



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Thirty-Sixth Report of Session 2019–21

Drawing special attention to:

Armed Forces Redundancy Scheme Order 2020 (S.I. 2020/1298)

Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2020 (S.I. 2020/1336)

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

Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (S.I. 2020/1374)

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

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

Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) Regulations 2020 (S.I. 2020/1611)

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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in [House of Commons Standing Order No. 151](#) and [House of Lords Standing Order No. 73](#), relating to Public Business.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

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The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

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Contents

Instruments reported	3
1 S.I. 2020/1298: Reported for defective drafting.	3
Armed Forces Redundancy Scheme Order 2020	3
2 S.I. 2020/1336: Reported for requiring elucidation	4
Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2020	4
3 S.I. 2020/1337: Reported for defective drafting	4
Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020	4
4 S.I. 2020/1374: Reported for defective drafting	5
Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020	5
5 S.I. 2020/1375: Reported for defective drafting	6
Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020	6
6 S.I. 2020/1518: Reported for defective drafting	7
Health Protection (Coronavirus, Restrictions) (Self-Isolation and Linked Households) (England) Regulations 2020	7
7 S.I. 2020/1611: Reported for defective drafting	7
Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) Regulations 2020	7
Instruments not reported	9
Annex	9
Appendix 1	11
S.I. 2020/1298	11
Armed Forces Redundancy Scheme Order 2020	11
Appendix 2	12
S.I. 2020/1336	12
Producer Responsibility Obligations (Packaging Waste) (Amendment) (England) Regulations 2020	12
Appendix 3	13
S.I. 2020/1337	13
Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020	13

Appendix 4	15
S.I. 2020/1374	15
Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020	15
S.I. 2020/1375	15
Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020	15
Appendix 5	18
S.I. 2020/1518	18
Health Protection (Coronavirus, Restrictions) (Self-Isolation and Linked Households) (England) Regulations 2020	18
Appendix 6	19
S.I. 2020/1611	19
Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) Regulations 2020	19

Instruments reported

At its meeting on 13 January 2021 the Committee scrutinised a number of instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to seven of those considered. The instruments and the grounds for reporting them are given below. The relevant departmental memoranda are published as appendices to this report.

1 S.I. 2020/1298: Reported for defective drafting

Armed Forces Redundancy Scheme Order 2020

1.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in three respects.**

1.2 This Order, which is subject to the negative resolution procedure, amends two previous armed forces redundancy scheme Orders and establishes a new 2020 redundancy scheme.

1.3 Articles 4 and 10 both insert provisions including a definition of “part-time service”, but the definitions are different in form. The Committee asked the Ministry of Defence to explain the intended difference in meaning (it being a core principle of legislation that a change of language should import a change of meaning). In a memorandum printed at Appendix 1, the Department states that there is no intended difference in meaning, and that the words found in one definition but not the other should have been included in both. **The Committee accordingly reports article 10 for defective drafting, acknowledged by the Department.**

1.4 There is a reference in paragraph 4(2) of the Schedule to “pensionable earnings” which the Committee suspected should be a reference to “relevant earnings”. The Committee put the point to the Department. In its memorandum, the Department confirms the Committee’s suspicion. **The Committee accordingly reports paragraph 4(2) of the Schedule for defective drafting, acknowledged by the Department.**

1.5 A formula is used in paragraph 14(3)(b)(iii) and (iv) of the Schedule which contains references to quantities “A” and “E”, the meaning of which the Committee could not identify. The Committee asked the Department to explain the intention of these references. In its memorandum, the Department admits that these quantities were included in error, and in each case the reference should have been to the quantity “F”. **The Committee accordingly reports paragraph 14(3)(b) of the Schedule for defective drafting, acknowledged by the Department.**

1.6 In the case of each of these errors the Department undertakes to amend at the next available opportunity. Since these errors go to the heart of the operation of the provisions affected, the Committee expects the Department not to wait for the next occasion on which it wishes to make substantive change, but to bring forward amendments as soon as is reasonably practicable. In the meantime, the Committee expects the Department to bear in mind the Committee’s repeated warning (see, most recently, the report on S.I. 2020/445 in the Twelfth Report of Session 2019–2021) that Departments cannot lawfully operate legislation as if it were in the form in which they wish they had enacted it, rather than in the form in which they did enact it.

2 S.I. 2020/1336: Reported for requiring elucidation

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

2.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.

2.2 These Regulations, which are subject to the negative resolution procedure, replace EU recovery and recycling targets with recycling targets on producers and remove the recovery targets. The instrument is made under section 93 of the Environment Act 1995. Regulations made under that section are subject to the draft affirmative resolution procedure unless they only contain “regulations varying any relevant targets” (section 93(11)). The Committee asked the Department for Environment, Food and Rural Affairs to explain why the Regulations were not made under the affirmative resolution procedure. In a memorandum printed at Appendix 2, the Department explains that recovery and recycling are inextricably linked and that the targets are intended to be viewed as a whole. On that basis the Department asserts that the reference to “regulations varying any relevant targets” in section 93(1) includes “regulations changing the size, amount, degree or nature of a target, provided, in the case of a change to the nature of a target, that it is not such a substantial change that the amended provision should be regarded as a separate, new target.” The Committee notes the Department’s argument, accepts that it is at least a possible interpretation of the enabling power, and **accordingly reports the Regulations for requiring elucidation.**

3 S.I. 2020/1337: Reported for defective drafting

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

3.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two respects.

3.2 These Regulations, which are subject to the negative resolution procedure, set out the circumstances in which a person who would otherwise be required to self-isolate on their arrival in England may leave self-isolation if they test negative for coronavirus. In accordance with regulation 2(7) (new Schedule 2A, paras.2(1)(c)(iii) and 3(f)), for the test to be “appropriate” it must use a “suitable” device for testing people of the relevant age and the provider must follow “appropriate standard operating procedures”.

3.3 The Committee asked the Department for Transport to explain what criteria will be used to determine “suitability” of devices. In a memorandum printed at Appendix 3, the Department explains that “this will be determined by reference to the test product specifications”, and that “If a test manufacturer declares on the product specification that the test device is not suitable for any particular age group, then the test device should not be used for an international arrival of that age”. If the policy is that any device is suitable for an age-group so long the manufacturer’s specification does not expressly exclude it, that should have been stated on the face of the Regulations. If there were intended to be

additional criteria for suitability, they too should have been stated. As drafted, it is simply unclear how suitability is to be assessed. **The Committee accordingly reports regulation 2(7) ((inserted paragraph 2(1)(c)(iii)) for defective drafting.**

3.4 (The Committee also asked the Department to explain what criteria will be used to determine “appropriate standard operating procedures”. In its memorandum, the Department refers to guidance on standards issued by the Department for Health and Social Care. That guidance could (having regard to the enabling powers in this case) have been referred to expressly in the Regulations, which would have given the reader authoritative elucidation of the meaning of “appropriate”. As drafted, the Regulations are unclear and it is not lawful for the Department to deploy the guidance, purely informally, to tighten up the otherwise loose language of the legislation. **The Committee accordingly reports regulation 2(7) ((inserted paragraph 3(f)) for defective drafting.**

4 S.I. 2020/1374: Reported for defective drafting

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

4.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

4.2 These Regulations, which are subject to the made affirmative resolution procedure, impose restrictions on gatherings and on businesses in England, including a framework consisting of three tiers of restrictions.

4.3 Under regulation 6, a gathering is a “permitted organised gathering” either if it takes place at premises operated by a specified class of body (regulation 6(2)) or if it takes place in a public outdoor space and has been organised by a specified class of body with the organiser taking specified precautions (regulation 6(3)). The Committee asked the Department of Health and Social Care why the requirement to take precautions applies only to regulation 6(3) and not to regulation 6(2). In a memorandum printed at Appendix 4, the Department asserts that the requirement for precautions is implicit in the case of premises and refers to guidance on “COVID secure locations”. The Committee does not agree: there is nothing in regulation 6(2) to incorporate the requirements of guidance, so if precautions are required for both limbs of the definitions of “permitted organised gathering” that should have been provided for expressly (whether by reference to the guidance or otherwise). **The Committee accordingly reports regulation 6 for defective drafting.**

4.4 The Department also confirms that (somewhat counter-intuitively) a social gathering such as a birthday party could lawfully take place on premises operated by a business or other specified body in reliance on regulation 6(2) provided that those attending “participate alone or as a member of a qualifying group”.

5 S.I. 2020/1375: Reported for defective drafting

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

5.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in two respects.**

5.2 These Regulations, which are subject to the made affirmative resolution procedure, provide local authorities with new enforcement powers relating to coronavirus restrictions.

5.3 A designated local authority officer may issue three types of enforcement notices where the person is contravening one or more specified coronavirus-related statutory provisions. These notices may not be issued in relation to premises which form part of “essential infrastructure”. The Committee asked the Department to clarify the intended meaning of “essential infrastructure”. In a memorandum printed at Appendix 4, the Department asserts that the expression can be given “its ordinary meaning” and that the context of the instrument and the power given to local authority officers “mean it is obvious how the words should be interpreted”; the Department adds that although the meaning is obvious, guidance issued in the context of other coronavirus regulations will elucidate if required. The Committee disagrees: “essential infrastructure” can bear a wide range of meanings, and there is nothing about the context of these Regulations that provides sufficient legal certainty. The Department has no power to dictate the meaning informally by reference to guidance or otherwise. The principles set out in the guidance to which the Department refers should have been distilled into statutory criteria in the Regulations by reference to which readers, including but not limited to local authority officers, would know with a reasonable degree of practical certainty when the powers under the Regulations can and cannot be exercised. **The Committee accordingly reports regulation 3(2), 4(2) and 5(2) for defective drafting.**

5.4 Failure to comply with an enforcement notice is a criminal offence. Regulation 7 states that proceedings for an offence may be brought by a local authority, the Crown Prosecution Service and any person designated by the Secretary of State and adds “(but this does not affect any other power to bring proceedings for such an offence)”. The Committee asked the Department to identify the “other powers” referred to in the parenthetical saving. In its memorandum, the Department explains that the saving was intended “as a belt and braces savings provision” and refers to “prosecution authorities such as the Attorney General and powers ... to bring a private action”. The Attorney General has no general power to prosecute for breach of statutory duty. As to private prosecutions, even if it were intended to permit them for failure to comply with enforcement notices (which seems most unlikely) the general reference to “power to bring proceedings” adds no more certainty in this respect than would have been achieved by silence. A “belt and braces” attitude to legislative drafting is not good practice, as duplication and redundancy are always potential sources of argument and confusion. **The Committee accordingly reports regulation 7 for defective drafting.**

6 S.I. 2020/1518: Reported for defective drafting

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

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

6.2 These Regulations, which are subject to the made affirmative resolution procedure, alter the period of self-isolation for close contacts of persons who test positive for coronavirus. The regulations use different formulations when expressing a particular day: “date after the date”; “day after the date”; and “day after the day”. The Committee asked the Department of Health and Social Care to explain the intended difference in meaning (it being a core principle of legislation that a change of language should import a change of meaning). In a memorandum printed at Appendix 5, the Department admits that there was no intended difference in meaning, accepts the need to avoid linguistic inconsistency and undertakes to amend at the next available opportunity. **The Committee accordingly reports the Regulations for defective drafting, acknowledged by the Department.**

7 S.I. 2020/1611: Reported for defective drafting

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

7.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

7.2 These Regulations, which are subject to the made affirmative resolution procedure: (a) amend the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 to introduce an additional tier of restrictions (“Tier 4”); (b) move 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; and (c) amend the Christmas period exception to the gathering limits in Tiers 1, 2 and 3.

7.3 The preamble records the Secretary of State’s satisfaction that the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 as amended by these Regulations satisfy the proportionality test. It does not include the same statement in respect of the other instrument amended by these Regulations, and the Committee asked the Department of Health and Social Care to explain. In a memorandum printed at Appendix 6, the Department acknowledges that the preamble should have recorded proportionality satisfaction in relation to both amended instruments. **The Committee accordingly reports the preamble for defective drafting, acknowledged by the Department.**

7.4 The Committee was also concerned about the timing of the Regulations. They came into force at 07.00 on 20 December 2020, having been signed at 06:00. The Committee asked the Department to clarify when the Regulations were published. In its memorandum, the Department explains that the Regulations were published on legislation.gov.uk at 06:47:44. For most practical purposes, therefore, those likely to be affected by the Regulations had almost no notice of their effect before they came into force. The Committee of course

recognises the extreme pressures on the Government in relation to the pandemic, and that it will sometimes simply not be possible to apply usual legislative process standards to emergency regulations. But the Committee takes the opportunity to reassert the importance of ensuring that people are given as much notice as possible, particularly in the case of regulations which criminalise a wide range of commercial and personal activity. The Committee expects the Government to maximise notice by any practicable means (including, where feasible, the publication of draft instruments before signature, so as to give advance notice of their precise expected content). In this instance the Committee assumes that the Government did everything in its power to publish as early as possible, **and accordingly reports the publication arrangements of the Regulations for requiring elucidation provided by the Department’s memorandum.**

7.5 The Committee was also concerned that the lack of notice was exacerbated by apparent confusion about when the Regulations came into force. Following the Prime Minister’s press conference on 19 December in which he said “these measures will take effect from tomorrow morning”, there were multiple references in the media on 19 and 20 December to the new Regulations becoming law at midnight on 19 December. The Secretary of State for Health and Social Care was reported by the Guardian newspaper on 20 December as stating “... the law came into force in the early hours of this morning”. And the Committee noticed that on 20 December the Minister of State for Digital and Culture issued a statement that “From 00:01 on Sunday 20 December 2020 Gosport Borough moved to Tier 4”, which was clearly incorrect. The Committee asked the Department to explain (mindful of the fact that, as explained above, until 06:47 on 20 December there was no published text by reference to which the public could check the commencement arrangements). In its memorandum, the Department disclaims responsibility for the Minister’s statement on the ground that it was “on a constituency website”. The Committee reasserts the importance of clarity about commencement for all legislation, but particularly for emergency regulations, so that people are not misled as to when restrictions do and do not apply. The Committee expects the Government to take all reasonable steps to provide the media with clear and accurate information about the commencement of emergency regulations, and to avoid making inaccurate statements about commencement whether on constituency websites or elsewhere.

Instruments not reported

At its meeting on 13 January 2021 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Instruments requiring affirmative approval

S.I. 2020/1468	Misappropriation (Sanctions) (EU Exit) Regulations 2020
S.I. 2020/1474	Unauthorised Drilling Activities in the Eastern Mediterranean (Sanctions) (EU Exit) Regulations 2020
S.I. 2020/1572	Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 2) Regulations 2020
S.I. 2020/1624	Customs Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020
S.I. 2020/1631	Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020
S.I. 2020/1632	Operation of Air Services (Amendment) (EU Exit) Regulations 2020
S.I. 2020/1646	Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3) Regulations 2020
S.I. 2020/1654	Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020
S.I. 2020/1658	Drivers' Hours and Tachographs (Amendment) Regulations 2020

Draft Instruments requiring affirmative approval

Draft S.I.	Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021
Draft S.I.	Plant Health (Amendment) (EU Exit) Regulations 2020
Draft S.I.	Government of Wales Act 2006 (Amendment) Order 2021
Draft S.I.	International Waste Shipments (Amendment) (EU Exit) Regulations 2021
Draft S.I.	West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021

Instruments subject to annulment

S.I. 2020/1398	Town and Country Planning (Local Planning, Development Management Procedure, Listed Buildings etc.) (England) (Coronavirus) (Amendment) Regulations 2020
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S.I. 2020/1403	Non-Domestic Rating (Compilation and Alteration of Lists) (England) Regulations 2020
S.I. 2020/1410	Food and Feed Hygiene and Safety (Miscellaneous Amendments) (England) Regulations 2020
S.I. 2020/1422	Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2020
S.I. 2020/1423	National Health Service (Charges to Overseas Visitors) (Amendment) (EU Exit) Regulations 2020
S.I. 2020/1424	Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 28) Regulations 2020
S.I. 2020/1444	Clean Air Zones Central Services (Fees) (England) Regulations 2020
S.I. 2020/1458	Return of Cultural Objects (Amendment) (EU Exit) Regulations 2020
S.I. 2020/1459	Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 4) Order 2020
S.I. 2020/1466	Official Controls (Plant Health and Genetically Modified Organisms) (England) (Amendment) (No. 5) Regulations 2020
S.I. 2020/1472	Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No. 3) Regulations 2020
S.I. 2020/1475	National Lottery (Amendment) Regulations 2020
S.I. 2020/1484	Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (England) Regulations 2020

Instruments not subject to parliamentary proceedings not laid before Parliament

S.I. 2020/1465	Domestic Violence, Crime and Victims Act 2004 (Commencement No. 1) Order (Northern Ireland) 2020
S.I. 2020/1480	Offensive Weapons Act 2019 (Commencement No. 1) (England and Wales) Regulations 2020

Appendix 1

S.I. 2020/1298

Armed Forces Redundancy Scheme Order 2020

1. The Joint Committee on Statutory Instruments requested a memorandum in response to three points made in relation to the above-mentioned instrument.

2. The first point is:

1. Explain the inconsistency in paragraph (a) of the definition of “part-time service” (i) as inserted into article 3 of the AFRS 2006 Order by article 4 of this instrument; and (ii) as inserted into article 2 of the AFRS 2010 Order by article 10 of this instrument.

3. There is no intended difference in meaning. The definition of part-time service for enlisted members, in article 10 of this instrument, should include the words “provided for in regulations made” immediately after the words “in accordance with an arrangement”, as in article 4 of this instrument.

4. The second point is:

2. In paragraph 4(2) of the Schedule, explain whether the reference to “pensionable earnings” should be to “relevant earnings”

5. The reference to “pensionable earnings” in paragraph 4(2) of the Schedule should be a reference to “relevant earnings”.

6. The third point is:

3. In paragraph 14(3)(b) of the Schedule, explain:

(a) what A means in paragraph (iii), and

(b) what E means in paragraph (iv).

7. The inclusion of the letters “A” and “E” in the equations is an error. They should both have been the letter “F”. The Department regrets these errors and will seek to correct them at the next opportunity.

Ministry of Defence

15 December 2020

Appendix 2

S.I. 2020/1336

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

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following points:

Given the fact that (as acknowledged in the Explanatory Note) these regulations are not limited to varying relevant targets but also remove recovery targets, explain why they were not made in accordance with the affirmative procedure.

2. The 2020 Regulations are made under section 93 Environment Act 1995. Section 93 (10) and (11) set out the parliamentary procedure applicable to such regulations. This is (s.93(10)) affirmative unless (s.93(11)) the statutory instrument “contains regulations varying any relevant targets”. “Relevant targets” are defined in section s.93(8) as “the targets specified or described in the regulations imposing the producer responsibility obligation in question”.

3. The 2020 Regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, which impose producer responsibility obligations. These include an obligation to recover and recycle packaging waste as calculated under Schedule 2. Schedule 2 references both recovery and recycling targets. However, recovery and recycling is inextricably linked—recycling being a form of recovery and recovery operations, and the targets are intended to be viewed in concert and as a whole, rather than separate and distinct from one another. In the Department’s view, the reference in section 93(11) of the 1995 Act to “regulations varying any relevant targets” is apt to include regulations changing the size, amount, degree or nature of a target, provided, in the case of a change to the nature of a target, that it is not such a substantial change that the amended provision should be regarded as a separate, new target. Amendments to the 2007 Regulations have, over time, changed the nature of the targets so as to focus on recycling in order to divert waste from landfill and move it further up the waste hierarchy. In keeping with this trend, the Department has, again, changed the nature of the targets—effectively setting recovery at zero in order to focus on the recycling element. In making these limited changes to what the targets cover, the Department is of the view that these regulations are limited to varying relevant targets and are, therefore, rightly made in accordance with the negative procedure.

Department for Environment, Food and Rural Affairs

15 December 2020

Appendix 3

S.I. 2020/1337

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

1. By a letter dated 9th December 2020, the Joint Committee on Statutory Instruments requested a memorandum on the following points:

“Explain what criteria will be used to determine:

(1) “suitability” in paragraph 2(1)(c)(iii), and

(2) “appropriate” standard operating procedures in paragraph 3(f) of the new Schedule 2A.”

2. As regards the suitability of the test in relation to the age of the person to be tested, the test device must be age-appropriate. This will be determined by reference to the test product specifications. If a test manufacturer declares on the product specifications that the test device is not suitable for any particular age group, then the test device should not be used for an international arrival of that age.

3. As regards what is an “appropriate” standard operating procedure, the guidance on the minimum standards for private test providers of COVID-19 testing for ‘Test to Release for International Travel’ at <https://www.gov.uk/government/publications/testing-to-release-forinternational-travel-minimum-standards-for-testing/minimum-standards-for-private-sectorproviders-of-covid-19-testing-for-testing-to-release-for-international-travel> provides:

The provider of the test must have an effective system of clinical governance in place, which includes appropriate standard operating procedures in relation to the carrying out of the tests being provided for ‘Test to Release for international travel’. For example:

- *clear governance and lines of accountability such as senior responsible officer, clinical lead, quality lead, training lead*
- *staff are appropriately trained and there is evidence of competency assessment and participation in relevant external quality assessment (EQA)*
- *liability and indemnity cover for staff*
- *for laboratory testing, a verification report for the laboratory element of the test (known as the assay), in line with national protocols (for laboratory-based testing)*
- *information management systems to monitor sample delivery and tracking*
- *systems to meet the provisions for handling, transportation and analysis of test samples*

- *for laboratory testing, working to containment level CL3 or CL2+ with Health and Safety Executive (HSE) approval*
- *systems, processes*

Department for Transport

15 December 2020

Appendix 4

S.I. 2020/1374

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

S.I. 2020/1375

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

1. Thank you for your memorandum dated 11 November 2020. We set out below our response on the following requests.

In respect of S.I 2020/1375:

(1) In relation to regulations 3(2), 4(2) and 5(2), clarify the intended meaning of “essential infrastructure”.

Response

2. This relates to the local authority’s powers to issue various types of notices which cannot be issued in relation to essential infrastructure. “Essential infrastructure” is not specifically defined in SI 1375 2020 and so bears its ordinary meaning. The context of the SI and the power given to local authority officers to close or restrict activities in premises mean it is obvious how the words should be interpreted. DHSC consult and liaise with local authorities and national bodies regularly to ensure a common understanding of the regulations and guidance.

3. Whilst the Department considers that local authorities will understand this term, the Department has issued guidance to local authorities listing examples of the sort of institutions and structures that it considers would be covered.* These include buildings owned by central or local government bodies, premises from which a health care professional operates and educational institutions. The guidance was issued in the context of Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 where the same expression is used. No separate guidance was issued for this SI/1375/2020.

(2) In relation to the parenthetical saving at the end of regulation 7, identify some or all of the “other powers” referred to.

Response

4. This relates to the prosecution powers of local authorities and others for offences under this part of the regulations. This power was not intended to affect any other power to bring proceedings for such an offence.

* <https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>

5. Local authorities and the Crown Prosecution Service have statutory prosecution functions. There are also other prosecution authorities such as the Attorney General, and powers subsist to bring a private action. The saving is to ensure that powers such as those are not excluded. It was intended as a belt and braces savings provision.

In respect of S.I 2020/1374:

Explain:

(1) Why the requirement to take precautions applies only to regulation 6(3) and not to regulation 6(2).

Response

6. This relates to the two alternative options for permitted organised gatherings.

7. Regulation 6(2) provides that a gathering can take place at premises (or part of premises) (but not a private dwelling) which are operated by a business, charity or public body, among others.

8. Regulation 6(3) provides that a gathering can take place in a public outdoor place, not falling within regulation 6(2), provided the gathering is organised by a business, charity, public or political body, among others, and the organiser takes specified precautions, including a risk assessment.

9. The distinction is made because the premises covered by regulation 6(2) should already be a COVID secure location. The guidance issued (<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>) sets out priority actions for businesses to take (and other venues such as heritage sites) which includes as number 1 the action of carrying out a risk assessment.

10. There is also guidance for the safe use of council buildings <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-council-buildings/covid-19-guidance-for-the-safe-use-of-council-buildings> and for the charity sector <https://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-the-charity-sector>.

11. Public outdoor spaces will not have had the same risk assessments and other precautions carried out in relation to individual gatherings taking place in that place. It is necessary for the organiser to take the specified precautions before holding the gathering in that location, and to follow event specific guidance in order to make the gathering secure.

(2) Whether a social gathering (such as a birthday party) could take place on premises operated by a business in reliance on regulation 6(2) (if people remained within their qualifying groups).

Response

12. This refers to the exemptions to the gathering rules for the various tiers, for participating in permitted organised gatherings. The exemption is made subject to the person gathering alone or in a qualifying group, which is separately defined for each tier.

13. The answer is yes. Within the exceptions to the gathering restrictions is ‘permitted organised gatherings’. For something to fall within that exception it has to be a permitted gathering under regulation 6, and the person has to participate alone or as a member of a qualifying group. As long as those requirements are met the social gathering can take place and this would include gatherings such as birthday parties.

Department of Health and Social Care

15 December 2020

Appendix 5

S.I. 2020/1518

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

1. The Department is grateful to the Committee for its letter to the Department of 16th December 2020 regarding the above regulations. In that letter, the Committee requested a memorandum on the following point:

Explain the intended difference in meaning between:

(i) “date after the date” (amendments made by regulations 2(2)(b), (3)(b)(ii) and

(3)(c)),

(ii) “day after the date” (amendments made by regulation 2(2)(a) and (3)(b)(i)),

and

(iii) “day after the day” (regulation 3(3)).

2. The Department confirms that there was no intended difference in meaning between these phrases and apologises to the Committee for the inadvertent inconsistency. The Department’s view is that the inconsistency has no legal or other material effect. However, the Department appreciates the need to eliminate the inconsistency if possible and will take steps to rectify it at the next available opportunity. To that end, the Department anticipates that further amendments may be required to these regulations in spring 2021.

Department of Health and Social Care

22 December 2020

Appendix 6

S.I. 2020/1611

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

1. The Department is grateful to the Committee for its letter to the Department of 23rd December 2020 regarding the above regulations. In that letter, the Committee requested a memorandum on the following points:

1. Identify the time on 20 December 2020 when these Regulations were first published on legislation.gov.uk.

2. Having regard to the commencement provision of these Regulations, explain why the Minister of State for Digital and Culture issued on 20 December a statement that “From 00:01 on Sunday 20 December 2020 Gosport Borough moved to Tier 4”—<https://www.caroline4gosport.co.uk/news/tier-4-update>

3. Explain why the third paragraph of the preamble does not include a reference to the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 as amended by these Regulations.

2. In relation to point 1, the Department can confirm that SI 2020/1611 was first published on legislation.gov.uk at 06:47:44 on the 20th December 2020.

3. In relation to point 2, SI 2020/1611 moved Gosport Borough into Tier 4 at 7am on the 20th December. This was a statement on a constituency website. It is, therefore, not appropriate for HMG to comment.

4. In relation to point 3, this was a drafting oversight. The Secretary of State for Health and Social Care did consider that the restrictions and requirements imposed by the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020, as amended by S.I. 2020/1611, were a proportionate public health response to the threat of Covid-19, the disease caused by severe acute respiratory syndrome coronavirus (SARSCoV-2).

Department of Health and Social Care & Department for Digital, Culture, Media & Sport

31 December 2020