

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 40th Report of Session 2019–21

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

Drawn to the special attention of the House:

#### **Statement of Changes in Immigration Rules**

Correspondence: Test to Release Scheme

#### **Includes information paragraphs on:**

17 instruments relating to COVID-19

Plant Health (Amendment) (EU Exit)  
Regulations 2020

Clean Air Zones Central Services (Fees)  
(England) Regulations 2020

International Waste Shipments (Amendment  
of Regulation (EC) No 1013-2006)  
Regulations 2020

National Lottery (Amendment) Regulations  
2020

Air Traffic Management (Amendment etc)  
(EU Exit) (No. 3) 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*

<a href="#"><u>Baroness Bakewell of Hardington Mandeville</u></a>	<a href="#"><u>Viscount Hanworth</u></a>	<a href="#"><u>The Earl of Lindsay</u></a>
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<a href="#"><u>Lord German</u></a>	<a href="#"><u>Lord Liddle</u></a>	<a href="#"><u>Baroness Watkins of Tavistock</u></a>

### *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](mailto:hlseclegscrutiny@parliament.uk).

# Fortieth Report

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

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

- Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Statement of Changes in Immigration Rules (HC 1043)

*Date laid: 10 December 2020*

*Parliamentary procedure: negative*

*The principal function of these Changes in Immigration Rules is to clarify the places and circumstances in which an asylum application may be properly made, and to enhance the UK's capacity to treat as inadmissible claims made by those who have passed through a safe third country. The changes took effect on 31 December 2020. The Home Office states that its intention is to discourage clandestine journeys across the Channel. But, in our view, effective enforcement will be key. **The House may therefore wish to ask the Minister for details of how the "robust returns" policy is to be delivered and the deterrent effect promulgated.***

**These Changes in Immigration Rules are drawn to the special attention of the House on the grounds that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation and that they may imperfectly achieve their policy objectives.**

1. This instrument, laid by the Home Office, amends the Immigration Rules that are used to regulate people's entry into, and stay in, the UK. It is accompanied by an Explanatory Memorandum (EM). As well as changing the asylum rules, this instrument allows international drivers to perform cabotage operations (collecting and delivering goods and passengers within the UK as part of an international journey).

#### *The changes*

2. The principal function of these Changes in Rules is, with effect from 31 December 2020, to clarify the places and circumstances in which an asylum application may be properly made and enhance the UK's capacity to treat as inadmissible claims made by those who have passed through a safe third country.
3. The EM states that the Immigration Rules do not presently set out an exhaustive list of the places and circumstances in which asylum claims can be properly made. This instrument sets out a list of designated places of claim (thereby making inadmissible claims made elsewhere, for example, at sea):
  - (a) an asylum intake unit;
  - (b) an immigration removal centre;
  - (c) a port or airport;
  - (d) a location to which the person has been directed by the Secretary of State to make a claim for asylum; or
  - (e) any other location where an officer authorised to accept an asylum application is present and capable of receiving the claim."

4. In addition, these changes separate the re-admission requirement from the inadmissibility decision, allowing the Home Office to treat applicants as inadmissible based solely on whether they have chosen to pass through one or more safe countries in order to come to the UK. The EM states that this will allow the Home Office to pursue avenues for an asylum seeker's removal not only to the particular third countries through which the applicant has travelled, but to any safe third country that may agree to receive them.

*Enforcement of the changes*

5. The first change appears largely to restate accepted asylum practice — this leads us to presume that the Home Office (and Border Force) intends to enforce it differently in 2021. However, the enforcement guidance was not available alongside the instrument. We were told it would not be published on the gov.uk website until 31 December 2020 at 23:00, when the existing guidance ceased operation. **We regard this as poor practice — where the manner of enforcement is likely to make a significant difference to the outcome of the legislation then the House should be given adequate information alongside the instrument.** Subsequent checks after 1 January found pages that said - unhelpfully: “The Brexit transition period has ended and new rules on claiming asylum in the UK now apply. This page is currently out of date.”<sup>1</sup> **This is equally poor practice**
6. We asked the Home Office for more specific details about how these Rules changes would operate. We were told it would vary on a case by case basis:

“When an individual makes an asylum claim, we will gather any evidence, verbal or documentary, of claimants having spent time in or having connections to a safe country. This could include biometric evidence, passports, legal papers, employment papers, bank statements, invoices, receipts and other similar documents (this list is not exhaustive). An account of the individual's immigration history will be taken as part of their asylum screening interview to fully understand the chronology and detail of how the person came to the UK. Evidence of a person's method and place of entry to the UK and their known or probable place of embarkation by Home Office officials or another person in an official capacity will be taken into consideration.”

*The policy objective*

7. We asked what the Home Office regarded as the policy objective of these changes. The Home Office responded:

“The policy objective is to operate a deterrent against migrants choosing to pay large sums of money to people smugglers and criminal facilitators, and undergo dangerous journeys across Europe and across the Channel. It is hoped, in the near future, to conclude robust returns agreements with EU states in order to support our Rules change. For now, with the UK leaving the Dublin Regulation, we must demonstrate to migrants that dangerous clandestine journeys to the UK rather than claiming in safe countries on the way will not result in immediate entry to the UK system via an asylum claim, and the UK will seek to continue the EU

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1 For example: HM Government, ‘Claim asylum in the UK: Eligibility’: <https://www.gov.uk/claim-asylum/eligibility> [accessed 5 January 2021].

principle of discouraging such secondary movements once safety has been reached.”

8. To be an effective deterrent, those considering clandestine entry to the UK need to see a change in the outcome of other attempts. We asked the Home Office what it expected the outcome of these changes to be: would more people fail to gain asylum or would the same number be rejected but at an earlier stage (thus achieving administrative benefits)? The Home Office replied:

“The full deployment of the Rules will deliver a significant uplift given that a person’s travel through a safe country to the UK makes them liable to inadmissibility, rather than the possibility of their return to that country. The system is intended to discourage secondary movements within Europe once a migrant has reached safety — including those dangerous journeys across the Channel.”

### *Deportation*

9. The policy relies heavily on the UK’s ability to deport anyone whose claim is deemed inadmissible on these grounds. We therefore asked the Home Office what would happen to these people. The Home Office replied:

“A person will be regarded as an asylum seeker up to the point of being deemed, formally, to be inadmissible. At that point they would be a failed asylum seeker. Both asylum seekers and failed asylum seekers can access support to prevent against destitution (in accordance with our obligations under the ECHR.) Our powers to detain are linked closely to an ability to remove within a reasonable period of time. If that is possible, therefore, detention is an option. If not, we are looking at different accommodation models for our asylum intake generally.”

We also asked what would happen if no third country was willing to take this possibly larger number of individuals. The Home Office replied:

“If returns are not, ultimately, possible within a matter of months, a person will be admitted into the asylum system.”

These Rules changes use imprecise terms —what is “ a reasonable period of time” in this context or “a matter of months”? It appears that in some cases the applicant will simply experience a delay in being processed, which leads us to question the effectiveness of this policy in deterring “inappropriate” asylum seekers.

### *Conclusion*

10. These changes in the Rules may alter an individual’s status to failed asylum seeker more quickly or perhaps limit their ability to have the decision reviewed, but it is not obvious how, in the absence of a clear enforcement policy, it will deter secondary movements. **The House may therefore wish to ask the Minister for details of how the “robust returns” policy is to be delivered and the deterrent effect promulgated.**

## CORRESPONDENCE

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### Test to Release Scheme

11. We drew the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020 (SI 2020/1337) to the special attention of the House in our 37th Report of this session on the ground that the explanatory material laid in support provided insufficient information to gain a clear understanding of the instrument's policy objective and intended implementation.<sup>2</sup>
12. The instrument sets out how travellers arriving in England from a non-exempt country, territory or region can shorten the (then) 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 said that we had substantial concerns about whether the new approach, which allows them to break quarantine after five days in order to take a test, was justifiable.
13. Following an All Peers briefing session on the matter, Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, wrote to the Chairman to address points raised in our Report (letter published at Appendix 1). **While we wish to thank the Minister for the further information provided, we regret that our concerns have not been allayed.**
14. We are told that the new approach mirrors that taken by close partners, such as Germany and Iceland — but no mention is made of the fact that infection rates have been much lower in those countries than in the UK.
15. We are also told that an Enhanced Enforcement Posture has been adopted by Border Force in relation to the completion of Passenger Locator Forms (PLF), meaning that more people will be issued with fines if they have not completed the PLF. While we have no doubt that this is a positive step, our greater concern is whether travellers comply with the rules once they are in England. The lack of adequate links between agencies' databases seems unlikely to make in-country compliance checks effective. Nor does the Minister's letter address the figures in our 37th Report, which indicate that 23% of the small sample of travellers whose completed PLFs were investigated by the police were either in breach of self-isolation (7%) or untraceable (16%).<sup>3</sup>
16. Finally, and most worryingly, is the information provided by the Minister to underpin the assertion made in the Explanatory Memorandum 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". The Minister refers to Public Health England modelling, which says that the effectiveness of testing after five days is 85%, whereas it is 96% after eight days and 98% after 10 days. **We would not describe a difference of 13 percentage points as "marginal"**, particularly when it relates to hundreds of thousands of travellers who have recently arrived from countries with high infection rates.

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2 *37th Report*, Session 2019–21 (HL Paper 189).

3 More details on the numbers involved can be found in our *37th Report*.

17. **We remain of the view set out in our 37th Report that there is insufficient explanation to support the policy objective and intended implementation of the instrument. The Minister's letter also raises further concerns about how closely the Department for Transport has consulted Border Force, the police and above all the Department for Health and Social Care, in formulating this policy.**

## INSTRUMENTS RELATING TO COVID-19

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### Restrictions on business and public gatherings

#### *Health Protection (Coronavirus, Restrictions) (Self-Isolation and Linked Households) (England) Regulations 2020 (SI 2020/1518)*

18. This instrument reduces the required period of self-isolation for an individual who has been notified that they have been in close contact with someone who has tested positive for coronavirus from 14 days to 10. This change is based on the latest advice from the Chief Medical Officers.
19. In addition, these Regulations amend provisions regarding when a person's period of self-isolation begins, so that the self-isolation period will end earlier than it would otherwise have done. The date of symptoms starting/a positive test exposure to an index case is counted as Day 0. The self-isolation period ends in each case at 11.59 pm on Day 10.
20. These Regulations also make consequential amendments to reduce the minimum break required between switching household or childcare bubbles to 10 days.

### Local restrictions and movement between tiers

#### *Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020 (SI 2020/1533)*

21. These Regulations make changes to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020<sup>4</sup> to move into Tier 3, the highest level of restriction when the instrument was made:<sup>5</sup>
  - all 32 London boroughs and the City of London;
  - Essex: Basildon, Brentwood, Harlow, Epping Forest, Castle Point, Rochford, Maldon, Braintree, Chelmsford — and two unitary authorities Thurrock and Southend on Sea Borough Council; and
  - Hertfordshire: Broxbourne, Hertsmere, Watford and Three Rivers.
22. The Explanatory Memorandum states that this is in response to the latest data showing an exponential rise in confirmed cases as well as rising local hospital admissions in those areas.

#### *Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No.2) Regulations 2020 (SI 2020/1572)*

23. This made affirmative instrument amends the All Tiers Regulations,<sup>6</sup> following the statutory review of those Regulations carried out on 16 December 2020. On the basis of new advice, this instrument moves council areas in the East and South East of England from Tier 2 to Tier 3 including Bedfordshire, Peterborough, the remaining areas of Hertfordshire,

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4 See Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ([SI 2020/1374](#)), which were due to lapse on 2 February 2021 but have now been extended to 31 March 2021 by [SI 2021/8](#).

5 A higher tier was introduced in Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 ([SI 2020/1611](#)); see para 4 of this Report.

6 [SI 2020/1374](#)

Buckinghamshire, parts of East Sussex and Hampshire, Portsmouth, Reading, West Berkshire, Bracknell Forest, Windsor and Maidenhead, Wokingham and Surrey (except Waverley Borough Council). This instrument also moves Bristol City Council and North Somerset Council from Tier 3 to Tier 2 and Herefordshire Council from Tier 2 to Tier 1. It was debated in the Lords on 30 December with the two items below.

*Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 (SI 2020/1611)*

24. Due to concerns about an increase in the R number, this is a later amendment to the All Tiers Regulations to introduce an additional tier of restrictions, Tier 4. In Tier 4, people are required to stay at home (subject to a number of exceptions including work and education) and may not gather with more than one person from another household or bubble even in a public open space. A broad range of entertainment, leisure and beauty establishments are required to close. and hospitality is limited to takeaway services. Essential retail may remain open.
25. This instrument moves all 32 London boroughs and the City of London and some local authority areas in the East and South East of England from Tier 3 to Tier 4 including Kent and Medway, Buckinghamshire, parts of Berkshire, Surrey (excluding Waverley), Hastings and Rother, Havant, Gosport and Portsmouth, Hertfordshire, parts of Essex, Central Bedfordshire, Bedford, Milton Keynes, Luton and Peterborough.
26. In the light of the infection rate it also amends the Christmas period exception to the gathering limits in Tiers 1, 2 and 3 from five days to just Christmas Day. Those in Tier 4 are not allowed to form a Christmas bubble at all. The instrument was debated on 30 December 2020 in the Lords. The All Tiers Regulations were next due for review on 30 December.

*Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3) Regulations 2020 (SI 2020/1646)*

27. Due to concerns over a new variant and the rapid rise in positive cases in several areas, particularly in the south, this instrument moved a number of local authority areas into higher Tiers with effect from 26 December 2020. The instrument was debated in the Lords on 30 December 2020. There were no longer any mainland Tier 1 areas;<sup>7</sup> the rest of the Midlands and Manchester area along with the area around Bristol and Somerset moved into Tier 3 and the remaining areas of South East and Eastern England (for example Norfolk and Suffolk) moved into Tier 4.
28. As well as some minor corrections to previous instruments, this instrument also made some changes to the Tier 4 restrictions including:
  - exemptions to the gathering restrictions for schools, picketing and the care of those with a disability;
  - enabling personal care treatments to continue for genuine medical and health reasons;
  - allowing a parent to stay in a hotel where necessary to have contact with a child who does not live with them; and

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<sup>7</sup> The Isles of Scilly were still in Tier 1 on 5 January 2021.

- ensuring local authorities have the same enforcement powers in Tier 4 as in all the other tiers.
29. The Regulations also enable people in Tier 4 to visit zoos, safari parks and other outdoor animal attractions.

*Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020 (SI 2020/1654)*

30. Because of the rapid rise in positive cases of COVID-19, mainly attributed to a more contagious new variant, this instrument puts more areas into Tier 4, with no mainland areas in Tiers 1<sup>8</sup> or 2, and approximately 78% of the population in England in Tier 4. The main areas remaining in Tier 3 are Liverpool, Yorkshire and the South West.
31. This instrument also makes technical amendments to the All Tiers Regulations,<sup>9</sup> correcting a cross reference in paragraph 8 of Schedule 3A and separately in regulation 8, to put beyond doubt that areas in Tier 4 are not also in Tier 1, and are not subject to both regimes of restrictions simultaneously.

**Changes to business practice and regulation**

*Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No. 3) Regulations 2020 (SI 2020/1472)*

32. This instrument extends further, until 31 March 2021, the moratorium during which landlords of commercial properties may not evict tenants due to non-payment of rent. This follows an initial three-month moratorium until 30 June 2020, introduced by the Coronavirus Act 2020, and two subsequent extensions until 30 September<sup>10</sup> and 31 December 2020.<sup>11</sup> The Ministry of Housing, Communities and Local Government (MHCLG) says that the moratorium is not a rent holiday and tenants remain liable for payment of any rent arrears, and that this further extension is necessary as many businesses are continuing to struggle with rent payments. According to MHCLG, no further extension is planned, giving businesses and their landlords a clear deadline to work to in terms of negotiating rent repayments.
33. MHCLG says that while the impact of reduced rental income “is causing some financial distress among commercial landlords”, the Government have worked with the sector to create a Code of Practice<sup>12</sup> that encourages businesses that can pay rent to do so. MHCLG also points to the package of support that is available to businesses and the commercial real estate sector through the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme and the Coronavirus Corporate Financing Facility. The schemes provide lending through grants and government-backed loans and are available to landlords in distress.

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8 *Ibid.*

9 [SI 2020/1374](#).

10 Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) Regulations 2020 ([SI 2020/602](#)).

11 Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No. 2) Regulations 2020 ([SI 2020/994](#)).

12 MHCLG, *Code of practice for the commercial property sector* (19 June 2020): <https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector> [accessed 16 December 2020].

34. We asked MHCLG about the scale of the impact of the moratorium on commercial landlords and to what extent landlords have taken up the available support. MHCLG told us that: “With regard to the impact of the moratorium on commercial landlords, we meet fortnightly with representative of the landlord and funder sectors who, although disappointed that the moratorium continues, have not reported immediate stress. We have seen limited evidence of immediate risk of extensive failures in the sector. Rent collection levels 35 days after the September rent payment date were 79% overall (according to data collected by Remit Consulting), up from 68.8% at the same point after the June payment date. Hospitality and leisure businesses show a significantly lower rent collection rate of 47.6%, up from 41.3% in June. We do not have data on the extent to which landlord businesses have taken advantage of the business support measures introduced by the Government in response to the pandemic.”
35. **As noted previously,<sup>13</sup> we are concerned that many landlords will be unable to recover rent that has not been paid during the moratorium, and that the longer-term impact on the retail sector and high streets could be significant.**

*Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2020 (SI 2020/1483)*

36. This instrument extends until 31 March 2021 two temporary insolvency measures which restrict the use of statutory demands<sup>14</sup> and winding up petitions.<sup>15</sup> The measures were initially introduced by the Corporate Insolvency and Governance Act 2020 and would otherwise have expired on 31 December 2020. The Department for Business, Energy and Industrial Strategy explains that these temporary measures are extended to maintain the protection of companies from aggressive creditor enforcement whilst the adverse effects from the coronavirus pandemic continue and social distancing restrictions remain in place, including regional tiered restrictions, which affect normal trading. The extension means that creditors cannot rely on statutory demands as evidence of a company’s inability to pay its debts and therefore its solvency, to bring winding-up petitions as they will be void. Where company winding up petitions are made, a petitioner will have to satisfy a court that the company’s inability to pay is not due to coronavirus.

*Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (England) Regulations 2020 (SI 2020/1484)*

37. This instrument continues temporary modifications of regulatory arrangements to facilitate the production and supply of Personal Protective Equipment (PPE) during the pandemic. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the current arrangements modify temporarily the effect of the EU’s PPE Regulation<sup>16</sup> and were adopted by the UK Government in March 2020, following a

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13 *28th Report*, Session 2019–21 (HL Paper 135).

14 A statutory demand can be made to ask for payment of a debt from an individual or company. The individual or company will have 21 days to pay the debt or reach an agreement to pay it.

15 A ‘winding up’ petition is an application that is made to the court to close or ‘wind up’ a company that cannot pay its debts.

16 Regulation (EU) [2016/425](#) of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing [Council Directive 89/686/EEC](#).

Commission Recommendation.<sup>17</sup> As this Recommendation will not become domestic law after the end of the Transition Period, a new provision is made by this instrument to continue the modified arrangements. According to BEIS, the modifications temporarily ease the regulatory requirements for the conformity assessment of certain categories of PPE in order to increase the supply of essential COVID-19-related PPE during the pandemic, while maintaining a process in which the Health and Safety Executive (HSE) certifies essential safety. The easements are time limited: HSE will undertake the modified assessment and certification process until 31 March 2021 for PPE to be placed on the market, and until 30 June 2021 for PPE to be provided to healthcare or specified health and care sector frontline workers.

## Travel

### *Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) (No. 2) Regulations 2020 (SI 2020/1517)*

38. These Regulations correct drafting errors in SI 2020/1337<sup>18</sup> (which introduced the Test and Release scheme) relating to the omission of an ISO standard in Schedule 2A, before the scheme came into force on 15 December 2020. On advice from the Chief Medical Officers, the instrument also shortens the self-isolation period required of traveller from non-exempt countries from 14 days to 10. They also make consequential amendments to the information operators are required to give to passengers coming to England and to the information those passengers must give on their arrival in England.
39. Additionally, on the basis of the latest information from the Joint Biosecurity Centre, Botswana and Saudi Arabia are added to the list of exempt countries with effect from 12 December 2020, but those travelling from the Canary Islands after that date must self-isolate.

### *Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 29) Regulations 2020 (SI 2020/1595)*

40. These Regulations amend the International Travel Regulations<sup>19</sup> to remove Namibia, the United States Virgin Islands and Uruguay from the list of exempt countries and territories with effect from 19 December 2020. Passengers arriving in England from those destinations after that date will be required to self-isolate for 10 days.
41. An exemption has been added for workers on Phase One of the HS2 rail project; the Department for Transport states that the exemption is needed to prevent delays to critical work and ensure both the safety and efficiency of the programme.

### *Health Protection (Coronavirus, Travel from South Africa) (England) Regulations 2020 (SI 2020/1644)*

42. A new variant strain of coronavirus has been identified in South Africa; as its effects are not yet known, the Government have implemented a number

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17 Commission Recommendation [\(EU\) 2020/403](#) of 13 March 2020 on conformity assessment and market surveillance procedures within the context of the COVID-19 threat.

18 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020 ([SI 2020/1337](#)), on which questions were raised in our [37th Report](#), Session 2019-21 (HL Paper 189).

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

of precautionary measures. Due to the urgency, the instrument was brought into effect before it could be laid in Parliament.

43. With effect from 23 December 2020, these Regulations amended the International Travel Regulations<sup>20</sup> to remove all exemptions from the requirement to self-isolate (including the Test to Release scheme) and all exemptions from the requirement to complete a Passenger Locator Form for anyone who has arrived in England from South Africa or transited through South Africa. The Regulations also require people residing with South African arrivals to self-isolate.
44. With effect from 24 December 2020, these Regulations prohibit the arrival in England of aircraft travelling directly from South Africa (except in defined emergencies).

### Public services

#### *Human Medicines (Coronavirus) (Further Amendments) Regulations 2020 (SI 2020/1594)*

45. Our 32nd Report of this session drew special attention to SI 2020/1125<sup>21</sup> which facilitated the logistics behind the COVID-19 mass vaccination programme by allowing a wider range of people to administer vaccines where necessary and simplifying administration for the vaccine supply chain. Inevitably, when setting up such a large system at speed, a few problems were not immediately identified. This instrument amends the law to deal with some of the practical problems that have been encountered, for example varying the normal manufacturing and labelling legislation to allow appropriate dilution of the vaccine and for it to be labelled with the time it started thawing. Another amendment allows pharmacists to assemble and administer the vaccine outside their registered premises, for example in care homes or community halls. These arrangements are temporary, and the Regulations will expire on 1 April 2022.

### Changes to benefits

#### *Rent Officers (Housing Benefit and Universal Credit Functions) (Modification) Order 2020 (SI 2020/1519)*

46. This instrument provides for the Local Housing Allowance (LHA) rates for the private rented sector for 2021-22 to remain at the same levels that applied from April 2020. The LHA scheme applies to the majority of tenants claiming Housing Benefit and all tenants claiming Universal Credit in that sector. LHA rates are normally reviewed annually by the Secretary of State and the rates were due to increase by 1.7% (CPI) in 2020-21 but, in response to COVID-19, were increased further to cover the lowest 30% of local rents instead. The maximum LHA rates, or “national caps”, were also increased to equal the maximum LHA rates for outer London, plus an additional 20%.

#### *Social Security Contributions (Disregarded Payments) (Coronavirus) (No. 2) Regulations 2020 (SI 2020/1523)*

47. This instrument provides for a temporary National Insurance contributions (NICs) disregard to ensure that when an employer pays or reimburses an

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<sup>20</sup> Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)).

<sup>21</sup> See 4th item in [32nd Report](#), Session 2019-21 (HL Paper 159) relating to Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020 ([SI 2020/1125](#)).

employee for the cost of a relevant coronavirus antigen test between 25 January and 5 April 2021, there is no Class 1 NICs liability for either the employer or the employee. The disregard also ensures that there is no Class 1A NICs liability for the employer either. This provision builds on a similar tax exemption.<sup>22</sup> HM Revenue and Customs (HMRC) explains that to be eligible for the disregard, a relevant coronavirus test is defined as a test which can detect the presence of a viral antigen or viral ribonucleic acid specific to severe acute respiratory syndrome coronavirus 2. It cannot be an antibody test because, according to HMRC, such tests only provide a historic view of whether an individual has previously contracted the coronavirus, and unlike the antigen test, do not show whether the individual is currently affected by the coronavirus and needs to self-isolate.

*Social Security Contributions (Disregarded Payments) (Coronavirus) (Scotland and Wales) Regulations 2020 (SI 2020/1532)*

48. This instrument disregards, in relation to National Insurance contributions (NICs), payments made under the Welsh Government’s Self-Isolation Support Payment scheme and the Scottish Government’s Self-Isolation Support Grant to employees who are on low incomes and have been asked to self-isolate. Payments made under these schemes will not be liable to employer or employee Class 1 NICs. Employers will also not be liable to Class 1A NICs in respect of the payments. The Scottish Self-Isolation Support Grant scheme started to process applications on 12 October 2020 and claims can be backdated to 28 September 2020. The Welsh Self-Isolation Support Payment scheme started to process applications on 16 November 2020 and is open to applicants who have been told to self-isolate on or after 23 October 2020.

*Tax Credits, Childcare Payments and Childcare (Extended Entitlement) (Coronavirus and Miscellaneous Amendments) Regulations 2020 (SI 2020/1515)*

49. This instrument makes changes in relation to tax credits, Tax-Free Childcare (TFC) and 30 hours free childcare (“30 hours”) to ensure that parents who receive payments from a coronavirus job support scheme remain eligible to both TFC and to 30 hours. The instrument also includes provisions to protect a claimant’s entitlement to receive Working Tax Credit (WTC) and to allow workers to continue to receive WTC if they would otherwise have been engaged in paid work were it not for the impact of the pandemic.
50. The instrument further ensures that certain payments, such as NHS Test and Trace Support Payments in England and similar schemes in the Devolved Administrations, such as Covid Winter Grant payments, as well as Best Start Foods and Mesh Complication payments in Scotland, are disregarded as income for tax credits purposes. In addition, the instrument ensures that WTC claimants continue to satisfy entitlement conditions during periods of self-isolation, and that furloughed and coronavirus-impacted workers have access to WTC during periods of absence from work due to childbirth, parental bereavement and adoption and during periods of time off work in connection with illness, incapacity or limited capability.

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22 See: Income Tax (Exemption of Minor Benefits) (Coronavirus) Regulations 2020 (SI 2020/1293).

51. Finally, the instrument amends the definition of a coronavirus-impacted worker to clarify when a person no longer qualifies, so that such workers are treated the same as furloughed workers when the Coronavirus Job Retention Scheme ends or there are permanent changes to their employment.

## INSTRUMENTS OF INTEREST

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### Draft Plant Health (Amendment) (EU Exit) Regulations 2020

52. This instrument aims to protect biosecurity and support trade between Great Britain (GB) and Northern Ireland (NI) by ensuring that plant health controls for Qualifying NI goods (Qualifying Goods) moving from NI to GB can function after the end of the Transition Period. The instrument also clarifies the internal GB controls applicable to Qualifying Goods. The Department for Environment, Food and Rural Affairs (Defra) says that as a result of the NI Protocol, different Sanitary and Phytosanitary (SPS) requirements will apply in GB and in NI, and that the changes in this instrument support the Government’s policy on unfettered market access for Qualifying Goods, by defining how this access operates for plant health and allowing enforcement action to be taken in GB if SPS requirements are not met. Under these arrangements, businesses will be allowed to move Qualifying Goods from NI into GB under an EU Plant Passport and, once in GB, this EU Plant Passport can continue to accompany the Qualifying Goods.
53. **We asked the Department whether a UK plant passport will be recognised for goods that move from GB to NI. Defra told us that: “Regulated plants and plant products moving from GB into NI will need to be accompanied by a Phytosanitary Certificate”, as will be the case for exports of plants from GB to the EU,<sup>23</sup> adding that “there will be a grace period for supermarkets to update their procedures” until 1 April 2021.<sup>24</sup> A recent Command Paper provides more detail.<sup>25</sup>**
54. We received a submission from Friends of the Earth which sought clarification of how plant products that pose a pest risk may be moved off an emergency measures list and be allowed to be imported and transported with conditions attached where the risk can be reduced to an acceptable level. We are publishing the submission and Defra’s response on our website.<sup>26</sup>

### Clean Air Zones Central Services (Fees) (England) Regulations 2020 (SI 2020/1444)

55. When Clean Air Zones (CAZ) are set up, to reduce Nitrogen Dioxide levels, the local authority will be able to impose a charge on non-compliant vehicles (like the Congestion charge). The Government plan to put in place centralised administration for collecting those charges — this instrument allows them to collect £2 per charge as an administration fee. The Department for Transport (DfT) states that Bath and North East Somerset are scheduled to operate the first CAZ from 15 March 2021 and Birmingham city centre will follow on 1 June 2021. In Bath the charge for non-compliant coaches, buses

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23 Defra, ‘Importing and exporting plants and plant products from 1 January 2021’, (31 December 2020): <https://www.gov.uk/government/collections/importing-and-exporting-plants-and-plant-products#exporting-plants-and-plant-products-from-england-scotland-or-wales-to-the-eu> [accessed 31 December 2020].

24 HC Deb, 9 December 2020, [Col 847](#).

25 Cabinet Office, *The Northern Ireland Protocol*, December 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/943251/2020-12-10\\_The\\_Northern\\_Ireland\\_Protocol.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943251/2020-12-10_The_Northern_Ireland_Protocol.pdf) [accessed 31 December 2020].

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

and HGVs is proposed to be £100. For taxis, private hire vehicles, minibuses and vans it will be £9 a day, but the level of charge will vary in each location.

56. However, the Explanatory Memorandum gave no indication of the volume of charges or the anticipated income, so that we were unable to judge whether this fee was set at an appropriate level. From the supplementary information (published at Appendix 2) it is expected that the income derived will only meet about half of the cost of the service provided (**a shortfall of £38.7 million**). DfT states that the £2 charge “is the optimum figure, because it minimises the risk of unnecessary delays and further litigation; allows Local Authorities to cover their own costs (under the New Burden principle) and represents a reasonable proportion of costs recovery to the Government and has been agreed with HM Treasury.”
57. The money generated through local authorities’ charging Clean Air Zone must be used to improve air quality with any surplus being used in support of local transport plans. Although the objective is cleaner air, **the House may wish to ask the Minister for further details about the costs and benefits of the solution they have chosen.**

#### **International Waste Shipments (Amendment of Regulation (EC) No 1013/2006) Regulations 2020 (SI 2020/1455)**

58. This instrument implements changes made to the Annexes of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“the Convention”) and to the Decision on Transboundary Movements of Waste destined for Recovery Operations by the Organisation for Economic Cooperation and Development (OECD). As a Party to the Convention and a Member of the OECD, the UK is obliged to implement the changes. The changes aim to reduce illegal cross-border shipment of plastic waste and encourage environmentally sound management of such waste.
59. The Department for Environment, Food and Rural Affairs explains that a new code for contaminated and highly mixed plastic waste (referred to as “Y48”) is introduced so that future shipments of this type of waste will require prior informed consent from regulators in the countries of dispatch, transit and destination. Exporters will also have to obtain a financial guarantee to provide for the costs of returning the waste to the UK if it cannot be recycled in the destination country. In addition, a new category of hazardous plastic waste (referred to as “A3210”) is introduced which will be subject to the same controls as Y48 when shipped to other OECD countries. Any shipments of A3210 to non-OECD countries will be prohibited. The changes took effect from 1 January 2021.

#### **National Lottery (Amendment) Regulations 2020 (SI 2020/1475)**

60. This instrument increases, with effect from 1 October 2021, the minimum age for buying and selling tickets for National Lottery games from 16 to 18 years. Where vending machines are used to sell National Lottery tickets, the minimum age for those who attend the machines to stop underage people purchasing tickets or to prevent excessive play is also increased to 18 years.
61. The Department for Digital, Culture, Media and Sport (DCMS) explains that there is emerging evidence of a potential link between 16 and 17-year olds playing lottery games, especially instant win games, and the likelihood

of problem gambling in adulthood. There have been calls to increase the minimum age, including by the House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry.<sup>27</sup>

62. According to DCMS, the coming into force date of October 2021 reflects a preference of the sector for advance notice and allows the Gambling Commission and Camelot, as the operator of the National Lottery, to manage the impact of the changes and support the sector with changing systems, training retailers and updating signage. DCMS says that a review of the Gambling Act and a call for evidence which was launched in December 2020 will include a review of the minimum age for playing society lotteries.<sup>28</sup>

**Air Traffic Management (Amendment etc) (EU Exit) (No. 3) Regulations 2020 (SI 2020/1498)**

63. The Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019<sup>29</sup> sought to ensure that UK law would remain interoperable with the rest of Europe under the Single European Sky (SES) initiative and the EU legislation on Performance-Based Navigation that enhances air traffic safety standards and efficiency. These Regulations make certain modifications to update the 2019 Regulations, in particular, to remove a requirement that after the end of the Implementation Period manufacturers, or their authorised representatives that self-certify their components, must be UK-based. This is because NATS (formerly known as National Air Traffic Services) currently rely on some EU-based manufacturers for specialised products which do not have UK-based agents. The EM states “This instrument therefore amends the 2019 Regulations to reflect this reality and ensure air navigation service providers are able to continue to source the technical equipment they need to provide air navigation services.”

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27 Select Committee on the Social and Economic Impact of the Gambling Industry, *Gambling Harm—Time for Action*, (Report of Session 2019–21, HL Paper 79).

28 DCMS, *Review of the Gambling Act 2005: Terms of Reference and Call for Evidence* (8 December 2020): <https://www.gov.uk/government/publications/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence> [accessed 17 December 2020].

29 Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/459).

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

Fertilisers and Ammonium Nitrate Material (Amendment)  
(EU Exit) Regulations 2021

Plant Health (Amendment) (EU Exit) Regulations 2020

### **Made instruments subject to affirmative approval**

SI 2020/1474 Unauthorised Drilling Activities in the Eastern Mediterranean  
(Sanctions) (EU Exit) Regulations 2020

SI 2020/1483 Corporate Insolvency and Governance Act 2020 (Coronavirus)  
(Extension of the Relevant Period) (No. 2) Regulations 2020

SI 2020/1518 Health Protection (Coronavirus, Restrictions) (Self-Isolation  
and Linked Households) (England) Regulations 2020

SI 2020/1533 Health Protection (Coronavirus, Restrictions) (All Tiers)  
(England) (Amendment) Regulations 2020

SI 2020/1572 Health Protection (Coronavirus, Restrictions) (All Tiers)  
(England) (Amendment) (No.2) Regulations 2020

SI 2020/1611 Health Protection (Coronavirus, Restrictions) (All Tiers  
and Obligations of Undertakings) (England) (Amendment)  
Regulations 2020

SI 2020/1646 Health Protection (Coronavirus, Restrictions) (All Tiers)  
(England) (Amendment) (No. 3) Regulations 2020

SI 2020/1654 Health Protection (Coronavirus, Restrictions) (All Tiers)  
(England) (Amendment) (No. 4) Regulations 2020

### **Instruments subject to annulment**

SI 2020/1397 Sanctions (EU Exit) (Miscellaneous Amendments) (No.5)  
Regulations 2020

SI 2020/1423 National Health Service (Charges to Overseas Visitors)  
(Amendment) (EU Exit) Regulations 2020

SI 2020/1444 Clean Air Zones Central Services (Fees) (England)  
Regulations 2020

SI 2020/1455 International Waste Shipments (Amendment of Regulation  
(EC) No 1013-2006) Regulations 2020

SI 2020/1458 Return of Cultural Objects (Amendment) (EU Exit)  
Regulations 2020

SI 2020/1459 Town and Country Planning (General Permitted  
Development) (England) (Amendment) (No. 4) Order 2020

SI 2020/1466 Official Controls (Plant Health and Genetically Modified  
Organisms) (England) (Amendment) (No. 5) Regulations  
2020

SI 2020/1472 Business Tenancies (Protection from Forfeiture: Relevant  
Period) (Coronavirus) (England) (No. 3) Regulations 2020

- SI 2020/1473 Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2020
- SI 2020/1475 National Lottery (Amendment) Regulations 2020
- SI 2020/1484 Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (England) Regulations 2020
- SI 2020/1486 Product Safety (Toys and Cosmetics) and Metrology (Measuring and Non-automatic Weighing Instruments) (Amendment) (EU Exit) Regulations 2020
- SI 2020/1493 Civil, Criminal and Family Justice (Amendment) (EU Exit) Regulations 2020
- SI 2020/1497 Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
- SI 2020/1498 Air Traffic Management (Amendment etc) (EU Exit) (No. 3) Regulations 2020
- SI 2020/1503 Challenges to Validity of EU Instruments (Amendment) (EU Exit) Regulations 2020
- SI 2020/1505 Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020
- SI 2020/1509 Motor Vehicle Tyres (Labelling) (Enforcement) (Amendment) (EU Exit) Regulations 2020
- SI 2020/1510 Export Control (Amendment) (EU Exit) (No. 2) Regulations 2020
- SI 2020/1515 Tax Credits, Childcare Payments and Childcare (Extended Entitlement) (Coronavirus and Miscellaneous Amendments) Regulations 2020
- SI 2020/1517 Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) (No. 2) Regulations 2020
- SI 2020/1519 Rent Officers (Housing Benefit and Universal Credit Functions) (Modification) Order 2020
- SI 2020/1523 Social Security Contributions (Disregarded Payments) (Coronavirus) (No. 2) Regulations 2020
- SI 2020/1530 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) (No. 2) Order 2020
- SI 2020/1532 Social Security Contributions (Disregarded Payments) (Coronavirus) (Scotland and Wales) Regulations 2020
- SI 2020/1594 Human Medicines (Coronavirus) (Further Amendments) Regulations 2020
- SI 2020/1595 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 29) Regulations 2020
- SI 2020/1644 Health Protection (Coronavirus, Travel from South Africa) (England) Regulations 2020

## APPENDIX 1: CORRESPONDENCE: TEST TO RELEASE SCHEME

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### Letter from Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, to Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee

Thank you to you and other Noble Lords for joining the briefing session on 14 December and for your considered questions raised in relation to the Government's Test to Release scheme.

Thank you too for the Committee's 37th Report of Session 2019-21, published on 9 December. I committed to responding in writing to the Committee's queries outlined therein.

**You asked for further explanation and evidence in support of the policy change behind the scheme.** The Test to Release regime marks an important evolution of our approach to health measures at the border. It provides passengers with the confidence that they can book travel and know that they have the opportunity to shorten their self-isolation by up to 5 days, should they choose to opt in to Test to Release and receive a negative test result. It will provide a much-needed boost to international travel, helping to stimulate our economy and show that the UK is open for business, while protecting public health.

Data has shown that even the most accurate tests are only accurate when the viral load is high enough to be detected. This point is generally not reached until 1 day before symptoms are displayed. Symptoms do not typically develop until 5-6 days following infection. Many cases are also asymptomatic. Therefore, a test after 5 days of self-isolation provides a strong level of protection against transmission of COVID-19 acquired abroad into the UK population, while allowing much more freedom for people seeking to travel.

We have considered existing scientific evidence carefully throughout this process and in advance of implementation. We have monitored other countries' proposals and systems closely to learn from any successes and setbacks. The approach we are taking on travel testing mirrors that of close partners, including Iceland and Germany.

**On the matter of enforcement, you asked whether there could be greater co-ordination between the different systems involved to ensure effectiveness.** The NHS Track and Trace app is designed from the ground up to protect user privacy. Linking this app to the Passenger Locator Form (PLF), which requires travel history, home address and address of stay in the UK, would not be compatible with this purpose. Therefore, the role of contact tracing is best fulfilled by the PLF for journeys to the UK. However, PHE is able to link into the PLF system, for example through flight manifests, to identify other travellers an infected individual may have been in contact with during their journey. We appreciate that the number of fines issued for non-compliance with the requirement to complete the PLF at the border is low; however, Border Force has now moved to an Enhanced Enforcement Posture (EEP) which means that more people will be issued with fines if they have not completed the PLF. This is instead of being given the opportunity to complete the form before being issued a fine. This will help ensure more people complete the PLF before they reach Passport Control and help ensure the flow of passengers through airports is maintained.

Compliance checks, to ensure that international arrivals who are required to self-isolate are doing so, are carried out by Public Health England's Isolation Assurance Service (IAS). IAS contacts randomly sampled international arrivals to ensure that they are self-isolating, including individuals who have opted in to Test to Release but have not yet received a negative test result. Compliance checks are also carried out by the police. If passengers test positive, they will be required to self-isolate for 10 days from the day of the test or when their symptoms started, if earlier, and will be subject to existing domestic support and enforcement measures.

**You asked 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 the Regulations to amend them.** The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ("the Regulations") are designed to reduce domestic transmission from imported cases of COVID-19. The Secretary of State must review the need for the requirements imposed by the Regulations at least every 28 days. This means determining whether each of the requirements remains necessary to achieving the public health aims of the Regulations. The statutory review includes consideration of both the requirement for international arrivals to complete a PLF and the requirement to self-isolate for 10 days, as well as consideration of the package of the measures as a whole. Each restriction is judged by reference to its continuing necessity as the pandemic develops; and based on the available information at each stage about the effectiveness and impact of the measures.

**You asked for the evidence underpinning the assertion 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".** As the Committee will be aware, the requirement for self-isolation has now been reduced to 10 days. PHE modelling, available at gov.uk, sets out the effectiveness of testing international arrivals after a period of 5 or 8 days' self-isolation. The assumption made in the paper is that an individual would continue to self-isolate for 2 days, for example while tests are processed, meaning that they would be released from self-isolation on receipt of a negative result after 7 or 10 days. This results in an effectiveness of 85% when a test is taken after 5 days and 96% when a test is taken after 8 days. 98% effectiveness is reached when a test is taken after 10 days, with a further 4 days' self-isolation (i.e. 14 days in total). Other modelling, conducted for example by the London School of Hygiene and Tropical Medicine, has reached results that are broadly consistent with PHE's.

**You also asked for further information about the Department's level of confidence that travellers will comply with the new Regulations.** There is no requirement to take a test – any person who is self-isolating because they have been in a country, territory or region not on the travel corridors list at any point in the 10 days before the date of their arrival in England may opt in to the Test to Release scheme on a voluntary basis.

For those who do opt-in, Test to Release will be enforced through a system of encouraging compliance in the first instance, followed by enforcement activity where needed. We will closely monitor the implementation of the scheme, including uptake and compliance, and will keep the scheme and amending regulations under constant review.

**17 December 2020**

## APPENDIX 2: CLEAN AIR ZONES CENTRAL SERVICES (FEES) (ENGLAND) REGULATIONS 2020 (SI 2020/1444)

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### Additional information from the Department for Transport

*Q1: What are the criteria for a Clean Air Zone (CAZ) being set up - are they only created at the direction of the Secretary of State where Nitrogen Dioxide exceeds 40 micograms per cubic meter - can you confirm that no other factors, like particulates are taken into account?*

A1: This is correct. No other particulates are taken into account. CAZs are specifically intended to reduce Nitrogen Dioxide levels in Directed areas below the limit values stipulated in Schedule 2 to the Air Quality Standards Regulations 2010.

*Q2: How many already exist (where) or is this something that will have future effect - I note you mention "there could be up to 10 CAZ implemented"?*

A2: Answer: None exist yet. Bath and Northeast Somerset are scheduled to have the first CAZ, which is planned to go live on 15 March 2021. Birmingham city centre is the next area with a CAZ planned to go live on 1 June 2021. The local authorities in the following areas will likely also have CAZs: Sheffield, Bradford, Greater Manchester, Bristol, Liverpool, Portsmouth, Tyneside, Leicester. We are currently working with these areas to refine and develop plans to bring forward CAZs. This list is subject to change as it will depend upon local evidence demonstrating that they are necessary.

*Q3: Why do the Regulations include a cut-off date of March 2027?*

A3: Modelling shows that we expect all local authorities to be compliant with the Air Quality Standards Regulations 2010 by this date and given that it is good practice to limit the duration of powers, we have selected this as an appropriate and safe cut-off date.

*Q4: Is CAZ different from the congestion charge? Could you be charged both in London?*

A4: Yes, a CAZ is different. A CAZ is similar to the Ultra Low Emission Zone (ULEZ) in London, which also charges the most polluting vehicles. However, as powers related to air quality are devolved to the Mayor of London, the CAZ and ULEZ programmes are distinct and separate. There will be no CAZs in London and thus no overlap between any CAZ and the London ULEZ/congestion charge is possible.

*Q5: Which vehicles are likely to be subject to the charge?*

A5: There are four classes of CAZ and they charge the following non-compliant vehicles:

Class A - Buses, coaches, taxis and private hire vehicles (PHVs)

Class B - Buses, coaches, taxis, PHVs and heavy goods vehicles (HGVs)

Class C - Buses, coaches, taxis, PHVs, HGVs and light goods vehicles (LGVs)

Class D - Buses, coaches, taxis, PHVs, HGVs LGVs and cars

We expect the majority of CAZs to be class C but this level of detail has to be established, based upon local evidence, and agreed with each Directed LA before its CAZ can go live.

*Q6: How much is the charge likely to be?*

A6: this varies for each CAZ and is dependent on the extent of behavioural change needed, i.e. the charge is set at a level that will deter a sufficient number of motorists with non-compliant vehicles from driving into the zone, based on the level of exceedance of Nitrogen Dioxide limit values. In Bath the charge for non-compliant coaches, buses and HGVs is proposed to be £100. For taxis, private hire vehicles, minibuses and vans it will be £9 a day. Non-compliant cars will not be charged. In Birmingham the charge for non-compliant coaches, buses and HGVs is proposed to be £50 a day and £8 a day for all other vehicles (including non-compliant cars).

*Q7: How many vehicles charges do you expect to be generated in a single year?*

A7: The number of vehicle charges is estimated at around 3.5m in 2021-22, rising to peak of around 5.8m in 2023-24 before reducing. By 2026-27 the number is estimated to be around 1.8m.

*Q8: How many schemes are there likely to be? Will the fees generate enough money to offset the costs of the Central Services - or will it be operating at a loss?*

A8: We have modelled 10 CAZs going live with a number of sensitivity scenarios. We are subsidising the scheme by design and have agreed the approach with HMT. We estimate the total cost of operating the scheme to be £71.5m and in our central scenario we expect to have a shortfall of £38.7m. Note however that these numbers, and in particular the extent of reactive, positive behavioural change, are difficult to predict accurately and thus uncertain. There are significant legal and political imperatives to consider which have led us to consider that the £2 charge (rather than full cost recovery) is the optimum figure, because it minimises the risk of unnecessary delays and further litigation; allows LAs to cover their own costs and represents a reasonable proportion of costs recovery to HMG and as agreed with HMT. Previous legal challenges established a legal imperative to comply with statutory limits “within the shortest possible time”. Note that the court has been quite clear that “the obligations imposed by the 2008 Directive are not qualified by reference to their cost”, meaning that cost cannot be a barrier to meeting our legal duty.

**14 December 2020**

### **APPENDIX 3: INTERESTS AND ATTENDANCE**

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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 5 January 2021, 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.