



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

37th Report of Session 2019–21

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

Drawn to the special attention of the House:

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020

Includes information paragraphs on:

7 instruments relating to COVID-19

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020

Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020

Patents, Trade Marks and Designs (Address for Service) (Amendment) (EU Exit) Rules 2020

Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2020

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Secondary Legislation Scrutiny Committee

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

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

And, to scrutinise –

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

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

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

Members

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

Registered interests

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

Publications

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

Committee Staff

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

Further Information

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

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

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

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

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

- Air Traffic Management (Amendment etc) (EU Exit) (No. 3) Regulations 2020
- Motor Vehicles (Tyre) (Labelling) (Enforcement) (Amendment) (EU Exit) Regulations 2020

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020 (SI 2020/1337)

Date laid: 24 November 2020

Parliamentary procedure: negative

*This instrument sets out how travellers arriving in England from a non-exempt country, territory or region can shorten the requirement to self-isolate for 14 days if they take a private COVID-19 test five days after their arrival and receive a negative result (“Test to Release”). Given that these travellers all come from places where the infection rate is too high to allow free movement after their arrival, we have substantial concerns about whether this approach, which allows them to break quarantine after five days in order to take a test, is justifiable. **We believe that the House will wish to press the Minister for a much fuller explanation, including a clear statement of the evidence relied upon in support of this policy change.***

This instrument is drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

1. This instrument has been laid by the Department for Transport (DfT), with an Explanatory Memorandum (EM). It sets out how travellers arriving in England from a non-exempt country, territory or region can shorten the requirement, under the International Travel Regulations,¹ to self-isolate for 14 days if they take a private COVID-19 test five days after their arrival and receive a negative result (“Test to Release”).
2. The instrument amends regulation 4 of the International Travel Regulations to allow travellers to leave their place of self-isolation to take a test. It also inserts new Schedule 2A which sets out the requirements to be met by any privately paid for test taken for these purposes, and amends regulation 9 to enable the disclosure and use of information relating to the tests for the purposes of enforcement.

How is it to be enforced?

3. We had concerns over how this measure could be enforced and, as a result, asked DfT a number of questions (published in full at Appendix 1). DfT responded:

“Test to Release will be enforced through a system of encouraging compliance in the first instance, followed by enforcement activity where needed.

Compliance checks are carried out by Public Health England’s Isolation Assurance Service (IAS) who contact randomly sampled international arrivals to ensure that they are self-isolating. Details of those found not to be isolating will be passed to the Home Office, who in turn pass relevant details on to the police for targeted follow-up enforcement activity.”

¹ Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)).

4. This response indicates some degree of co-ordination between different agencies. We were surprised, therefore, to be told that the information from the Passenger Locator Form stating that a traveller plans to take the test after five days is not passed to Test and Trace for follow up. We note that the private test provider is required to report results with the contact details of the traveller to Public Health England (PHE), which will be passed to Test and Trace, but—of course—that requirement only applies when tests are taken. Travellers who change their minds about the test should complete the full 14 day self-isolation period but we question how likely they are to do that, especially over the Christmas period.
5. We were also told that if, for example, the Q code at a pub identifies a traveller as out and about on day four, there is no link between the NHS App and the Passenger Locator Form database to alert the authorities that he or she has been out of the country and should be self-isolating.
6. **The House may wish to ask the Minister whether there could have been greater co-ordination between these different systems, and for an assurance that opportunities for greater effectiveness have not been lost.**

Penalties issued

7. With regard to enforcement, the Department referred to a mix of encouraging compliance followed by enforcement activity, including penalties:

“If individuals provide incorrect or misleading information, including in relation to opting in to “Test to Release”, on the Passenger Locator Form they are subject to a Fixed Penalty Notice (FPN) of £100.

Only a negative test from a private provider which meets the minimum standards will enable a traveller to cease self-isolating early—if they decide not to take the test and do not self-isolate, the fixed penalty notice payable for a first offence is £1,000, and increases to £2,000, £4,000 and then £10,000 for subsequent offences.”
8. We asked DfT how many Fixed Penalty Notices (FPNs) have been issued for breach of self-isolation, and the number of passengers in scope. We were told that since 8 June, when the requirement to self-isolate was introduced, there have been approximately nine million arrivals by air to the UK.² (Because of the frequency of changes to the exemption list over that period the Department was not able to distinguish between passengers coming from “safe” countries and those which required subsequent self-isolation.)
9. DfT reported to us that up to 16 November, 223 FPNs have been issued by police forces in England to those failing to self-isolate after arriving from a country not on the Travel Corridor list.

² The Department was unable to disaggregate these figures for England only, nor to provide figures for ferry or Eurostar arrivals. See details in Appendix 1, Q 7.

10. They cited the source for this information as a police press release³ which gave the following additional information:

“Up to 24 November under the International Travel Regulations:

- 7,040 cases investigated by officers found an individual to be complying with the regulations, with no further action being necessary.
- 416 cases found a person to be in breach of the regulation, but no further action was necessary as they were successfully encouraged to self-isolate using the 4-Es approach.
- 586 cases saw officers attend an address only to find that nobody with the relevant name lived at that address so no further enforcement action could be taken.
- 862 cases resulted in no answer at all when officers attended an address, with no further enforcement action possible.”

11. *In summary:* of an unspecified number, but likely to be in the millions, of travellers who have come to England from non-exempt countries, the IAS follow up a random sample (number also unspecified). Of that IAS sample an unknown proportion will have been found to be compliant but 9127 cases were passed on for investigation by the police — a miniscule percentage of the total. Of the cases investigated, 639 (7%) were identified as having definitely been in breach of a requirement to self-isolate and 1448 (16%) were untraced, so, of those cases investigated, 23% had failed to comply with the self-isolation requirements. The press release footnotes also refer to a separate enforcement process via Border Force, which blurs the picture further.
12. **Given these figures, the House may wish to press the Minister for further information about the Department’s evaluation of the effectiveness of the International Travel Regulations and about the evidential basis on which it was decided to introduce these Regulations to amend them.**

Conclusion

13. The test after five days will identify those who may not be aware that they have the infection. These Regulations, therefore, allow travellers who may be infected to break quarantine in order to take a test at that point. Given that these travellers will have come from places where the infection rate is too high to allow free movement after their arrival, we have substantial concerns about whether this approach is justifiable. Neither the EM nor the supplementary material assists in allaying those concerns.
14. **The House may wish to ask the Minister for the evidence underpinning the assertion (in paragraph 12.1 of the EM) that “the protective effect of testing to release international arrivals after 5 days of self-isolation is only marginally less effective than 14 days of self-isolation”, and**

3 National Police Chief’s Council, Press Release: *More Fixed Penalty Notices issued since national Coronavirus restrictions were reintroduced, with crime 9 per cent lower than last year* on 30 November 2020: <https://news.npcc.police.uk/releases/more-fixed-penalty-notices-issued-since-national-coronavirus-restrictions-were-reintroduced-with-crime-9-per-cent-lower-than-last-year> [accessed 9 December 2020].

for further information about the Department's level of confidence that travellers will be fully compliant with the new Regulations (particularly in the light of the supplementary information we have received from the Department, published at Appendix 1.)

INSTRUMENTS RELATING TO COVID-19

15. One instrument relating to the COVID-19 pandemic, the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020 (SI 2020/1337), is drawn to the special attention of the House in this report (see pages 2 to 5 above).

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (SI 2020/1374)

16. This instrument imposes a framework of restrictions throughout England consisting of three Tiers, which will be applied according to the Department of Health and Social Care's (DHSC) assessment of what is necessary to manage COVID-19 outbreaks and keep the R rate below 1.

Tiers

17. As before the restrictions are cumulative:
- Tier 1 applies the rule of six indoors and outdoors, and requires certain places of adult entertainment to be closed (for example, nightclubs); the rest (for example, cinemas, fairgrounds) may not operate between 23:00 and 05:00 and places selling food can only offer takeaway delivery between 22:00 and 05:00.
 - Tier 2 in addition, limits indoor gatherings to a single household or support bubble. In pubs and restaurants, alcohol may only be provided with a meal and by table service.
 - Tier 3 prohibits gatherings from different households indoors or outdoors and the rule of six applies in public outdoor spaces. All hospitality businesses must close except for delivery or takeaway. All holiday accommodation must close.
18. Many of the restrictions, exceptions and penalties are similar to those imposed during earlier phases of the pandemic, but on this occasion, a more precautionary approach has been taken. On the date of coming into force the only areas subject to the lowest controls, Tier 1, are the Isle of Wight, Cornwall and the Isles of Scilly. The areas in Tier 2 and Tier 3 are listed in Schedule 4. It is envisaged that areas will be moved between Tiers, subject to a 14-day review cycle, which will reassess the risks in each area. The first such review will be on 16 December.

Criteria

19. DHSC states that decisions on which Tier will initially apply in each area were primarily based on five key indicators:
- Case detection rates in all age groups;
 - Case detection rates in the over 60s;
 - The rate at which cases are rising or falling;
 - Positivity rate (the number of positive cases detected as a percentage of tests taken); and

- Pressure on the NHS, including current and projected occupancy.
20. DHSC added that no rigid thresholds have been set because the key indicators need to be viewed in the context of how they interact with each-other as well as the wider context.

Scrutiny

21. The Regulations came into effect on 2 December 2020 and will expire on 2 February 2021. In line with the Health Secretary's undertaking, they were debated in both Houses on 1 December, before they came into effect.⁴ However, once again, there was a long gap between the Government announcing the Regulations to the media and their actually being laid; many Peers complained that they had had only 24 hours before the debate to absorb a 75 page instrument and its supporting documents.
22. This instrument also revokes the Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020,⁵ but there was some uncertainty over when the second lockdown ended and the alternative regime began, meaning certain shops and hospitality venues were not ready to open on 2 December thinking they would have to wait another day. **When these Regulations expire or when areas are moved between Tiers as the infection rate changes, the Government should communicate more clearly the dates and changes to those affected.**
23. Regulation 4 also allows a general exception for three households to meet during the Christmas period (23 December to 27 December 2020) across all Tiers. The Government acknowledge that this represents an increased transmission risk but says that it must be balanced against the social benefits. Each area's existing restrictions on hospitality and businesses will remain in place throughout this period of temporary relaxation, as the aim is to enable families to get together rather than suspend social distancing.
24. Although no dedicated Impact Assessment has been prepared as this is a temporary measure, on 30 November 2020 the Government published a summary of the impacts of COVID-19 to date.⁶ This includes some limited material on the effectiveness of the first system of Tiers. It also includes consideration of broader factors such as social impact of the restrictions in particular on mental health and on education. The economic section of the analysis estimates that GDP growth in 2020 will fall by 11.3% and includes a forecast of forward growth up to March 2021. Although not a complete or entirely coherent document, **we regard the provision of some substantive information as a step in the right direction towards enabling scrutiny of the Tiers policy being presented.**

Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 (SI 2020/1375)

25. To remedy breaches of the requirements listed in regulation 2, this instrument enables Local Authority Officers to issue a *Coronavirus Improvement Notice*,

4 HL Deb, 1 December 2020, [cols 678–724](#).

5 [SI 2020/1200](#).

6 HM Government, *Analysis of the health, economic and social effects of COVID-19 and the approach to tiering* (30 November 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939876/Analysis_of_the_health_economic_and_social_effects_of_COVID-19_and_the_approach_to_tiering_FINAL_SofS_.pdf [accessed 3 December 2020].

a *Coronavirus Immediate Restriction Notice* (which closes premises for up to 48 hours) and a *Coronavirus Restriction Notice* (which closes premises for up to seven days). Breach of a Notice issued under these Regulations is an offence, although mainly subject to a Fixed Penalty. The objective of these Regulations is to address rapidly any business or activity that is not operating in a COVID-19 secure way. Various other issues relating to offences and enforcement are tidied up, including limiting the power to use “reasonable force” solely to police constables. The instrument will expire six months after it comes into force.

Public services

Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020

Draft Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020

26. The Government is actively encouraging private COVID-19 testing to help develop new and more accurate testing technologies and to make cheaper, quicker testing available. Currently, COVID-19 test providers who remove or analyse bodily cells, tissues or fluid samples are regulated by the Care Quality Commission (CQC), but other types of test are not (for example, tests based on a pin prick blood sample that do not need laboratory analysis).
27. The “Regulated Activities” instrument will remedy this discrepancy by removing all COVID-19 test sampling and test examination, including antibody testing, from the CQC regime. The Department of Health and Social Care (DHSC) states that this will also remove a barrier to innovation as novel, non-clinical testing methods that develop will no longer need to be individually exempted from the CQC regime.
28. On the same day, the “Coronavirus Testing Standards” instrument will replace quality assurance of these activities with an end-to-end accreditation scheme for COVID-19 tests and test providers, run by the United Kingdom Accreditation Service (UKAS). DHSC state that the UKAS accreditation process will be quicker and cheaper than CQC registration, which can take up to 10 weeks, and cover a wider range of COVID-19 testing-related activities. Companies offering testing services will need to work, in stages, towards accreditation with UKAS against the relevant international standards. Dates and details are set out in the Explanatory Memorandum. Additional minimum standards apply to those companies that wish to offer test services for Test To Release for international arrivals (See SI 2020/1337 above).
29. Mandatory, uniform standards are required to enable consumer confidence in private testing services and to ensure that results sent to Public Health England and NHS Test and Trace systems are of a high standard. This is also essential as these results can trigger legal duties, for example, the requirement to self-isolate.

Changes to business practice and regulation

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 (SI 2020/1349)

30. This instrument introduces temporary measures in relation to corporate insolvency and annual general meetings in response to the pandemic:
- A temporary modification of the wrongful trading provisions in the Insolvency Act 1986 is re-instated. The Department for Business, Energy and Industrial Strategy (BEIS) explains that wrongful trading may apply where there is evidence that creditors have incurred losses as a result of a company being allowed to trade beyond the point at which insolvency proceedings were inevitable. Where the test for wrongful trading is met, a court may require a director of the company to contribute to the company's assets from their personal assets. This possibility of personal liability aims to discourage continued trading by an insolvent company. The instrument modifies the provisions so that in determining a person's contribution to the company's assets, a court is required to assume that the person is not responsible for any worsening of the company's financial position that occurs between 26 November 2020 and 30 April 2021. BEIS says that this aims to allow directors of companies which are viable but for the effects of the pandemic to make decisions as to whether to continue trading without the threat of personal liability should those companies enter insolvency proceedings later. This temporary change revives an earlier time-limited modification made by the Corporate Insolvency and Governance Act 2020 ("the CIG Act") which expired on 30 September 2020.
 - The instrument also extends until 30 March 2021 temporary measures that were introduced by the CIG Act which allow companies to hold Annual General Meetings and other meetings in ways which are consistent with both public health measures and their constitutional requirements. This includes, for example, holding these meetings and allowing votes to be cast electronically. Without the extension, this temporary flexibility would have expired on 30 December 2020.

Travel

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 25) Regulations 2020 (SI 2020/1323)

31. These Regulations amend the original International Travel Regulations⁷ following the sixth statutory review which was completed on 16 November 2020. In Schedule 2 the exemption for Crown Servants and government contractors is amended and an exemption for people working on subsea fibre optic telecommunications infrastructure is added. The list of specified competitions in Schedule 3, which enables an exemption from self-isolation for elite sportspeople, is updated.
32. Following review by the Joint Biosecurity Centre it also adds Bonaire, Saint Eustatius and Saba, Israel, Jerusalem, Namibia, Northern Mariana Islands, Rwanda, Sri Lanka, Uruguay and The United States Virgin Islands to the list

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

of exempt countries, territories and regions from which passengers arriving in England after 21 November 2020 are not required to self-isolate.

33. The Committee asked the Department for Transport (DfT) for more information on how these changes are decided. DfT explained that “Ministerial decisions on international travel corridors are informed by risk assessments provided by the Joint Biosecurity Centre, working closely with Public Health England (PHE), using a methodology endorsed by the 4 Chief Medical Officers (CMO) of the UK”.⁸ Further detail about the factors taken into consideration as part of each risk assessment is included at Appendix 2. The House may particularly wish to note this information as passengers coming from non-exempt countries and territories after 15 December 2020 will be able to shorten their period of self-isolation by taking a test after five days (see SI 2020/1337 above).

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 27) Regulations 2020 (SI 2020/1360)

34. These Regulations amend the International Travel Regulations⁹ to add Aruba, Bhutan, Kiribati, Mongolia, the Federated States of Micronesia, Samoa, Solomon Islands, Timor-Leste, Tonga and Vanuatu to the list of exempt countries and territories at Schedule A1, from which passengers arriving in England are not required to self-isolate. With effect from the same date, 28 November 2020, passengers from Estonia and Latvia were required to self-isolate due to increased infection rates in those countries.
35. In response to an outbreak of a mink-variant of COVID-19, Denmark was removed from the list of exempt countries and territories; following a review, the special requirements in the Health Protection (Coronavirus, Travel from Denmark) (England) Regulations 2020¹⁰ are revoked. However, passengers from Denmark are still required to self-isolate for 14 days.

8 DHSC, ‘COVID-19 risk assessment methodology for inbound international travel’ (24 November 2020): <https://www.gov.uk/government/publications/covid-19-risk-assessment-methodology-for-inbound-international-travel/covid-19-risk-assessment-methodology-for-inbound-international-travel> [accessed 3 December 2020].

9 *Ibid.*

10 [SI 2020/1277](#).

INSTRUMENTS OF INTEREST

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020

36. This Order amends the regulatory framework for providers of pre-paid funeral plan contracts, so that they will generally need to be authorised by the Financial Conduct Authority (FCA). The instrument allows appointed representatives, such as funeral directors, to negotiate the sale of funeral plan contracts while not being fully authorised by the FCA, if a funeral plan provider agrees to be accountable for them complying with FCA rules for their activities. The instrument also makes changes to allow the Financial Ombudsman Service to deal with complaints in this area.
37. The measures are being introduced in response to growing concerns about poor sales practices in the pre-paid funeral plan sector. HM Treasury (HMT) says that the current voluntary regulatory system does not cover all providers and is not sufficiently robust to ensure fair treatment, especially of vulnerable consumers. According to HMT, compulsory regulation is necessary and was supported by a majority of respondents during consultation.¹¹ To give the FCA enough time to design, consult on and implement enforceable rules and standards and to give the sector time to prepare and seek authorisation, the new regulatory framework will come into force 18 months after this instrument is made.

Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020 (SI 2020/1247)

38. This instrument grants states of the European Economic Area (EEA) and Gibraltar approval as equivalent third countries and their audit regulatory authorities status as approved third country competent authorities. This approval is indefinite; a time-limited approval until 31 December 2020 introduced by earlier EU Exit legislation is withdrawn. The Department for Business, Energy and Industrial Strategy (BEIS) says that the approval aims to ensure that the UK's audit regulatory regime will continue to allow for cross-border listing of securities on the UK's regulated markets by companies in the EEA and Gibraltar, and that there are no obstacles in the UK framework for regulatory cooperation with the competent authorities in the EEA. This is one of a number of equivalence decisions made by the Government.¹² The instrument also extends the period during which the Independent Regulatory Board of South Africa will be approved provisionally as an approved third country competent authority from 31 July 2022 until 30 April 2026, reflecting a Commission Implementing Decision that will become retained EU law after the end of the Transition Period.
39. **We asked BEIS whether the EU had reciprocated the equivalence decision. The Department responded that it had “submitted material to the European Commission answering questions it had asked for**

11 HMT, ‘Regulation of pre-paid funeral plans: response to the consultation’ (March 2020): <https://www.gov.uk/government/consultations/regulation-of-pre-paid-funeral-plans-consultation-on-a-policy-proposal> [accessed 3 December 2020].

12 See statement by the Chancellor of the Exchequer on the Future of Financial Services, HC Deb, 9 November 2020, [vol. 683, col 619](#), and HMT, *HM Treasury equivalence decisions for the EEA States* (9 November 2020): <https://www.gov.uk/government/publications/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020> [accessed 8 December 2020].

the purpose of an assessment by the Commission of the equivalence of the UK under Article 46 of the Audit Directive and the adequacy of the Financial Reporting Council under Article 47 as the UK’s audit competent authority. We are yet to receive a response.”

**Patents, Trade Marks and Designs (Address for Service)
(Amendment) (EU Exit) Rules 2020 (SI 2020/1317)**

40. This instrument ensures that from 1 January 2021 only an “address for service” (AfS) in the UK (including the Isle of Man), the Channel Islands or Gibraltar will be permitted in proceedings before the UK Intellectual Property Office (IPO).¹³ AfS from the European Economic Area (EEA) will no longer be accepted. These changes will apply to actions such as new applications and new requests to initiate proceedings at the IPO, covering trade marks, registered designs, unregistered designs and patents. The current rules will continue to apply to proceedings still pending at the end of the Transition Period (TP) and the instrument includes a transitional provision to meet the UK’s commitments under the Withdrawal Agreement: over two million registered EU trade marks and designs will be re-created on the UK register to give rise to corresponding UK domestic rights after the end of the TP. These rights will retain their EEA AfS for three years after the end of the TP.
41. The IPO explains that the changes mirror changes made by the EU: after the end of the TP, UK applicants for trade marks and designs at the EU’s Intellectual Property Office (EUIPO) will no longer be able to use a UK representative or attorney for correspondence purposes and UK attorneys will lose the ability to represent clients at the EUIPO. Instead, UK applicants will have to use a representative in the EEA. The IPO says that smaller attorney firms are supportive of the changes in this instrument which they expect to “help reduce the loss of business arising from the UK’s withdrawal from the EU”.
42. The IPO says that UK applicants will continue to be able to use UK representatives and rely on AfS in the UK for applications at the European Patent Office (EPO), as the EPO is not an EU body and instead grants applications for patents according to the European Patent Convention which has non-EU members such as Switzerland and Turkey.

Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2020 (SI 2020/1336)

43. These Regulations make changes to the overall targets for the recycling of packaging waste as well as the targets for specific materials, such as glass, plastic, aluminium and paper. The instrument deals with England; Wales, Scotland and Northern Ireland will make similar changes separately. The Department for Environment, Food and Rural Affairs (Defra) explains that businesses are currently under an obligation to recycle a proportion of the packaging that they place on the market if they handle more than 50 tonnes of packaging per year and have an annual turnover of more than £2 million. The current targets cover the period 2018 to 2020 and were announced at Budget 2017. This instrument changes the overall target for the recycling of

¹³ An AfS is an address that is used to correspond with the IPO and for proceedings under IP legislation. It can be the address of the person making the application or their attorney or representative.

packaging waste, as well as the material specific recycling targets for 2021 and 2022, which are increased incrementally.

44. According to Defra, the current overall recovery target requires businesses to recover 82% of all their packaging waste, of which a minimum of 92% has to be recycled, leaving a maximum of 8% of the total recovery obligation which can be achieved by other recovery activities, such as treating packaging waste at combustion plants to generate power and/or heat. The overall recycling target is increased slightly by this instrument, but it is expressed differently, so the current 92% target will no longer apply, while no new overall recovery target is set, so businesses will only have to meet the new recycling targets for packaging waste. Defra told us that this is “in line with the Packaging Directive, which also moved to solely recycling targets in 2018”, adding that recycling “is considered to generate better environmental outcomes than recovery” and dropping the recovery target “removes an incentive for material going to activities which are lower on the waste hierarchy”, reflecting a commitment made by the Government in the Resources and Waste Strategy¹⁴ to increase the recycling of packaging waste. We are publishing at Appendix 3 additional information from Defra that provides further context, including about future targets and the consultation exercise.

¹⁴ Defra, *Resources and waste strategy for England* (18 December 2018): <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england> [accessed 3 December 2020].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020

Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020

Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020

Plant Health (Amendment etc.) (EU Exit) Regulations 2020

Made instruments subject to affirmative approval

- SI 2020/1349 Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020
- SI 2020/1374 Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020
- SI 2020/1375 Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020

Draft instruments subject to annulment

Modifications to the Standard Conditions of Electricity and Gas Supply Licences, The Standard Conditions of Electricity Distribution Licences, The Standard Conditions of Gas Transporters Licences, The Smart Meter Communication Licences, and The Smart Energy Code (Smart Meters No. [4] of 2020)

Instruments subject to annulment

- SI 2020/1247 Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020
- SI 2020/1317 Patents, Trade Marks and Designs (Address for Service) (Amendment) (EU Exit) Rules 2020
- SI 2020/1323 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 25) Regulations 2020
- SI 2020/1332 Occupational Pensions (Revaluation) Order 2020
- SI 2020/1335 National Health Service (Dental Charges) (Amendment) Regulations 2020
- SI 2020/1336 Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2020
- SI 2020/1352 Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) (No. 2) Regulations 2020
- SI 2020/1360 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 27) Regulations 2020

APPENDIX 1: HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL) (ENGLAND) (AMENDMENT) (NO. 26) REGULATIONS 2020 (SI 2020/1337)

Further information from the Department for Transport

Q1: If someone says on their locator form that they will elect to have the five-day test — is this followed up to see if they do actually do so? If so, who by whom?

A1: No. It is up to the individual whether they decide to go through with taking a test once it's booked and they have indicated as such on the Passenger Locator Form (PLF). If individuals provide incorrect or misleading information, including in relation to opting in to "Test to Release", on the PLF they are subject to a Fixed Penalty Notice (FPN) of £100.

Only a negative test from a private provider which meets the minimum standards will enable a traveller to cease self-isolating early — if they decide not to take the test and do not self-isolate, the fixed penalty notice payable for a first offence is £1,000, and increases to £2,000, £4,000 and then £10,000 for subsequent offences.

Q2: Does test and trace get a notification from [the people who receive the locator forms] that they should receive Mr X's test results by [date]? What happens if those results are not received?

A2: No. Private providers are legally required to report all test results to PHE as COVID-19 is a notifiable disease. These results, along with the contact details of the individual in question will be passed to Test and Trace from PHE.

Q3: Could you explain more about who is going to "inspect" compliance?

A3: Individuals who opt in will be required to self-isolate until they receive a negative test result. Compliance checks are carried out by Public Health England's Isolation Assurance Service (IAS) who contact randomly sampled international arrivals to ensure that they are self-isolating. Details of those suspected not to be isolating will be passed to the Home Office, who in turn pass relevant details on to the police for targeted follow-up enforcement activity.

Anyone who does not comply with this requirement could be fined £1,000 for the first offence and up to £10,000 for repeat breaches. Only a negative test result from a private provider which meets the minimum standards will enable a traveller to cease self-isolating early.

Q4: Could you explain more about who is going to enforce this — if Mr X is found out in a pub on day four how would [the police] know that he should be in quarantine?

A4: As with the existing enforcement regime for international arrivals, and in addition to the enforcement outlined above, in response to reports from members of the public about individuals not self-isolating, the Police can request information about that individual's PLF to ascertain whether they should indeed be self-isolating. This will equally apply to those who opt in to Test to Release. As part of compliance investigations, the police may request confirmation of the international arrival's test result, to decide whether they must still self-isolate.

Test providers must, on request, provide a constable with the following information:

- an arrival's passport number or travel document reference number (as collected at booking)
- an arrival's test result
- the date on which an arrival took their test
- the date on which the test result was notified or made available to the arrival (as collected at booking)

Q5: If the Q code at a pub identifies Mr X as out and about, will the test and trace system identify that he has been out of the country and should be in quarantine and alert someone? How joined up and intelligent are these systems?

A5: No. The NHS App is not linked up with the PLF database.

Q6: Although there is a system and penalties for non-compliance - what is not so clear is how delinquents are to be identified — so could you please explain to the Committee how compliance is to be monitored and ensured.

A6: Test to Release will be enforced through a system of encouraging compliance in the first instance, followed by enforcement activity where needed.

We have amended the Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 to require transport operators to provide information on Test to Release at the booking and check in stages, as well as 24-48 hours before travel. This will ensure that passengers are made aware of the scheme and its requirements at the earliest stage in their journey, and are reminded at subsequent stages.

Only a negative test from a private provider which meets the minimum standards will legally release an individual from self-isolation early. A negative test result from an NHS test will not legally release an individual from self-isolation early.

Individuals are only legally permitted to take a test on or after the 5th day after the date they last left a non-exempt country, which for most arrivals will be 5 days after the date they arrived in England. They will be required to self-isolate until they receive a negative test result from a private test provider which meets the minimum standards.

Compliance checks are carried out by the IAS who contact randomly sampled international arrivals to ensure that they are self-isolating. Details of those found not to be isolating will be passed to the Home Office, who in turn pass relevant details on to the police for targeted follow-up enforcement activity.

Anyone who does not comply with the requirement to self-isolate could be issued an FPN in the amount of £1,000 for the first offence and up to £10,000 for repeat breaches.”

Q7 Do you have figures for compliance with the existing 14-day isolation requirement (or at least how many fines have been issued for non-compliance compared with the number of incoming passengers from relevant countries)?

A7: Processing by the ACRO Criminal Records Office up to the 16 November shows that 223 FPNs have been issued by police forces in England to those failing to self-isolate after arriving from a country not on the Travel Corridor list.

Further details can be found at the link below:

<https://news.npcc.police.uk/releases/more-fixed-penalty-notice-issued-since-national-coronavirus-restrictions-were-reintroduced-with-crime-9-per-cent-lower-than-last-year>

Self-isolation requirements came into force from 8 June 2020. The monthly air arrivals into the UK for the months from June are as follows:

- June: 194,900
- July: 1,260,400
- August: 3,106,500
- September: 2,757,700
- October: 1,741,100

It is worth noting the following caveats about these numbers:

- They are based on air arrivals only, and do not include maritime and international rail;
- They account for arrivals into the whole of the UK, not just England;
- They account for total arrivals, so include those who arrive from travel corridor countries from where they are not required to self-isolate, and those who are exempt from self-isolation for other reasons (the travel corridor list changes on a weekly basis).

Further detail can be found on the link below:

<https://www.gov.uk/government/publications/statistics-relating-to-passenger-arrivals-since-the-covid-19-outbreak-november-2020/statistics-relating-to-passenger-arrivals-since-the-covid-19-outbreak-november-2020>

3 December and 4 December 2020

APPENDIX 2: HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL) (ENGLAND) (AMENDMENT) (NO. 25) REGULATIONS 2020 (SI 2020/1323)

Further information from the Department for Transport

Ministerial decisions on international travel corridors are informed by risk assessments provided by the Joint Biosecurity Centre (JBC), working closely with Public Health England (PHE), using a methodology endorsed by the 4 Chief Medical Officers (CMO) of the UK.

The risk assessment takes into account a number of factors. Weekly incidence rate per 100,000 population, test positivity, imported cases and rates of change are key indicators used to identify specific countries, territories or islands that may be considered for an increase or decrease in risk rating. These countries, territories or islands are then subject to deep dives.

Deep dives bring together a broader number of quantitative and qualitative indicators in order to make a more complete assessment of the risk posed, taking into account data limitations and potential biases. Deep dive indicators include:

- an estimate of the proportion of the population that is currently infected (this is known as ‘point prevalence’)
- weekly incidence rate and population size of the country, territory or island (noting smaller population sizes will show more volatility)
- trends in incidence, deaths, hospitalisations and intensive care admissions
- information on laboratory capacity, testing and contact tracing strategies, and test positivity rates
- COVID-19 cases detected in the UK with recent international travel history (imported infections)
- qualitative information related to the reliability of reported data and the maturity of public health systems
- public health measures in place and the enforcement of, and adherence to, those measures
- variations of the above metrics within countries, territories or islands, and information on disease clusters

JBC uses a range of different data sources to produce their assessment, including the European Centre for Disease Control, reporting from national websites, imported cases data collected by Contact Tracing, open source analysis, and FCDO reporting.

Further information regarding the methodology endorsed by the 4 CMOs of the UK is at: <https://www.gov.uk/government/publications/covid-19-risk-assessment-methodology-for-inbound-international-travel/covid-19-risk-assessment-methodology-for-inbound-international-travel>.”

1 December 2020

APPENDIX 3: PRODUCER RESPONSIBILITY OBLIGATIONS (PACKAGING WASTE) (AMENDMENT) (ENGLAND) REGULATIONS 2020 (SI 2020/1336)

Further information from the Department for Environment, Food and Rural Affairs

Q1: Table 2 inserted by regulation 2 sets out the new waste recycling targets for 2021 and 2022. How do the new targets compare to the current targets? Is there a comparable table for 2019 and 2020?

A1: Comparable table for 2017–2020 targets is:

	2017	2018	2019	2020
	%	%	%	%
General recovery	79	80	81	82
General recycling	92	92	92	92
Paper/Board	69.5	71	73	75
Glass	77	78	79	80
Aluminium	55	58	61	64
Steel	76	79	82	85
Plastic	51	53	55	57
Wood	22	38	43	48

Source: Defra

Q2: Paragraph of the EM 7.4 refers to a maximum of 8% that could be achieved through recovery activities and that this instrument does no longer set such a recovery target. What is waste recovery and what does it involve? Why is it no longer seen as an effective tool in reducing waste?

A2: Recycling is considered to be a sub-set of recovery, but recovery can include other processes including treating waste at specially designed combustion plants to generate power and/or heat from waste.

In the context of the packaging regulations reference to ‘recovery’ generally means recovering energy from waste in this way. Recycling is considered to generate better environmental outcomes than recovery (it is higher in the waste hierarchy—see response to question below); and the government made a clear commitment in the Resources & Waste Strategy to increase the recycling of packaging waste. Setting new targets solely for recycling, with no part that can be met by recovery, removes a level of incentive for material to be sent to energy from waste plants and drives more material towards recycling.

Q3: Has the 92% overall recycling target changed at all or is this left unchanged by this instrument? How does the 92% overall recycling target relate to the targets set out in Table 2 for individual materials?

A3: The overall recycling target has increased slightly, but is expressed differently so the “92%” no longer applies. It does not apply to the material specific recycling requirement in table 2.

For example, in 2020, the general recovery target was 82%—so if a company placed 100t of packaging on the market, they had to ensure the recovery of 82t.

The recycling part of the obligation meant that of the total 82t, 92% (or 75.4t) had to be achieved by recycling activities (and the remaining 6.6t could be met by recovery or recycling activities).

The amendment now simply sets a recycling target (76% and 77%) respectively, so a recycling target of 76t and 77t, which is a slight increase for 2021 and 2022.

Q4: Paragraph 7.4 states that “the focus is on moving the management of waste up the waste hierarchy and on recycling targets as a means of evidencing producer responsibility obligations are met”. What does “moving the management of waste up the waste hierarchy” mean?

A4: The waste hierarchy (<https://ec.europa.eu/environment/waste/framework/>) establishes some basic waste management principles and ranks options based on what has the best environmental outcome. “Moving up the waste hierarchy” means trying to ensure that we get the best outcome for the waste in question.

Q5: Paragraph 10.5 states that a “significant minority supported the consultation proposals”. What was the actual percentage that was supportive and what percentage opposed the proposals?

A5: Please see p 93 of the summary (link below)—36% responded “Yes”, 27% responded “No” and 37% responded “Neither”. It is worth noting that a large number of respondents who responded “No” (i.e. didn’t support the proposed targets) actually wanted higher targets (p 93 54.4)

<https://www.gov.uk/government/consultations/packaging-waste-changing-the-uk-producer-responsibility-system-for-packaging-waste>

Q6: Paragraph 10.5 also refers to “the expected higher recycling targets for 2025 and 2030 set under a reformed scheme”. This instrument sets targets for 2021 and 2022 — are there plans for further, more long-term reform and for more ambitious targets for 2025 and 2030? If so, what are these and has this already been legislated for?

A6: The government indicated its’ intention in the Resources and Waste Strategy to set ambitious future recycling targets. As part of the 2019 consultation we asked for initial feedback on packaging recycling targets for 2025 and 2030. The proposals we put forward were consistent with those established by the EU. We will consult again on proposals for future targets as part of the consultation next year on the design of the proposed new extended producer responsibility (EPR) scheme for packaging waste. Our future proposals for targets, including targets for 2023 and 2024, will depend on final decisions on the new EPR scheme for packaging and our proposals for a deposit return scheme for drinks containers. It is likely that the future approach to targets will not be directly comparable with the

current approach to recycling targets. No targets have been legislated for beyond 2022.

Q7: Were any concerns or objections raised during the consultation and if so, how have these concerns and objections been addressed?

A7: Responses to questions on targets are in Part B, Section 6. As indicated above, views were mixed on the proposed recycling targets but no objections were received. Following consultation, and prior to finalising our proposals with the devolved administrations, we took advice from the government's Advisory Committee on Packaging.

Q8: What were the responses to the proposal not to set an overall packaging waste recovery target?

A8: Government's intention not to set an overall recovery target for 2021 and 2022 was clearly stated in the consultation document. The targets on which we were consulting were set out in the consultation document and respondents were asked whether they agreed or disagreed with these targets. These were recycling targets by material and an overall recycling target; no overall recovery target was included. There were no responses that specifically referenced the proposal to remove the recovery target.

30 November 2020

APPENDIX 4: 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 8 December 2020, Members declared the following interests:

Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) (No. 2) Regulations 2020

Draft Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2020

The Earl of Lindsay

Chairman, BPI Pension Trustees Limited

Attendance:

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