

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

44th Report of Session 2019–21

Drawn to the special attention of the House:

Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021

Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2021

Includes information paragraphs on:

4 instruments relating to COVID-19

Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021

Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021

Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2021

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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.

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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 Fourth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021 (SI 2021/58)

Date laid: 21 January 2021

Parliamentary procedure: negative

*These Regulations have been laid by the Department of Transport to mitigate risks to critical supply chains by extending, to 1 April 2021, two relaxations of the normal rules on Heavy Goods Vehicles Drivers hours, the net effect of which is to increase the fortnightly driving limit from 90 hours to 96 hours. These relaxations are not restricted to port areas or to essential supplies, and the definition of when they can be used, “when necessary”, is very vague. There is also some blurring in this policy between the responsibilities of the driver and the operator in deciding when to use the extended hours, and we are concerned that drivers may feel under pressure to use them. A submission from UNITE the Union illustrates the problems likely to arise. The sector is very diverse, with both employed and self-employed drivers, and the balances of risks and advantages may differ between these groups. **Although a contingency provision may be needed, we were not clear about the conditions in which these exemptions are intended to be used and where the responsibility for implementing these decisions lies. The House may wish to ask the Minister to provide a fuller explanation.***

These Regulations are drawn to the special attention of the House on the ground that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House.

1. These Regulations have been laid by the Department of Transport (DfT) to mitigate risks to critical supply chains, due to coronavirus and possible border disruption. The Regulations extend two relaxations of the normal rules on Heavy Goods Vehicle (HGV) Drivers hours to 1 April 2021. The Regulations were laid with an incorrect version of the Explanatory Memorandum (EM) which, among other things named the wrong Minister, and has since been replaced.
2. A submission from UNITE the Union illustrates the problems likely to arise, and is published in full on our publications page.¹

Content

3. **In relation to journeys within Great Britain (GB)**, the relaxation applies to HGV drivers in all sectors and allows the replacement of the requirement to take a full weekly rest period of 45 hours in a two-week period, with an alternative pattern of weekly rest periods which would enable the driver to work two six-day weeks. The net effect is to increase the fortnightly driving

¹ SLSC scrutiny evidence page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

limit from 90 hours to 96 hours. More detail is set out in the guidance,² including the forms that employers are required to complete stating which exemptions they have used.

4. **In relation to journeys between GB and the EU or GB and Northern Ireland**, different relaxations can apply, although the options cannot be mixed:³
 - (a) Replacement of the EU daily driving limit of nine hours with one of 11 hours.
 - (b) Reduction of the daily rest requirements from 11 to nine hours, together with a relaxation on the use of the ferry/train derogation and to increase the maximum number of the interruptions to a daily rest period from two to four (not exceeding an accumulated period of three hours).
 - (c) Lifting the weekly (56 hours) and fortnightly driving limits (90 hours) to 60 and 96 hours respectively.
 - (d) Postponement of the requirement to start a weekly rest period after six 24-hour periods, for after seven 24-hour periods, although two regular weekly rest periods or a regular and a reduced weekly rest period will still be required within a fortnight.
 - (e) In addition, drivers who are driving only in Kent on journeys out of the UK via the Channel Tunnel or Dover, are permitted to break 45-minute rest breaks into up to three blocks of 15 minutes each, which together are at least 45 minutes (within a 4.5 hour period). This is designed for use when drivers are stuck in the queuing system in Kent.
5. The EM and guidance emphasise that the employers remain responsible for the health and safety of their employees and other road users, and that drivers should not be expected to drive while tired.

Procedural issues

6. The instrument was brought into immediate effect to extend the provisions of an administrative measure made by DfT Ministers, that came into effect on 23 December 2020, under EU law, to last until 21 January 2021 (the maximum of 30 days allowed). DfT told us:

“The exception, introduced on 23 December 2020, was effected via a ministerial decision. The extent of the exception was published and circulated to a number of organisations, including police, other enforcement agencies, trade associations and unions, devolved governments and other government departments (including those linked to specialised supply chains). A notification about the exception was sent

2 DfT, ‘Temporary relaxation of the enforcement of the retained EU drivers’ hours rules: all road haulage sectors within Great Britain’ (20 January 2021): <https://www.gov.uk/government/publications/temporary-relaxation-of-the-enforcement-of-the-retained-eu-drivers-hours-rules-all-road-haulage-sectors-within-great-britain> [accessed 2 February 2021].

3 DfT, ‘Temporary relaxation of the enforcement of the retained EU drivers’ hours rules: international and Great Britain to Northern Ireland carriage of goods’ (20 January 2021): <https://www.gov.uk/government/publications/temporary-relaxation-of-the-enforcement-of-the-retained-eu-drivers-hours-rules-international-and-great-britain-to-northern-ireland-carriage-of-goods/temporary-relaxation-of-the-enforcement-of-the-retained-eu-drivers-hours-rules-international-and-great-britain-to-northern-ireland-carriage-of-goods> [accessed 2 February 2021].

to the European Commission, which circulated it to Member States, so it would be recognised abroad.”

We note that the list of bodies notified does not include Parliament.

7. A statutory instrument is now required to extend these provisions from 22 January to 31 March 2021. DfT states that the relaxations continue to be required because of both delays at the borders and the reduction in driver numbers due to COVID-19.

“Necessity”

8. The EM and the DfT guidance both state that the relaxation should only be used where necessary, otherwise the normal drivers’ hours rules are to be followed. We therefore asked DfT how “necessary” was to be interpreted:

“‘Necessary’ has not been defined explicitly. However, the published guidance states the following:

The drivers’ hours and working time rules are in place to protect road safety and the working conditions of drivers and to reduce the risk of drivers being involved in fatigue-related accidents. As such, any relaxation of these rules should only be considered where genuinely necessary and when other supply chain management interventions are unable to alleviate issues. The Department for Transport (DfT) wishes to make clear that driver safety must not be compromised. Drivers should not be expected to drive whilst tired—employers remain responsible for the health and safety of their employees and other road users.

For the relaxation relevant to international transport the published notification states that:

It [the relaxation] should be used when there are significant unanticipated or substantial delays, related to border crossings and checks related to cross-Irish Sea transports.”

9. We note that—unlike SI 2021/109 (see page 6 below)—which identifies certain trigger criteria for the use of its contingency measures, the key definitions for the use of these relaxations are more vague.

10. The legislation is all framed in relation to the driver. Regulation 2(b) states:

“a driver may rely on a temporary exception ...where a driver has reasonable grounds to believe that there are exceptional circumstances which makes compliance with Articles 6 to 9 of the Drivers’ Hours Regulation not reasonably possible.”

“Exceptional circumstances” are defined as the circumstances arising from the COVID-19 pandemic or the withdrawal of the UK from the EU, which adversely affect the carriage of goods by road.

11. Other considerations, however, such as the imperative to make deliveries, the chance of an increased pay check, and a desire to meet the employers’ expectations, are also likely to influence such decisions.

12. The sector also includes self-employed drivers, and while they may welcome the extra hours, we are concerned whether they will be able to assess properly the effects of prolonged fatigue on their own driving performance.
13. UNITE makes the point that, although temporary, this provision will be in place for over three months and that fatigue is cumulative:

“The impact of fatigue is well documented and for drivers it can be the equivalent of being under the influence of alcohol. UNITE believes that prolonged long working hours without the ability to take proper rest away from work will result in serious risks in road safety, for HGV drivers and all road users. “

Monitoring

14. Paragraph 14.1 of the EM states that DfT will monitor use of the relaxations within GB by requiring operators to inform DfT, by completing a form, of their intention to use them and then later how they were used.⁴ This suggests that the use of these relaxations is to be planned by the employer, rather than the decision being the responsibility of the driver as regulation 2(b) appears to indicate.
15. We also note that the forms ask about the relaxation used and the loads carried but not about the circumstances which made the use of these provisions “necessary”. We therefore asked DfT how use of the system will be assessed to ensure that the additional hours allowed are not simply exploited for commercial advantage. DfT replied:

“The Driver and Vehicle Standards Agency checks [DVSA] operator records including tachographs and has information about which operators notified the Department about the use of the relaxations. It is able to make further enquiries about the circumstances related to information notified to the Department and to check a notification was made when tachograph records indicate extra driving. The Agency can also act on information received to check complaints about the use of relaxations.”

16. **The House may wish to ask for an analysis of the outcome of the DVSA checks to be reported to Parliament so that members can form a view as to whether the system has been abused. Simpler, clearer legislation, however, might remove the need for so much administration.**

Consultation

17. The EM states that the relaxations were brought in at the request of industry and have been used by operators needing some additional flexibility to mitigate problems caused by port congestion and coronavirus-related absences. We therefore asked DfT who had been consulted and whether any drivers’ representatives had been included DfT responded:

“Relaxations to drivers’ hours rules were sought by a number of individual firms, representative bodies and Defra (in the context of the

4 DfT: “Operators must notify DfT if this relaxation is used by completing an [initial notification of relaxation form](#) and emailing a copy to RSSSFOLRCOVID19@dft.gov.uk. A completed [follow-up notification of relaxation form](#) must then be emailed to RSSSFOLRCOVID19@dft.gov.uk one week after the end of the period of relaxation.”

food supply chain). Unite the Union was consulted informally - and for the record was not in support of the relaxation as made.”

18. We asked UNITE to explain their concerns:

“The issues in Kent have been widely reported but the knock-on effect of the border issues is now impacting on domestic transport. We have received reports from drivers who simply cannot find places to park to take statutory rest breaks due to service areas being full of drivers trying to get Covid tests and customs documents checked. In one instance, over 200 drivers were queueing outside of Thurrock services which meant that other drivers could not park safely.

Statutory rest periods for drivers can be within the working day, daily rest periods and weekly rest periods. There is already great flexibility in the rules which allow reductions in all but the 45 minute breaks drivers must take during their working day. The weekly rest period is what is relaxed in this Statutory Instrument. It is worth pointing out that the standard weekly rest cannot be taken in the cab of the vehicle, the drivers workplace. However, a reduced rest can be. This means that drivers will be expected to spend their working and rest periods at their place of work. Whilst there have been great advances over the years in cab comfort, working and living in an HGV cab for weeks on end will inevitably result in driver fatigue. There is very little sound insulation and other vehicles moving in the vicinity will mean drivers cannot get proper rest. Due to necessary Covid controls drivers are also limited with any activities they can take outside of the vehicle such as relaxing away from work, eating or exercising.

Conclusion

19. We are aware of the potential for difficulties in the supply chain to arise because of delays at borders and a shortage of drivers due to the effects of COVID-19 and acknowledge that contingency measures are required. **The normal restrictions on drivers’ hours are based on accident statistics, for safety reasons we would not wish to see their relaxation become permanent.**
20. The provisions of these Regulations are not restricted to port areas or to essential supplies, and the definition of when they can be used, “when necessary”, is very vague. Tying use of the exception to “exceptional circumstances” sounds like a limit, but as they are in turn defined as “circumstances arising” from the pandemic or the UK’s withdrawal from the EU, its application can be very broad indeed.
21. There is also some blurring in this policy between the responsibilities of the driver and the operator in deciding when to use the extended hours, and we are concerned that drivers may feel under pressure to use them. **Although a contingency provision may be needed, we were not clear about the conditions in which these exemptions are intended to be used and where the responsibility for implementing these decisions lies. The House may wish to ask the Minister to provide a fuller explanation.**

Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2021 (SI 2021/109)

Date laid: 1 February 2021

Parliamentary procedure: negative

This Order requires all Heavy Goods Vehicle drivers, and any passengers, to provide evidence of a recent negative COVID-19 test result as a condition of access to the coastbound carriageways of the motorway network in Kent.

*It also introduces the Expedited Return Scheme, as a contingency measure, to allow for the prioritisation of outbound empty goods vehicles moving from the UK to the EU in the event of severe disruption in Kent, enabling the vehicles to restock and return speedily with fresh supplies. **The policy objective is clearly explained and well-argued in the Explanatory Memorandum and seems pragmatic in current circumstances. We regret, however, that—once again—many key policy elements are not included in the legislation that is subject to scrutiny, but published in policy statements and guidance.***

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

COVID-19 Testing

22. This instrument, laid by the Department for Transport (DfT), requires all Heavy Goods Vehicle (HGV) drivers, and any passengers, to provide evidence of a recent negative COVID-19 test result as a condition of access to the coastbound carriageways of the motorway network in Kent. Drivers who are not able to produce evidence of a negative COVID-19 test for themselves will under this Order be liable for a £300 Fixed Penalty Notice. In practice, the burden should be minimal since the French authorities already require this. The original Order that this instrument amends will expire on 31 October 2021.⁵
23. This Order was originally laid as SI 2021/62 on 21 January to come into effect on the same day. SI 2021/62, however, did not reflect the version signed by the Minister on 20 January, as some wording had been omitted. It was therefore replaced with the correct version, as SI 2021/109, laid on 1 February. **We would welcome an assurance that steps are being taken by the department to ensure that mistakes such as this are not repeated.**

Expedited Return Scheme

24. The instrument also introduces the Expedited Return Scheme (ERS), which will allow for the prioritisation of outbound empty goods vehicles moving from the UK to the EU in the event of severe disruption in Kent, enabling the vehicles to restock and return speedily with fresh supplies. Gibraltar relies on the UK for approximately 50% of its food supply, so this scheme for expediting vehicles will additionally apply to Gibraltar-bound groceries. The

⁵ Heavy Commercial Vehicles in Kent (No. 3) Order 2019 (SI 2019/1210, as amended by SI 2020/1146).

instrument also provides for checking compliance and enforcement of these measures through fines.

25. DfT states that ERS is a contingency measure to enable the Department to respond when difficulties occur (for example, if the French authorities again closed the border for 48 hours as they did in late December 2020). The criteria for exercising these powers are set out in a separate document,⁶ which was not published until 29 January. They include:
 - congestion on the approach to Dover and Eurotunnel of eight hours or more;
 - actual loads delivered to UK supermarkets falling below 75% of planned expectations for two consecutive days; and
 - any indication of shortages or panic buying.
26. DfT states that the Secretary of State will turn the measures off again as soon as traffic flow rates recover, or indicators show that demand and supply issues are reducing. The measures will be suspended if they cause congestion in the contraflow or otherwise impede the Kent Traffic Management systems.
27. There is no conflict between this scheme and the existing prioritisation of perishable goods through Kent, as the two schemes are triggered differently: perishable goods will be prioritised if there are traffic delays, whilst empty trucks require traffic delays and falling food supply for two consecutive days before the scheme is implemented. In the circumstance that ERS causes unacceptable rises in traffic volumes it will be turned off but perishable goods will continue to be prioritised.
28. DfT states that the scheme must be simple to administer and enforce and proposes limiting the number of ERS permits to 300 per day (plus up to an estimated 10 per day Gibraltar-bound vehicles under the Prioritised Goods Scheme) to balance the efficient operation of the Kent Traffic Management systems against the maximum benefit for food supply.
29. As the large supermarkets have around 95% market share across the whole of the UK, DfT intends to limit access to the ERS permits to the nine largest of them. This means that DfT can contact the companies directly by email or telephone in the event of the scheme being activated. The policy intention is to guarantee essential supplies but there may be commercial disadvantage to smaller suppliers as a result.
30. **The policy objective is clearly explained and well-argued in the EM and seems pragmatic in current circumstances. We regret, however, that—once again—many key policy elements are not included in the legislation that is subject to scrutiny but published in policy statements and guidance.**

6 Defra, *Expedited Return Scheme (ERS)* (29 January 2021): <https://www.gov.uk/government/publications/expedited-return-scheme-ers> [accessed 2 February 2021]. The EM said that this document would be published on 21 January 2021, the day the instrument came into effect, but it did not appear until 29 January 2021 — we also regard this as poor practice.

INSTRUMENTS RELATING TO COVID-19

31. Two instruments relating to the COVID-19 pandemic, the Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021 (SI 2021/58), and the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2021 (SI 2021/109), are drawn to the special attention of the House in this report (see pages 1 to 7 above).

Changes to business practice and regulation

Draft Electricity Supplier Payments (Amendment) Regulations 2021

32. These Regulations propose new levy rates for the 2021/22 financial year to enable the Contract for Difference (CfD) Counterparty and the Settlement Body for the Capacity Market to recover their operational costs. Both organisations share their resources and facilities. The CfD scheme is the main mechanism for supporting new renewable electricity generation projects in Great Britain and the CfD Counterparty enters into and manages CfDs with low carbon electricity generators. The Capacity Market is one of the main mechanisms to ensure that there is enough capacity to meet peak demand for electricity at minimum cost to consumers in Great Britain and the Settlement Body is responsible for financial transactions relating to the Capacity Market.
33. The Department for Business, Energy and Industrial Strategy (BEIS) says that it would have preferred to propose new levy rates for the next three financial years to reduce the administrative burden on the sector as it did in 2017, but that electricity demand has fallen significantly during the pandemic and that this uncertainty makes it difficult to forecast electricity demand beyond the 2021/22 financial year. BEIS estimates that the total impact of the new levy rates will be around 40p on the average annual household electricity bill, £30 for a typical small-sized business (using around 250 megawatt hours per year) and £1,200 for a typical medium-sized business (using around 10 gigawatt hours per year). According to BEIS, the new levy rates will amount to less than 0.1% of these users' electricity bills.

Public Services

Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) (Amendment) (England) Regulations 2021(SI 2021/52)

34. This instrument enables a governance petition that is submitted to a council between 16 March 2020 and 8 February 2021 to be treated as having been presented on 9 February. According to the Ministry of Housing, Communities and Local Government (MHCLG), this enables a referendum to be held within six months of 9 February 2021, including on 6 May 2021, alongside any local elections taking place on that date. The instrument also enables governance petitions to be presented from 9 February 2021. MHCLG says that in practice this allows the London Borough of Croydon to process a petition that has already been presented and to hold a governance referendum on the introduction of a mayor and cabinet system at the same time as scheduled elections in the local authority area.

35. MHCLG explains that the changes are necessary as an earlier instrument⁷ postponed local by-elections and governance and neighbourhood planning referendums until 6 May 2021 and also provided that governance petitions may not be presented during the period between 16 March 2020 and 5 May 2021. Despite these measures, a small number of governance petitions have been submitted which, under the current restrictions, would need to be resubmitted after 5 May 2021, making it impossible to hold a referendum on 6 May 2021. According to MHCLG, the changes made by this instrument avoid the need for a standalone referendum sometime later in the year which would risk very low turnout and substantial additional financial costs and administrative burdens for the councils affected.

School and Early Years Finance (England) Regulations 2021 (SI 2021/59)

36. This instrument sets out how local authorities should set their education budgets in the 2021/22 financial year, including by setting the parameters that local authorities must follow in determining schools' budgets and the budgets which may be retained centrally. The Regulations also set out how local authorities are to allocate funding to maintained schools and private, voluntary and independent providers of free early years provision through locally-determined funding formulae. The Department for Education (DfE) explains that an instrument to this effect is made annually and that in 2021/22, local authorities will continue to determine schools' budget allocations at a local level, through a local funding formula. This is known as a "soft" schools National Funding Formula (NFF). DfE says that while a "hard" schools NFF will be implemented in future, whereby schools receive what they attract through the national formula rather than through different local authority funding formulae, the Department does not intend to introduce any changes to further restrict local authority discretion over their own funding formulae in 2021/22 in order to ensure stability during the pandemic.
37. The Explanatory Memorandum includes headline funding figures for the 2021/22 financial year. We asked DfE about the availability of additional funding for schools to help them deal with the impacts of the pandemic. The Department has provided information which we are publishing at Appendix 1. DfE highlights that this additional funding is temporary and paid out as specific grants, not through the funding formula administered by local authorities, and therefore does not affect this instrument.
38. The Regulations also make **permanent** a provision which was introduced in an earlier instrument⁸ which allowed schools forums⁹ to meet remotely during the pandemic. DfE says that feedback from local authorities suggests that holding school forum meetings remotely has been successful and has made the arrangement of such meetings easier.

7 Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 (SI 2020/395).

8 Schools Forums (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/540).

9 Schools forums are statutory bodies established by each local authority to advise on matters relating to the local authority's schools budget, including five to 16-year old provision in mainstream schools, early years provision and high needs provision for children and young people (aged 0-25) with complex needs.

Delayed or revoked legislation

Charities (Exception from Registration) (Amendment) Regulations 2021 (SI 2021/55)

39. This instrument extends a temporary exception granted to certain religious charities from the requirement to be registered with the Charity Commission (“the Commission”) until 31 March 2031. The exception would otherwise expire on 31 March 2021. This is not the first extension: the exception has been extended several times since it was first granted in 1996.
40. The Department for Digital, Culture, Media and Sport (DCMS) explains that most charities have to register if their gross annual income is more than £5,000. This is to promote public trust and confidence in the charities sector. Certain charities are exempt from registration, either permanently or temporarily, if their gross annual income does not exceed £100,000. There are around 35,000 exempt charities, most of them religious charities connected with particular denominations, boy scout and girl guide charities and armed forces charities, as well as students unions and charities that provide premises for some types of schools. Most of these exceptions are permanent and the charities affected are regulated by another regulator under a separate legal framework. The temporary exception applies only to religious charities.
41. DCMS explains that many of these charities have been impacted by the pandemic and lack the capacity and resources to manage the administrative burden of the registration process, while significant planning and support will be required to register them with the Commission. According to DCMS, it would be inappropriate to impose a regulatory burden on them at this time. DCMS says that the extension until 31 March 2031 will enable the Commission to develop an approach for phasing the affected charities onto the register over the course of the extension period. The Commission will begin liaising with church bodies in the first half of 2021–22 to design and consult on a programme of phased voluntary registration. **Given that the current exemption has been extended repeatedly since 1996, the House may wish to press the Minister for assurance that this will be the final extension and that the registration process will be completed over the extension period.**

INSTRUMENTS OF INTEREST

Draft Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021

42. This instrument disapplies the Country of Origin (CoO) principle, as set out in the Electronic Commerce Directive and as it relates to two specific pieces of legislation: Schedule 11B to the Education Act 2002 (“the 2002 Act”) provides for the prosecution of certain criminal offences which are committed where a person breaches a reporting restriction in respect of a teacher who has been accused of an offence involving a pupil at their school. The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (“the 2005 Regulations”) make provision in relation to the breach of restrictions on arranging adoptions or publishing or distributing of adoption-related advertisements.
43. This instrument removes the application of the CoO principle to the enforcement of an offence under the provisions in the 2002 Act and the 2005 Regulations. According to the Department for Education (DfE), this will not revoke any criminal offences either in the UK or across the European Economic Area but instead will affect where Information Society Services (ISS)¹⁰ are liable for prosecution if they commit a relevant offence: an offence committed in England and Wales will be prosecuted domestically irrespective of where the relevant ISS is established. If an ISS established in the UK commits the offence in another country, it will be subject to the law of that country.
44. When the instrument was initially laid for sifting under the European Union (Withdrawal) Act 2018 in June 2019, we took the view that these issues were likely to be of policy interest to the House and recommended an upgrade to the affirmative procedure. We asked DfE why the instrument was laid before Parliament for regular scrutiny more than a year and a half after sifting. DfE told us that: “In order to ensure all of the critical legislation was in place for the end of the Transition Period, it was necessary to prioritise SIs that needed to be in force immediately on 1 January 2021. SIs with less time pressure have therefore been laid later, as far as possible. [These Regulations] were considered a lower priority.”

Draft Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021

45. The UK’s Border Force operates juxtaposed immigration controls at the seaports of Calais and Dunkirk in France under the reciprocal Le Touquet Treaty 2003. For the Channel Tunnel, Border Force has juxtaposed controls in Coquelles and in Eurostar terminals in France, Belgium and the Netherlands, under legislation which also allows policing and goods checks on passengers and freight before embarkation. French Border officials have equivalent powers.
46. The purpose of this Order is to harmonise the legislative regimes across all juxtaposed controls, which will also extend the power to use “reasonable force” at the Northern French seaports. The Home Office states that “With

¹⁰ ISS cover any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing and storage of data, and at the individual request of a recipient of a service. This includes internet service providers.

thousands of attempts made by persons seeking to enter the UK illegally via the Northern French seaports every year, and with many of these individuals not complying with immigration processes once intercepted, it is necessary to grant Border Force officers at the juxtaposed seaports the power to use reasonable force, where necessary, to enforce compliance with UK immigration controls and to intervene, where strictly necessary, where non-compliant persons present a danger to themselves or others.”

Draft Tax Credits, Child Benefit and Guardian’s Allowance Up-rating Regulations 2021

47. This instrument sets the annual rates of Child Tax Credit and Working Tax Credit (WTC) and the weekly rate of Child Benefit and Guardian’s Allowance for the 2021/22 tax year, as announced in a Written Ministerial statement on 25 November 2020.¹¹ The rates are increased by 0.5%, in line with the Consumer Price Index (CPI) in September 2020. HM Revenue and Customs emphasises that the increase will be applied to the rate of the WTC basic element as announced in November 2019 (£1,995), so that this annual uprate is separate from the temporary uplift to the WTC basic element by £1,045 a year, equal to up to £20 per week, that was introduced in response to the pandemic. The temporary uplift will expire on 5 April 2021 and is disregarded for the purpose of the annual increase set out in this instrument.

¹¹ Social Security Benefit and Pension Up-rating 2021/22, 25 November 2020. HL Deb. 25 November 2020, [HLWS593](#).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Armed Forces Act (Continuation) Order 2021

Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2021

Electricity Supplier Payments (Amendment) Regulations 2021

Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021

Guaranteed Minimum Pensions Increase Order 2021

Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2021

Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) (Amendment) Order 2021

Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2021

Social Security Benefits Up-rating Order 2021

Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2021

Instruments subject to annulment

SI 2021/31	Broads Authority (Transfer of Mutford Lock) Harbour Revision Order 2021
SI 2021/32	Port of Lowestoft (Transfer of Mutford Lock) Harbour Revision Order 2021
SI 2021/36	Public Service Pensions Act 2013 (Judicial Offices) (Amendment etc.) Regulations 2021
SI 2021/41	Shoreham Port Authority Harbour Revision Order 2021
SI 2021/43	Weymouth Harbour Revision Order 2021
SI 2021/45	Mersey Docks and Harbour Company (Liverpool Cruise Terminal Extension) Harbour Revision Order 2021
SI 2021/52	Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) (Amendment) (England) Regulations 2021
SI 2021/54	Trade in Endangered Species of Wild Fauna and Flora (Council Regulation (EC) No 338/97) (Amendment) Regulations 2021
SI 2021/55	Charities (Exception from Registration) (Amendment) Regulations 2021
SI 2021/59	School and Early Years Finance (England) Regulations 2021

- SI 2021/60 Limited Liabilities Partnerships (Amendment etc.) Regulations 2021
- SI 2021/64 Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021
- SI 2021/65 Social Fund Funeral Expenses Payment (Amendment) Regulations 2021

APPENDIX 1: SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2021 (SI 2021/59)

Additional information from the Department for Education

Q: Paragraph 7.2 of the EM helpfully sets out the financial context of the instrument and the funding increase. Is there separate funding for schools to support them during the pandemic, for example in relation to daily testing of pupils, providing disadvantaged pupils with laptops etc?

A: We have provided additional funding to schools, on top of existing budgets, to cover unavoidable costs incurred between March and July 2020 due to the coronavirus (COVID-19) outbreak that could not be met from their budgets.

Schools were eligible to claim for: increased premises related costs associated with keeping schools open over the Easter and summer half term holidays; support for free school meals for eligible children who were not in school, where schools were not using the national voucher scheme; and additional cleaning costs required due to confirmed or suspected coronavirus (COVID-19) cases, over and above the cost of existing cleaning arrangements.

We have published guidance on the fund, at: <https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-schools>

We have paid schools £102 million for all claims in the first claims window within the published scope of the fund, and we will shortly process claims made in the second window in December.

We will fund school and colleges, which have remained open, for costs relating to COVID-19 testing. Funding will be paid to schools who have conducted testing in respect of workforce costs and other incidental costs relating to testing such as waste disposal. A total of £78m has been made available for schools and colleges and will be paid retrospectively. The amount of funding available to a school or college will depend on its size, as this will impact the number of additional staff or additional staff hours required to conduct testing. We have provided a ready reckoner that provides illustrative workforce requirements and associated funding.

The government is investing over £400 million to support access to remote education and online social care, including securing 1.3 million laptops and tablets for disadvantaged children and young people. This includes over 800,000 laptops and tablets that were delivered to schools, trusts and local authorities by 17 January.

We have also introduced a Covid workforce fund for schools and colleges to help them to remain open in November and December last year. It will fund the costs of teacher absences over a threshold, for those with high staff absences that are also facing significant financial pressures. The fund will help schools and colleges to meet the cost of absences experienced during the period from the beginning of November until the end of the autumn term.

Schools will continue to receive their budgets for the coming year, as usual, regardless of any periods of partial or complete closure. This will ensure that they are able to continue to pay their staff and meet their other regular financial commitments.

School budgets are rising by £2.6bn in 2020–21, £4.8bn in 2021–22 and £7.1bn in 2022–23, compared to 2019–20. This increase in funding will help schools with costs associated with the coronavirus (COVID-19) outbreak.

The additional funds outlined above are temporary increases in funding, rather than long-term changes. There is no plan to give schools further additional funding in 21-22 at present but we are considering how to support schools to help children catch up on lost learning.

This money is paid out as specific grants, not through the funding formula administered by LAs, and therefore does not affect the regulations.

26 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 2 February 2021, Members declared the following interests:

Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021 (SI 2021/58)

The Earl of Lindsay

Wife has an HGV licence

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.