

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

36th Report of Session 2019–21

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

Includes information paragraphs on:

2 instruments relating to COVID-19

Draft Customs Safety and Security
Procedures (EU Exit) Regulations 2020

Draft World Trade Organisation Agreement
on Agriculture (Domestic Support)
Regulations 2020

Town and Country Planning (General
Permitted Development) (England)
(Amendment) Regulations 2020

Central Counterparties (Equivalence)
Regulations 2020; Seeds (Amendment etc.)
(EU Exit) Regulations 2020

Environment (Miscellaneous Amendments)
(EU Exit) Regulations 2020

Domestic Violence, Crime and Victims Act
2004 (Victims' Code of Practice) Order 2020

Ordered to be printed 1 December 2020 and published 3 December 2020

Published by the Authority of the House of Lords

HL Paper 184

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>
<u>Rt Hon. Lord Cunningham of Felling</u>	(Chair)	<u>Lord Sherbourne of Didsbury</u>
<u>Lord German</u>	<u>Lord Liddle</u>	<u>Baroness Watkins of Tavistock</u>

Registered interests

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

Publications

The Committee's Reports are published on the internet at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

Committee Staff

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

Further Information

Further information about the Committee is available at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/>

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

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

Contacts

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

Thirty Sixth Report

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

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

- European Institutions and Consular Protection (Amendment etc.) (EU Exit) (Amendment) Regulations 2020
- Food and Drink (Amendment) (EU Exit) Regulations 2020

INSTRUMENTS RELATING TO COVID-19

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Restrictions) (England) (No. 4) (Amendment) (No. 2) Regulations 2020 (SI 2020/1326)

1. These Regulations amend the “Lockdown 2” Regulations¹ to permit shops, stalls, Christmas tree farms and other businesses selling or supplying natural Christmas trees to open. The main regulations are due to expire on 2 December.

Changes to business practice and regulation

Employment Rights Act 1996 (Coronavirus, Calculation of a Week’s Pay) (Amendment) Regulations 2020 (SI 2020/1296)

2. This instrument ensures that from 18 November 2020 and in line with the effect of an earlier instrument², various statutory entitlements based on a week’s pay and connected with termination of employment, are not reduced as a result of an employee being furloughed under the Coronavirus Job Retention Scheme (CJRS). The entitlements are: redundancy pay; notice pay; compensation for unfair dismissal; a payment resulting from a failure to provide a written statement of reasons for dismissal; a payment resulting from a failure to comply with an order for reinstatement or re-engagement; and remuneration for time off to look for employment or arrange training. The instrument also extends the effect of the earlier instrument regarding how a week’s pay is to be calculated for the purpose of deciding whether an employee is taken to be on short-time for statutory purposes.
3. The earlier instrument assumed that the CJRS would end on 31 October 2020. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the Government subsequently announced that the CJRS would be extended until 31 March 2021, so the intention of this instrument is to ensure that all furloughed employees are protected until 31 March 2021. We asked the Department about the impact of the gap between 31 October, when the protection provided by the earlier instrument expired, and 18 November when this instrument came into force. BEIS told us that while there are no

“figures on the number of furloughed employees who may have received reduced statutory redundancy pay for reasons relating to the period between 31 October and 18 November 2020, given the extension of the furlough scheme meant that this was still available to employers after 31 October, we think it is relatively unlikely that many employers would be making previously furloughed employees redundant in that period”.

1 Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 ([SI 2020/1200](#)).

2 Employment Rights Act 1996 (Coronavirus, Calculation of a Week’s Pay) Regulations 2020 ([SI 2020/814](#)), see: [25th Report](#), Session 2019-21 (HL Paper 123).

INSTRUMENTS OF INTEREST

Draft Customs Safety and Security Procedures (EU Exit) Regulations 2020

4. This instrument introduces powers for HM Revenue and Customs (HMRC) to allow the requirement for pre-departure declarations to be waived temporarily or to modify the time limit for the submission of such declarations temporarily by public notice after the end of the Transition Period (TP). HMRC says that the powers will be available from 1 January 2021 until 30 June 2021, and that they can only be used to mitigate border disruption. Any notices published under these powers can be further limited, for example by time, location, sector of trade or type of goods, allowing targeted mitigation.
5. HMRC explains that the powers are required to ensure a temporary contingency option should there be border disruption as a result of pre-departure safety and security requirements on exports after the end of the TP. According to HMRC, certain groups, such as hauliers who move goods exclusively to the EU, do not have to make safety and security declarations at present as these declarations are not required for goods moved between the UK and EU Member States while the EU's Union Customs Code (UCC) continues to apply during the TP. This instrument only applies to businesses and intermediaries exporting goods from Great Britain (GB), while in Northern Ireland (NI), the UCC will continue to apply to movements to and from NI, as required by the NI Protocol. We note that it is not clear whether suspending pre-departure safety and security requirements on exports could lead to any adverse impacts. We also note that while this instrument enables HMRC to waive temporarily the requirement for pre-departure declarations for goods leaving GB, any use of this power would not help with potential disruption caused by the need for declarations for the same goods entering the EU.
6. With regard to publicising the use of the new powers, the Department told us that: "Any public notices made using the powers contained within [this instrument] will be published online [on the Customs, VAT and Excise UK transition legislation website]³ and supported by relevant communications activity. We also intend to keep Parliament informed of any use of these powers, and will set out how we would do this before the end of the year."

Draft World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020

7. These draft Regulations have been laid under the Agriculture Act 2020 to ensure the UK continues to comply with its obligations under the World Trade Organisation (WTO) Agreement on Agriculture (AoA) in relation to the classification and notification of domestic support, and its commitment to reduce its Aggregate Measurement of Support (AMS), which is a key measure used by the WTO to assess domestic support for agricultural commodities.
8. The Department for Environment, Food and Rural Affairs (Defra) explains that while the UK was a member of the EU, its interests at the WTO

3 HMRC, 'Customs, VAT and Excise UK transition legislation from 1 January 2021' (10 September 2020): <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> [accessed 1 December 2020].

were represented by the European Commission, which was responsible for ensuring that the UK complied with the WTO agreements. The EU's Common Agricultural Policy set the framework within which the UK provided agricultural support and complied with the AMS commitment and other obligations under the AoA. Defra says that having left the EU, the UK will now represent its own interests at the WTO, and the UK Government will be responsible for ensuring that the UK complies with its obligations and commitments as an independent WTO member.

9. Defra says that this instrument specifies the amounts of “amber box” payments that may be given in each country of the UK. Amber box payments are agricultural support payments with trade-distorting effects. They are limited under the AoA and the aim is to reduce them over time. This instrument allows for each UK administration to design and implement their own agricultural support schemes within an amber box spending envelope set by this instrument. The instrument also outlines the procedure for classifying such schemes and permits the Secretary of State to request information where this is needed to enable the UK to meet its obligations under the AoA. We note that the UK administrations will need to ensure that any changes to the way farming is supported, such as the planned transition to sustainable farming in England from 2021,⁴ comply with the WTO requirements.

Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020 (SI 2020/1243)

10. This instrument makes a number of amendments to local planning legislation,⁵ partly in response to the current coronavirus pandemic. While some of the changes are temporary, others are permanent. The key changes made by this instrument are:
 - A new requirement for all homes built through Permitted Development Rights (PDRs) to meet, as a minimum, the nationally described space standards, as announced by the Ministry of Housing, Communities and Local Government (MHCLG) in September 2020.⁶ PDRs allow for a lighter touch approval process than the full local planning permission application process. New homes created through PDRs include conversions of existing buildings, such as offices, and to date there have been no minimum space standards for such developments. MHCLG says that “certain developers have provided housing [under PDRs] which is below an acceptable standard”, so this change is to ensure that all new homes provided through PDRs will meet the national space standards as a minimum. This will mean that, in practice, they will have to be no smaller than 37 square metres.
 - A new permanent exemption for theatres, concert halls and live music venues from the PDR for the demolition of such buildings in Class B under the General Permitted Development Order, as announced in July

4 Defra, *The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024*, (30 November 2020): <https://www.gov.uk/government/publications/agricultural-transition-plan-2021-to-2024> [accessed 1 December 2020].

5 Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596) (“the General Permitted Development Order”).

6 MHCLG, *Press Release: “Permitted development” homes to meet space standards* on 30 September 2020: <https://www.gov.uk/government/news/permitted-development-homes-to-meet-space-standards>. [accessed 1 December 2020].

2020.⁷ This is to protect these venues and prevent their unnecessary loss as a result of having to close due to the pandemic.

- An extension until 23 March 2022 of a PDR right which allows local authorities to hold a market for an unlimited number of days without a planning application. This time limited right would otherwise have expired on 23 March 2021.
- An extension until 23 March 2022 of a PDR which allows restaurants, cafes and drinking establishments to provide temporarily takeaway food. This is to support businesses, protect employment and ensure food supply during the pandemic. The time limited right would otherwise have expired on 23 March 2021.
- An extension until 31 December 2021 of a temporary PDR which allows the emergency development of land by local authorities and health service bodies, for example for the provision of Nightingale Hospitals. This time limited right would otherwise have expired on 31 December 2020.
- A permanent extension from six months to up to 12 months for an existing PDR under Class Q under the General Permitted Development Order which allows development on Crown land for the purpose of preventing an emergency or reducing, controlling or mitigating its impact. According to MHCLG, an example of a development that would be allowed are the test and trace facilities which have been rolled out across the country. An additional new right is introduced to allow for the development of Crown land under Class QA for the specific purpose of dealing with a pandemic for a period of 12 months. This will allow a development started under Class Q to continue for a further 12 months, so for a total of 24 months, where this is specifically in relation to a pandemic. An example of the type of development allowed would be a facility to support a vaccination programme. MHCLG told us that the extension is being introduced as the evidence from dealing with the pandemic has made clear “that the need for facilities in relation to a pandemic, such a test and trace or vaccination facilities, could go beyond a 12-month timescale”.

11. As with some previous instruments, **we regret that these Regulations include a mixture of provisions, some of which are temporary, while others represent permanent changes.**
12. Apart from the introduction of a minimum space standard requirement, the measures in these Regulations are in response to the pandemic. **We therefore take the view that the title of the instrument should have included the term “Coronavirus”, as did earlier similar instruments.**⁸ Reflecting the pandemic in the title of an instrument enhances transparency and helps Parliament and the wider public to identify more easily secondary legislation that deals directly with the impacts of the pandemic. We are publishing MHCLG’s reasoning for not using “Coronavirus” in the title of this instrument at Appendix 1.

⁷ Lord Greenhalgh, 14 July 2020, [Statement UIN HLWS359](#).

⁸ See, for example, the Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 ([SI 2020/412](#)) or the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 ([SI 2020/632](#)).

Central Counterparties (Equivalence) Regulations 2020 (SI 2020/1244)

13. This instrument specifies that the legal and supervisory arrangements for Central Counterparties (CCPs)⁹ in the European Economic Area (EEA) meet at least equivalent outcomes to the UK's regime. According to HM Treasury (HMT), the instrument, and the subsequent recognition by the Bank of England that it enables, will allow UK businesses and trading venues to continue using the clearing services of EEA CCPs under the European Market Infrastructure Regulation (EMIR) after the end of the Temporary Recognition Regime (TRR). The TRR will be in place for up to three years following the end of the Transition Period (TP). HMT says that as of October 2020, 48 foreign CCPs had notified to enter the TRR of which 12 were based in the EEA.
14. Given that equivalence in relation to the regulation of financial services is an important aspect of the future relationship with the EU, we asked HMT whether the EU was going to reciprocate the UK's recognition of EEA arrangements for CCPs. HMT confirmed that the EU had "also taken a decision that the UK will be regarded as having an equivalent legal and supervisory framework for CCPs after the end of the Transition Period", but added that "the EU's equivalence decision will expire at the end of June 2022, 18 months after the end of the Transition Period". HMT also told us that the EU's equivalence decision applies to EU firms wanting to use UK CCPs, and that while there are only three CCPs currently operating in the UK, London Clearing House (LCH) Limited, ICE Clear Europe and London Metal Exchange (LME) Clear, these are "globally systemic and provide a large volume of services to EU clients". HMT said that LCH, for example, "accounts for over 93% of the global market for cleared interest rate swaps. It is the largest CCP in Europe and one of the largest globally". HMT also told us that there are other areas where reciprocal equivalence decisions have been made by the UK and the EU, such as exemptions for the Bank of England and EU central banks. We are publishing HMT's full response at Appendix 2.

Seeds (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1294)

15. These Regulations make changes to implement the Northern Ireland (NI) Protocol in relation to the certification and marketing of varieties of agricultural and vegetable species. The Department for Environment, Food and Rural Affairs (Defra) explains that under the current arrangements, national registers of varieties are used to compile the EU's Common Catalogues of varieties, which enable seeds and other propagating material of the registered varieties to be marketed across the EU. This instrument reduces the extent and application of the relevant UK legislation¹⁰ to Great Britain (GB), thereby creating a GB variety list. NI will continue to be able to market varieties that are listed on the EU's Common Catalogues of varieties and will create its own NI variety list. We asked Defra about the practical impact of the separate arrangements on trade between GB and NI. The Department told us that:

9 CCPs are used by firms to manage counterparty risk when trading derivative contracts or securities. A derivative is a contract between two or more parties whose value is based on an underlying asset or set of assets. CCPs stand between the buyer and seller of a derivative product or security in order to guarantee the performance of the contract: The CCP will ensure the contract is honoured even if one of the parties goes into default. This process of guaranteeing transactions is referred to as clearing.

10 Seeds (National Lists of Varieties) Regulations 2001 ([SI 2001/3510](#)).

“From 1 January 2021, for seed of regulated agricultural and vegetable species varieties to be marketable in GB, the variety will need to be on the GB or NI variety list. To be marketable in NI, the variety will need to be on the NI variety list or the EU Common Catalogue. The NI variety list will not form part of the Common Catalogue, and varieties on the NI list will not be marketable in the EU.

To minimise the impact on businesses in terms of listing new varieties, the NI variety list and the GB variety list will in practice be managed as they are now, on a UK basis, in terms of the application and testing process. New applications will by default be considered as applications for both lists, with a single fee charged. Although separate GB and NI decision making will be required, the UK’s overall objective is to ensure there is consensus on the decisions allowing the varieties to be listed on both the GB variety list and the NI variety list. Varieties on the UK national list on 31 December 2020 will be transferred to both the GB variety list and the NI variety list.

In terms of trade, this means that seed and other propagating material marketable in NI, including varieties on the NI variety list, will continue to be marketable in GB from 1 January 2021. However material produced in GB will not be marketable in NI until EU equivalence is granted. The UK’s equivalence application is currently being considered by the EU.”

Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 (SI 2020/1313)

16. Amongst other changes, this instrument amends legislation on air quality standards and national emission ceilings to ensure that the legislation implements the relevant EU law as intended. The instrument also amends legislation on the control of trade in endangered species and on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) to ensure that it can continue to operate effectively after the end of the Transition Period (TP). The Department for Environment, Food and Rural Affairs (Defra) says that the changes are minor and do not represent any change in policy.
17. We received a submission from ClientEarth which suggests that while competent authorities from the devolved administrations will have to report information on emissions of pollutants from industrial plants to the Secretary of State after the end of the TP, no such competent authority appears to have been designated for England, so that, in effect, the Government will be regulating itself. We put this concern to the Department which explained that: “In practical terms, the regulators for each administration (e.g. the Environment Agency) will continue to act as the competent authorities [...] and there will be no change in the information made available to the public [...], meaning the UK will continue to meet its obligations”. We are publishing the submission from ClientEarth and Defra’s full response on our website.¹¹

11 SLSC scrutiny evidence page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2020 (SI 2020/1314)

18. This Order will bring the revised code of practice entitled “Code of Practice for Victims of Crime”¹² into operation on 1 April 2021, to replace the previous, 2015 version. The revised Victims' Code was drafted in the light of the responses to a Government consultation. It has a simpler structure, clearly defined as a set of 12 rights, and better information about at what points in the justice process victims should receive support. The main changes are: improved accessibility, clearer information on victims' rights to practical and emotional support, stronger emphasis on communication by the authorities with the victim, and increasing the voice of the victim by providing more flexibility in the Victim Personal Statement process. **We commend the Ministry of Justice for their extensive consultation and bid to make the law more accessible to the public.**

Other instruments

19. The Universal Credit (Earned Income) Amendment Regulations 2020 were laid on 20 October 2020 and came into force on 16 November 2020. We should have scrutinised the Order at our 33rd meeting on 3 November 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.

¹² MoJ, ‘The code of practice for victims of crime and supporting public information materials’ (Published 1 October 2005): <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime> [accessed 1 December 2020].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

- Antique Firearms Regulations 2020
- Customs Safety and Security Procedures (EU Exit) Regulations 2020
- Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020
- World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020

Made instruments subject to affirmative approval

- SI 2020/1309 Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020
- SI 2020/1326 Health Protection (Coronavirus, Restrictions) (England) (No. 4) (Amendment) (No. 2) Regulations 2020

Instruments subject to annulment

- SI 2020/1243 Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020
- SI 2020/1244 Central Counterparties (Equivalence) Regulations 2020
- SI 2020/1274 Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2020
- SI 2020/1275 Payment Services and Electronic Money (Amendment) Regulations 2020
- SI 2020/1276 Road Vehicles (Display of Registration Marks) (Amendment) Regulations 2020
- SI 2020/1278 Yemen (Sanctions) (EU Exit) (No. 2) Regulations 2020
- SI 2020/1294 Seeds (Amendment etc.) (EU Exit) Regulations 2020
- SI 2020/1296 Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) Regulations 2020
- SI 2020/1298 Armed Forces Redundancy Scheme Order 2020
- SI 2020/1301 Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020
- SI 2020/1313 Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- SI 2020/1314 Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2020

APPENDIX 1: TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) REGULATIONS 2020 (SI 2020/1243)

Additional information from the Ministry for Housing, Communities and Local Government

Q1: Could you clarify please how the minimum space standards that will in future apply to all new homes created through PDRs differ from the current situation – are there no space standards for new homes delivered under the current PDRs?

A1: At present there is no requirement for homes delivered through permitted development rights to meet space standards. This amendment requires all homes delivered through permitted development rights to meet the [Nationally Described Space Standards](#) as a minimum from 6th April 2021. In particular the gross internal floor area of any new homes must also, as a minimum, be no smaller than 37 square metres, including where this may provide a studio flat.

Q2: The instrument includes some key changes, both temporary and permanent, in response to the Coronavirus pandemic. Other instruments the Committee has considered that deal with the pandemic use “Coronavirus” in the title to make it easier to identify this relevance. Why was “Coronavirus” not included in the title of this instrument?

A2: As there are measures in the Regulations which are not in response to the Covid-19 pandemic (such as the space standards measure discussed above) we did not use “Coronavirus” in the title of the Regulations. In addition, we also want to ensure that the regulations remain relevant and could be urgently deployed in the fight against Covid-19 and any possible future pandemic if required.

26 November 2020

APPENDIX 2: CENTRAL COUNTERPARTIES (EQUIVALENCE) REGULATIONS 2020 (SI 2020/1244)

Additional information from HM Treasury

Q1: Has the EU also taken a decision that the UK will be regarded as having an equivalent legal and supervisory framework for CCPs after the end of the Transition Period?

A1: [HMT] can confirm that the EU had also taken a decision that the UK will be regarded as having an equivalent legal and supervisory framework for CCPs after the end of the Transition Period.

The EU had made a series of decisions, the effect of which permit UK CCPs to provide clearing services to the EU. These are as follows: on 21 September, the European Commission adopted a time-limited equivalence decision for 18 months from January 2021 determining that the regulatory and supervisory framework applicable to UK CCPs is equivalent; following this, the Bank of England and the European Securities and Market Authority (ESMA) agreed a new Memorandum of Understanding (MoU), agreeing the necessary arrangements for the supervision of UK CCPs under EMIR 2.2; and finally, on 28 September ESMA also completed the recognition of all three UK CCPs.

13 November 2020

Q2: Is the EU's recognition of the three UK CCPs limited to 18 months?

A2: Recognition is dependent on an equivalence decision being in force and the EU's equivalence decision will expire at the end of June 2022, 18 months after the end of the Transition Period.

Under EMIR, it is for ESMA to decide how to manage the process at the end of the 18-month period and if necessary the wind down of activity. This process could go beyond the current 18th month time-limit for equivalence.

Q3: How significant is equivalence in this area?

A3: Equivalence is a unilateral process and therefore decisions are made autonomously by the UK and the EU.

Our decision allows UK businesses and trading venues to continue to use the clearing services of EEA CCPs, replacing the recognition decision by the Bank of England under the UK's Temporary Recognition Regime.

The EU's decision applies to EU firms wanting to use UK CCPs. There are only three CCPs operating in the United Kingdom - London Clearing House (LCH) Limited, ICE Clear Europe and London Metal Exchange (LME) Clear. The EU's equivalence, and subsequent tiering and recognition decisions, therefore apply to all UK CCPs.

UK CCPs are globally systemic and provide a large volume of services to EU clients. LCH, for example, accounts for over 93% of the global market for cleared interest rate swaps. It is the largest CCP in Europe and one of the largest globally.

Q4: Is this an isolated decision or have there been other equivalence decisions in other areas of financial services?

A4: The EU have granted the UK a handful of decisions outside of CCPs, which give exemptions to the Bank of England and other UK public bodies.

The UK granted its first set of decisions to the EU in April 2019 covering exemptions for EU central banks and public bodies and also under the prospectus and transparency directives.

On 10 Nov, the UK granted a package of equivalence decisions to the EEA States, including EU Member States. To provide clarity and stability to industry and reflecting the Government's commitment to be as open as possible, HM Treasury announced as many decisions as we can in advance of the end of the Transition Period, as provided for under the agreement on the UK's withdrawal from the EU (the Transition Period) on 31 December 2020. Granting these equivalence decisions provides a range of benefits, including supporting well-regulated open markets, facilitating effective pooling and management of risk, and supporting UK and EEA clients' access to financial services and market liquidity. This statutory instrument is an important part of that package.

24 November 2020

APPENDIX 3: 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 1 December 2020, Members declared the following interests:

World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020

The Earl of Lindsay

Farming interests in Scotland.

Attendance:

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

