

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

48th Report of Session 2019–21

Drawn to the special attention of the House:

Heather and Grass etc. Burning (England) Regulations 2021

Includes information paragraphs on:

4 instruments relating to COVID-19

Draft Administration (Restrictions on Disposals etc. to Connected Persons) Regulations 2021

Draft Audiovisual Media Services (Amendment) Regulations 2021

Draft Direct Payments to Farmers (Reductions and Simplifications) (England) (Amendment) Regulations 2021

Draft Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021

Draft Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021

Draft Registration of Marriages Regulations 2021

Cumbria (Changes to Years of Elections) Order 2021 and two related instruments

Restriction of Public Sector Exit Payments (Revocation) Regulations 2021

Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) Regulations 2021

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 22 February 2021, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, and 23(1) of the European Union (Withdrawal) Act 2018 and section 31 of the European Union (Future Relationship) Act 2020..

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/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 hseclegscrutiny@parliament.uk.

Forty Eighth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Heather and Grass etc. Burning (England) Regulations 2021 (SI 2021/158)

Date laid: 16 February 2021

Parliamentary procedure: negative

This instrument bans the burning, without a licence, of heather and other vegetation on protected blanket bog habitats. The instrument also specifies when the Secretary of State, as the licensing authority, may grant a licence for burning, for example when this is considered necessary to reduce the risk of wildfire. A submission we have received from Wildlife and Countryside Link criticises that the ban is limited in scope and raises concerns about the licensing regime, in particular that key aspects of the decision-making process are to be provided in future guidance, and about the wider context of the UK hosting the global climate conference (COP 26) later this year.

We are concerned that as key aspects of the Secretary of State's decision-making in relation to licences will be set out in guidance there is limited time available for the Department to consult on the new guidance before licensing applications can be made ahead of the start of the burning season on 1 October.

We also take the view that the Department should have been clearer about the size of the areas of peatland that will be affected by the ban on unlicensed burning, as the different metrics and reference points used in the Explanatory Memorandum are a source of confusion. Given the environmental significance of England's peatlands, and that the Department regards the instrument as a "crucial step in delivering the aims of the England Peat Strategy and to meet nature recovery and climate change mitigation and adaptation targets", the House may wish to examine these issues further.

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

1. This instrument has been laid by the Department for Environment, Food and Rural Affairs (Defra) with an Explanatory Memorandum (EM). The instrument bans the burning, without a licence, of heather and other vegetation on protected blanket bog habitats.¹ The instrument also specifies the grounds on which the Secretary of State, as the licensing authority, may grant a licence for burning, for example where this is considered necessary to reduce the risk of wildfire.

¹ Blanket bog is mostly an upland habitat where peat has accumulated.

Background

2. Defra explains that England's peatlands are the nation's largest carbon store, as well as a haven for rare wildlife, an important part of the cultural heritage and natural providers of water regulation. While the UK's blanket bog is also of global importance, accounting for 13% of the world's blanket bog, only around 12% of peatlands are in a near natural state, with the remainder having been degraded by practices such as rotational burning. According to Defra, rotational burning is used as a land management tool on moorland and blanket bog and involves controlled burning on patches of heather during winter months, typically on an eight to 12-year rotation.² The practice is used to support grouse shooting, as burning of heather promotes young shoots, which grouse feed on.³ Defra says that there is a consensus that burning on blanket bog is environmentally damaging, making it more difficult to restore these habitats to their natural state and to restore their hydrology.
3. The Department says that rather than absorbing and storing carbon, degraded peatland currently releases approximately 11 million tonnes of carbon dioxide equivalents annually, equivalent to 24% of the emissions reported for the UK's agriculture sector in 2017. As peatland restoration will contribute to the Government's targets on nature recovery and help to achieve net zero carbon emissions by 2050, the Government have committed to restore 35,000 hectares of peatlands by 2025, and to publish England's first comprehensive Peat Strategy later this year.⁴

Changes made by this instrument

4. This instrument bans the burning, without a licence, of specified vegetation, such as heather, rough grass, bracken or gorse on peat over 40 centimetres in depth in a protected blanket bog habitat. This is defined as a Site of Special Scientific Interest (SSSI) that is also a Special Area of Conservation (SAC) and/or a Special Protection Area (SPA). The instrument also sets out the grounds on which the Secretary of State, as the licensing authority, may grant a licence for burning. This may be, for example, where it is considered necessary or expedient to reduce the risk of wildfire or for conservation purposes, or where the land is too steep or rocky to use machinery.⁵ According to Defra, the instrument does not make provision for the regulation of accidental fires, such as those caused by military training.
5. Defra says that new guidance will specify where and when burning may be appropriate and under what circumstances it may be licensed. The guidance will also set out the licence application process and the evidence applicants

2 Defra, Press Release, *England's 'national rainforests' to be protected by new rules*, 29 January 2021: <https://www.gov.uk/government/news/englands-national-rainforests-to-be-protected-by-new-rules>. [accessed 25 February 2021].

3 See the Committee on Climate Change, *Land use: Policies for a Net Zero UK*, (January 2020): <https://www.theccc.org.uk/publication/land-use-policies-for-a-net-zero-uk/> [accessed 25 February 2021].

4 While peat used in horticulture is not subject of this instrument and is extracted from areas which are not covered by these Regulations, we note that the Department intends to address the horticultural use of peat separately. Defra says that while there has been some progress, voluntary targets to phase out the horticultural use of peat in the amateur sector by 2020 and the professional sector by 2030 have not succeeded: The total volume of peat sold in the UK was 25% lower in 2019 than in 2011. The Department therefore intends to consult later this year on further measures to end the horticultural use of peat.

5 The specified grounds are (a) for the conservation, enhancement or management of the natural environment for the benefit of present and future generations; (b) for the safety of any person; (c) to reduce the risk of wildfire; or (d) because the specified vegetation is inaccessible to mechanical cutting equipment and any other method of management is impracticable.

will need to provide if seeking to burn on protected deep peat. The guidance will build on the Heather and Grass Burning Code 2007⁶ and on Natural England’s position statement on burning as a tool for restoration.⁷ Defra says that the guidance will be published in sufficient time to enable applications for licences to be made before this year’s burning season starts on 1 October.

6. According to Defra, around a third of protected blanket bog currently has consent for rotational burning and previous voluntary measures to cease burning have not worked, primarily because of the reluctance of landowners to adopt more sustainable practices. Defra says that this instrument will protect around 142,000 hectares of deep peat, equivalent to 90% of the SSSI designated blanket bog habitat and 40% of the upland deep peat, and that the measures are a “crucial step in delivering the aims of the England Peat Strategy and to meet nature recovery and climate change mitigation and adaptation targets”.

Submission by Wildlife and Countryside Link

7. We have received a submission from Wildlife and Countryside Link (WCL)⁸ which criticises that the ban is limited in scope and raises concerns about the licensing regime and the wider context of the UK hosting the global climate conference (COP 26) later this year. We are publishing WCL’s submission and Defra’s response in full on our website.⁹

Scope of the ban

8. WCL says that only 109,043 hectares of English upland peat meet the specifications of the ban, out of a total of 355,000 hectares, so that “the maximum application of the ban would see it protect approximately 30.7% of English upland peat”, while “At least 69.3% of upland peat is excluded from the ban as it is outside the specification for a designated site”, adding that “changing the specification for designation to a site being in an SSSI or a SAC or SPA would widen the proportion of upland peatland protected by the ban.”
9. We put this concern to the Department, which responded that:

“It is correct to point out that the proposed regulations will only apply to [SSSI] that are also [SAC] or [SPA]. It is, however, important to recognise the current regulatory landscape. As it currently stands, a third of protected blanket bog have consents for rotational burning, having been granted these consents when the scientific consensus on the effects of burning was less known. This land is held by 124 landowners/land managers whilst the remainder is managed by other methods. Since 2017, the Government has worked with landowners and land managers to promote alternative management practices to burning, and to achieve a voluntary cessation of rotational burning on protected blanket bog

6 See: Defra and Natural England, *The Heather and Grass Burning Code*, 2007 Version: <http://gfmc.online/programmes/natcon/UK-DEFRA--Heather-Grass-Burning-Code-2007.pdf> [accessed 25 February 2021].

7 Natural England, *Burning as a tool for the restoration of upland blanket bog: Position Statement from Natural England (UPS01)*, 4 November 2020 : <http://publications.naturalengland.org.uk/publication/6647144950005760> [accessed 25 February 2021].

8 WCL brings together 57 organisations, including Client Earth, Friends of the Earth, the RSPCA, Greenpeace, the National Trust, the WWF and the RSPB.

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

sites. At the time of writing, 47% of consents to burn have been removed and approximately half of the remaining consents are in perpetuity. The Government has previously stated that if voluntary measures to cease burning on blanket bog did not work it would put in place legislation to achieve this. These Regulations are the result.

The regulations directly address the issue of burning of vegetation where a valid consent is held but, importantly, does not seek to replace or supplant existing regulatory measures designed to prevent damaging land management practices. It instead seeks to regulate the most damaging practices on our most protected sites.”

10. **We note the additional explanation about the scope of the ban but take the view that the Department should have been clearer about the actual size of the areas covered by the ban and the peatlands currently subject to rotational burning as well as those areas where consent to burn has already been removed: the mix of percentages, hectares and other metrics and the use of different reference points, such as “protected blanket bog habitat”, “peatlands” or “upland deep peat”, are a source of confusion and make it difficult to assess the extent and impact of the ban on unlicensed rotational burning.**

Licensing regime and guidance

11. WCL criticises that while the instrument gives the Secretary of State the power to grant a licence to permit burning in a designated site on a number of specified grounds, the instrument does not contain an evidence threshold which licences made on these grounds will have to meet, and that “even in the 30% of upland peat habits covered, the protection offered can be revoked by a licence”. WCL says that because there is no specified standard of evidence that an application for such a licence must meet to be successful, this “constitutes an incomplete and imperfect protection for upland peat”. WCL adds that “requirements to meet a tight definition of inaccessibility, to provide evidenced support from the local fire authority for wildfire prevention burning, and to provide evidenced support from Natural England for conservation burning, would provide a standard of evidence for burning licence applications to meet.”
12. Defra responded that in addition to the circumstances where the Secretary of State will have the power to grant a licence, “there is also the power of the Secretary of State to refuse to grant a licence or to issue a licence with conditions”, and that it is:

“worthwhile noting that in making any such decision, the Secretary of State will be obliged to receive and consider the advice of Natural England and consider the requirements of the Conservation of Habitats and Species Regulations 2017. Whilst the Secretary of State must consider the advice of Natural England, he may also seek the advice of other stakeholders and interested parties, including the local Fire and Rescue Service, for example.”

13. The Department added that:

“much of the detail of how this regulation will be administrated will be set out in new guidance. [...] We consider that this guidance is the proper place to detail the evidence that is required upon which the

Secretary of State may grant a licence; including such detail within the regulations would restrict our ability to respond with agility to changes in the scientific and environmental consensus. We have always planned to seek the views of stakeholders such as those represented by [WCL], to ensure that the guidance that is developed supports and encourages sustainable land management practices that reflect our ambitions to restore and protect our peatlands. We will also be engaging with the Chief Fire Officers Association to ensure that their expertise is available to the Secretary of State when they come to make their determinations under the regulations.”

14. **We have previously criticised a blurring of the distinction between guidance and legislation and have raised this with the Leader of the House of Commons¹⁰ who told us that “as a general principle, legislation needs to be detailed and clear enough that guidance does not need to be relied upon for the purposes of interpretation”. We acknowledge that the licensing of rotational burning on protected blanket bog is site specific and involves complex assessments, but the House may wish to press the Minister further about Defra’s explanation that including detail in relation to the evidence that will be required for the Secretary of State to grant a licence for burning in the instrument would have restricted the Department’s ability to respond quickly to changes in the scientific and environmental consensus. This raises questions about the extent of the Secretary of State’s discretion in the decision-making process, in the absence of the guidance which is yet to be published and which the Committee was therefore unable to scrutinise. We also draw to the attention of the House our concern that the timetable appears to be very tight: the Department intends to consult with key stakeholders on the new guidance which needs to be in place before licensing applications can be made ahead of the start of the burning season on 1 October.**

COP 26

15. WCL says that while COP 26 will see the Government champion nature-based solutions to climate change, this advocacy “will be undermined if it takes places against a backdrop of burning on our peatland habitat.”
16. The Department responded that:

“We have always been clear of the need to phase out rotational burning of protected blanket bog to conserve these vulnerable habitats. [...] These regulations represent a crucial step in meeting the Government’s nature and climate change mitigation and adaptation targets, including the legally binding commitment to reach net zero carbon emissions by 2050.

In developing these regulations, the Government has sought to recognise that burning, in strictly limited circumstances, can represent an effective and legitimate approach when used as part of a cohesive restoration or wildfire management plan. Indeed, the need to protect our peatlands from the threat of wildfire is greater than ever and action to address the threat, both short term removal of fuel load and longer-term restoration

¹⁰ Letter from the Rt Hon. Jacob Rees-Mogg MP, 14 February 2021, regarding guidance and legislation: <https://committees.parliament.uk/publications/4929/documents/49319/default/>.

of these sites, has required greater consideration. The licensing regime represents a means of ensuring that burning only take place in the right place, at the right time and for the right reasons. [...]

The proposed regulation will bring an estimated 62% of the blanket bog habitat in England under regulatory protection from burning; it will do this by making both a consent from Natural England and the requirement for a licence from the Secretary of State a legal requirement, whilst addressing the issue of consents held in perpetuity by landowners.”

17. Defra concludes that:

“The new regulations represent a significant step forward in protecting peat and we recognise that efforts to restore and protect peat extends beyond this specific regulation. All peat is important, and we are committed to the sustainable management of England’s peatlands. The Chancellor announced in March 2020 that as part of the Nature for Climate Fund, 35,000 [hectares] of peatland restoration would be achieved over the next 5 years. We have also commenced a project to map England’s peatlands so that we can better understand where our restoration efforts can be best deployed and, critically, can most effectively focus our protection measures. These actions represent significant steps forward in our restoration and protection efforts and will require us to continue to work closely with a wide range of stakeholders.

The Government will be setting out further measures to restore, protect and manage England’s peatlands this year as part of a package of measures to protect England’s landscapes and nature-based solutions.”

Conclusion

18. The submission we have received from WCL raises a number of concerns about the Government’s approach to the protection of England’s peatlands, including about the limited scope of the ban on rotational burning and the licensing regime, in particular that key aspects of the Secretary of State’s decision making on licences will be set out in guidance rather than in this instrument. **We draw to the attention of the House this matter and also that concerning the limited time available for the Department to consult on the new guidance before licensing applications can be made ahead of the start of the burning season on 1 October. The House may wish to examine these matters further.**
19. **We also take the view that the Department should have been clearer about the size of the areas of peatland that will be affected by the ban on unlicensed burning, as the different metrics and reference points used in the Explanatory Memorandum are a source of confusion. Given the environmental significance of England’s peatlands, and that the Department regards this instrument as “a crucial step in delivering the aims of the England Peat Strategy and to meet nature recovery and climate change mitigation and adaptation targets”, the House may wish to examine these issues further as well.**
20. **The instrument is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.**

INSTRUMENTS RELATING TO COVID-19

Changes to business practice and regulation

Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) Regulations 2021 (SI 2020/177)

21. This instrument extends until 30 April 2021 the effects of two earlier instruments, so that the period during which various statutory entitlements based on a week's pay and connected with termination of employment are not reduced as a result of an employee being furloughed under the Coronavirus Job Retention Scheme (CJRS). Without this instrument, the protection would end on 31 March 2021. This is the second extension¹¹ and reflects the extension of the CJRS by HM Treasury until 30 April 2021 (as of 23 February 2021). The entitlements that are protected include redundancy pay and compensation for unfair dismissal. The instrument also extends the effect of the earlier instruments regarding how a week's pay is to be calculated for the purpose of deciding whether an employee is taken to be on short-time for statutory purposes.

Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2021 (SI 2021/185)

22. An airport 'slot' is a permission to use all necessary airport infrastructure to operate an aircraft at a specified date and time for take-off or landing, and is a valuable commercial asset to an airline. Slot administration normally operates a "use-it-or-lose-it" rule, which gives an airline that has used its slots at least 80% of the time in the winter or summer season an entitlement to the same slots in the upcoming equivalent season. Due to the pandemic passenger numbers have declined and so a previous instrument waived the 80% usage requirement until 27 March 2021.¹² As conditions have not yet improved this instrument further suspends the rule for the Summer 2021 season, and these Regulations will expire on 30 October 2021.

Public Services

Health and Care Professions Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021 (SI 2021/167)

23. This instrument came into effect immediately before the Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021,¹³ laid on 14 January 2021, to correct an error. The original Order makes **permanent changes** to amend the procedural rules for the Health and Care Professions Council's three Practice Committees, which conduct fitness to practise proceedings, and the procedural rules for its Appeal Panel, which hears appeals against registration decisions, to provide for the service of documents by electronic means. The original Order omitted provisions specifying the day on which a document being sent by email is treated as having been sent — which is a legal requirement. The current Order corrects that to state that "Any communications sent for the purposes of these Rules is to be treated as having been sent on the day the communication was posted or sent by electronic mail."

11 [SI 2020/814](#), protected furloughed employees until 31 October 2020. Following the extension of the CJRS, this period was extended until 31 March 2021 by [SI 2020/1296](#).

12 [Draft](#) Airports Slot Allocation (Amendment) (EU Exit) Regulations 2021 (made as 2021/100).

13 [SI 2021/27](#).

Law and Order

Draft Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021

24. These Regulations temporarily extend the proxy vote provisions so that those who have, or may have, coronavirus (for example, are experiencing symptoms) close to polling day would be able to apply for an emergency proxy vote without producing a positive test result and without their application having to be attested by a medical professional. Electors in the shielding category would also be eligible to vote by proxy under these provisions. Additionally, the Regulations provide the flexibility for a person who has a long-term proxy arrangement to appoint a new proxy if their original nominee is affected by COVID-19 and unable to attend the polling station. Applications for proxy votes or changes to them can be made up to 17:00 on polling day. This instrument will expire on 28 February 2022.

INSTRUMENTS OF INTEREST

Draft Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021

25. This instrument proposes changes to address concerns about so-called pre-pack administration or sales. This occurs when a purchaser of an insolvent company's business is found prior to administration, with the sale executed at or shortly after the appointment of an administrator. According to the Department for Business, Energy and Industrial Strategy (BEIS), there has been criticism of pre-pack sales which happen before the creditors are given an opportunity to vote on the administrator's proposals to sell a company's business or assets. Recent examples of pre-pack sales include House of Fraser in 2018 and Debenhams in 2019. While BEIS says that the speed with which a pre-pack sale takes place helps to preserve jobs and the value in the business, there are concerns about the lack of transparency for creditors, and the fact that in many cases the business or assets are purchased by the same owners or others connected with the insolvent company.
26. BEIS explains that voluntary measures that were introduced following an independent review¹⁴ into pre-pack sales in 2014 have resulted in some improvement, but that there are still concerns about transparency. This instrument therefore requires that if a person intends to acquire a business or assets from a company in administration within the first eight weeks of administration, and that person is connected to the insolvent company, they must seek an independent opinion from an evaluator on the purchase, unless creditors have approved the sale. The instrument sets out certain requirements for the person acting as evaluator, such as the need for indemnity insurance, and includes measures to prevent a person from obtaining multiple evaluator reports in the hope that one will be favourable. BEIS says that the mandatory referral to an independent third party will provide creditors with greater assurance that such a sale is appropriate in the circumstances of the insolvency.

Draft Audiovisual Media Services (Amendment) Regulations 2021

27. Amongst other changes, this instrument introduces an ambulatory reference to the latest definition of "European works" and the associated guidance, to ensure that UK domestic law references the relevant definition and guidance automatically should this be updated in EU law. The Department for Digital, Culture, Media and Sport (DCMS) says that the automatic reference will not apply if the EU 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.
28. 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),¹⁵ with a power to co-operate in relation to harmful

14 Insolvency Service, *Graham review into Pre-pack Administration* (June 2014): <https://www.gov.uk/government/publications/graham-review-into-pre-pack-administration> [accessed 4 March 2021].

15 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), [OJ L 95/1](https://eur-lex.europa.eu/eli/dir/2010/13/oj), 15 April 2010.

online content. DCMS says that the sharing of information by Ofcom with EU regulators is vital to ensuring that UK users remain protected: “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”. 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 states ... abiding by its commitment to protecting minors from damaging content online”.

29. 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 after EU exit, 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.¹⁶ While the Government have committed to tackling online harm, especially in relation to young people, through an Online Harms Bill, there is currently not a clear timetable for this Bill. Given these uncertainties, we recommended an upgrade of this instrument to the affirmative procedure when it was laid for sifting under the European Union (Withdrawal) Act 2018.

Draft Direct Payments to Farmers (Reductions and Simplifications) (England) (Amendment) Regulations 2021

30. This instrument proposes reductions to the Direct Payments made to farmers in England for the 2021 claim year, following the UK’s exit from the EU and the end of the Transition Period. The reductions are progressive, as set out last year,¹⁷ and range from 5% for Direct Payments of up to £30,000 to 25% for Direct Payments of £150,000 or more. This means that for a claim worth £40,000, for example, a 5% reduction will be applied to the first £30,000 (a reduction of £1,500), and a 10% reduction will be applied to the next £10,000 (a reduction of £1,000), with a total reduction by £2,500 to £37,500. The Department for Environment, Food and Rural Affairs (Defra) says that all funding released from these reductions will be re-invested into delivering new domestic schemes so that the same level of funding will be maintained throughout this Parliament. The additional support will be made available through a number of schemes, grants and other types of support for farmers to manage land and their businesses more sustainably.¹⁸
31. The instrument also ensures that Direct Payments will be calculated in sterling and changes the rules for the recovery of overpayments and payment entitlements: the current euro thresholds below which the Rural Payments Agency (RPA) does not need to recover overpayments or payment entitlements or charge interest are removed. Defra says that instead, when deciding whether recoveries should be made, the RPA will apply the principles set out in HM Treasury’s Managing Public Money guidance.¹⁹

¹⁶ See: [30th Report](#), Session 2019–21 (HL Paper 146) and [32nd Report](#), Session 2019–21 (HL Paper 159).

¹⁷ Defra, *The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024* (November 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954283/agricultural-transition-plan.pdf [accessed 4 March 2021].

¹⁸ *Ibid.*

¹⁹ HM Treasury, *Managing public money* (updated September 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835558/Managing_Public_Money_MPM_with_annexes_2019.pdf [accessed 4 March 2021].

Draft Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021

32. The Department for Environment, Food and Rural Affairs (Defra) states that while there will be no changes to policy, some of the amendments made by this instrument will have “real world” effects on food information and the way in which it is presented to consumers. For example, in relation to the origin of meat (excluding beef which is dealt with by separate legislation), the instrument will require the use of a “non-UK” rather than “non-EU” origin designator. This new requirement does not preclude the use of a designator that shows the specific country of origin. The instrument includes a 21-month adjustment period to give businesses time to adjust to the new requirement, with similar legislation planned in Wales and Scotland, so that the continued use of “EU” or “non-EU” origin designators will be allowed across Great Britain (GB) until 1 October 2022.
33. We note that, as consumers will no longer be able to tell whether meat (excluding beef) is from the EU or not after the adjustment period, this may have the potential of reducing key information that is available at present about the origin of a product and therefore about the associated food standards. We also note that after the adjustment period, different requirements will apply in GB and Northern Ireland (NI) where EU requirements will continue to apply as a result of the NI Protocol. Defra told us that “further steps will be taken to continue unfettered access for NI food products to the GB market”.
34. Given the sensitivities around future food standards and the potential impact of different labelling requirements on trade between NI and GB, we recommended an upgrade of this instrument to the affirmative procedure when it was laid for sifting under the European Union (Withdrawal) Act 2018.

Draft Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021

35. This instrument proposes amendments to ensure that the UK can operate a domestic Kyoto Protocol (KP)²⁰ registry that is independent of the EU-wide software platform, the Consolidated System of European Union Registries (CSEUR), which the UK used until the end of the Transition Period (TP). The Department for Business, Energy and Industrial Strategy (BEIS) says that following the end of the TP, the UK is establishing its own domestic KP registry to replace the CSEUR, so that it can continue to comply with its international obligations under the KP. According to BEIS, the IT platform for the new UK KP registry is currently in development and is due to be operational in Spring 2021. Until then, UK businesses that wish to trade KP units will have to open KP accounts in other countries’ registries.
36. Asked about the impact of this gap on industry, the Department told us that it is not aware of any UK businesses having opened KP accounts in other countries’ registries. We also asked BEIS when in Spring the new UK KP registry would become operational. The Department told us that the intention was for users to be able to register on the system from 1 May 2021, and for the registry to be ready for trading KP units in June 2021. We are publishing further information the Department provided about the new registry and how it will operate at Appendix 1.

²⁰ The KP is a protocol to the United Nations Framework Convention on Climate Change (UNFCCC), which is an international climate change treaty to which the UK is a party. The KP sets out emission reduction obligations for the EU and certain countries, including the UK.

Draft Registration of Marriages Regulations 2021

37. These Regulations, in conjunction with other primary and secondary legislation, will modernise the Marriage Act 1949, to enable the introduction of an electronic ‘schedule system’ for the registration of marriages in England and Wales, rather than couples signing a paper marriage register. The details will then be added to an electronic register by the registrar and a paper certificate issued. The schedule system allows more flexibility in the content of the marriage entry, so that the details of both parents of the couple may be entered, including same sex parents’ names, instead of just the father’s name and occupation as now. The General Register Office states that as well as reflecting family circumstances in society today, the move to an electronic system is expected to reduce costs by approximately £34 million over 10 years.

Cumbria (Changes to Years of Elections) Order 2021 (SI 2021/174)

North Yorkshire (Changes to Years of Elections) Order 2021 (SI 2021/175)

Somerset (Change to Year of Election) Order 2021 (SI 2021/176)

38. These three instruments, which have been laid before Parliament together and share an Explanatory Memorandum, reschedule to 5 May 2022 the elections due to take place on 6 May 2021 to the county councils and district councils in Cumbria, North Yorkshire and Somerset. The instruments also extend the terms of office for councillors whose seats would have been up for election and make provision to ensure that any by-elections to fill vacancies on those councils take place.
39. The Ministry of Housing, Communities and Local Government (MHCLG) explains that the rescheduling of the elections avoids the possibility of the electorate being asked to vote for councils while they are at the same time being given the opportunity to express their views on the possible abolition of those councils as part of proposals to set up unitary authorities in these areas. The postponement also avoids members potentially being elected to serve short terms. MHCLG says that there is precedent for rescheduling elections where unitarisation is under consideration.

Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 (SI 2021/197)

40. This instrument revokes an earlier instrument²¹ which restricted public sector bodies from making exit payments above £95,000. During the debate of the earlier instrument²² and the passage of the Enterprise Bill,²³ concerns were raised that such a cap could adversely affect longer serving and lower earning employees, especially in local government. The Explanatory Memorandum to this instrument states that, following an extensive review, the Government have concluded that “the cap on public sector payments may have had unintended consequences”. Asked for more detail about these unintended consequences, HM Treasury (HMT) told us that:

21 Restriction of Public Sector Exit Payments Regulations 2020 ([SI 2020/1122](#)), [25th Report](#), Session 2019–21 (HL Paper 123).

22 HL Deb, 23 September 2020, [cols 1897–1909](#).

23 HL Deb, 4 November 2015, [cols 359 – 380](#).

“[I]t has become clear that there is a risk that — as drafted — the cap may cut across contractual rights in a way that would be difficult to justify in line with our original policy intent. HM Treasury has therefore revoked the 2020 Regulations and, for the time being, redundancy payments will default to those set out in the terms and conditions in employment contracts. We remain committed to taking forward measures at pace to ensure that exit payments represent value for money and ending taxpayer funded six figure payoffs for the best paid public sector workers.”

HMT says that following the removal of the cap, those who received an exit payment which had been capped under the earlier instrument, would be entitled to an additional payment.

Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) Regulations 2021 (SI 2021/199)

41. Ethanol is a biofuel that can be blended into petrol to reduce greenhouse gas emissions. The standard 95 octane grade, known as “premium” petrol in the UK, is currently blended with no more than 5% ethanol, a grade known as E5. These Regulations require its ethanol content to be increased to no more than 10% (E10) with effect from 1 September 2021. E10 petrol is suitable for the majority of petrol vehicles, but not some older vehicles and some petrol-powered equipment. This instrument therefore also ensures that “super” grade higher octane petrol remains E5 for those that need it.
42. The Department for Transport says in its Impact Assessment that that these changes are necessary to meet future legally binding carbon budgets: the policy could account for around 7% of the additional transport savings required under the fifth carbon budget (2028–2032). Biofuel blending levels are generally driven by a separate government scheme known as the Renewable Transport Fuel Obligation (RTFO) and the Explanatory Memorandum states that the current regulations will only be effective if RTFO targets are increased as soon as possible after E10 is introduced: that is planned for 1 January 2022.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Administration (Restrictions on Disposals etc. to Connected Persons) Regulations 2021

Audiovisual Media Services (Amendment) Regulations 2021

Direct Payments to Farmers (Reductions and Simplifications) (England) (Amendment) Regulations 2021

Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2021

Extradition Act 2003 (Codes of Practice and Transit Code of Practice) Order 2021

Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021

Greenhouse Gas Emissions (Kyoto Protocol Registry) Regulations 2021

Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Amendment) Regulations 2021

Registration of Marriages Regulations 2021

Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021

Instruments subject to annulment

SI 2021/167 Health and Care Professions Council (Coronavirus) (Amendment) (No. 2) Rules Order of Council 2021

SI 2021/170 Health and Care Professions Council (Registration and Fees) (Amendment) Rules Order of Council 2021

SI 2021/174 Cumbria (Changes to Years of Elections) Order 2021

SI 2021/175 North Yorkshire (Changes to Years of Elections) Order 2021

SI 2021/176 Somerset (Change to Year of Election) Order 2021

SI 2021/177 Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) Regulations 2021

SI 2021/178 National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2021

SI 2021/179 Police and Crime Commissioner Elections (Returning Officers' Accounts) (Amendment) Regulations 2021

SI 2021/182 High Speed Rail (Planning Appeals) (Written Representations Procedure) Regulations 2021

SI 2021/183 High Speed Rail (Fees for Requests for Planning Approval) Regulations 2021

- SI 2021/185 Airports Slot Allocation (Alleviation of Usage Requirements) Regulations 2021
- SI 2021/186 Personal Injuries (NHS Charges) (Amounts) (Amendment) Regulations 2021
- SI 2021/187 Official Controls and Phytosanitary Conditions (Amendment) (No. 2) Regulations 2021
- SI 2021/188 Housing Benefit (Persons who have attained the qualifying age for state pension credit) (Amendment) Regulations 2021
- SI 2021/189 Carbon Accounting (Provision for 2019) Regulations 2021
- SI 2021/191 Education (Student Loans) (Repayment) (Amendment) Regulations 2021
- SI 2021/197 Restriction of Public Sector Exit Payments (Revocation) Regulations 2021
- SI 2021/199 Motor Fuel (Composition and Content) and the Biofuel (Labelling) (Amendment) Regulations 2021

APPENDIX 1: DRAFT GREENHOUSE GAS EMISSIONS (KYOTO PROTOCOL REGISTRY) REGULATIONS 2021

Further information from the Department for Business, Energy and Industrial Strategy

Q1: When in “Spring 2021” does the Department expect to launch the Kyoto Protocol registry?

A1: We intend for the UK Kyoto Protocol (KP) registry to become available for users to register on the system from 1 May 2021. There will then be a process of verifying users’ identification and assigning them to their accounts that have been transferred from the EU system where they were previously held. We anticipate that the UK KP registry will be ready for trading KP units in June 2021.

Q2: Why was the KP registry not operationally ready at the end of the Transition Period? In contrast, the UK Emissions Trading Scheme Registry went live in January.

A2: The UK KP registry has been developed as part of the same IT build as the UK Emissions Trading Scheme (ETS) Registry. This system has been developed in a compressed timeframe and the decision was made to prioritise the UK ETS registry, given the larger number of businesses using it and the significantly higher value of ETS allowances compared to KP units. Additionally, the UK KP registry requires successful connection to all other international registries, and therefore has complex connectivity protocols to meet, including reconciling of all existing accounts. We have regularly updated account holders on plans and timings for the new KP Registry.

Q3: What does it mean for businesses if they have to open accounts in other countries’ registries while the UK KP registry is not ready — how onerous and costly is this? Para 12.3 refers to minimal costs as there is no policy change but will there be costs from businesses from the gap and the transition and from having to move to another country’s registry?

A3: Businesses are not required to open accounts in other countries’ registries — this is optional if businesses wish to trade KP units during the period that the UK KP registry is offline. Should they wish to do so, the cost and process to register for opening an account in another country’s registry varies from administrator to administrator. We have no evidence to suggest that any businesses with accounts in the UK KP registry have taken this step. Given the short period that the UK KP registry is unavailable, and the low value of KP units, we understand from previous stakeholder engagement that most businesses are content to wait until the new UK system is ready.

Q4: Did any of the businesses that were informed (para 10.1) raise concerns?

A4: No, we have not received any complaints from businesses affected. Businesses have received regular communications on plans for the new KP Registry, timings and implications, and are able to contact the Environment Agency (the national administrator of the UK KP registry) if they have any concerns, though none have been received to date. Businesses were informed in good time through stakeholder notices on gov.uk what impact this change would have on them.

Q5: Could you briefly set out how the UK ETS Registry that was established by earlier Regulations and the KP registry fit into the overall system? Are these two registries linked?

A5: The UK KP registry has been developed as part of the same IT build as the UK Emissions Trading Scheme (ETS) Registry, and the two systems share similar IT functionality. However, the two Registries are servicing two distinct policies — KP units cannot be used in the UK ETS, and UK ETS allowances cannot be traded on the UK KP registry. Under the Kyoto Protocol regime, the UK must maintain a KP registry to hold and trade Kyoto units and demonstrate compliance with the Kyoto Protocol.

2 March 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 9 March 2021, Members declared the following interests:

Heather and Grass etc. Burning (England) Regulations 2021 (SI 2021/158)

Lord Chartres

Ambassador, WWF (formerly World Wide Fund for Nature)

Draft Registration of Marriages Regulations 2021

Lord Lisvane

Wife is priest who solemnises marriages

Attendance:

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