

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

49th Report of Session 2019–21

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

Drawn to the special attention of the House:

Draft Whiplash Injury Regulations 2021 and one related instrument

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2021

Correspondence: Provision of illustrative plans with Harbour Revision Orders; Sunset provisions in statutory instruments dealing with COVID-19

Includes information paragraphs on:

7 instruments relating to COVID-19

Draft Agriculture (Financial Assistance) 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 Ninth Report

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

Instruments recommended for upgrade to the affirmative procedure

Introduction and the Import of Cultural Goods (Revocation) Regulations 2021

1. This instrument proposes to revoke EU Regulation 2019/880 on the introduction and import of cultural goods. The Department for Digital, Culture, Media and Sport (DCMS) explains that several provisions in the Regulation came into force during the Transition Period, thereby becoming part of retained EU law. This includes Article 3(1) which came into force on 28 December 2020 and prohibits the introduction of non-EU cultural goods which have been unlawfully removed from the country in which they were created or discovered (referred to as the “general prohibition”).
2. In the Explanatory Memorandum (EM), DCMS explains that the general prohibition provision “has become legally deficient, as it applies to the ‘introduction of cultural goods’ which is defined [...] as ‘entry into the customs territory of the Union’”, and that this “refers to the customs territory of the EU, and cannot be interpreted to mean the customs territory of the United Kingdom”. DCMS further explains that the Department has chosen to revoke the Regulation, rather than amend it because it considers that:

“even if not deficient, this provision would not add anything new to the existing obligations on businesses and importers to ensure the legal provenance of cultural goods which they bring into the United Kingdom, or to the measures already available to the United Kingdom’s border authorities to prevent cultural goods being brought into the United Kingdom when there is information or evidence that they have been unlawfully removed from another country”.
3. DCMS further states that these measures “are in line with our existing commitments and obligations as a member of international organisations such as the World Customs Organisation and Interpol and in international law, including the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.”
4. In the De Minimis Assessment, the Department acknowledges, however, that revoking the instrument:

“is likely to be criticised by those who consider that the UK needs to do more to prevent the import into the UK of cultural goods which have been stolen, looted and/or unlawfully exported from other countries. [...] There could be a perception that we are watering down our commitment to protect cultural property from illicit trade which we will need to robustly counter.”
5. While the Department has provided us with a list of international and domestic legislation in this area, we are concerned that this instrument may nevertheless have the potential of weakening the legal prohibition that

is currently provided by Article 3(1). We also note potential concerns that the UK should do more to prevent the import of stolen or looted cultural goods. These are significant issues that the House may wish to examine further. **On balance, therefore, we take the view that the instrument should be subject to the affirmative procedure. We also ask that the EM be revised to include the additional information provided by the Department.**

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Whiplash Injury Regulations 2021

Date laid: 25 February 2021

Parliamentary procedure: affirmative

Civil Procedure (Amendment No.2) Rules 2021 (SI 2021/196)

Date laid: 25 February 2021

Parliamentary procedure: negative

These two instruments set up a simplified on-line system for claiming damages for whiplash injuries resulting from a road traffic accident with effect from 31 May 2021. Compensation will be paid according to a scale that increases with the duration of the injury but does not exceed £5,000. This legislation also prevents any claim being settled without medical evidence of the type specified being produced.

We have received a submission from the Motor Accident Solicitors Society which criticises the proposed tariff-based approach, in particular for its inconsistency with awards made under other damages regimes and the likely reduction in legal representation for the claimant. The Ministry of Justice's response indicates that these issues were raised and decided during the passage of the Civil Liability Act 2018, the parent Act, and that the new system is exceptional, to deal with particular abuse. Both the submission and the department's response are published on our website.

These two instruments 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.

Background

6. For some years there have been concerns over the number of whiplash claims going through the courts, and the Civil Liability Act 2018 (the 2018 Act) included provisions to enable reform. These Regulations now implement a new scheme with effect from 31 May 2021.
7. The draft affirmative instrument would limit claims for damages to no more than £5,000 for any road traffic accident-related whiplash injury (as defined by the 2018 Act), and for any minor psychological injuries suffered as a result. The instrument includes a scale of fixed sum payments, which rise with the duration of the injury. (More serious whiplash injuries, lasting longer than two years, are not subject to the tariff scheme.) Other provisions allow the court to apply a discretionary uplift (of up to 20%) to the tariff in exceptional circumstances. Finally, the Regulations set out specific requirements for medical evidence, which experts may provide, and require that it must always be provided before the claim may be settled.
8. The associated negative instrument, SI 2021/196, amends court procedures to support these changes, in particular by allowing whiplash claims for less than £5,000 to be pursued through the small claims track. Applications are to be made through an Official Injury Portal. Claimants who are unable to use the online service will be able to seek assistance from a dedicated support

centre. The Ministry of Justice (MoJ) states that guidance and assistance is to be made available so that claims by both represented and unrepresented claimants can be pursued efficiently.

9. The Explanatory Memorandum (EM) states that these changes intend to reduce excessive claims, and could reduce motorists' insurance premiums by approximately £35 a year. Section 11(7) of the 2018 Act requires the Treasury to lay a report before Parliament by 1 April 2025 setting out specified information on how insurers' costs and awards have changed as a result of this change and giving a view on whether individual policy holders have benefited from any reductions in costs for insurers. Section 4 of the 2018 Act requires the Lord Chancellor to publish a review of the operation of these Regulations three years after they come into effect.

Lower levels of compensation

10. We received a submission from the Motor Accident Solicitors Society (MASS) criticising the tariff-based approach proposed in particular for its inconsistency with awards made under other damages regimes and the likely reduction in legal representation for the claimant. MASS however does support some aspects of the proposed legislation, such as the need for medical evidence and no settlement without it, to address the underlying levels of fraud. MoJ has provided a detailed response. The key points of both are set out below, and both are published in full on our website.¹
11. MASS states that the compensation levels, which start at £240 for an injury lasting no more than three months and rise in increments to £4,215 for an injuring lasting between 18 and 24 months, are too low and “are based on a combination of inaccurate insurance industry data, old Judicial College Guidelines (2013) and political judgement”. MASS adds that the tariff levels are much lower than the existing scale; for example the Judicial College Guidelines recommended an award of £2,950 for a four-to-six month injury in 2019, which would be reduced to £495 by these Regulations.
12. MoJ responded that

“This issue was raised and debated in depth during the passage of the 2018 Act. The Government informed both Houses during these debates on the methodology used in setting them. ...

For clarity, when first consulting on the tariff in 2016, the Government considered numerous factors including the suggested compensation levels included in the edition of the Judicial College Guidelines (JCG) relevant to the claims data set used (12th edition, published October 2013). In addition, a considerable amount of validated data was gathered from insurers on actual settlements made, as well as additional corroborating claims data from claimant lawyers and claims volume and accident rate data from other Government Departments. Full details of the data sets used is available in the published impact assessment.²

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

2 Ministry of Justice, *Civil Liability Act 2019: Reforming the Soft Tissue Injury ('whiplash') Claims Process: Impact Assessment* (January 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778250/Whiplash-impact-assessment.doc [accessed 11 March 2021] [Word document download].

This data was balanced against the overall Government objectives to control the societal impacts of the high volumes of claims by reducing compensation paid to a proportionate level to control the costs and benefit consumers through reduced motor insurance premiums. ... Since the tariff was last published in 2018 it has been further up-rated again to reflect inflation and the publication of the 15th edition of the JCG guidelines. The Lord Chief Justice has also been consulted and his views on the tariff level were considered before the final figures were set.”

13. The MASS submission adds that the judiciary should not be restricted by the Lord Chancellor in applying a discretionary uplift in the proposed fixed compensation payments. Judges should be able to apply discretion according to the severity and duration of the injury sustained, and the circumstances of the accident.

14. MoJ responded that:

“The Government believes that this uplift should be capped at an appropriate level to protect the policy objectives of the reform programme. A high or unlimited uplift may result in more claimants requesting hearings for an uplift, driving litigation into the courts, and make the tariff system unworkable.

The Whiplash Injury Regulations 2021 will set that cap at an amount specified by the Lord Chancellor. The figure of 20% was included in the public consultation and debated during the passage of the 2018 Act. The 20% cap balances competing needs for an effective tariff and judicial discretion in exceptional circumstances.”

15. MoJ describes the way that the uplift system will work as follows:

“The 20% uplift is available to all claimants providing they can justify why they should receive more than the standard tariff amount. The new Official Injury Claim (OIC) service which will support claimants through the process, mirrors the requirements of the new Small Claims Track Pre Action Protocol and allows claimants to request the uplift as part of their settlement along with providing their reasons why. The information provided also helps to enable the medical expert who examines the claimant to consider whether there is any support for a claim for uplift, and if so this should be included in the claimants medical report.

If the at-fault compensator agrees that there are exceptional circumstances supporting this request they can include a percentage uplift of up to 20% in their settlement offer. If the at-fault insurer disagrees with the claimant’s request, the claimant has a choice of continuing to negotiate, to settle for the standard tariff amount or refuse to settle which would result in the need to issue court proceedings.

The OIC service will at this point provide the claimant with a court pack of evidence, including all relevant information input into the system by the claimant, and will generate a completed court form for their use. The claimant is also required to provide supporting evidence to the court as to why their circumstances are exceptional. This can be via their medical report or by some other form of evidence. The court

will then consider the evidence provided by both parties and make a determination on whether an uplift of up to 20% is appropriate and issue a judgment.”

16. MASS argues that the tariff amounts are not comparable with damages for equivalent injuries or inconvenience. MASS states that a person who suffers pain for 12 months from a whiplash injury sustained in a road accident will receive £1,320 in compensation, whereas:

- “a long-distance flight that lands four hours late attracts £530 compensation,
- holiday sickness lasting a few days to a week attracts awards of £1,250-£3,300.
- a person who suffers the same injury through a different type of (non-motor) accident might be anticipated to receive an award of £4,000.”

17. MoJ responded:

“It is also not appropriate to compare non-injury compensation awards such as for a travel delay with compensation for a whiplash injury as the circumstances are both different and unrelated. Supporting evidence for a whiplash injury can be anecdotal and difficult to substantiate, whilst there will be strong objective evidence in the case of a transport delay, which is usually paid to compensate for financial loss. Financial losses in relation to whiplash claims are still payable in full as well as the claimant receiving an additional payment for the pain and suffering encountered.

The tariff only applies to whiplash injuries suffered as a result of an RTA [Road Traffic Accident] where a driver has been negligent, as this is where there is the high number and cost of claims.

The damages proposed in the tariff are in line with stated Government policy as confirmed to both Houses of Parliament during the passage of the CLA [Civil Liability Act 2018]. It should be noted that the levels suggested in the JCG are generally higher than the amount that most claims settle for. This can be explained in part by the fact that the JCG is developed using outcomes of cases heard by the court. By default, the judiciary only hear more complex claims where there is significant dispute, and this can often result in higher awards for claimants. For example, the average pre-court settlement for a 9-month whiplash injury is currently around £2,500 but could attract an award of £3,710 if the JCG are used.

Damages for lost wages remain unchanged under these reforms and exceptional additional impacts on a claimant’s hobbies or lifestyle are catered for under the new proposals through the facility to apply for a 20% uplift to the tariff damages.

As previously made clear, the tariff is intended to reduce the amount of damages paid to victims of minor whiplash injuries to meet public policy concerns over their cost and impact on premiums. The awards in the proposed tariff are intentionally lower than those made typically under the current system but still provide an amount of compensation that

we believe is proportionate, fair and non-discriminatory for the level of injury genuinely incurred.”

Unequal representation

18. MASS also argues that people rely on the higher compensation to pay for legal advice. Although claimants will still have the option to seek expert legal advice, they say that the tariff of damages will make it significantly less likely. Insurers however will remain supported by defendant solicitors.
19. So, MASS continues, following these reforms, litigants in person:

“will be forced to navigate a new digital-only process — through a new Portal funded, developed and administered by the insurance sector — with little or no support in understanding complex legal concepts such as liability, resolving disputes of fact, causation, liability evidence, the complexities of the Road Traffic Act, court rules and protocols and evidence of financial loss.”

This, MASS states, challenges the fundamental principles of access to justice and equality of arms.

20. MoJ responded:

“The whiplash reforms do not restrict access to justice and the new SCT Pre-Action Protocol (SCT PAP) will enable parties to reach a fair settlement without the need for separate legal advice. The new SCT PAP also details the steps the parties should take, and the new service will provide them with a completed application form should they need to start court proceedings.

However, it is also important to note that the new online service has also been carefully designed to mirror the requirements of the SCT PAP. This means that claimants who process their claim through the Official Injury Claim service will automatically meet all the requirements of the new PAP.

Digitally disadvantaged claimants who are unable to use the system may also seek assistance from the dedicated telephone support centre. The guidance and help centre will provide support with the process of making a personal injury claim and whilst they will not provide legal advice, they will signpost users to alternative sources of help and support.

As mentioned above, the new service has been carefully designed to mirror the requirements of the SCT PAP and a new bespoke Practice Direction (PD27B) has been developed to enable claimants with a liability or quantum dispute to seek a judicial determination on their issue before being returned into the service to continue towards settlement.

MoJ officials have worked closely with both claimant and defendant representatives to draft the new framework. The new SCT PAP, PD27B and the accompanying rule changes included in SI 2021/196 — The Civil Procedure (Amendment No. 2) Rules 2021, have all been drafted in conjunction with, and approved by the Civil Procedure Rule Committee (CPRC). The CPRC is an independent body responsible for drafting court rules, its members are drawn from a wide range of backgrounds

including claimant lawyers, defendant lawyers, barristers, lay members representing consumer interests and the Judiciary.”

Conclusion

21. The MoJ letter is a robust response that makes clear that these matters were fully debated during the passage of the 2018 Act and the issues were decided by Parliament. We note that illustrative tariff rates were available when the Bill was in progress, which we regard as best practice, and so the House was clear that it was agreeing to a substantial reduction in awards. We also note that the 2018 Act includes a number of provisions which require review of how this scheme operates and that it can be modified if unintended consequences are found.

Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021 (SI 2021/184)

Date laid: 25 February 2021

Parliamentary procedure: negative

This Home Office statutory instrument brings into force amended statutory guidance on Adults at Risk in Immigration Detention, with effect from 25 May 2021. The document sets out the principles and process for making decisions about individuals who may be considered at risk in immigration detention and deciding whether they should be subject to other arrangements. The proposed change will merge Potential Victims of Trafficking (PVoTs) into the same system as other adults at risk.

*We have received a submission expressing concern that this change may result in more PVoTs being detained for longer. The Home Office response indicates that this may be an effect for some individuals. We note that the Home Office indicates that equivalent protection will be achieved through caseworker guidance and training. **However, the House may wish to consider whether it is appropriate to downgrade statutory guidance under the Modern Slavery Act 2015 in this way.***

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

Background

22. This Home Office statutory instrument brings into force amended guidance on Adults at Risk in Immigration Detention (“the AAR Statutory Guidance”)³ with effect from 25 May 2021. The document sets out the principles and process for making decisions about individuals who may be considered at risk in detention and deciding whether they should be subject to other arrangements.
23. The amended AAR Statutory Guidance deletes a separate section on ‘Trafficking cases’ at paragraph 18 of the current version, to bring people who are potential victims of modern slavery or trafficking fully within its scope. Detention considerations for them will therefore be made using criteria consistent with those that apply to other categories of vulnerable people.
24. The Home Office has recently published the latest immigration statistics for the year ending December 2020.⁴ They show that 14,773 people entered detention in 2020, although in part affected by the COVID-19 pandemic, this continues the general downward trend since 2015. Figures on the number of individuals in detention whose particular vulnerability is identified under

3 Home Office, ‘Draft revised guidance on adults at risk in immigration’ (22 February 2021): <https://www.gov.uk/government/publications/draft-revised-guidance-on-adults-at-risk-in-immigration-detention-february-2021/draft-revised-guidance-on-adults-at-risk-in-immigration-accessible-version> [accessed 11 March 2021].

4 Home Office, ‘National Statistics: How many people are detained or returned?’ (25 February 2021): <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2020/how-many-people-are-detained-or-returned> [accessed 11 March 2021].

the National Referral Mechanism are not released but the operation of the system is subject to independent annual review.⁵

Concern about Potential Victims of Trafficking

25. We have received a submission from a group of seven organisations with expertise on immigration detention and/or human trafficking: After Exploitation, Anti-Slavery International, Bail for Immigration Detainees, Focus on Labour Exploitation, Freedom from Torture, the Helen Bamber Foundation and Medical Justice. It is published in full on our website.⁶ The groups are concerned that this merger of systems will weaken the protections for potential victims of trafficking (“PVoTs”) and result in more of them being detained for a longer time.
26. The Home Office is required to balance the risks of an individual coming to harm in detention against other immigration factors including their previous immigration history and any offending. This dictates the level of evidence that is required in the assessment. The submission argues that merging PVoT into the mainstream AAR Statutory Guidance removes more favourable consideration under the Modern Slavery Act Guidance:

“The very fact that a PVoT has been trafficked often leads to them having a negative immigration history. For example, being under the control of a trafficker may result in the person entering the country unlawfully, being unable to claim asylum as soon as they arrive, or being unable to travel in order to report.

Secondly, in order to benefit from a stronger protection against detention (i.e. that afforded at Level 3), once brought under the AAR Guidance, PVoTs with a positive Reasonable Grounds decision will now need to provide additional professional evidence demonstrating not only that they are an adult at risk, but that detention is likely to cause them harm.

Therefore, compared to the current arrangements, the amended AAR Guidance will make it significantly more difficult for PVoTs to avoid or secure release from detention.”

Home Office response

27. We asked the Home Office to respond and its full answer is published on our website. The Home Office said:

“It is necessary for the Home Office to make this change to the AAR Guidance in order to rectify an anomaly in the current policy, in which detention decisions for those considered to be potential victims of trafficking or modern slavery are made with reference to the separate Modern Slavery Act 2015 Statutory Guidance⁷ ... [which] states only that

5 The 2018-19 review can be found here: Independent Chief Inspector of Borders and Immigration, *Annual inspection of ‘Adults at Risk in Immigration Detention’ (2018–19)* (29 April 2020): <https://www.gov.uk/government/publications/annual-inspection-of-adults-at-risk-in-immigration-detention-2018-19> [accessed 11 March 2021].

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

7 Home Office, *Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland* (January 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950690/January_2021_-_Modern_Slavery_Statutory_Guidance_E_W_Non-Statutory_Guidance_S_NI_v2.pdf [accessed 11 March 2021].

such individuals do not need to be released from detention where there are public order reasons not to do so. We believe that the AAR policy itself provides the appropriate framework for all detention considerations of potential victims of modern slavery, to enable consistent consideration of all vulnerable individuals within a single policy and to remove the policy anomaly.

We recognise that there are specific protections afforded to those who have received a positive Reasonable Grounds decision under the National Referral Mechanism (NRM). Existing protections, including those provided under Articles 12 and 13 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) such as the 45-day Recovery and Reflection period, will continue. We will work closely with caseworkers and ensure that they are aware, through the supplementary AAR caseworker guidance and training, of the particular considerations and protections which apply to trafficking victims.”

28. In response to concerns expressed that PVoTs would be detained longer, the Home Office said that this may be the effect, though it is not the policy intention:

“There is a presumption in immigration policy that a person will not be detained. The AAR policy strengthens this presumption against the detention of those who are particularly vulnerable to harm in detention. This has not changed. Some individuals may, as a result of the changes, be more likely to be detained, or have their detention continued, than would currently be the case. However, detention decisions are always made on a case-by-case basis and vulnerable people will be detained only when the evidence of vulnerability in their particular case is outweighed by the immigration considerations — including timescales for potential removal, public protection concerns and risk of compliance issues.”

29. We note that the Home Office indicates that equivalent protection will be achieved through caseworker guidance and training. However, **the House may wish to consider whether it is appropriate to downgrade statutory guidance under the Modern Slavery Act 2015 in this way.**

Inadequacies in the consultation process

30. The submission also refers to the conduct of the consultation about this change. It said:

“i. The Home Office shared the proposed change with a small group of stakeholders in August 2020. The group of stakeholders consulted did not include many relevant and/or specialist organisations whose expertise would have been extremely valuable. This included an external engagement forum set up by the Home Office itself (the Modern Slavery Strategy Implementation Group), various anti-trafficking charities, and a network of people with lived experience of the asylum/detention system.

ii. The consultation period was short (two weeks); moreover, it was carried out at a point in the year (August) when representatives of stakeholder organisations were likely to be on leave.

iii. The consultation also took place very late in the policy development process, raising questions about the ability of stakeholders to influence Home Office thinking on the issue. It is important to note that the proposed change had been under consideration by the Home Office for at least two years. It is unclear why the department did not begin the consultation at an earlier stage.

iv. Involvement in the consultation group was subject to an agreement not to disseminate the proposals beyond the group.”

31. The Home Office responded:

“There is no statutory requirement for consultation when making a change to the AAR Statutory Guidance. However, the Home Office has undertaken targeted engagement on this proposal with key stakeholders which has been used to inform our approach. We recognise that this targeted engagement does not constitute a formal consultation and was therefore not referred to in the Explanatory Memorandum. Through our engagement similar concerns were raised to those set out above. We have considered these concerns and are satisfied that there is sufficient rationale for introducing this change to ensure fairness and the consistent consideration of detention decisions for potential victims of modern slavery as well as to correct the policy anomaly. We continue to value the input and insights from those with an interest in this policy.”

32. We are concerned by this approach to consultation: targeted engagement always risks the department self-selecting those who will support its view, although we are told that was not the case here. Good policy making benefits from challenge and review, and the Home Office should have explained any consultation conducted in the Explanatory Memorandum, whether informal or as a statutory requirement. **Conducting consultation for so short a time and in a holiday period, we will always regard as poor practice.**

**Health Protection (Coronavirus, International Travel) (England)
(Amendment) (No. 9) Regulations 2021 (SI 2021/223)**

Date laid: 2 March 2021

Parliamentary procedure: negative

*Among other things, this instrument defers the transition of testing for travellers to the private sector and the uploading of certain information from laboratories. The Explanatory Memorandum was particularly thin on this point, and the supplementary information provided remained opaque. We therefore wrote to the Minister for elucidation. The correspondence is published in this report and provides information and reassurance. **It should not have been needed, however, as a clear description of the context, the reason for the change being made, and what its effects are likely to be should form the core of an Explanatory Memorandum.***

These Regulations are drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.

33. This instrument does two main things:
- it sets up special quarantine arrangements for unaccompanied children travelling to England, particularly those returning to boarding schools, and
 - defers the transition of testing for travellers to the private sector and the uploading of certain information from laboratories.
34. The Explanatory Memorandum (EM) is particularly thin on this second point; although we received supplementary information from the Department of Health and Social Care, the material on testing remained opaque. We were told that in relation to regulation 9:
- “Extensive work is required to update the current operational and digital systems to accommodate the provision of private tests to red list arrivals. Regrettably, a delay to the original launch date of 1 March to 26 April has been judged necessary to ensure that all of the relevant systems are ready to deliver this change.”
35. And in relation to regulation 10:
- “This requirement is being delayed to allow more time for PHE to onboard laboratories to the complex process of uploading BAM sequencing files when reporting the viral genome for positive cases.”
36. We were left unclear about the context, the reason for the delays enabled by the Regulations, and the potential consequences of them. We therefore wrote to the Minister for elucidation. The correspondence is published in full at Appendix 1.
37. Lord Bethell’s letter gives a clearer explanation of the context:
- “The move to introduce private sector testing of travellers is, in part, in order to safeguard [NHS Test & Trace] capacity for clinical priorities. It is also intended to encourage market innovation, offering choice to the

consumer and enabling demand to expand the market’s capacity, as well as encourage a dynamic diagnostics industry. Travel is a discretionary activity and international arrivals are therefore required to pay for their testing.

Based on the Corporate Travel Management quarantine and test bookings data, in the period 15 February to 13 March inclusive there were 5,158 red-list arrivals and 237,957 amber-list arrivals.⁸ Based on prior volumes, the private sector will be able to deliver testing to 98% of arrivals. Depending on consumer preference and market pricing, private providers are likely to deliver a significant proportion of this potential market.”

38. The Minister’s letter also explains how the results of private testing will be integrated into the Test and Trace system. It says that all international arrivals are called by the Isolation Assurance Service to check that they are quarantining and completing mandatory tests unless they are exempt. It also gives reassurance that no information on variants of concern would have been missed because of the delay to the data from laboratories.

Conclusion

39. **The Minister’s further explanation is helpful, but we should not have needed its assistance. A clear description of the context, the reasons for the change being made, and what its effects are likely to be should form the core of an EM.** In our recent interim report we made the point that — “the fact that the majority [of COVID-19 SIs] have been brought into effect within days makes it even more important that their intention and effect are made clear to both Parliament and the public.” The EM that accompanied this instrument failed to do that. **The instrument is therefore drawn to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.**

⁸ We had not previously seen this term used. DfT states that the “amber list” is an informal term for those countries not currently on the red list (Schedule BI of the original regulations). Arrivals from amber list countries are required to self-isolate at home for 10 days on arrival in England and take pre-booked tests on days 2 and 8.

CORRESPONDENCE

Provision of illustrative plans with Harbour Revision Orders

40. We have recently considered a number of Harbour Revision Orders. For some of these, the illustrative map was not required by the statutory instrument to be made available during our scrutiny period. We wrote to the Marine Management Organisation and they have agreed that, for future Orders, the map, where required, will be made available on the day an instrument is laid before the House. We welcome this helpful approach. The full correspondence is published in Appendix 2.

Sunset provisions in statutory instruments dealing with COVID-19

41. We have noted in previous reports⁹ that many statutory instruments that relate to the coronavirus pandemic included sunset provisions. To assist the House in scrutinising the legislation, we asked the Leader of the House of Commons to send us monthly updates so that they could be properly monitored. A further update has been received, which is published at Appendix 3.

9 Most recently, our [46th Report](#) (Session 2019-21, HL Paper 229).

INSTRUMENTS RELATING TO COVID-19

42. One instrument relating to the COVID-19 pandemic, the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2021 (SI 2021/223), is drawn to the special attention of the House in this report (see paragraphs 33 to 39 above).

Restrictions on businesses and public gatherings

Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021 (SI 2021/247)

43. With effect from 8 March 2021, this instrument amended the All Tiers Regulations¹⁰ and the Face Coverings Regulations¹¹ to facilitate voting and the counting of votes in the forthcoming elections, and to allow two people to gather for the associated campaigning and nominations activities. The Regulations add polling stations to the list of places where face coverings must be worn. Any non-exempt person who refuses to comply may be subject to a fixed penalty notice but may not be prevented from voting.
44. The Regulations also facilitate the 2021 Census (which will take place on 21 March) by providing that community centres, which must otherwise be closed, may open to provide access to computers for completing Census forms online.
45. The instrument also expands the permitted reasons to leave home in Tier 4 to include outdoor recreation with a linked household or one other person in a public outdoor place, and allows wrap-around childcare activities for all children whose parents are going to work or seeking work.
46. Finally, these Regulations amend the All Tiers Regulations to require all travellers leaving the Common Travel Area from a port or airport in England to complete a form declaring their reason for travelling, and to present that form for inspection when required (subject to a fixed penalty notice of £200 for failure to comply).

Changes to business regulations and practice

Draft Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021

47. This instrument proposes amendments to section 44 of the Employment Rights Act 1996 (“the Act”) to extend to so-called limb (b) workers the right to protection from detriment if they are in circumstances of danger which they reasonably believe to be serious and imminent and they leave or refuse to return to their place of work. The legislation as currently drafted limits this protection to workers who qualify as employees.
48. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the changes are made following a judicial review brought by the Independent Workers’ Union for Great Britain (IWGB) against BEIS and the Department for Work and Pensions, in which the High Court found that

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

11 Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant place) Regulations 2020 ([SI 2020/791](#) as amended).

the UK had failed to implement fully two EU Directives¹² in domestic law, as protections were applied only to employees, while they should extend also to limb (b) workers.¹³ BEIS says that a further instrument will be required to extend the Personal Protective Equipment at Work Regulations¹⁴ to all workers.

49. According to BEIS, the term ‘limb (b) worker’ derives from the definition of these workers by section 230 (3)(b) of the Act. Limb (b) workers tend to have a more casual employment relationship than employees and include freelancers or contractors, but they are entitled to a basic set of rights, such as minimum wage and holiday pay. While they can be found in any sectors, according to the IWGB, they are particularly common in the ‘gig economy’.¹⁵ BEIS says that the changes will provide clarity to both workers and businesses and will protect workers’ rights through the challenges created by the pandemic.

Draft Warm Home Discount (Miscellaneous Amendments) Regulations 2021

50. This instrument extends the Warm Home Discount (WHD) scheme¹⁶ until 31 March 2022 which would otherwise expire on 31 March 2021. The instrument increases overall spending in line with inflation to £354 million and makes several operational changes to the scheme. This includes a £2,000 cap on individual debt write-off, in addition to maintaining the current £6 million total debt write-off cap, to enable energy suppliers to maximise the number of households they can support. The instrument also removes restrictions on providing financial assistance with energy bills, such as fuel vouchers, to domestic customers who are eligible for rebates. This is aimed at removing a barrier that prevented vulnerable households from accessing emergency support, particularly during the pandemic, for fear of later losing out on a rebate. The instrument also requires installations or repairs of boilers and central heating systems under the WHD scheme to be delivered by installers which are registered with the TrustMark scheme, so that they are subject to its auditing processes. According to the Department for Business, Energy and Industrial Strategy, this will provide better standards of installation and consumer protection, particularly for the most vulnerable customers and those living in high risk properties.

Travel

Mandatory Travel Concession (England) (Amendment) Regulations 2021 (SI 2021/205)

51. The reimbursement of concessionary fares, which allow those of State Pension Age or with a disability to travel at no cost, forms a significant revenue stream for bus operators. The legal requirement is that the sums paid by the Travel Concession Authorities (TCAs) do not result in the bus operator being better off. Since the beginning of the pandemic, the Department for

12 Health and Safety Framework Directive ([89/391/EEC](#)) and Personal Protective Equipment Directive ([89/656/EEC](#)).

13 High Court, *R (Independent Workers’ Union of Great Britain) v Secretary of State for Work and Pensions and another*, [2020] EWHC 3039 (QB) (Admin).

14 Personal Protective Equipment at Work Regulations ([SI 1992/2966](#)).

15 Independent Workers’ Union of Great Britain, *IWGB wins groundbreaking health and safety legal challenge against the Government* on 13 November 2020: <https://iwgb.org.uk/post/iwgb-wins-groundbreaking-health-and-safety-legal-challenge-against-the-government>.

16 The WHD scheme was launched in 2011 and is a key part of the Government’s strategy to tackle fuel poverty. It supports over 2.2 million low income and vulnerable households in Great Britain every year with their energy costs.

Transport (DfT) has asked TCAs to carry on paying concessionary fare funding to bus operators at pre-COVID-19 levels, despite the fall in travel by concessionary pass holders. To avoid a legal anomaly, these Regulations suspend the “no better off” provision until the end of the 2021–22 financial year. DfT’s objective is that the bus operators will continue to break even despite the reduction in concessionary passenger numbers. A separate fund also provides financial support for lost revenue from other passengers during the pandemic period.

Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) Regulations 2021 (SI 2021/252)

52. To complement SI 2021/247 above, these Regulations amend the Passenger Information Regulations¹⁷ to impose a new requirement on the operators of commercial transport services departing from England to inform passengers about the current restrictions on movement before their departure from England — namely before online booking and at least 24 hours prior to the scheduled departure time of the service. The information to be provided is specified in the amended Schedule to the Passenger Information Regulations.
53. These Regulations also amend the International Travel Regulations¹⁸ to ensure a consistent definition of aircraft crew is applied across the self-isolation and pre-departure testing exemption regimes and to ensure specialist crew rely on the correct exemption for their profession. They also update the list of specified competitions in Schedule 3, which is relevant to the exemptions for sportspersons.

Public services

School Discipline (Pupil Exclusions and Reviews) (England) (Coronavirus) (Amendment) Regulations 2021 (SI 2021/204)

54. This instrument deals with arrangements for the exclusion of pupils from school during the pandemic. The instrument extends temporary measures introduced by two earlier instruments, so that they apply to exclusions occurring between 25 March and 24 September 2021.¹⁹ Without the extension the temporary measures would expire on 24 March.
55. The extension will have the effect that meetings of responsible bodies²⁰ and independent review panels (IRP) can continue to take place virtually to consider exclusions, if it is not reasonably practicable for the meeting to take place in person because of the pandemic, if participants agree to meet remotely and if certain conditions are met to ensure procedural fairness. Where the conditions for a virtual meeting have not been met, the timescale for the meeting will be extended by “such longer period as is reasonably necessary

17 Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020 ([SI 2020/567](#)). As this instrument widens their scope to include passengers travelling from England, it also alters the title to the Health Protection (Coronavirus, Public Health Information for *International Passengers*) (England) Regulations 2020.

18 Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)) as amended.

19 School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020 ([SI 2020/543](#)) and School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) (No. 2) Regulations 2020 ([SI 2020/908](#)).

20 The ‘responsible body’ is the governing body in the case of a maintained school, the management committee in the case of a pupil referral unit, and the proprietor (Academy Trust) in the case of an Academy.

for a reason related to the incidence or transmission of coronavirus”. The instrument also keeps a longer application window within which a parent or adult pupil can apply for an independent review (25 rather than 15 school days).

56. The Department for Education says that it has considered scientific advice and views of stakeholders from across the education sector, including the Office of the Children’s Commissioner for England, who have been broadly supportive of the policy, with some stakeholders asking whether virtual IRPs could become a permanent option.

*Early Years Foundation Stage (Learning and Development Requirements)
(Coronavirus) (Amendment) Order 2021 (SI 2021/234)*

57. This instrument modifies temporarily the requirements in the Statutory Framework for the Early Years Foundation Stage for early years providers in England, so that it will not be a statutory requirement for them to complete the Early Years Foundation Stage Profile (EYFSP) in the academic year 2020/21. Instead they will be required to use “their best endeavours” to complete the EYFSP and to provide the information to Year 1 teachers and parents if they are able to do so in the summer term. The Department for Education (DfE) says that this modification aims to reduce pressure on teachers and early years practitioners during the pandemic and aligns with temporary changes made to other statutory primary assessments in 2020/21. The instrument also removes a requirement to submit data to the local authority and ensures that providers which are able to complete the EYFSP in 2020/21 will not be subject to statutory moderation by the local authority. According to DfE, the modifications build on the removal of the statutory requirement to complete the EYFSP for the 2019/20 academic year, while recognising that the EYFSP is a valued teacher-observed assessment and tool in supporting children’s development and the transition from reception to Year 1.

INSTRUMENTS OF INTEREST

Draft Agriculture (Financial Assistance) Regulations 2021

58. Following EU Exit, this instrument provides for the checking and monitoring of four financial assistance schemes which have been established under the Agriculture Act 2020, marking the move away from the EU's Common Agricultural Policy (CAP). The four schemes are: (i) the Environmental Land Management National Pilot, which will test a new financial assistance scheme before full roll out across England in 2024; (ii) the Tree Health Pilot which aims to improve the financial support available under the existing Countryside Stewardship Tree Health scheme and is to be rolled-out across England in 2024; (iii) a simplified version of the EU's Countryside Stewardship Scheme, which will continue to provide funding to farmers and other land managers to make environmental, agricultural and forestry improvements; and (iv) the Farming Investment Fund.
59. According to the Department for Environment, Food and Rural Affairs (Defra), the instrument also introduces investigation and enforcement measures to ensure compliance with the conditions under which financial assistance is provided under these schemes, and makes provision for decisions of the Secretary of State to be reconsidered and appealed. It also provides for the publication of details of the payments made on a public facing Defra database, similar to existing arrangements for CAP schemes.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Agriculture (Financial Assistance) Regulations 2021
 Employment Rights Act 1996 (Protection from Detriment in
 Health and Safety Cases) (Amendment) Order 2021
 Single Use Carrier Bags Charges (England) (Amendment)
 Order 2021
 Warm Home Discount (Miscellaneous Amendments)
 Regulations 2021

Instruments subject to annulment

HC 1248	Statement of changes in Immigration Rules
SI 2021/204	School Discipline (Pupil Exclusions and Reviews) (England) (Coronavirus) (Amendment) Regulations 2021
SI 2021/205	Mandatory Travel Concession (England) (Amendment) Regulations 2021
SI 2021/206	Oil and Gas Authority (Levy and Fees) Regulations 2021
SI 2021/211	Approved Country Lists (Animals and Animal Products) (Amendment) Regulations 2021
SI 2021/212	Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967 and Rent Act 1977) (England) Regulations 2021
SI 2021/214	Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations 2021
SI 2021/227	Communications (Television Licensing) (Amendment) (No. 2) Regulations 2021
SI 2021/234	Early Years Foundation Stage (Learning and Development Requirements) (Coronavirus) (Amendment) Order 2021
SI 2021/236	Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) Order 2021
SI 2021/240	Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2021
SI 2021/247	Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021
SI 2021/252	Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) Regulations 2021

**APPENDIX 1: CORRESPONDENCE: HEALTH PROTECTION
(CORONAVIRUS, INTERNATIONAL TRAVEL) (ENGLAND)
(AMENDMENT) (NO. 9) REGULATIONS 2021 (SI 2021/223)**

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to Lord Bethell, Parliamentary Under Secretary of State at the Department of Health and Social Care

I am writing to you in my capacity as Chair of the House of Lords Secondary Legislation Scrutiny Committee. This week, we considered these Regulations but could not complete our scrutiny because of insufficient information.

We were, in particular, dissatisfied that the Explanatory Memorandum (EM) gives no background on the rationale for transferring mandatory coronavirus testing of travellers to the private sector, or the steps that are needed to be taken before it can happen. We therefore had no means of assessing the impact of the delay that the instrument enables, nor what the consequences might be, for example, whether state resources will continue to be used that had been previously earmarked for other purposes.

We would also like to know how information from private tests will be integrated into the Test and Trace system, what percentage of travellers are currently being contacted by the Isolation Assurance Service, what percentage are being passed to the police for investigation of non-compliance, and whether the move to private tests will alter those levels.

We asked your department why the requirement for laboratories to notify technical information about certain samples was extended to 15 March 2021 (regulation I 0). The response we received offered little clarification:

“This requirement is being delayed to allow more time for PHE to onboard laboratories to the complex process of uploading BAM sequencing files when reporting the viral genome for positive cases.”

We would therefore be grateful if a fuller and more accessible explanation could be provided, including information about the context, the reason for the delay and its consequences. Does this delay in “onboarding laboratories” mean, for example, that data about variants of concern will be delayed or not passed to the authorities who need to monitor those infected?

10 March 2021

Letter from Lord Bethell to Lord Hodgson

This letter provides further detail in response to your letter of 10 March in which you expressed your dissatisfaction that the Explanatory Memorandum (EM) for the Health Protection (Coronavirus, International Travel)(England)(Amendment) (No. 9) Regulations 2021 (SI 2021/223) gave insufficient background on the rationale for allowing the private sector to deliver mandatory coronavirus testing of travellers.

The move to introduce private sector testing of travellers is, in part, in order to safeguard NHS T&T capacity for clinical priorities. It is also intended to encourage market innovation, offering choice to the consumer and enabling demand to expand the market’s capacity, as well as encourage a dynamic diagnostics industry.

Travel is a discretionary activity and international arrivals are therefore required to pay for their testing.

Minimum standards are established in legislation for private providers of day 2 and day 8 testing for international travel. These cover test diagnostics and genome sequencing, including independent validation of test performance, the competence end-to-end testing delivery through UKAS accreditation and data reporting. Where a private provider identifies positive test results from international arrivals' day 2 tests, the positive sample must be genome sequenced, with the standards for genome sequencing also set.

You queried the impact of the delay that the instrument enables on the demand for privately provided testing. Based on the Corporate Travel Management (CTM) quarantine and test bookings data, in the period 15 February to 13 March inclusive there were 5,158 red-list arrivals and 237,957 amber-list arrivals. Based on prior volumes, the private sector will be able to deliver testing to 98% of arrivals. Depending on consumer preference and market pricing, private providers are likely to deliver a significant proportion of this potential market.

You ask how the information from private tests will be integrated into the NHS Test and Trace system. The provider must have a system in place for reporting positive, negative and inconclusive test results cases in accordance with their obligations under the Notification Regulations and the International Travel Regulations. This includes data fields for the test result, personal data for the purposes of contact tracing and international travel data fields for the purposes of disease surveillance. The reporting of results, including the identification of Variants of Concern, is fully integrated into NHS Test and Trace systems. As for NHS Test and Trace tests, positive results from privately provided tests trigger contact tracing and the identification of a variant of concern triggers enhanced contact tracing. Privately provided testing is also integrated into the disease surveillance systems.

You ask whether privately provided testing will impact on the compliance and enforcement approach. All international arrivals must book a testing package before travel, and this booking is checked by Border Force. All international arrivals are called by the IAS service to check that they are quarantining and completing mandatory tests, unless they are claiming a sectoral exemption from testing. Allowing private providers to deliver tests does not alter the compliance approach for mandatory testing or the approach to applying penalties for non-compliance.

You asked why the requirement for laboratories to notify technical information was extended to 15 March 2021 (regulation 10). This was delayed to allow more time for PHE to onboard laboratories to the upload of BAM (Binary Alignment Map) files. A sorted BAM file contains 'reads' aligning to the SARS-CoV-2 reference genome and is a recognised format for storing genome sequences. The reporting of BAM files will allow for the identification of new, unknown variants and quality assurance of the genome sequencing undertaken by private providers. Reporting of a BAM file became a requirement on the 15 March. This did not delay the reporting of identified and known Variants of Concern, which can already be reported by private providers through existing systems. It also would not have delayed enhanced contact tracing were any known Variants of Concern to have been identified by a private provider in this period.

15 March 2021

APPENDIX 2: CORRESPONDENCE: PROVISION OF ILLUSTRATIVE PLANS WITH HARBOUR REVISION ORDERS

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to Mr Tom McCormack, Chief Executive Office at the Marine Management Organisation

The provision of maps with Harbour Revision Orders

I am the Chair of the House of Lords Secondary Legislation Scrutiny Committee and I am writing to you about the Newport (Isle of Wight) and Fowey Harbour Revision Orders, recently considered by the Committee, which provide for illustrative maps to be produced *within 30 days of the Orders coming into effect*.

I am aware that, following an exchange with one of the Committee's Advisers, your team has arranged for the maps for these two instruments to be made available on the day that the Orders come into effect. I would like to thank them for their prompt response about this matter.

That said, it remains the case that the maps were not available to my Committee for its scrutiny, and the current formula means that in most cases, the maps would not have to be published during the period when Parliament would have an opportunity to comment on Harbour Revision Orders.

The Marine Management Organisation (MMO) requires applicants to provide and update these maps on their websites to ensure clarity about the changes being made. This is clearly helpful. It would greatly assist parliamentary scrutiny if the initial maps were made available at an earlier stage, *on the day that such Orders are laid*. I would be grateful if you could change the MMO's current policy to meet this need.

4 March 2021

Letter from Mr Tom McCormack to Lord Hodgson

The provision of illustrative plans with Harbour Revision Orders

Thank you for your letter dated 4 March 2021 regarding the Newport (Isle of Wight) and Fowey Harbour Revision Orders (HROs). I am pleased to hear of the prompt response provided by my colleagues in order to address your Committee's comments.

The Marine Management Organisation (MMO) understands the issue which was caused by not having the illustrative plans for the aforementioned HROs made available for your Committee and its scrutiny. The MMO welcomes your suggestion that such illustrative plans should be made available by the respective Statutory Harbour Authorities (SHAs), at an earlier stage.

The MMO will ensure that for future HROs there will be provision for SHAs to make their illustrative plans available on the respective laying dates of those HROs, which will allow for adequate scrutiny by your Committee.

12 March 2021

APPENDIX 3: CORRESPONDENCE: SUNSET PROVISIONS IN STATUTORY INSTRUMENTS DEALING WITH COVID-19

Letter from the Rt Hon. Jacob Rees-Mogg MP, Lord President of the Council and Leader of the House of Commons, to Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee

In my letter of 9 July 2020 I committed to provide a regular monthly update of sunset provisions in statutory instruments (SIs) made in response to the Coronavirus pandemic.

As of 5 March 2021, the Government has laid 321 SIs that fall into this category, of which 97 include a specific sunset provision.

Annex A sets out the SIs that have been laid in response to the pandemic which include a specific sunset provision, along with the timing of that provision. This information is also included in the Explanatory Notes to each SI. The inclusion of a sunset provision is always carefully considered. An additional four SIs (also listed in Annex A) do not include specific sunset provisions themselves, but cease to have effect after 28 days, as dictated by the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020.

I hope that this information is helpful to the Committee and I will continue to provide an updated list every month. This letter has been copied to the Leader of the House of Lords and the Chairman of the Joint Committee on Statutory Instruments.

10 March 2021

Annex A

	Dept	Title	Sunset Provision
1	DHSC	Health Protection (Coronavirus) Regulations 2020	10/02/2022
2	DHSC	The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020	23/09/2020 — This SI was revoked by the below SI.
3	DHSC	Health Protection (Coronavirus, Restrictions) (England) Regulations 2020	26/09/2020 — Now revoked by Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020
4	DHSC	The Safeguarding Vulnerable Groups Act 2006 (Regulated Activities) (Coronavirus) Order 2020	17/10/2021
5	HO	Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020	27/03/2021
6	MHCLG	Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020	31/12/2020 — These provisions have been extended to 31/12/2021
7	DWP	Universal Credit and Employment Support Allowance Amendment Regulations 2020	12/11/2020 — These provisions have been extended to 12/05/2021
8	DWP	Northern Ireland equivalent to above	12/11/2020 — These provisions have been extended to 12/05/2021
9	DWP	Social Security (Coronavirus) (Further Measures) Regulations 2020	12/11/2020 — These provisions have been extended to 12/05/2021. Regulation 2 in the provisions have been extended to 30/04/2021
10	DWP	Social Security (Coronavirus) (Further Measures) Northern Ireland Regulations 2020	12/11/2020 — These provisions have been extended to 12/05/2021
11	DWP	The Social Security (Coronavirus) (Prisoners) Regulations 2020	12/11/2020 — These provisions have been extended to 12/05/2021

	Dept	Title	Sunset Provision
12	DWP	The Social Security (Coronavirus) (Prisoners) Regulations 2020 Northern Ireland	12/11/2020 — These provisions have been extended to 12/05/2021
13	DfE	The School Admissions (Appeals Arrangements) (England) (Amendment) (Coronavirus) Regulations 2020	31/01/2021 — These regulations have been extended to 30/09/2021
14	DfE	The Adoption and Children (Coronavirus) (Amendment) Regulations 2020	This has been partially extended. Some of the provisions of these regs were extended through The Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020, but the majority expired.
15	DfT	The Motor Vehicles (Tests) (Amendment) Regulations 2020	01/02/2021 — This has been further amended by the Motor Vehicles (Tests) (Amendment) (Coronavirus) (No.2) Regulations.
16	DfE	The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020	These expired with no extension necessary.
17	DfE	The Education (School Teachers' Qualifications and Induction Arrangements) (England) (Coronavirus) (Amendment) Regulations 2020	01/09/2020 — These were extended through The Education (Induction Arrangements for School Teachers) (England) (Coronavirus) (Amendment) Regulations. They now expire on 01/09/2021.
18	BEIS	Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020	01/08/2020 — No SI was laid to extend these provisions, the sunset provision has come into effect and therefore the SI is no longer in force.
19	DHSC	Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020	26/09/2020 — Now revoked by Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020

	Dept	Title	Sunset Provision
20	MHCLG	The Town and Country Planning (Development Management Procedure) (England) (Coronavirus) (Amendment) Order 2020	31/12/2020 — These provisions have been extended to 31/12/2021
21	MoJ	Prison and Young Offender Institution (Coronavirus) (Amendment) (No. 2) Rules 2020	25/03/2022
22	MoJ	The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020	08/06/2021
23	DIT	The Traffic Order Procedure (England) (Coronavirus) (Amendment) Regulations 2020	30/04/2021
24	DfE	School Forums (Coronavirus) SI	01/04/2021
25	DHSC	Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020	26/09/2020 - Now revoked by Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020
26	DHSC	Health Protection (Coronavirus, International Travel) (England) Regulations 2020	08/06/2021
27	DIT	The Health Protection (Coronavirus, Public Health Advice for Passengers) (England) Regulations 2020	08/06/21 — Updated by regulations laid on 6 July.
28	DIT/ DHSC	The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (S.I., 2020, No. 592)	15/06/21
29	DHSC	Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020	26/08/2020 — Now revoked by Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020
30	MoJ	Competition Appeals Tribunal	25/03/2022

	Dept	Title	Sunset Provision
31	BEIS	The Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020	05/04/2021
32	BEIS	Patents, Trade Marks and Registered Designs (Fees) (Coronavirus) (Amendment) Rules 2020	31/03/2021
33	MOJ	The Secure Training Centre (Amendment) (Coronavirus) Rules 2020	25/03/2022
34	DHSC	Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020	04/01/2021 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020
35	DHSC	Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020	04/01/2021 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020
36	DHSC	The Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) Regulations 2020	08/06/2021
37	HMRC	The Value Added Tax (Zero Rate for Personal Protective Equipment) (Extension) (Coronavirus) Order 2020	These regulations have expired.
38	HMRC	Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Coronavirus) Order 2020	These regulations have expired.
39	MHCLG	Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020	31/12/2020- These provisions have been extended to 31/12/2021
40	MHCLG	Town and Country Planning (Spatial Development Strategy) (Coronavirus) (Amendment) Regulations 2020	31/12/2020 — These provisions have been extended to 31/12/2021

	Dept	Title	Sunset Provision
41	MHCLG	Infrastructure Planning (Publication and Notification of Applications etc.) (Coronavirus) (Amendment) Regulations 2020	31/12/2020 — These provisions have been made permanent.
42	MHCLG	The Environmental Assessment of Plans and Programmes (Coronavirus) (Amendment) Regulations 2020	31/12/2020 — These provisions have been made permanent.
43	MoJ	Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020	28/03/21
44	DHSC	Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020	17 /01/21 — These provisions have been extended by 6 months to 17/07/2021
45	DHSC	Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020	24/07/21
46	DHSC	Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Luton) Regulations 2020	25/01/21 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020
47	DHSC	The Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020	04/02/2021 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020
48	DHSC	Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) (Amendment) Regulations 2020	04/02/2021 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020

	Dept	Title	Sunset Provision
49	DHSC	The Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) (Amendment) (No. 2) Regulations 2020	04/02/2021 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020
50	DHSC	National Health Service (Coronavirus) (Charges and Further Amendments Relating to the Provision of Primary Care Services During a Pandemic etc.) Regulations 2020	01/04/2021
51	DHSC	The Health Protection (Coronavirus) (Restrictions on Holding of Gatherings and Amendment) (England) Regulations 2020	04/12/2020 — This was extended to 17/07/2021
52	DHSC	The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place and on Public Transport) (England) (Amendment) Regulations 2020	27/08/2021
53	BEIS	Feed-in Tariffs (Amendment) (Coronavirus) (No. 2) Order 2020	The regulations contain multiple sunset provisions depending which elements they apply to: Hydro installations - 31/03/22 Community hydro installations - 30/09/22 Anaerobic Digestion and wind installations- 31/03/21 Community anaerobic digestion and wind installations - 30/09/21 Community solar installations - 31/03/21
54	BEIS	The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020	18/09/2021

	Dept	Title	Sunset Provision
55	DfE	Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020	31/03/2021
56	DfE	Early Years Foundation Stage (Learning and Development and Welfare Requirements) (Coronavirus) (Amendment) (No. 2) Regulations 2020	31/08/2021
57	DHSC	Health Protection (Coronavirus, Restrictions) (Greencore) Regulations 2020	These regulations have expired.
58	DHSC	Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020	10/03/21 — These regulations have been revoked by The Health Protection (Coronavirus, Restrictions) (North of England and North East and North West of England etc) (Amendment) Regulations 2020
59	DHSC	Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) Regulations 2020	15/03/2021 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020
60	DHSC	The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020	18/09/2021
61	DHSC	The Health Protection (Coronavirus, Restrictions) (North East England) Regulations	18/03/2021 — These regulations have been revoked by The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020
62	HO	Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) (No. 2) Regulations 2020	01/04/2021

	Dept	Title	Sunset Provision
63	MoJ	Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020	31/01/2022
64	MoJ	Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020	28/06/2021
65	DWP	Employment and Support Allowance and Universal Credit (Coronavirus Disease) (Amendment) Regulations 2020	12/05/2021
66	MoJ	Prison and Young Offender Institution (Coronavirus, etc.) (Amendment) (No. 3) Rules 2020	25/03/2022
67	DHSC	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020	14/04/2021
68	DHSC	Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) (Amendment) Regulations 2020	Regulations that placed an area into tier 3 didn't explicitly have sunset provisions. However, the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 dictated that regulations which placed an area into tier 3 ceased to have effect on 14/11/2020
69	DHSC	Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium, High and Very High) (England) (Amendment) Regulations 2020	Regulations that placed an area into tier 3 didn't explicitly have sunset provisions. However, the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 dictated that regulations which placed an area into tier 3 ceased to have effect on 21/11/2020

	Dept	Title	Sunset Provision
70	DHSC	Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No. 2) Regulations 2020	Regulations that placed an area into tier 3 didn't explicitly have sunset provisions. However, the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 dictated that regulations which placed an area into tier 3 ceased to have effect on 24/11/20
71	DHSC	Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium, High and Very High) (England) (Amendment) (No. 3) Regulations 2020	Regulations that placed an area into tier 3 didn't explicitly have sunset provisions. However, the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 dictated that regulations which placed an area into tier 3 ceased to have effect on 27/11/20.
72	DHSC	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020	14/04/2021
73	DHSC	The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations	14/04/2021
74	DHSC	Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020	02/12/2020 — This SI was revoked.
75	DWP	Social Security (Coronavirus) (Further Measures) (Amendment) and Miscellaneous Amendment Regulations 2020	12/05/2021
76	MoJ	Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020	11/01/2021 — These regulations have been extended to 22/02/2021

	Dept	Title	Sunset Provision
77	DHSC	The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020	02/02/2021 — These regulations have been extended to 31/03/2021
78	DHSC	The Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020	06/06/2021
79	BEIS	Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2020	31/03/2021
80	BEIS	Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (England) Regulations 2020	These regulations contain two sunset provisions. 30/06/2021 is the provision for COVID-19 related PPE being purchased by the Government/ NHS for use by health workers. 31/03/2021 is the provision for other COVID-19 related PPE which can be manufactured or imported and sold on the UK Market
81	DHSC	Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020	02/02/2021 — This has been extended to 31/03/2021
82	MHCLG	Parish and Community Meetings (Coronavirus) (Polls) (Amendment) (England) Rules 2020	07/05/2021
83	MHCLG	Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No. 3) Regulations 2020	31/03/2021
84	MHCLG	Town and Country Planning (Local Planning, Development Management Procedure, Listed Buildings etc.) (England) (Coronavirus) (Amendment) Regulations 2020	31/12/2021

	Dept	Title	Sunset Provision
85	DfE	The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2021	30/09/2021
86	DIT	Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021	07/06/2021
87	MHCLG	Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) (Amendment) (England) Regulations 2021	06/05/2021
88	MoJ	The Public Health (Coronavirus) (Protection from Eviction) (England) Regulations 2021	21/02/2021 — These regulations have been extended to 31/03/2021
89	BEIS	Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021	29/04/2022
90	BEIS	The Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) Regulations 2021	30/04/2021
91	CO	Mayoral and Police and Crime Commissioner Elections (Coronavirus, Nomination of Candidates) (Amendment) Order 2021	28/02/2022
92	CO	Local and Greater London Authority Elections (Coronavirus, Nomination of Candidates) (Amendment) (England) Rules 2021	28/02/2022
93	CO	Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021	28/02/2022

	Dept	Title	Sunset Provision
94	DfE	Education (Coronavirus, Remote Education Information) (England) (Amendment) Regulations 2021	31/08/2021
95	Moj	Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2021	28/06/2021
96	Moj	Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) Regulations 2021	31/03/2021
97	DHSC	The Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021	31/03/2021

Source: *Leader of the House of Commons*

APPENDIX 4: 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 16 March 2021, Members declared the following interests:

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2021 (SI 2021/223)

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Single Use Carrier Bags Charges (England) (Amendment) Order 2021

The Earl of Lindsay

Chairman, BPI Pension Trustees Limited (contains companies which manufacture carrier bags)

Attendance:

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