

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

41st Report of Session 2019–21

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

Drawn to the special attention of the House:

Maritime Enforcement Powers (Specification of the Royal Navy Police) Regulations 2020

Correspondence: Equivalence in financial services

Includes information paragraphs on:

4 instruments relating to COVID-19

Draft International Waste Shipments (Amendment) (EU Exit) Regulations 2021

Draft West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021

Customs Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020

Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020

Drivers' Hours and Tachographs (Amendment) Regulations 2020

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

Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

Sea Fishing (Penalty Notices and Designation) (England) (Amendment) (EU Exit) Order 2020

Ordered to be printed 12 January 2021 and published 14 January 2021

Published by the Authority of the House of Lords

HL Paper 210

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.

Forty First Report

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

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

- Social Fund Funeral Expenses Payment (Amendment) Regulations 2021

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Maritime Enforcement Powers (Specification of the Royal Navy Police) Regulations 2020 (SI 2020/1554)

Date laid: 17 December 2020

Parliamentary procedure: negative

This instrument extends maritime enforcement powers to members of the Royal Navy Police. The Ministry of Defence explains that, at present, interventions at sea typically involve joint operations of the police and military, with the police providing the legal basis for intervention. This instrument ensures that if such joint operations are not practicable, the Royal Navy has the legal basis to intervene without the police being present. The instrument was laid as a contingency measure before the UK and the EU reached the Trade and Cooperation Agreement which includes an agreement on fishing. Given the political significance and sensitivity of fishing and any potential enforcement action in this area, the instrument may be of interest to the House.

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

1. This instrument has been laid by the Ministry of Defence (MoD) with an Explanatory Memorandum (EM). The purpose of the instrument is to extend maritime enforcement powers to members of the Royal Navy Police.

The changes made by this instrument

2. Chapter 5 of Part 4 of the Policing and Crime Act 2017 (“the Act”) sets out maritime enforcement powers, which are exercisable by law enforcement officers for the purpose of preventing, detecting, investigating or prosecuting offences committed on board of vessels which are encountered at sea.
3. This instrument specifies members of the Royal Navy Police as law enforcement officers for the purposes of the maritime enforcement powers in Chapter 5 of Part 4 of the Act. According to the MoD, the maritime enforcement powers that are given to the Royal Navy Police include the power to stop, board, divert and detain vessels, the power to search vessels and persons, and the power to arrest persons in England and Wales waters. The powers apply in Scotland waters “where there has been a hot pursuit into those waters”. We understand that in scenarios where there has not been such a “hot pursuit” the Royal Navy Police will still be able to assist the Scottish enforcement authorities. This raises the question whether current operational capabilities are sufficient to deal with potential instances of illegal fishing in Scotland waters.
4. The MoD says that the extension of maritime enforcement powers through this instrument will provide operational flexibility at sea: while the police forces of the UK currently have enforcement powers underpinned by statute, they have only limited capability to intervene at sea. At the same time, the Royal Navy has the operational capability but, without this instrument, would not have a general statutory basis to intervene at sea.

5. The MoD further explains that current practice for interventions at sea typically involves a joint operation, with the police providing the legal basis for intervention and the Royal Navy providing the necessary support. This instrument ensures that in cases where a joint operation may be impractical, for example due to poor weather conditions or the geographical location of the incident, the Royal Navy has the legal basis to intervene without the police being present.
6. We asked the MoD for further explanation of current police enforcement responsibilities and capabilities and the need for this instrument. The MoD responded that:

“The regional police are responsible for maritime enforcement in the waters contiguous with their region; each police force with a coastline is responsible for the waters out to 12 nautical miles from their beaches/coastline.

Some police forces have their own RHIBs (Rigid Hull Inflatable Boats) but few, if any, have anything other than that. This is with the exception of the Met Police (though they are focussed wholly on the Thames and the estuarine approaches to London). Recent discussions with police have stated that they have limited ability to conduct boarding in anything more than the most benign/permissive environments. So in poor weather, or in anything like non-compliant/opposed boardings, Defence would likely to be called upon to facilitate police access. But without the SI, Royal Navy Service Police (RNSP) have no powers and would only conduct a boarding to enable civilian police to achieve a legal resolution. RNSP would only be used alone at the behest of the Home Office/regional police Gold Commander if their own police were unable to reach the scene of an incident in good time.”

7. The MoD told us that while larger vessels, such as frigates, destroyers and carriers, routinely carry Royal Navy Police, smaller vessels do not, but that there are additional Royal Navy Police personnel trained to supplement the offshore patrol vessels in the short term.
8. The EM states that the instrument is “part of contingency preparations that are required in the event that the Transition Period expires without a comprehensive fishing agreement in place between the UK and EU members”. The instrument was laid before the UK and the EU reached the Trade and Cooperation Agreement on 24 December,¹ which includes an agreement on fishing. We asked the MoD whether, in the light of the Agreement, this instrument was still required. The MoD responded that:

“As an agreement has been reached, further guidance is being sought from the Defence Secretary to confirm whether he considers it appropriate to revoke the instrument ahead of the intended six-month review.”

Conclusion

9. This instrument extends maritime enforcement powers to members of the Royal Navy Police. Fishing and any potential enforcement action in this area

¹ See: Heading Five on Fisheries of: Prime Minister’s Office, ‘Cooperation Agreement’ (24 December 2020): <https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union> [accessed 7 January 2021].

are politically significant and sensitive aspects of the UK's future relationship with the EU. **The instrument is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.**

CORRESPONDENCE

Equivalence in financial services

10. Over the last few months, the Committee has considered a number of statutory instruments which have granted equivalence to the oversight and regulatory arrangements of the EU and its institutions in the area of financial services. In several of these instruments, the UK appears to have granted equivalence unilaterally or indefinitely, while the EU has not yet completed its assessment of the UK's equivalence (for example in relation to the regulatory regime for auditors) or has granted only time-limited equivalence (for example limited to 18 months in the case of the supervisory arrangements for central counterparties). This does not appear to the Committee to be an entirely satisfactory situation. Against this background, we wrote to HM Treasury to ask for an overview of the equivalence decisions that have been made by the UK or EU so far. We are publishing our letter and the response from the Economic Secretary at Appendix 1. We will seek a further update of this information in due course.

INSTRUMENTS RELATING TO COVID-19

Local Restrictions and movement between Tiers

Health Protection (Coronavirus, Restrictions) (No. 3) And (All Tiers) (England) (Amendment) Regulations 2021 (SI 2021/8)

11. On 4 January 2021 the Chief Medical Officers raised the Covid-19 Alert Level to level 5. This instrument achieves a national lockdown by making all areas of England subject to Tier 4 from 6 January. It also extends the expiry date of the All Tiers Regulations² to 31 March 2021 and amends the Tier 4 provisions to:
- Remove exceptions for outdoor recreation, outdoor sports gatherings for under 18s and outdoor sports (other than for specific exceptions);
 - Close zoos and all animal attractions, outdoor sports venues and retail travel agents; and
 - Restrict alcohol takeaway and click and collect from hospitality businesses;
 - Permit childcare and supervised activities only to be used for children of critical workers and vulnerable children and remove the exception for parent and child groups. **We note that the definition of “critical worker” is set out in guidance rather than in this legislation.³ We again draw attention to this blurring of legislation and guidance, which we regard as poor practice.** We are also aware of news reports expressing the concern of teachers that the widened definition of “critical worker” has resulted in some schools’ attendance rate exceeding 50%.⁴ This not only works against the aim of limiting the spread of infection but is also detrimental to educational standards as teachers struggle to cope with teaching in person and online at the same time. **The House may wish to ask for the definition to be reviewed urgently and included in regulations so that it can be subject to scrutiny by Parliament.**
12. In addition, this instrument also extends the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020⁵ by six months so that they expire on 17 July 2021. These Regulations give enforcement powers in relation to premises, events and public outdoor places. It also removes from them the ability for a police community support officer to use ‘reasonable force’ in enforcing them.

2 Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ([SI 2020/1374](#)).

3 Cabinet Office and DfE, ‘Children of critical workers and vulnerable children who can access schools or educational settings’ (as updated 8 January 2021): <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision> [accessed 12 January 2021].

4 BBC, ‘Surge in pupils at school in lockdown sparks call for limit’ (9 January 2021): <https://www.bbc.co.uk/news/education-55579711>.

5 Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ([SI 2020/750](#)).

Changes to business practice and regulation

Competition Act 1998 (Groceries) (Public Policy Exclusion) Order 2020 (SI 2020/1568)

13. This Order suspends temporarily prohibitions of certain types of anti-competitive activity, as set out in Chapter 1 of the Competition Act 1998 (“the 1998 Act”), in the UK groceries sector. The Department for Business, Energy and Industrial Strategy (BEIS) says that the Order is a contingency measure that aims to protect the security of supply of groceries to consumers in the UK in the event that there is disruption to the supply chain caused by the continuing effects of the pandemic and the end of the Transition Period.
14. The Order specifies the types of activities and agreements between suppliers that are excluded temporarily from anti-competitive behaviour provisions under the 1998 Act, such as sharing information about stock levels and shortages; coordinating the limiting of purchases by consumers of particular groceries; coordinating support for particular groups of consumers, such as critical workers or vulnerable consumers, or particularly vulnerable areas of the UK; sharing information on the passage of groceries through UK ports; and sharing staff or facilities. The exemptions apply retrospectively from 17 December 2020 and will expire at the end of 31 March 2021 or earlier, if the Order is revoked.
15. Agreements between businesses in these areas will have to be notified to the Secretary of State. The Order mirrors a similar instrument⁶ that was made in the early stages of the pandemic. BEIS told us that, under the earlier Order, the Secretary of State received 18 notifications from industry of agreements made between industry parties. All notifications were published.⁷

Travel

Operation of Air Services (Amendment) (EU Exit) Regulations 2020 (SI 2020/1632)

16. EU Regulation 2020/696 made temporary provision to help the aviation industry deal with the impacts of the COVID-19 outbreak. In November these provisions were further extended. Although these changes would have been incorporated into retained EU law at the end of the Transition Period, the current Regulations make the necessary adjustments to ensure that they will continue to operate appropriately until they expire. The EU provisions allow airlines in temporary financial difficulty to retain their operating licences for another year, allow airports to replace a bankrupt ground handling service provider without tender until the end of 2021, and inserted provisions allowing ground handlers, whose contracts expire before the end of 2021, to keep them until 2022.

⁶ Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 ([SI 2020/369](#)).

⁷ See: BEIS, ‘Competition law exclusion orders relating to coronavirus (COVID-19)’ (21 May 2020): <https://www.gov.uk/guidance/competition-law-exclusion-orders-relating-to-coronavirus-covid-19> [accessed 7 January 2021].

Changes to benefits

Statutory Sick Pay (General) (Coronavirus Amendment) (No. 7) Regulations 2020 (SI 2020/1638)

17. From 14 December 2020 in England, Scotland and Northern Ireland, and from 10 December in Wales, the self-isolation period for contacts of someone who has tested positive for coronavirus was reduced from 14 days to 10 days. The point at which the 10-day self-isolation period begins also changed, with day 1 being the day after either the first day of symptoms, the day of the test or, if a contact, the day of the most recent contact with the confirmed case.
18. These Regulations reflect these changes to ensure that, subject to the usual qualifying conditions, individuals remain eligible for Statutory Sick Pay for the full period of self-isolation.
19. Individuals may be notified that they have been in contact with someone with coronavirus in writing or orally (in person or by telephone). Regulation 2(7) provides for relevant notifications to be given orally and expands the list of people who can issue relevant notifications to include the Scottish and Welsh Ministers.

INSTRUMENTS OF INTEREST

Draft International Waste Shipments (Amendment) (EU Exit) Regulations 2021

20. This instrument implements the Northern Ireland Protocol (“the Protocol”) in relation to the shipment of waste. The Department for Environment, Food and Rural Affairs (Defra) explains that under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, shipments of waste are controlled to make sure they are managed in an environmentally sound manner. The requirements include a notification procedure for transboundary movements of waste. In addition, the Organisation for Economic Cooperation and Development (OECD) provides a framework for transboundary movements of waste for recovery between OECD countries.
21. Defra explains that the UK will remain a party to the Basel Convention and a member of the OECD after the Transition Period and will continue to meet its international obligations, and that, under the Protocol, Northern Ireland (NI) will continue to apply EU law on the movement of notifiable waste.⁸ This means that regulatory and administrative controls will be required on the movement of waste from Great Britain (GB) to NI. These controls are introduced by this instrument and include requirements for the business arranging for the transport of waste to apply to the Competent Authorities of dispatch in GB and destination in NI for approval before the waste is transported, and for a financial guarantee or equivalent insurance to cover the costs if the waste cannot be recycled. Defra states that between 45 and 55 businesses which currently transport an estimated 80,000 tonnes of hazardous or mixed waste from GB to NI annually will be affected. Defra says that there will be no such controls for the shipment of waste from NI to GB.

Draft West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021

22. The purpose of this instrument is to provide for the establishment of a directly elected Mayor who will also chair the West Yorkshire Combined Authority (“the WYCA”). The WYCA includes the local government areas of Bradford, Calderdale, Kirklees, Leeds and Wakefield. The current plan is for the first mayoral election to be held on 6 May 2021. The Order amends certain governance arrangements and sets out the functions that are to be exercised by the WYCA, such as in relation to transport; education, skills and training; and housing, regeneration and planning. The Order further specifies functions of the WYCA which are to be exercised only by the Mayor, including powers in relation to housing, land acquisition and local transport plans and strategies. The Order also transfers functions as well as property, rights and liabilities of the current Police and Crime Commissioner (PCC) for West Yorkshire to the WYCA from 10 May 2021. From that date, the PCC functions will be exercised by the Mayor and the PCC for West Yorkshire will be abolished. **We regret that while the Explanatory Memorandum states that conferring functions to the WYCA “should lead to operational efficiencies that could lead to reduced costs”, the**

8 Regulation (EC) No 1013/2006 of the European Parliament and of the Council [Regulation \(EC\) No 1013/2006](#).

Ministry of Housing, Communities and Local Government has not provided any financial assessment of the changes.

Customs Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020 (SI 2020/1624)

23. This instrument makes changes in relation to goods that are moved from Northern Ireland (NI) to Great Britain (GB) after the end of the Transition Period (TP). HM Revenue and Customs (HMRC) says that the changes are required under the NI Protocol and ensure that:

- entry summary declarations (ENS), which contain safety and security information about the goods being moved, will be required for goods that are moved from NI to GB, where those goods are subject to a customs duty under section 30C of the Taxation (Cross-border) Act 2018. Goods that are not subject to a duty will not require an ENS. HMRC told us that section 30C imposes a customs duty only on goods which are not qualifying NI goods.⁹ This includes goods for which specific conditions apply under international obligations when they are moved from NI to GB, such as fluorinated gas and ozone depleting substances, hazardous chemicals, persistent organic pollutants, genetically modified organisms, rough diamonds or endangered species. According to HMRC, the provisions ensure that unfettered access is only available to appropriate NI traders and deter businesses from rerouting goods from the EU via NI to avoid import formalities;
- the shorter two-hour time limit for the submission of an ENS that applies to goods arriving in GB by sea from the Republic of Ireland, the Channel and other nearby ports will also apply to goods that require an ENS and arrive by sea from NI ports;
- Economic Operation Registration and Identification requirements, in relation to goods imported and exported into and out of GB, also apply to goods moving from NI into GB, where those goods are subject to a section 30C duty;
- the Customs and Excise Management Act 1979 applies for the purpose of enforcing prohibitions and restrictions on the movement of goods, people and vehicles between GB and NI;
- the Finance Act 1994 applies to the movement of goods from NI to GB, including in relation to HMRC's powers to require the production of documents or enter premises, where there are export formalities under EU law in relation to restricted or prohibited goods; and
- HMRC is able to collect and process trade statistics in relation to the trade of goods between the UK and the EU.

Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020 (SI 2020/1631)

24. This instrument makes further amendments to existing retained EU law to ensure a full system of sanitary and phytosanitary (SPS) controls on imports to Great Britain of agri-food items, including transitional arrangements. The

⁹ As defined by the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454).

Department for Environment, Food and Rural Affairs (Defra) says that the SPS checks will vary proportionately, depending on the specific risk factors of the commodity and of the country of export.

25. We have received a submission from Friends of the Earth which raises a number of questions about the approach the Department has taken with this instrument, including with regard to the requirements of future new model import certificates and the level of parliamentary scrutiny in relation to the future imposition of import restrictions. We are publishing the submission and Defra's response on our website.¹⁰

Drivers' Hours and Tachographs (Amendment) Regulations 2020 (SI 2020/1658)

26. This instrument is the first to be made under the European Union (Future Relationship) Act 2020 and is made under the urgency provisions to avoid any gap in enforceability of the drivers' hours and tachograph rules. The original EU Exit Regulations (SI 2019/453) were made for a no deal scenario but needed to be amended swiftly to ensure that the specific provisions set out in the Trade and Cooperation Agreement relating to international road freight and passenger transport are met. The instrument legislates for the whole of the UK, with the agreement of Northern Ireland due to the very tight deadline for making changes. As part of its justification for the urgency procedure, the Department for Transport states that the Driver and Vehicle Standards Agency detects around 500 offences per month related to drivers' hours or tachograph breaches: "A gap in enforcement would be liable to be swiftly recognised by many drivers and operators and would risk some of them changing behaviour."

Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (SI 2020/1661)

27. This instrument deals with retained EU law on geographical indication (GI) schemes for food and drink. Amongst other changes, the instrument provides, through so-called "bridging arrangements", interim protection of third country GIs and traditional wine terms which have been agreed in continuity trade agreements between the UK and third countries, but which have not yet been ratified. The instrument also provides for the ongoing protection of US and Mexican product designations, such as Bourbon and Tequila, to reflect continuity agreements that the UK has now concluded with the US and Mexico. While not part of this instrument, Defra has confirmed that all UK GIs which were already registered with the EU by 31 December 2020, will remain protected in the EU.
28. The instrument further introduces temporary arrangements for the import of wine from the EU. The Department for Environment, Food and Rural Affairs (Defra) explains that after the end of the Transition Period (TP), there will be a new requirement for wine that is imported from the EU to be covered by the appropriate certification. Defra says that the UK currently imports about half of its wine from the EU, and that this instrument introduces a six-month transition period until 1 July 2021, during which EU wines can continue to enter the UK under the arrangements that applied before the end of the TP. This is to give EU exporters time to adjust to

¹⁰ SLSC scrutiny evidence page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

the new import requirements in the UK. Defra told us that the Trade and Cooperation Agreement has simplified these requirements, for example by only requiring the alcoholic strength to be provided in relation to the analytical characteristic of the wine.

29. The instrument also ensures that current organic standards and requirements for the certification and traceability of organic food and feed products are maintained, reflecting the UK's decisions to recognise the EU and European Economic Area (EEA) as having equivalent organic standards until 31 December 2021. This is to ensure that operators in Great Britain (GB) can continue to import organic food and feed from the EU/EEA as they did before the end of the TP. Defra says that the Trade and Cooperation Agreement that was agreed with the EU on 24 December extends the mutual recognition of organic standards until 31 December 2023, and that a further instrument will be brought forward to implement this. This instrument also ensures that GB operators will not require a Certificate of Inspection for organic imports from the EU/EEA and Switzerland until 1 July 2021 to provide additional time for ports to adjust to the new import processes.

Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (SI 2020/1557)

30. This is a joint Order by the UK, Scottish, Welsh and Northern Irish governments. It makes changes to enable the launch of the UK Emissions Trading Scheme (UK ETS) which replaced the UK's participation in the EU Emissions Trading System (EU ETS) at the end of the Transition Period (TP).¹¹ The Order came into force alongside an earlier instrument¹² which established the statutory framework for the UK ETS. The Department for Business, Energy and Industrial Strategy (BEIS) says that UK ETS will run for an initial phase of 10 years, divided into two allocation periods (2021 to 2025 and 2026 to 2030).
31. Amongst other provisions, this Order creates a Registry to track the distribution and use of allowances under the UK ETS, both by traders and by operators for compliance purposes, and sets out the rules for the free allocation of allowances to industrial sectors to protect against carbon leakage, closely replicating the rules of the EU ETS.¹³ The Registry will be an online platform which, in practice, will be managed by the Environment Agency on behalf of regulators in England and the Devolved Administrations. We note that a separate instrument will be required to establish the rules for the auctioning of allowances and mechanisms to support market stability which will be a central part of the UK ETS without which a properly functioning market will not be able to exist.
32. We asked the Department about the readiness of the new Registry which, according to the Explanatory Memorandum, "is currently being developed and is on track to be ready for January 2021". BEIS told us that:

11 BEIS, 'Participating in the UK Emissions Trading Scheme (UK ETS) from 1 January 2021' (17 December 2020): <https://www.gov.uk/government/publications/participating-in-the-uk-ets> [accessed 7 January 2021].

12 Greenhouse Gas Emissions Trading Scheme Order 2020 (SI 2020/1265), [24th Report](#), Session 2019-21 (HL Paper 116).

13 Carbon leakage occurs where industrial sectors shift production to countries which do not have policies that put a price on carbon to incentivise decarbonisation.

33. “The UK Emissions Trading Registry is now live (from 4 January 2021). This follows significant testing with delivery partners, the registry administrator (the Environment Agency) and end users throughout the development process but also intensively through testing sprints during October, November and December 2020.
34. In addition, ETSWAP (Emissions Trading System Workflow Automation Programme), the system used for issuing and managing permits and management plans under the UK ETS, has been in place for a number of years and is well understood by users and regulators (this UK solution was also used under the EU ETS for UK users). Initial permits and management plans were issued for existing participants in the UK ETS in December 2020.
35. The UK Emissions Trading Registry will be in a ‘Private Beta’ phase with a sub-set of UK ETS participants for the first weeks of operation. This is effectively a ‘soft launch’ to ensure that the production system and administrative functions are all running smoothly. As well as establishing Registry Administrator and Authority User accounts in the new Registry, a number of end users have been invited to participate in private Beta through January and February.
36. Registration of users and allocation of allowances into Registry accounts is planned for quarter 2 2021 to avoid unnecessary overlap with the compliance period of the final year of the EU ETS (allowance surrender deadline for 2020 under the EU ETS is 30 April 2021).
37. UK ETS compliance accounts will be automatically created by the Registry Administrator on behalf of operators and will be assigned to operators in Q2 2021. UK ETS Traders will also be invited to open trading accounts by Q2 2021. Further guidance and information on how to use the UK Emissions Trading Registry is available on GOV.UK.”

**Sea Fishing (Penalty Notices and Designation) (England)
(Amendment) (EU Exit) Order 2020 (SI 2020/1635)**

38. This instrument enables the Marine Management Organisation (MMO) to issue financial administrative penalties (FAPs) for offences set out in the Fisheries Act 2020, including in relation to access to British fisheries by foreign boats; the requirement to license British fishing boats; the requirement to license foreign fishing boats within British fishery limits; and the requirement to comply with conditions attached to a fishing licence. The Department for Environment, Food and Rural Affairs (Defra) explains that without this instrument, the MMO would not be able to issue FAPs from 1 January 2021, for example, for access and licensing offences made by foreign fishing boats. Defra says that offences would instead need to be dealt with by the courts, which would delay taking enforcement action. The instrument also enables the Secretary of State to delegate to the MMO functions that relate to the delivery of certain limited schemes of financial assistance provided by Defra for the seafood sector in England.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Government of Wales Act 2006 (Amendment) Order 2021
 International Waste Shipments (Amendment) (EU Exit) Regulations 2021
 West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021

Made instruments subject to affirmative approval

SI 2020/1624 Customs Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020
 SI 2020/1631 Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020
 SI 2020/1632 Operation of Air Services (Amendment) (EU Exit) Regulations 2020
 SI 2020/1658 Drivers' Hours and Tachographs (Amendment) Regulations 2020
 SI 2020/1661 Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020
 SI 2021/8 Health Protection (Coronavirus, Restrictions) (No. 3) And (All Tiers) (England) (Amendment) Regulations 2021

Instruments subject to annulment

CP 361 Statement of changes to the Immigration Rules
 SI 2020/1555 Air Navigation (Amendment) Order 2020
 SI 2020/1557 Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020
 SI 2020/1568 Competition Act 1998 (Groceries) (Public Policy Exclusion) Order 2020
 SI 2020/1584 Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2020
 SI 2020/1596 Health Service Commissioner for England (Special Health Authorities) Order 2020
 SI 2020/1627 Food and Drink (Amendment) (EU Exit) Regulations 2020
 SI 2020/1635 Sea Fishing (Penalty Notices and Designation) (England) (Amendment) (EU Exit) Order 2020
 SI 2020/1636 Spirit Drinks, Wine and European Union Withdrawal (Consequential Modifications) (Amendment) (EU Exit) Regulations 2020
 SI 2020/1638 Statutory Sick Pay (General) (Coronavirus Amendment) (No. 7) Regulations 2020

- SI 2020/1659 National Health Service (Charges to Overseas Visitors)
(Amendment) (EU Exit) (No. 2) Regulations 2020
- SI 2020/1665 Libya (Sanctions) (EU Exit) Regulations 2020

APPENDIX 1: CORRESPONDENCE: EQUIVALENCE IN FINANCIAL SERVICES

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to John Glen MP, Economic Secretary to HM Treasury

Equivalence in financial services

I am writing on behalf of the Secondary Legislation Scrutiny Committee (SLSC) of which I am Chair. Over the last few months, the Committee has considered a number of statutory instruments which have granted equivalence to oversight and regulatory arrangements in the EU in the area of financial services. More recent instruments include, for example, the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020, laid by the Department for Business, Energy and Industrial Strategy, and the Central Counterparties (Equivalence) Regulations 2020, laid by HM Treasury.

Equivalence in relation to the regulation of financial services is an important aspect of our future relationship with the EU. In several of the instruments that we have considered, the UK appears to have granted equivalence indefinitely, while the EU has not yet completed its assessment of the UK's equivalence (for example in relation to the regulatory regime for auditors) or has granted only time-limited equivalence (for example limited to 18 months in the case of the supervisory arrangements for central counterparties).

Against this background, the Committee would welcome information on the following:

- A list of the equivalence decisions made by the UK Government in the different areas of financial services regulation.
- Whether the EU has reciprocated and granted equivalence to the UK and its regulatory arrangements in these areas.
- Whether equivalence by the UK and EU has been granted indefinitely or is time limited.
- Any equivalence decisions made by the EU that have not been reciprocated by the UK.

14 December 2020

Letter from John Glen MP to Lord Hodgson of Astley Abbotts

In your first question you requested information regarding the specific equivalence decisions the UK has made for the EU.

On 9 November 2020, the Chancellor announced in his statement to the House of Commons that the UK was granting a package of equivalence decisions to the EU and EEA member states, as part of his vision for a leading, global, open UK financial services industry. This is in addition to decisions which the UK has already made for the EU in 2019 (which granted equivalence under the Transparency Directive and Prospectus Regulation, in relation to the recognition of EU-adopted International Financial Reporting Standards for the purpose of preparing financial statements under the Transparency Directive, and to prepare a prospectus under the Prospectus Regulation) as well as exemptions for central

banks and certain public bodies in the EEA under certain prudential regulations in the area of financial services.

The majority of the decisions in the Chancellor's statement of 9 November were made by directions laid before Parliament under the power in Regulation 2(1) of The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, and on 10 November I made a Written Ministerial Statement to the House of Commons providing further detail on these decisions. This statement is available at the following address: <https://questions-statements.parliament.uk/written-statements/detail/2020-11-10/hcws567>.

All of the directions containing equivalence and exemption decisions made to date can be found at <https://www.legislation.gov.uk/ukxi/2019/541/resources>.

In addition to the directions, HM Treasury made the *Central Counterparties (Equivalence) Regulations 2020*, which granted equivalence for Central Counterparties in the European Economic Area (<https://www.legislation.gov.uk/ukxi/2020/1244/contents/made>) and the Department for Business, Energy and Industrial Strategy made *The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020* to grant audit equivalence to the EEA States and approve as adequate their audit competent authorities (<https://www.legislation.gov.uk/ukxi/2020/1247/contents/made>).

In relation to your second and third questions, the EU has granted the UK decisions for Central Bank exemptions (which are not time limited), as well as an 18 month time limited decision for Central Counterparties under Article 25 of the European Markets Infrastructure Regulation ("EMIR"), and a 6 month time limited decision for Central Securities Depositories under Article 25 of the Regulation on Central Securities Depositories. All of the UK decisions for the EU, are full decisions, with the exception of Article 13 of EMIR which is a partial decision permitting intragroup transactions only. I can also confirm that, to provide certainty to industry, there are no time limits on any UK decisions for the EU and EEA. However, HM Treasury retains the ability to revoke existing equivalence or exemption determinations that that could be detrimental to financial stability, consumer protection or market integrity at any time, and will continue to monitor these decisions. With the exception of the decisions mentioned above the EU has not made any further decisions for the UK.

Finally, in relation to your fourth question, there are no decisions made by the EU that have not been reciprocated by the UK. Furthermore, in many areas the UK has gone further in granting equivalence, as part of the Chancellor's strategy for an open, global industry, and to provide certainty and stability to market participants. In these areas the EU has yet to provide clarity on its position in granting equivalence to the UK. We remain open to further discussions with the EU on the decisions and hope we can come to an agreed arrangement ahead of the expiration of the transitional regimes.

7 January 2021

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 12 January 2021, Members declared the following interests:

Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020 (SI 2020/1557)

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

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 Abbots, Lord Liddle, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.