

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 45th Report of Session 2019–21

#### Proposed negative statutory instruments laid under the European Union (Withdrawal) Act 2018

#### Includes information paragraphs on:

7 instruments relating to COVID-19

Draft Authority to Carry Scheme and Civil  
Penalties Regulations 2021

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

### *Members*

<a href="#"><u>Baroness Bakewell of Hardington Mandeville</u></a>	<a href="#"><u>Viscount Hanworth</u></a>	<a href="#"><u>The Earl of Lindsay</u></a>
<a href="#"><u>Rt Hon. Lord Chartres</u></a>	<a href="#"><u>Lord Hodgson of Astley Abbotts</u></a>	<a href="#"><u>Lord Lisvane</u></a>
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<a href="#"><u>Lord German</u></a>	<a href="#"><u>Lord Liddle</u></a>	<a href="#"><u>Baroness Watkins of Tavistock</u></a>

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

### *Committee Staff*

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

### *Further Information*

Further information about the Committee is available at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/>

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

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

### *Contacts*

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

# Forty Fifth Report

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

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### Instruments recommended for upgrade to the affirmative procedure

#### *Audiovisual Media Services (Amendment) Regulations 2021*

1. Amongst other changes, this instrument removes an obligation on Ofcom to notify the European Commission of the service providers that it regulates, and instead places a requirement on Ofcom to publish a list of these service providers on its website. It also introduces an ambulatory reference to the latest version of the definition of “European works” and of the European works guidelines, to ensure that domestic law references the relevant definition and guidance automatically should this be updated in future. The Department for Digital, Culture, Media and Sport (DCMS) says that the automatic reference will not apply if the Commission *replaces* the definition or guidance, as this “would expose the UK to risk of being subject to substantial change in rules it must observe”. According to DCMS, the UK will continue to participate in the European works regime as a signatory to the European Convention on Transfrontier Television as this will benefit the UK production sector.
2. The instrument also replaces a duty on Ofcom to co-operate with regulators in the EU, in relation to the requirements of the Audiovisual Media Services Directive (AVMSD),<sup>1</sup> with a power to co-operate. DCMS says that the sharing of information by Ofcom with EU regulators is vital to ensuring that UK users remain protected, by supporting effective AVMSD regulatory regimes in EU Member States. The Department anticipates “that as a result of granting Ofcom the power to share information relating to investigations and jurisdiction, regulators in EU and EEA Member States will continue to cooperate with UK regulators”, and that it “will also incentivise other national regulators to cooperate if Ofcom engage with them”. DCMS adds that through this co-operation, “Ofcom can assist in the protection of UK users from harmful material on platforms established in EU/EEA [European Economic Area] states”, and that through sharing information to assist with investigations into both illegal and harmful materials, the UK is “abiding by its commitment to protecting minors from damaging content online”.
3. While replacing a duty on Ofcom to co-operate with regulators in the EU with a power to do so could be considered appropriate in the absence of mandatory reciprocity, this nevertheless creates some uncertainty with regard to the effectiveness of tackling online harm: key content providers, such as YouTube, are based and regulated in the EU. We have previously raised concerns about enforcement after the end of the Transition Period and that, as a third country, the UK will now have to rely on informal co-operation with regulators in the EU. While tackling online harm, especially in relation to young people, is a significant policy issue and one that the Government has committed to address through an Online Harms Bill, there is currently not a clear timetable for this Bill and the House may welcome an opportunity to look into these issues. **On balance, therefore, we take the view that the instrument should be subject to the affirmative procedure.**

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1 [Directive 2010/13/EU](#).

## INSTRUMENTS RELATING TO COVID-19

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### Restrictions on businesses and public gatherings

#### *Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021 (SI 2021/97)*

4. We have previously criticised the Government for not sharing data effectively with the authorities to enable them to enforce self-isolation.<sup>2</sup> This instrument is therefore welcome. It amends the Self-Isolation Regulations<sup>3</sup> to provide the police with sufficient information to verify the identity of an individual, a copy of the notification sent to the individual informing them of the legal duty to self-isolate and why (following a positive test or contact with an infected individual). Regulation 4(4) limits the use of this shared notification information to the prevention, investigation, detection or prosecution of offences under the Self-Isolation Regulations. The Department for Health and Social Care states that disclosure of this information for these reasons is proportionate and in line with Article 8 of the European Convention on Human Rights and the Data Protection Act 2018.
5. In addition, regulation 2 changes the All Tiers Regulations<sup>4</sup> to introduce a new fixed penalty notice (FPN) for each individual that attends a gathering of more than 15 people in a private dwelling, in educational accommodation or at an indoor rave. The first penalty is £800 with subsequent offences doubling the FPN to a maximum of £6,400.

### Changes to business practice and regulation

#### *Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2021 (SI 2021/76)*

6. This instrument amends legislation concerning both the Domestic and Non-Domestic Renewable Heat Incentive (RHI) schemes. The RHI schemes aim to encourage the transition from fossil fuel-based forms of heating to renewable, low-carbon alternatives. While the Domestic RHI scheme involves renewable heat installations that service domestic properties, the Non-Domestic RHI scheme is open to producers of biomethane for injection into the gas grid, to renewable heat installations that provide heat to a variety of buildings, such as commercial properties, blocks of flats or public buildings, or for industrial or agricultural uses.
7. The changes to the Domestic RHI scheme relax the requirement to apply for accreditation within 12 months of the installation being commissioned. The Department for Business, Energy and Industrial Strategy says that this relaxation is being introduced in response to the pandemic, which is preventing some applicants from being able to comply with the current application requirement. The amendment will enable applicants whose installation was commissioned on or after 1 March 2019 to apply for the Domestic RHI scheme until it closes to new applications on 31 March 2022. The instrument also updates the reference to the code of practice of the Home Insulation & Energy Systems (HIES) Quality Assured Contractors Scheme and revises the thresholds at which degressions are triggered.

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2 Most recently in our [37th Report](#) in relation to Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 26) Regulations 2020 ([SI 2020/1337](#)).

3 Public Health (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 ([SI 2020/1045](#)).

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

8. The amendments to the Non-Domestic RHI scheme provide for its closure for new applications at the end of 31 March 2021 as confirmed last year,<sup>5</sup> future-proof the scheme across a range of technologies including heat pumps, biomass and biomethane, and provide a 12-month extension to smaller projects impacted by pandemic-related delays.

*Official Controls (Temporary Measures) (Coronavirus) (Amendment) Regulations 2021 (SI 2021/78)*

9. This instrument amends retained direct EU law<sup>6</sup> which introduced temporary relaxations of the system of official controls last year, so that these relaxations can continue until 1 July, rather than expire on 1 February 2021. The amendments temporarily allow competent authorities in Great Britain to carry out electronic document checks on some imported goods, including at locations other than a Border Control Post (BCP), instead of checking hard copies. This is to prevent disruption during the ongoing pandemic.
10. The Department for Environment, Food and Rural Affairs (Defra) says that the relaxations apply to certain products of animal origin including fish and fishery products for human consumption, animal by-products, high-risk food and feed not of animal origin as well as plants, plant products and other objects regulated by plant health legislation. Some products are exempt, such as live animals and animal products derived from porcine meat due to their higher biosecurity risk and risk for spread of disease. The instrument also reinstates a provision that permits appropriately authorised persons to carry out checks under the supervision of the competent authority. Defra told us that when this provision was used last year, it allowed non-Official Veterinarian staff at BCPs to perform or assist with checks under the supervision of an Official Veterinarian.
11. Defra says that the relaxations were introduced last year to help address serious disruption to official controls due to capacity issues with staff having to self-isolate and adhere to social distancing measures. The relaxations do not enter into force automatically through this instrument, but the instrument provides the Government with the legal powers to apply them. Defra told us that because the EU has made equivalent changes to EU law, Northern Ireland has the legal powers to introduce the same relaxations. We are publishing at Appendix 1 further information from the Department about the context of the relaxations and how they will operate in practice. **While the additional information helps to understand how any potential relaxations will operate in a complex system, we note that the relevant government websites are not easy to navigate. This is a matter of concern: good and effective law needs to be accessible and should be signposted and explained appropriately on official websites to those who may be affected by it.**

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5 BEIS, *Non-domestic Renewable Heat Incentive: ensuring a sustainable scheme* (28 April 2020): <https://www.gov.uk/government/consultations/non-domestic-renewable-heat-incentive-ensuring-a-sustainable-scheme> [accessed 4 February 2021].

6 Commission Implementing Regulation (EU) [2020/466](#).

## Travel

### *Traffic Signs (Coronavirus) (Amendment) (England) Regulations 2021 (SI 2021/75)*

12. This instrument makes certain clarifications to the e-scooter pilot scheme in the light of six months' experience. In particular, some of the road marking requirements for a cycle track shared with e-scooter trials are temporarily adjusted, e-scooter access to bus lanes is clarified, and it is made clear that e-scooters may not park in motorcycle bays. **Although this instrument has 'Coronavirus' in the title, the connection appears to us as tenuous** (see our Report on the original regulations).<sup>7</sup>
13. We asked the Department for Transport (DfT) for information on how the trials are progressing. DfT said:

“E-scooter trials are currently live in 25 areas across England, including the West Midlands, Liverpool, Cambridge, Nottingham, Bristol, Bath, Norwich and Tees Valley. A further five areas have been approved to hold trials, but have not yet launched. London has also announced plans to launch trials in participating boroughs in spring 2021, but have not yet submitted a formal proposal to the Department for approval.

We have approved over 17,000 e-scooters for use, but do not yet have detailed data on the number of e-scooters currently being used, or trips taken. We will receive this data as part of our monitoring and evaluation plan, later in February (as our data 'warehouse' is now almost built).

In the interim, we have been receiving 'situation reports' from trial areas and these show that the majority of journeys on e-scooters have been completed safely and successfully. Where problems have arisen, we have been working closely with both local authorities and e-scooter suppliers to resolve matters. For example, we have tightened the requirements for licence checks to ensure that a single licence cannot unlock multiple e-scooter accounts. We have asked operators to develop more robust geo-fencing to tackle pavement riding and other anti-social behaviour. No serious incidents have been reported to us.”

14. We note that there have been press reports about serious injuries as a result of accidents involving e-scooters. If, as the DfT statement implies, they are caused by privately owned e-scooters being used illegally, rather than those in the pilot schemes, **the House may wish to ask what the Government are doing to address that illegal usage**. We also question how robust the results of trials conducted during the pandemic will be given that road and foot traffic are likely to be significantly less busy than usual, and whether, to give an accurate picture of risks, these trials should be repeated when normal conditions are resumed.

### *Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 5) Regulations 2021 (SI 2021/98)*

15. With effect from 29 January 2021, this instrument added Rwanda, Burundi and the United Arab Emirates to the list, in Schedule B1 to the International

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<sup>7</sup> See our [22nd Report](#), Session 2019-21 (HL Paper 104) on The Electric Scooter Trials and Traffic Signs (Coronavirus) Regulations and General Directions 2020 ([SI 2020/663](#)).

Travel Regulations,<sup>8</sup> of countries and territories subject to enhanced restrictions. Passengers from those countries and the household where they reside in England must self-isolate for 10 days and they may not make use of the “Test to Release” regime.

16. In addition all direct flights from the United Arab Emirates are banned from landing in England, except in emergencies. (There are no direct flights to the UK from Burundi and Rwanda, so this provision is not required for those countries).

### Public services

#### *Organic Control (Amendment) Regulations 2021 (SI 2021/94)*

17. This instrument extends temporary COVID-19-related derogations in relation to the process for verifying the integrity of organic products. The derogations are contained in retained direct EU legislation<sup>9</sup> and the instrument extends the end date of the derogations, the majority of which would otherwise have ended on 1 February, to the end of 2021 or until national restrictions are lifted. The extension until 31 December 2021 applies, for example, to unannounced physical inspections, additional random control visits and samples taken by control bodies to verify the integrity of organic products, while a derogation relating to annual supervision audits is extended until the current national restrictions on movement during the pandemic are lifted. The Department for Environment, Food and Rural Affairs says that the Devolved Administrations in Scotland and Wales have given their consent to the instrument, while EU law will continue to have effect in Northern Ireland. The EU is expected to introduce similar extensions.

### Law and order

#### *Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2021 (SI 2021/91)*

18. This instrument will remove all defendants who are under 18 years old at the time of their first appearance at the Crown Court from the extension to custody time limits (CTLs) introduced by the Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020<sup>10</sup> (“the 2020 Regulations”). The 2020 Regulations amended the maximum CTL by 56 days from 182 days to 238 days (eight months) for all criminal offences awaiting trial on indictment at the Crown Court with effect from 28 September 2020. These Regulations also provide that any defendant under the age of 18, remanded on or after 28 September 2020, will no longer be subject to the extended CTL. **We note this exclusion but remind the House of the concerns expressed in our Report on the 2020 Regulations<sup>11</sup> about the effects on the mental health of anyone remanded for such a long time and hope that the backlog of cases, which is only in part due to the pandemic, may soon be reduced.**

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8 Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2021/568](#)).

9 Commission Implementing Regulation (EU) No [2020/977](#).

10 Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 ([SI 2020/953](#)).

11 [27th Report](#), Session 2019-21 (HL Paper 131).

## **INSTRUMENTS OF INTEREST**

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### **Draft Authority to Carry Scheme and Civil Penalties Regulations 2021**

19. This instrument will bring into effect the second Authority to Carry Scheme, to prevent certain individuals from travelling to or from the UK. The original scheme, made under counter-terrorism law, came into effect in 2015, and specifies the carriers (aircraft, ships and trains) and the classes of person to whom the scheme applies, the grounds for refusing authority to carry, and the process for carriers to check individuals. The fine for carriers in breach of these requirements is up to £50,000 on each occasion.
20. The Authority to Carry Scheme 2021<sup>12</sup> has been updated to reflect the UK leaving the EU and adds further classes of people who will not be allowed to travel: individuals with visas that have been cancelled or revoked; individuals subject to travel-related UK sanctions; individuals who have been refused leave to enter the UK under article 7 of the Immigration (Leave to Enter and Remain) Order 2000 and those intending to leave the UK using an invalid travel document. The Explanatory Memorandum states that around 8,000 people were refused entry under the previous scheme of which over half had stolen or invalid travel documents. The scheme will lapse seven years after coming into effect.

### **Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021 (SI 2021/83)**

21. This instrument repeals an EU Regulation which establishes a framework for the free flow of non-personal data in the EU.<sup>13</sup> According to the Department for Digital, Culture, Media and Sport (DCMS), the EU Regulation aims to reduce public sector data localisation mandates for non-personal data. Data localisation mandates mean that commercial organisations must store data in a territory as a condition of doing business in that jurisdiction. Unjustified localisation mandates are considered protectionist in terms of global trade. The EU Regulation also encourages the development of codes of conduct, making data portability and provider switching less onerous. According to DCMS, the effects of the EU Regulation mean that, in practice, the UK Government is obliged to establish a “single point of contact” with responsibility to notify the Commission if the UK wishes to introduce a mandate for non-personal data localisation, or make a change to any existing policies; assist EU Member States in terms of data localisation queries/potential infringements; provide business information and promote the codes of conduct; and engage with the Commission to report justified exemptions. DCMS says that if the EU Regulation is not repealed, these obligations will continue to apply to the UK unilaterally.
22. We agreed to the negative procedure when these Regulations were laid for sifting as a proposed negative instrument, as there is not any substantial or impactful policy change: the repeal of the EU Regulation is considered necessary to avoid a unilateral, albeit minor, obligation on the UK after the end of the Transition Period. We note, however, that while this policy is supported by the Devolved Administrations, there is a disagreement between the UK Government and Welsh Ministers on legislative competence in this area, as set out in the Explanatory Memorandum. The Welsh Parliament is aware of this issue.

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<sup>12</sup> [Draft Authority to Carry Scheme 2021](#).

<sup>13</sup> [Regulation \(EU\) 2018/1807](#).

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

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

Authority to Carry Scheme and Civil Penalties Regulations 2021

Northamptonshire (Structural Changes) (Supplementary Provision and Amendment) Order 2021

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

SI 2021/97 Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021

### **Instruments subject to annulment**

SI 2021/70 Sexual Offences Act 2003 (Prescribed Police Stations) (England and Wales) (Amendment) Regulations 2021

SI 2021/75 Traffic Signs (Coronavirus) (Amendment) (England) Regulations 2021

SI 2021/76 Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2021

SI 2021/78 Official Controls (Temporary Measures) (Coronavirus) (Amendment) Regulations 2021

SI 2021/80 Criminal Legal Aid (Remuneration) (Amendment) Regulations 2021

SI 2021/81 Merchant Shipping (Counting and Registration of persons on board Passenger Ships) (Amendment) Regulations 2021

SI 2021/82 M271 Motorway (Junction 1 to Redbridge Roundabout) (Fixed Speed Limits) Regulations 2021

SI 2021/83 Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021

SI 2021/91 Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2021

SI 2021/94 Organic Control (Amendment) Regulations 2021

SI 2021/98 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 5) Regulations 2021

## **APPENDIX 1: OFFICIAL CONTROLS (TEMPORARY MEASURES) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2021 (SI 2021/78)**

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### **Additional information from the Department for Environment, Food and Rural Affairs**

*Q1: Paragraph 2.1 of the EM states that the precise list of goods and documents to which the easement apply will be published as soon as possible. Has this information been published yet, and if so, where?*

A1: This instrument was laid to have legal powers in place to continue with a number of easements that are needed in relation to official controls and official activities, to ensure a continued flow of trade during the pandemic.

All easements are assessed according to their public, animal and plant health risk, and only those that constitute a low risk are adopted.

All easements currently in place can be accessed on the websites for the respective policy areas to which they apply. A gov.uk page will be created with an overview of all easements within the next weeks.

The precise list of goods and documents related to the imports of animals and animal products, to which these easements apply, can be found on the Animal & Plant Health Agency's (APHA) [website](#).

The information is set out in the form of guidance to Official Veterinary Surgeons ('OVS notes') at Border Control Posts (BCPs). OVS notes are publicly available and provide information on technical details/advice related to third country import controls for animals and animal products.

The information is sent to BCP after a change has been agreed and then uploaded to APHA's website. OVS notes are not limited to changes resulting from Covid-19 but cover any updates to our imports system of technical nature. Updates can be consequences of changes to legislation or administrative changes.

This instrument provides powers for the introduction of further easements related to official controls and other official activities. All animal health easements must be presented to the Animal Policy Group (APG) before they can be applied. APG consist of the four UK Chief Veterinary Officers (for the UK, Wales, Scotland and Northern Ireland) as well as Senior Civil Servants at Defra, the Food Standards Agency (FSA) and equivalent bodies in the Devolved Administrations. APG monitors and reviews all easements on a regular basis around their continued need.

Plant health easements are assessed by the UK Plant Health Risk Group which includes the Devolved Administrations and UK Chief Plant Health Officers.

*Q2: Could you provide examples of the types of goods and documents to which the instrument will apply?*

A2: This instrument gives us legal powers to continue with and introduce new easements related to official controls and official activities, for a temporary period, in order to contain risks of serious disruption caused by the pandemic. The European Commission originally adopted this instrument last year to give the UK and Member States powers to apply easements to their official controls systems and related activities if they wished to do so.

One of the easements that was introduced last year has given BCPs powers to accept electronic copies of official certificates and attestation instead of originals that are usually required for third countries imports of commodities subject to food and feed, plant health, animal health and welfare legislation.

The easement applies to certain products of animal origin (POAO) including fish and fishery products for human consumption, animal by-products (ABP), high-risk food and feed not of animal origin (HRFNAO) and plants, plant products and other objects regulated by the Plant Health Regulation. Some exclusions apply such as for live animals and animal products derived from porcine meat due to their higher biosecurity risk and risk for spread of disease.

This easement was introduced as a result of lockdown measures and impacts on operators across the globe resulting from the pandemic. This prevented operators from being able to provide original certification and attestations that are required to accompany the consignment under normal circumstances. In the absence of this easement imports from third countries would be held at the border, leading to trade disruptions.

*Q3: The instrument applies to official controls in Great Britain (GB). Does that mean that the easement applies to goods being moved from Northern Ireland (NI) to GB? What are the arrangements in NI — will hard copies of documents have to be submitted in NI, including for goods imported from GB?*

A3: The SI provides a legal basis to introduce easements related to official controls and related activities, be it for internal movements or third country imports. As regards the easement on allowing electronic certification, the easement can only apply to movements where official certification and documentation is required to accompany the consignment. For movements from NI to GB, this would only be the case for animals and germinal products. However, the current easement in place does not include those commodities.

The European Commission has amended the EU equivalent Implementing Regulation 2020/466, which makes similar changes to their legal instrument, i.e. it has been extended until 1 July and Article 3 has been re-instated. This means that NI has legal powers to apply the same easements as GB.

*Q4: Paragraph 7.1 refers to temporary easements that have been in place in 2020. Could you provide an example of these easements and the legislation that introduced them?*

A4: As a result of the Covid-19 outbreak the European Commission adopted an Implementing Regulation 2020/466 at the beginning of last year, providing the UK and EU Member States with the option to implement temporary measures related to official controls and official activities to prevent disruption to intra-EU and third country trade. The UK made use of this and introduced a number of easements.

These include:

- To permit documentary checks based on copies/electronic documents instead of the original signed documentation for certain commodities imported from third countries.
- To permit electronic Intra Trade Animal Health Certificates (ITAHC) and journey logs submitted through TRACES (if applicable) and by email for intra-EU livestock imports.

- To permit UK Official Veterinarians (OVs) to certify livestock for export based on facts, knowledge and data provided by private veterinarians.
- To allow competent non-Official persons to assist with physical checks on some third country imports.
- To allow officials to carry out remote documentary check.

A number of other easements were introduced last year. Most of these easements have in the meantime been withdrawn as they are no longer needed.

*Q5: Paragraph 7.2 refers to third country imports — does that include EU imports?*

A5: EU Member States are considered third countries since 1 January 2021. However, a different approach applies to sanitary and phytosanitary checks for EU imports, which are being phased in over the first six months of 2021.

For imports of animals and animal products, there are no new check related to EU imports in the first three months of 2021. From April, a new requirement will become applicable to EU imports of products of animal origin (POAO), requiring these to be pre-notified on our imports system IPAFFS, to be accompanied by a GB health certification and to undergo remote documentary checks. Until April, the easements currently in place will not be applicable to EU imports.

GB measures for plants and plant products have been adapted to suit UK rather than EU risk profiles and so phytosanitary certificates are needed from 1 January 2021 for high risk plants and plant products, with subsequent changes phased in over 6 months.

*Q6: Paragraph 7.2: what does it mean in practice that original documents will have to follow “as soon as technically possible”? Does it mean that hard copy documents will have to be submitted eventually for all relevant imports that take place between 1 February and 30 June? Does this not create a backlog that will have to be processed? How will it be monitored/enforced whether hard copies are submitted later?*

A6: For animal health, BCPs have been instructed to keep track of all consignments that are subject to the easement, which allows BCPs to accept electronic copies of official certificates instead of originals that are usually required for imports from third countries, and which are not accompanied by original documentation. BCPs should request a declaration from the operator to agree to submit original documents as soon as possible. Ten working days is the guided timescale. If no documents are received within this time period, the BCP should contact the competent authority in the exporting third country to seek an authenticated copy of the original document. If after a further ten working days nothing has been received from the competent authority, then the BCP should contact either Defra or the FSA for further advice.

*Q7: Paragraph 7.2 also says that the instrument reinstates Article 3 of the EU Regulation to enable checks to be carried out by “appropriately authorised, trained and qualified natural persons under the supervision of the competent authority”, and that this Article had previously been revoked. Why was the Article revoked previously and why is it being re-instated now?*

A7: The reason for re-instating Article 3 was to have legal powers in place to re-introduce easements, which have previously allowed BCPs to draw on natural persons specifically authorised by the BCP on the basis of their qualifications,

training and practical experience to carry out, on an exceptional basis, official controls in GB.

The Food Standards Agency (FSA) and Food Standards Scotland (FSS) also requested for re-instating Article 3 to provide a legal option for a possible introduction of easements in relation to staff undertaking official controls in meat establishments (slaughterhouses and cutting plants) that were previously made available in 2020 under EU law.

In April last year, a number of easements were introduced that drew on these powers. One easement allowed non-Official Veterinarian (non-OV) staff at BCPs to perform or assist with checks under the supervision of an Official Veterinarian (OV). Another easement that was introduced under this Article was to permit trainee Official Auxiliaries (OAs) to undertake certain low risk tasks under the supervision of an Official Veterinarian (OV) or OA related to controls in approved meat establishments. These easements were introduced to help address serious disruptions to official controls due to capacity issues with staff having to self-isolate and adhere to social distancing measures. All easements were withdrawn last year following the revocation of Article 3 of the Commission Implementing Regulation 2020/466, which had provided a legal basis for these easements.

Staff at BCPs and meat establishments continue to stress that they are facing capacity issues due to Covid and would benefit from any easements that would allow them to draw on further resources for the performance of official controls, which is why the Article was re-introduced in the instrument.

Please note that these easements do not enter into force automatically through the instrument. The instrument provides us with legal powers to re-introduce them.

**1 February 2021**

## APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 9 February 2021, Members declared the following interests:

### **Domestic Renewable Heat Incentive Scheme and Renewable Heat Incentive Scheme (Amendment) Regulations 2021 (SI 2021/76)**

The Earl of Lindsay

*Chairman, United Kingdom Accreditation Service (UKAS)*

### **Attendance:**

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Lord Cunningham of Felling, Lord German, Viscount Hanworth, Lord Hodgson of Astley Abbots, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.

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