



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

10th Report of Session 2019–21

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

Includes information paragraph on:

Statutory Sick Pay (General) (Coronavirus
Amendment) Regulations 2020

Statutory Sick Pay (General) (Coronavirus
Amendment) (No. 2) Regulations 2020

Employment and Support Allowance and
Universal Credit (Coronavirus Disease)
Regulations 2020

Employment and Support Allowance and
Universal Credit (Coronavirus) Regulations
(Northern Ireland) 2020

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Secondary Legislation Scrutiny Committee

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

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

And, to scrutinise –

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

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

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

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

Members

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>The Earl of Lindsay</u>
<u>Rt Hon. Lord Chartres</u>	<u>(Chair)</u>	<u>Lord Lisvane</u>
<u>Rt Hon. Lord Cunningham of Felling</u>	<u>Lord Kirkwood of Kirkhope</u>	<u>Lord Sherbourne of Didsbury</u>
<u>Viscount Hanworth</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 <http://www.parliament.uk/seclegpublications>

Committee Staff

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

Further Information

Further information about the Committee is available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/>

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

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

Contacts

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

Tenth Report

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

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

Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2020

1. As well as amending references to the UK being a Member State of the EU, these Regulations would maintain the current dangerous goods regulatory framework and the international process behind it. This includes the power for the Secretary of State for Transport or the Health and Safety Executive for Northern Ireland to grant authorisations and implement derogations from the standards imposed by the Dangerous Goods and Transportable Pressure Equipment (“TPE”¹) Directives. The Regulations would also maintain recognition of the EU ‘pi’ marking for TPE that meets the required standards, and introduce the optional use of a new UK ‘rho’ marking for TPE either manufactured in the UK or imported and conformity assessed in the UK by appointed inspection bodies.
2. Although the practical effect of the revision will be minimal, regulations 24(3) and 47(3) provide that no fee is to be charged where a UK competent authority appoints a person that was a notified body before Implementation Period Completion Day (that is, 31 December 2020) after that date.
3. In line with the Committee’s policy remit, we do not express a definitive view on what is essentially a legal issue; however, **this alteration to the fee structure may be regarded as triggering the affirmative procedure** under the broad provision of Schedule 7 paragraph1(2)(b) of the European Union (Withdrawal) Act 2018, according to which a statutory instrument should be subject to the affirmative procedure if it “relates to a fee in respect of a function exercisable by a public authority” in the UK.
 - Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020

1 “Transportable pressure vessel” means a cylinder, tube or cryogenic receptacle, used or intended to be used for the storage or transport of a gas.

INSTRUMENTS OF INTEREST

Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020 (SI 2020/287)

Statutory Sick Pay (General) (Coronavirus Amendment) (No. 2) Regulations 2020 (SI 2020/304)

4. Instrument 2020/287 deems those who are self-isolating, in line with guidance relating to coronavirus provided by Public Health England, NHS National Services Scotland and Public Health Wales,² to be incapable of work and therefore entitled to Statutory Sick Pay. Statutory Sick Pay is paid by employers at a flat rate of £94.25 for up to 28 weeks (although the rate will increase to £95.85 from 6 April 2020). The Government regard this change as essential to encourage people to self-isolate when necessary so as to minimise the risk to public health.
5. These are emergency regulations which come into effect the day after being laid. They include a sunset clause and will lapse after eight months. Because these Regulations refer to Government coronavirus guidance issued on a particular date, they will need to be amended by further emergency regulations whenever the guidance changes. Instrument 2020/304 is the first of those update regulations.

Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 (SI 2020/289)

Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020 (SR 2020/33)

6. These emergency regulations are part of the Government's strategy to support people affected by Covid-19. These Regulations make changes to out of work benefits so that they can be claimed by those affected by the virus. They include a sunset clause and will lapse after eight months. The key changes are:
 - Removing waiting days in Employment and Support Allowance for those affected by the virus to ensure that support is provided as early as possible and incentives for people to keep working or fail to isolate are removed.
 - Ensuring that claimants to Employment and Support Allowance or Universal Credit can be treated as having Limited Capability for Work without the requirement for any medical evidence or to undergo a work capability assessment. This has the effect of switching off the normal requirements to look for and be available for work and provides access to other support within Universal Credit such as a work allowance and childcare support for those with partners who are still able to work. This change also protects Department for Work and Pensions (DWP) staff by reducing the amount of face to face contact that will be needed.

2 That guidance is published in digital form only on the following websites: Public Health England, 'Number of coronavirus (COVID-19) cases and risk in the UK' (23 March 2020): <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public> [accessed 16 March 2020]; Health Protection Scotland, 'Coronavirus (COVID-19)': <https://www.hps.scot.nhs.uk/a-to-z-of-topics/covid-19/> [accessed 16 March 2020]; and Public Health Wales, 'Novel Coronavirus (COVID-19)': <https://phw.nhs.wales/topics/latest-information-on-novel-coronavirus-covid-19/> [accessed 16 March 2020].

- Provisions for additional flexibility in the way the Minimum Income Floor for self-employed people will be assessed to ensure that any longer-term effects on self-employed claimants are reduced.

Further information from DWP on how this will operate is included in Appendix 1.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Greater Manchester Combined Authority (Fire and Rescue Functions) (Amendment) Order 2020

Court of Appeal (Recording and Broadcasting) (Amendment) Order 2020

Made instruments subject to affirmative approval

SI 2020/273 Employment Allowance (Increase of Maximum Amount) Regulations 2020

Instruments subject to annulment

HC 120 Statement of Changes in Immigration Rules

SI 2020/212 Personal Injuries (Civilians) Scheme (Amendment) Order 2020

SI 2020/213 Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2020

SI 2020/229 Road Vehicles (Defeat Devices, Fuel Economy and Type-Approval) (Amendment) Regulations 2020

SI 2020/238 Social Security Contributions (Decisions and Appeals) (Amendment) Regulations 2020

SI 2020/239 Social Security (Contributions) (Amendment) Regulations 2020

SI 2020/241 Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations

SI 2020/245 Wildlife and Countryside Act (Variation of Schedule 2) (England) Order 2020

SI 2020/246 Statutory Parental Bereavement Pay (Administration) Regulations 2020

SI 2020/248 Marketing of Fruit Plant and Propagating Material (England) (Amendment) Regulations 2020

SI 2020/251 Government Resources and Accounts Act 2000 (Estimates and Accounts) Order 2020

SI 2020/252 Statutory Parental Bereavement Pay (Persons Abroad and Mariners) Regulations 2020

SI 2020/253 Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2020

SI 2020/256 Addition of Vitamins, Minerals and Other Substances (England) (Amendment) Regulations 2020

SI 2020/258 Branded Health Service Medicines (Costs) (Amendment) Regulations 2020

SI 2020/264	Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2020
SI 2020/266	Social Security Benefits Up-rating Regulations 2020
SI 2020/267	Healthy Start Scheme and Welfare Food (Miscellaneous Amendments) Regulations 2020
SI 2020/269	Child Trust Funds (Amendment No. 2) Regulations 2020
SI 2020/284	Magistrates' Courts (Functions of Authorised Persons–Civil Proceedings) Rules 2020
SI 2020/287	Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020
SI 2020/288	Housing Benefit (Transitional Provision) (Amendment) Regulations 2020
SI 2020/289	Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020
SI 2020/293	Legal Services Act 2007 (Designation as a Licensing Authority) Order 2020
SI 2020/304	Statutory Sick Pay (General) (Coronavirus Amendment) (No. 2) Regulations 2020
SR 2020/33	Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020

Treaties subject to scrutiny under the Constitutional Reform and Governance Act 2010

CP 234	Council of Europe Convention on Cinematographic Co-Production (Revised)
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APPENDIX 1: EMPLOYMENT AND SUPPORT ALLOWANCE AND UNIVERSAL CREDIT (CORONAVIRUS DISEASE) REGULATIONS 2020

Further information from the Department for Work and Pensions

Q1: Will the self-employed be able to claim irrespective of their assets? We understand that if they have more than £16,000 they may have to wait.

A1: The regulations, laid 12 March, ensure that claimants are treated as having Limited Capability for Work, without the requirement for any medical evidence or to undergo a work capability assessment, when they are sick or compelled to self-isolate in line with government Covid-19 guidance.

This ensured that self-employed claimants who are infected or compelled to self-isolate in line with government Covid-19 guidance will also not have the Universal Credit Minimum Income Floor (MIF) applied for the period of time that they are treated as having Limited Capability for Work.

Going further, we have now announced that we will temporarily relax the application of the MIF for all self-employed UC claimants affected by the economic impact of COVID-19 from 6 April, for the duration of the outbreak.

This ensures that the self-employed are supported by the benefit system so that they can follow Public Health England guidance on social distancing and self-isolation.

For this group, we can dial down the MIF to zero so that we are not assuming any level of earnings. We are passing new regulations to support this new change and we are still finalising how we deliver all such changes operationally, given the pressures on the UC system at present.

I can confirm that the normal limits on capital assets continue to apply; households with more than £16,000 of savings are ineligible for Universal Credit. We have announced measures that can be quickly and effectively operationalised, and that benefit those who need support the most.

People with savings and who also have a sufficient National Insurance record will be able to claim contributory Jobseekers' Allowance (if they become unemployed) or Employment and Support Allowance (if they are sick or self-isolating).

24 March 2020

APPENDIX 2: INTERESTS

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.