill Sub-Committee, *Off-Payroll working: treating people fairly*, (1st Report, Session 2019-21, HL Paper 50).

However, the Government cannot delay addressing the unfairness of off-payroll contractors paying less tax than employees when their engagement meets the test of an employment relationship, and the resulting loss of revenue needed for vital public services.”

17. We note that the Employment Bill is to address some key challenges of the current labour market, including issues reported by the Taylor Review. It is important therefore that the Government set out a clear timetable for this Bill.
18. We also asked HMRC why the changes had not been postponed beyond April 2021, giving businesses more time to recover from the economic impact of the pandemic. HMRC explained that:

“The Government has already made the decision to delay this reform until April 2021 in response to the COVID-19 crisis. However, there will not be a further delay. The primary legislation has now received Royal Assent, and the reform will be implemented in April 2021 as announced.

The reform was originally announced at Budget 2018. Many businesses were prepared for the reform to be implemented in April 2020 as originally planned, and HMRC have undertaken a significant program of education and support to ensure that large and medium-sized businesses are ready to implement the reform. Businesses have already been putting in place preparations for April 2021, and another postponement would lead to inconvenience and potentially additional costs. Further delaying implementation of these changes would have other very significant drawbacks. As well as the fiscal cost, it would prolong the fundamental unfairness of taxing two people differently for the same work. It would also extend the disparity between the private and voluntary sectors, and the public sector, where the reform has been in place since 2017.”

Conclusion

19. This instrument implements changes to off-payroll working in the private and third sectors that were first announced at Budget 2018. There are considerable concerns about the impact of the changes on businesses and the need for a more holistic approach that not only deals with tax on employment but also considers people’s rights across different forms of employment. We are particularly concerned about the timing of the changes as we believe that it is unlikely that all businesses will be able to prepare for the implementation of the new rules from 6 April 2021, at a time when they will still be recovering from the impact of the pandemic. We note an annulment motion has been tabled, providing an opportunity for these issues to be explored further. **The instrument is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.**

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 24) Regulations (SI 2020/1292)

Date laid: 16 November 2020

Parliamentary procedure: negative

*This instrument amends the International Travel Regulations to allow workers coming to England for seasonal work at poultry farms an exemption from the requirement to self-isolate. It came into force on 17 November. At a time of national lockdown, we find this measure extraordinary and concerning, all the more so since it appears that no tailored programme of testing these workers is envisaged to address the potential infection risk. **This exemption appears to put economic considerations above those of public health. The House may wish to press the minister for further explanation, including whether safer alternatives for achieving the policy objective of the instrument were considered.***

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

20. This instrument — which provides for an exemption from international travel restrictions — was laid, with an Explanatory Memorandum (EM), by the Department for Transport (DfT). Supplementary information provided by DfT is published at Appendix 1 of this report.
21. Since the instrument relates to food production, the Department for Environment, Food and Rural Affairs (Defra) also has an interest, and the Government have published guidance (“the guidance”) for workers and employers, drafted jointly by Defra and Public Health England.¹¹
22. **We note that the guidance is extensive and goes significantly beyond the requirements of the law. We have raised our concern in earlier reports about the risks of blurring the distinction between legal requirements and advice in guidance.**

Content

23. This instrument amends the International Travel Regulations¹² to allow workers coming to England for seasonal work at poultry farms an exemption from the requirement to self-isolate; they can mix with any other person living or working at the specified premises. It came into force on 17 November. The workers are allowed to “self-isolate” at their specified accommodation, when working at the specified premises and when travelling directly between the specified accommodation and the specified premises; this will allow them to start work as soon as they arrive.
24. The EM (paragraph 7.2) says that this exemption is being put in place to “prevent significant economic damage to an important UK sector”, to “prevent significant animal welfare issues” that would otherwise arise, and to “ensure an adequate supply of food for the Christmas period”.

¹¹ Defra, ‘Coming to England for seasonal poultry work on farms and processing sites’ (17 November 2020): <https://www.gov.uk/guidance/coming-to-england-for-seasonal-poultry-work-on-farms-and-processing-sites> [accessed 25 November 2020].

¹² Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (SI 2020/568).

The Committee's concerns

25. According to DfT, the exemption provided for by this instrument is likely to be used by around 5,500 workers coming from a number of Eastern European countries, mainly Poland, Romania, Bulgaria and Hungary. Despite infection levels being currently very high in these countries, the workers are not required to provide evidence of a negative COVID-19 test before travelling, nor are they required to be tested on arrival at their place of work. The DfT told us that “as with all international passengers, testing is reserved for those displaying symptoms of COVID-19”. Although the guidance advises employers to provide workers with transport from the port or airport to their place of work, this is not required by law.
26. The Government guidance also advises employers to place workers in cohorts of about six, with whom they should live and work, to limit potential transmission to small numbers. However regulation 2 of the instrument “does not require P [the worker] to remain in isolation from any other person who is living or working on the specified farm.” There may, therefore, be a risk of infecting locally sourced farm workers.
27. The guidance says that a farmer, poultry producer, labour provider or agency bringing workers from overseas to work on farms in England, should give them appropriately translated guidance on any local restrictions and industry guidance on social distancing: “You should ask workers to give written confirmation that they have received and understood this information. If necessary, there should be translation facilities available.”
28. It also advises that employers “should make sure that for the first 14 days workers to not leave their designated accommodation, for example to go shopping”. **While this is sensible advice, the House may wish to ask the minister how an employer can be expected to enforce it.**
29. We asked the Government a number of questions about how this scheme would operate (see Appendix 1). We note that currently the testing and other requirements are all based on the assumption that an individual with symptoms will volunteer for a test that, if positive, will prevent them from working for at least 10 days. Meat packing plants have been a focus of infection in both America and Europe and we are surprised that no special measures are envisaged for this work scheme. **In particular, the House may wish to ask the minister how the risks of asymptomatic transmission from these workers can be managed if no routine testing is carried out.**

Conclusion

30. At a time of national lockdown, we find this measure extraordinary and concerning, all the more so since it appears that no tailored programme of testing these workers is envisaged to address the potential infection risk. **This exemption appears to put economic considerations above those of public health. The House may wish to press the minister for further explanation, including whether safer alternatives for achieving the policy objective of the instrument were considered.**

INSTRUMENTS RELATING TO COVID-19

One instrument relating to the COVID-19 pandemic, the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 24) Regulations (SI 2020/1292) is drawn to the special attention of the House in this report (see pages 6 to 7 above).

Changes to business practice and regulation

Consumer Credit (Enforcement, Default and Termination Notices) (Coronavirus) Amendment) Regulations 2020 (SI 2020/1248)

31. This instrument makes permanent changes to the language and format that is prescribed¹³ for Enforcement, Default and Termination Notices (“the Notices”). The instrument updates the content of these Notices to make them less intimidating and easier to understand. HM Treasury explains that it is estimated that in England alone, over 100,000 people in problem debt attempt suicide each year, a situation exacerbated by the mental health and economic impacts of the pandemic. This instrument addresses these impacts and also forms part of the Government’s wider effort to help people who are struggling with their finances and mental health.
32. The instrument aims to reduce the negative impacts of the Notices on borrowers and empower them to take control of their finances by making it easier to understand the Notices and access appropriate support. The instrument makes three main changes: (i) block capitals, which have found to be intimidating for consumers, are banned from being used to aid prominence; (ii) technical legal language is removed and, where that is not possible, simple explanations need to be provided; and (iii) the wording and format of Notices is amended to improve consumers’ understanding.

Travel

Health Protection (Coronavirus, International Travel, Travel from Denmark) (England) (Amendment) Regulations 2020 (SI 2020/1277)

33. The International Travel Regulations¹⁴ are further amended following advice from the Joint Biosecurity Centre to remove Greece (other than specified islands) and the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus from the list of exempt countries, which means that passengers arriving from those places after 14 November must self-isolate for 14 days. However, with effect from the same date, passengers arriving in England from Bahrain, Cambodia, Chile, Iceland, Laos, Qatar, Turks and Caicos Islands and United Arab Emirates are not required to self-isolate on arrival. In addition, the instrument modifies the prohibition on all transport from Denmark¹⁵ because of COVID-19 to allow for flights in transit (where no one disembarks) and medical transport to land. The instrument also allowed players, and support staff, taking part in two football matches (Denmark and Iceland on Sunday 15 November and England and Iceland on Wednesday 18

13 See: Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 ([SI 1983/1561](#)). Under the consumer protection regime, lenders are required to send Notices to borrowers to enable and empower them to make informed decisions, including by highlighting their rights and the actions a lender might take.

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

15 See SIs [2020/1227](#), [2020/1238](#) & [2020/1239](#).

November) to travel between England and Denmark without being required to self-isolate on their arrival in, or return to, England.

Law and order

Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020 (SI 2020/1290)

34. Evictions were banned during the first national lockdown and, after that “stay” expired on 20 September, were not enforced in areas of high infection at the request of the Lord Chancellor. Because of the second national lockdown, the Ministry of Justice is now legislating to prevent eviction except in the most egregious cases (for example trespass). The ban will be in force until 11 January 2021 because the Government recognise that NHS and local authority services are already under pressure and access to alternative housing may not be available over the Christmas holidays.
35. After the original restrictions on taking control of goods were lifted on 23 August 2020, bailiffs were instead required to comply with specific COVID-19-secure guidance published on the Gov.uk website.¹⁶ This instrument prohibits bailiffs from seizing goods in lieu of debt inside someone’s house for the duration of the second national lockdown. It does not, however, prevent other steps to enforce debts, including seizing goods located outside a property or at business premises. The Explanatory Memorandum states the Government’s view that this policy strikes a proportionate balance between the administration of justice and public health guidance.

¹⁶ MoJ, ‘Working safely during COVID-19: enforcement agents (bailiffs)’ (4 September 2020): <https://www.gov.uk/government/publications/working-safely-during-covid-19-enforcement-agents-bailiffs/working-safely-during-covid-19-enforcement-agents-bailiffs> [accessed 20 November 2020].

INSTRUMENTS OF INTEREST

Draft Agriculture and Horticulture Development Board (Amendment) Order 2020

36. These draft Regulations propose to assign additional functions to the Agriculture and Horticulture Development Board (AHDB). The functions relate to collecting, managing and making available information regarding the identification, movement and health of animals, and allocating unique identification codes for identifying animals. The Department for Environment, Food and Rural Affairs (Defra) says that this is to enable the AHDB to run a new Livestock Information Service (LIS). According to Defra, LIS will replace the current species-specific databases with a multi-species traceability system in England and facilitate the tracing of livestock movements across the UK.
37. As no further information is provided in the Explanatory Memorandum, we asked Defra about the practical introduction of LIS. The Department told us that they “are taking an incremental approach to transition in England where current and future services will work side by side. Data will be migrated as part of that process, and livestock keepers should only ever have to enter their data onto one system. Scotland and Wales have their own transition plans.” Asked about timing, Defra told us that the plan is to transition the existing sheep service in England to the new arrangements in spring 2021, while cattle and pig services are due to transition in 2022.

Draft Direct Payments to Farmers (England) (Amendment) Regulations 2020

38. These draft Regulations have been laid under the Agriculture Act 2020 and need to come into force on 1 January 2021 to ensure that Direct Payment support will be available for farmers in England for the 2021 claim year. Direct Payment schemes in England include the basic payment scheme as well as the greening payment and young farmer payment and are currently worth around £1.8 billion per year. The Department for Environment, Food and Rural Affairs (Defra) explains that this instrument sets rules about the financial ceilings used to calculate farmers’ Direct Payments, giving the Secretary of State time to determine the ceilings for the 2021 claim year before the start of that year. The current financial ceilings only extend up to the 2020 claim year.
39. According to Defra, the instrument seeks to maintain the status quo as far as possible and farmers will not see any changes on the ground. Defra says that while the Government remain committed to “beginning ambitious agricultural reforms in England in 2021, including beginning to apply reductions to Direct Payments to phase them out over a seven year agricultural transition period” and to simplifying Direct Payment schemes from 2021, separate legislation will be required for these reforms.

Draft Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020

40. The purpose of this instrument is to end the application of directly effective rights that flow from EU Treaty provisions¹⁷ which prohibit the imposition of

¹⁷ These are Articles 34 and 35 of the Treaty on the Functioning of the EU.

quantitative restrictions, such as administrative or regulatory requirements, that restrict free movement of non-harmonised goods¹⁸ within the EU, or between the EU and Switzerland or the EU and Turkey. The Department for Business, Energy and Industrial Strategy (BEIS) says that Great Britain (GB) intends to have its own regulatory regime for goods after the end of the Transition Period (TP) and that the intention of this instrument is to ensure that there is no barrier to diverging from EU rules should GB chose to do so after the end of the TP. BEIS adds that repealing the rights that flow from the prohibition of quantitative restrictions is necessary as the rights could otherwise form the basis for claims by GB manufacturers against the UK Government if regulatory divergence does create trade barriers. The rights that the instrument will disapply in GB will continue to apply in Northern Ireland (NI) by virtue of the NI Protocol.

41. We recommended an upgrade of these draft Regulations to the affirmative procedure when the instrument was initially laid for sifting as a proposed negative instrument.¹⁹ This was in the light of the political significance of any future diversion from EU regulations and potential trade barriers and because, at the time, the Department told us that NI had questioned how this instrument would impact on the flow of goods between NI and GB. The Explanatory Memorandum of this instrument now states that the UK Internal Market Bill makes provision for unfettered access for NI Qualifying Goods to the GB market and for the application of the market access principles of mutual recognition and non-discrimination. We note that this Bill has yet to complete its passage through Parliament, and if the Bill were to be amended this might impact on these provisions.

¹⁸ Non-harmonised goods are not subject to common EU rules but may be subject to national rules.

¹⁹ [24th Report](#), Session 2019-21 (HL Paper 116).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Agriculture and Horticulture Development Board
(Amendment) Order 2020

Antique Firearms Regulations 2020

Direct Payments to Farmers (England) (Amendment)
Regulations 2020

Medical Devices (Amendment etc.) (EU Exit) Regulations
2020

Plant Health (Phytosanitary Conditions) (Amendment) (EU
Exit) Regulations 2020

Prohibition on Quantitative Restrictions (EU Exit) Regulations
2020

Made instruments subject to affirmative approval

SI 2020/1290 Public Health (Coronavirus) (Protection from Eviction and
Taking Control of Goods) (England) Regulations 2020

Instruments subject to annulment

SI 2020/1222 Merchant Shipping (Safety Standards for Passenger Ships on
Domestic Voyages) (Miscellaneous Amendments) Regulations
2020

SI 2020/1233 Syria (United Nations Sanctions) (Cultural Property) (EU
Exit) Regulations 2020

SI 2020/1235 Social Security (Personal Independence Payment)
(Amendment) Regulations 2020

SI 2020/1245 Network and Information Systems (Amendment and
Transitional Provision etc.) Regulations 2020

SI 2020/1248 Consumer Credit (Enforcement, Default and Termination
Notices) (Coronavirus) Amendment) Regulations 2020

SI 2020/1251 Antarctic Act 1994 (Convention for the Conservation of
Antarctic Marine Living Resources) Regulations 2020

SI 2020/1277 Health Protection (Coronavirus, International Travel, Travel
from Denmark) (England) (Amendment) Regulations 2020

APPENDIX 1: HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL) (ENGLAND) (AMENDMENT) (NO. 24) REGULATIONS 2020 (SI 2020/1292)

Additional information from Department for Transport in consultation with Department for Environment Food and Rural Affairs

Q1. Approximately how many seasonal poultry workers are likely to use this exemption ... and where they are likely to be travelling from?

A1: Around 5,500 workers are arriving mainly from Poland, Romania, Bulgaria, Hungary but also Slovakia, Slovenia and Czech Republic.

Q2. What checks are being made to ensure that they are housed suitably — since they are going to be confined to their place of employment?

A2: Most of these seasonal poultry workers return to the same farm or processing site each year. Therefore, they would be aware of and accustomed to the usual living arrangements. Otherwise it is in the interest of the farm owner to ensure they are housed suitably in order to secure workforces for the following year.

Q3. What health checks are being made in situ — so that one individual does not infect the whole farm/factory. And if they do will the whole facility be shut down for two weeks?

A3: Testing is currently reserved for individuals displaying symptoms of COVID-19, as with all workplaces. As a matter of industry standard, abattoirs and processing sites undergo deep cleans every day to maintain hygiene. Guidance has been published at <https://www.gov.uk/guidance/coming-to-england-for-seasonal-poultry-work-on-farms-and-processing-sites>, instructing employers to place workers in cohorts, with whom they live and work, to limit any potential transmission to small numbers. Workers are advised to only work in the same one function and location for the first 14 days. In the event of an outbreak, testing will be rolled out among workers. Areas of transmission are identified within the workplace, where workers will be removed for self-isolation and the area deep cleaned. The scale of operations depends on the number of positive cases identified, but as per recent large outbreaks in food production sites, sites are rarely closed for more than a few days if at all.

Q4. If one of the workers does test positive for COVID — will that affect the meat?

A4: The risk of transmission of COVID-19 via food is negligible. Cooking thoroughly will kill the virus. COVID-19 is a respiratory illness and is not known to be transmitted by exposure to food or food packaging. There is guidance for consumers on COVID-19 and food at <https://www.gov.uk/government/publications/guidance-for-consumers-on-coronavirus-covid-19-and-food/guidance-for-consumers-on-coronavirus-covid-19-and-food>. There is also a SAGE report on environmental transmission of COVID-19 which details the reasoning for this position.

Q5. What checks are to be made before they travel to their place of employment or to their next destination — so they don't spread COVID to fellow passengers on the journey?

A5: As with all international passengers, testing is reserved for those displaying symptoms of COVID-19. All workers must fill in the Passenger Locator Form upon arrival to England, which provides personal information, their living address in England and contact details. They must also present a letter of employment

from employers stating personal information, contact details of the workers and employer, address, and start and end date of work. This will allow Test and Trace to track their location and identify potential contacts. Employers will have organised private direct transport from the airport to the designated accommodation, and transport between the accommodation and workplace, to avoid contact with the general public.

Q6: The Committee is concerned about the COVID-19 testing regime for turkey slaughterers: to what degree has the Department for Health and Social Care has been involved in the development of this policy?

A6: DHSC have been fully involved in the development and agreement of this exemption. Whilst DfT are the responsible department for the travel regulations, DHSC reviewed the final submission and the committee that agreed to the proposal is chaired by the Health Secretary. Officials from Defra and PHE jointly drafted the industry guidance, which was then signed-off by PHE for the final submission. Following current DHSC/PHE protocols for managing outbreaks in work places, on-site and mobile community-based testing is prioritised, including the testing of asymptomatic workers where required.

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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 24 November 2020, Members declared no interests.

Attendance:

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Lord Cunningham of Felling, Lord German, Viscount Hanworth, Lord Hodgson of Astley Abbotts, Lord Liddle, the Earl of Lindsay, Lord Lisvane, Lord

Sherbourne of Didsbury and Baroness Watkins of Tavistock.

