

# HOUSE OF LORDS

## Secondary Legislation Scrutiny Committee

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### 51st Report of Session 2019–21

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

Drawn to the special attention of the House:

**Adoption and Children (Coronavirus)  
(Amendment) Regulations 2021**

**Abortion (Northern Ireland) Regulations 2021**

#### **Includes information paragraphs on:**

7 instruments relating to COVID-19  
Civil Liability Act 2018 (Financial Conduct  
Authority) (Whiplash) Regulations 2021 and  
one related instrument

Money Laundering and Terrorist Financing  
(Amendment) (High-Risk Countries)  
Regulations 2021

Meat Preparations (Amendment and  
Transitory Modification) (England) (EU Exit)  
(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.

### *Members*

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

### *Registered interests*

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

### *Publications*

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

### *Committee Staff*

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

### *Further Information*

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

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

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

### *Contacts*

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

# Fifty First Report

## PROPOSED NEGATIVES UNDER THE EUROPEAN UNION WITHDRAWAL ACT 2018

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

- European Union (European Schools) Regulations 2021
- Renewable Energy, Energy Efficiency and Motor Fuel Emissions (Miscellaneous Amendments) (EU Exit) Regulations 2021
- Climate and Energy (Revocation) (EU Exit) Regulations 2021
- Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021
- Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021
- Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021
- Union Civil Protection Mechanism (Revocation) (EU Exit) Regulations 2021

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Adoption and Children (Coronavirus) (Amendment) Regulations 2021 (SI 2021/261)

*Date laid: 9 March 2021*

*Parliamentary procedure: negative*

*This instrument extends by six months until 30 September 2021 several relaxations of statutory requirements in relation to children’s social care which were introduced earlier during the pandemic. These relaxations allow, for example, virtual visits of social workers to looked after children and meetings of children and young people in children’s homes with families and social workers to be virtual rather than face-to-face. **While we note the Department’s consultation with the sector and recognise the need for flexibility at this time, we are concerned about the length of this further extension, especially as children have now returned to school. We consider that a three-month extension may have been more appropriate, given the vulnerability of the children affected and the benefits of face-to-face contact, especially over the summer holidays. The House may wish to press the Minister for an assurance that the Department will make every effort to bring to an end the temporary relaxations and return to regular face-to-face visits and meetings at the earliest opportunity.***

**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. These Regulations have been laid by the Department for Education (DfE) with an Explanatory Memorandum (EM). They extend by six months several relaxations of statutory requirements in relation to children’s social care which were introduced earlier during the pandemic.

#### *Previous measures*

2. DfE introduced extensive temporary changes to the statutory requirements that apply to adoption and fostering services and children’s residential care and the responsibilities of local authorities in these areas during the early stages of the pandemic<sup>1</sup> to help the sector to deliver care services. At the time, we raised concerns about the extent of these changes and that the Children’s Commissioner had not been consulted. The first instrument and the majority of temporary changes lapsed on 25 September 2020; the Department introduced a second instrument<sup>2</sup> which extended some of the changes until 31 March 2021.

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1 Adoption and Children (Coronavirus) (Amendment) Regulations 2020 ([SI 2020/445](#)), [13th Report](#), Session 2019–21 (HL Paper 57).

2 Adoption and Children (Coronavirus) (Amendment) (No.2) Regulations 2020 ([SI 2020/909](#)), [26th Report](#), Session 2019–21 (HL Paper 126).

*The key measures extended by this instrument*

3. This third instrument extends until 30 September the temporary measures introduced by the second instrument. The key measures that are extended include the following:
- Social workers may continue to conduct virtual visits of looked after children where appropriate via video conference, telephone, or any other electronic means, but only when face-to-face contact would be contrary to any official public health guidance or when it is not reasonably practicable because of the pandemic. The decision to allow the use of a virtual visit will need to be made in line with any recommendations by a nominated officer. In cases where there are concerns and a face-to-face visit is still the most appropriate, visits will need to be conducted in line with public health advice and the use of personal protective equipment. All uses of virtual visits must be recorded.
  - Virtual visits of residential family centres and virtual interviews with residents and staff to provide assurance on the conduct of the centre, and to form an opinion on the standard of care provided may also continue, but only when face to face contact would be contrary to any official public health guidance or when it is not reasonably practicable because of the pandemic. Similarly, virtual meetings of children and young people in children's homes with their families, social workers and others may also continue under certain conditions. In all these cases the use of virtual visits will need to be recorded.
  - With the NHS remaining under pressure during the pandemic, applications for adoption and fostering may progress to the next stage of the assessment process without medical reports, which are usually required by the end of the initial stage of the process. Such medical reports continue to be required, however, before a final decision on an adoption or fostering placement can be made.
  - The minimum frequency of Ofsted inspections of children's homes, residential family centres, holiday schemes for disabled children, fostering and voluntary adoption and adoption support agencies will remain suspended, with graded inspections expected to resume from April. According to DfE, Ofsted has continued to register social care providers and managers and to monitor children's homes and other regulated settings where there are safeguarding concerns throughout the pandemic.
4. DfE explains that the Department consulted on the further extension of these measures and says that it had discussions with key stakeholders, including children's rights organisations, the Children's Commissioner and the Association of Directors of Children's Social Care as well as with children and young people's forums via local authorities. According to DfE, the majority of stakeholders agreed that the temporary measures should be extended further.<sup>3</sup> The Department will continue to monitor the use of these

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3 DfE, *Children's Social Care: Government consultation response* (March 2021): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/967663/Children\\_s\\_Social\\_Care\\_-\\_government\\_consultation\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967663/Children_s_Social_Care_-_government_consultation_response.pdf) [accessed 8 April 2021].

measures and has updated its guidance<sup>4</sup> and published a Children’s Rights Impact Assessment<sup>5</sup> as well as an Equality Impact Assessment.<sup>6</sup>

5. **While we note the Department’s consultation with the sector and recognise the need for flexibility at this time, we are concerned about the length of this further extension, especially as children have now returned to school. We consider that a three-month extension may have been more appropriate, given the vulnerability of the children affected and the benefits of face-to-face contact, especially over the summer holidays. The House may wish to press the Minister for an assurance that the Department will make every effort to bring to an end the temporary measures and return to regular face-to-face visits and meetings at the earliest opportunity.**

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4 DfE, ‘Coronavirus (COVID-19): guidance for children’s social care services’ (31 March 2021): <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services> [accessed 8 April 2021].

5 DfE, *Children’s Rights Impact Assessment* (August 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/967661/Children\\_s\\_Rights\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967661/Children_s_Rights_Impact_Assessment.pdf) [accessed 8 April 2021].

6 DfE, *Equalities impact Assessment*: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/967662/Public\\_Sector\\_Equality\\_Duty\\_-\\_Equalities\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967662/Public_Sector_Equality_Duty_-_Equalities_Impact_Assessment.pdf) [accessed 8 April 2021].

**Abortion (Northern Ireland) Regulations 2021 (SI 2021/365)***Date made: 22 March 2021**Parliamentary procedure: affirmative*

*These Regulations are supplementary to the 2020 Regulations and our earlier reports on those Regulations reflect some of the substantive issues associated with the extension of abortion services in Northern Ireland. The 2021 Regulations do not change the intention or content of the 2020 Regulations. They provide a mechanism to enforce their implementation which, in turn, raises complex legal and constitutional questions. **We regard it as poor practice to bring new policy into effect when the House is not sitting, and using a procedure which prevents discussion before the legislation takes effect. It is particularly inappropriate when that policy is likely to be controversial, and the House may wish to ask the Minister to explain that decision.***

**We draw these Regulations to the special attention of the House on the ground that they are politically and legally important and give rise to issues of public policy likely to be of interest to the House.**

*Background: the 2020 Regulations*

6. The Abortion (Northern Ireland) Regulations 2020 (“the original Regulations”) extended provision for abortion in Northern Ireland. They were made to fulfil section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 (“the NIEF Act”) which imposed a statutory duty on the Secretary of State to implement, by 31 March 2020, the recommendations contained in paragraphs 85 and 86 of a UN Report made under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>7</sup>
7. In our 11th Report of this session, we drew the original Regulations to the special attention of the House.<sup>8</sup> We had received a number of submissions and in our report we set out the points raised in them with additional material from the Northern Ireland Office (NIO) to supplement that contained in the Explanatory Memorandum (EM).
8. The original Regulations were laid at the start of the pandemic period. Because, at that time, the House did not have the ability to vote remotely, the Government revoked the original Regulations and replaced them with the Abortion (Northern Ireland) (No. 2) Regulations 2020 (“the No. 2 Regulations”). They were almost identical to the original Regulations and in effect extended the approval period until the capacity to vote remotely was in place. In our 16th Report of this session, we confirmed that the comments made in our 11th Report applied equally to the No 2 Regulations.<sup>9</sup> We also drew attention to a number of further submissions, many reacting to the additional material from the NIO published in our 11th Report.

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<sup>7</sup> Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (18 September 2018): [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT\\_CEDAW\\_ITB\\_GBR\\_8637\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf) [accessed 9 April 2021].

<sup>8</sup> Abortion (Northern Ireland) Regulations 2020 (SI 2020/345), [11th Report](#), Session 2019–21 (HL Paper 49).

<sup>9</sup> Abortion (Northern Ireland) (No. 2) Regulations 2020 (SI 2020/503), [16th Report](#), Session 2019–21 (HL Paper 68).

*Reason for the 2021 Regulations*

9. The Abortion (Northern Ireland) Regulations 2021 (“the 2021 Regulations”) were laid by the NIO on 23 March accompanied by an EM. They confer power on the Secretary of State to issue a “direction” to require the relevant authorities in Northern Ireland to take action to implement the CEDAW recommendations. They do not amend the provisions set out in the No 2 Regulations. We have received a number of submissions in relation to these Regulations which are published on our webpages, along with the full text of the further information provided by the NIO.<sup>10</sup>
10. Paragraph 7.4 of the EM states that some service provision has been established by registered medical professionals across the Northern Ireland Health and Social Care Trusts, which has allowed over 1,100 women and girls to access abortion services locally. However, despite the legislation having been in force for a year, these services have not been commissioned or supported by the Northern Ireland Department of Health and full provision is not yet available in Northern Ireland. This has meant that some women have had to continue to travel to England to access abortion services under the Abortion Act 1967 rather than being able to access local healthcare.
11. Paragraph 7.5 of the EM further states the Government’s view that, while some delay could be attributed to the COVID-19 pandemic, “progress should have been made by now”, and that “it is not sustainable for medical professionals to take forward service provision without any formal commissioning, support, relevant medical guidance, and funding” from the Northern Ireland authorities. The EM concludes: “We have reached a point where it remains clear that the Department of Health [in Northern Ireland] will not move forward to make positive progress on this matter”. The 2021 Regulations therefore confer on the Secretary of State the power to direct a Minister or Northern Ireland department to take action to implement the recommendations in paragraphs 85 and 86 of the CEDAW Report.
12. Paragraph 7.9 of the EM states that, following the making of the 2021 Regulations, the Secretary of State will continue to engage in discussions with the Minister and the Department of Health, as well as the Northern Ireland Executive, to see if progress can be made ahead of any direction.

*Direction*

13. We asked the NIO to explain what form such a “direction” would take, and they responded:
 

“A “direction” is a document which sets out the actions that the relevant person is directed to take. The direction will be given to the recipient under cover of a letter from the Secretary of State for Northern Ireland. As set out in the Regulations, the direction will also be published and laid before Parliament. We envisage that the direction will look quite similar to a statutory instrument.”
14. We also asked what sanctions are available to the Secretary of State if a direction is not complied with. The NIO said that any failure to take the action as directed could be challenged by an application for judicial review.

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

15. We asked the NIO if a direction would impinge on the conscientious objection protection in the No 2 Regulations in any way. They replied:

“Regulation 12 of the Abortion (Northern Ireland) (No. 2) Regulations 2020 does not interact with the Abortion (Northern Ireland) Regulations 2021. The conscientious objection protection in the 2020 Regulations applies to medical professionals and others in the actual delivery of abortion services where they can opt-out of participation in treatment for abortion to which they have a conscientious objection. This protection does not relate to the Department of Health and relevant health bodies in terms of commissioning abortion services as that does not amount to ‘participation in treatment’.

The Supreme Court has held that the extent of conscientious objection is restricted to performing the tasks involved in the whole course of treatment bringing about the termination of the pregnancy, beginning with the administration of the drugs designed to induce labour and normally ending with the ending of the pregnancy by delivery of the foetus, placenta and membrane. People carrying out the host of ancillary, administrative and managerial tasks that might be associated with those acts do not have the same right to conscientious objection.

This will be an important matter for the Northern Ireland Department of Health to address in any guidance it produces and/or professional guidance it adopts on these matters.”

### *Timing*

16. The 2021 Regulations were brought into effect on 31 March 2021, the anniversary of the original Regulations taking effect, using the made affirmative procedure. Contrary to the convention of allowing at least 21 days between laying an instrument and bringing it into effect, the 2021 Regulations came into effect eight days after laying. We asked the NIO why this had been done. They replied:

“This was a policy choice. While there may been some inevitable delay by the Department of Health in Northern Ireland in commissioning abortion services, given the unforeseen pressures of responding to the Covid pandemic, progress cannot continue to stall. As it remains clear that the Department of Health will not move forward to make positive progress on this matter, we have had to take this action.

As the Explanatory Memorandum notes, as the instrument does not impose duties on people that are significantly more onerous than before under the 2020 Regulations, or require them to adopt different patterns of behaviour, so commencement less than 21 days after making does not give rise to the usual concern about whether those affected have a reasonable chance to adapt their behaviour.”

17. The 21-day convention is not, however, only for the benefit of those affected in the wider public but also to allow time for parliamentary scrutiny before legislation takes effect. According to Statutory Instruments Practice (the National Archives’ guidance):

“If the 21-day period is reduced, you are reducing the time Parliament has to scrutinise the SI. This should not be done simply for Departmental

convenience. If observing the ‘21-day rule’ is impossible, you must explain in the EM why the SI could not have been made and laid sooner, and why it had to come into effect on the day specified. If the reasons are matters of policy, explain why the policy requires such urgent action. The explanation in the EM should also include what the financial or other impact of delaying the legislation to meet the rule would be.”<sup>11</sup>

18. Our own guidance also warns that a department may be criticised if regulations introducing new policy come into effect when the House is not sitting.<sup>12</sup> **The House may therefore wish to press the Minister for further justification as to why the NIO decided to bring these Regulations into effect in breach of the 21-day convention and during Easter recess.**

*The problem to be addressed*

19. We asked for clarification of the nature and scale of problem that a direction may be used to address. The NIO explained what had happened following the original regulations coming into effect:

“... medical professionals in Northern Ireland commenced some abortion service provision within the scope of the Regulations, across the five Health and Social Care Trusts in Northern Ireland. However, these services have been susceptible to collapse - with both the Northern Trust and South Eastern Trust having to suspend their interim services for periods of time due to resourcing constraints.

The relevant Northern Ireland health bodies, being the Northern Ireland Department of Health, Health and Social Care Board, and the Public Health Agency, have not taken any action to formally commission these services and support the Trusts and medical professionals directly. This means that there is no treatment for the termination of pregnancy available in all of the circumstances in which a termination may lawfully be carried out under the Abortion (Northern Ireland) (No. 2) Regulations 2020 on a consistent basis across the Trusts; no guidance available for medical professionals; no counselling services funded and supported through the health and social care system; and no provision of information about how to access the abortion services.”

20. Some abortions are happening in Northern Ireland through sexual and reproductive health clinics. The 1,100-figure cited in the EM was provided by the Northern Ireland Minister of Health, Robin Swann MLA, in recent Assembly Questions. Because abortion was previously criminalised in Northern Ireland, only eight abortions were conducted within the health system in 2018–19, prior to the change in the law. The NIO does not have figures for abortions within Northern Ireland; however, it states that 1,053 women travelled to England to access abortion services in 2018 and 1,014 women in 2019 but this is not the full picture. The figures for 2020 will be affected by the pandemic and have not yet been published by the DHSC, and so the true scale of demand for abortion services in Northern Ireland is not yet clear.

11 National Archives, *Statutory Instruments Practice: 5th Edition* (November 2017): [https://www.legislation.gov.uk/pdfs/StatutoryInstrumentPractice\\_5th\\_Edition.pdf](https://www.legislation.gov.uk/pdfs/StatutoryInstrumentPractice_5th_Edition.pdf) [accessed 9 April 2021]. Para 2.11.4

12 SLSC, *Guidance for Departments* (January 2020): <https://publications.parliament.uk/pa/ld5801/ldselect/downloads/Guidance-for-departments-on-statutory-instruments-Feb-2020.pdf>. Paras 17,18 and 22.

21. Furthermore, the CEDAW recommendations are wider than the provision of abortion services. They require, for example, information on and access to affordable sexual and reproductive health services and products, including contraception, and non-biased, scientifically sound counselling to be made available. The NIO explained that:

“We want to deliver through the Department of Health in Northern Ireland. However, the statutory duty imposed on the Secretary of State by section 9 of the NIEF Act is such that until all of the recommendations in the CEDAW Report are implemented in Northern Ireland, he will not have complied with his statutory duties in full.”

*Submissions to the Committee*

22. We have received submissions from CARE NI, the Democratic Unionist Party (DUP), the Presbyterian Church in Ireland, Right to Life and Mr Christopher Langley.
23. Several of the submissions ask how the Secretary of State can still have a statutory obligation to implement the CEDAW recommendations under the NIEF Act given that the Northern Ireland Executive resumed in January 2020. Right to Life point directly to the Devolution Settlement provisions,<sup>13</sup> which explicitly make health, social services and education fully devolved matters on which the Assembly has full legislative powers.
24. The NIO told us:
- “The NIEF Act was passed when there was no Executive in Northern Ireland. This position is reflected in the commencement provision in section 13: section 9 only came into force because no Executive was formed before 21 October 2019. The NIEF Act does not provide, however, that section 9 ceased to have effect when an Executive was formed. The statutory duty is unchanged. This reflects the overarching constitutional position that Parliament remains sovereign and may legislate in respect of transferred (i.e. devolved) matters in Northern Ireland if it chooses.”
25. Conversely, the Northern Ireland Human Rights Commission (NIHRC) allege that the Secretary of State has failed to comply with section 9(1) of the NIEF Act. The NIHRC are asking the court to issue a mandatory order requiring the Secretary of State to ensure that the CEDAW recommendations are fully implemented in Northern Ireland, whether through the regulations or otherwise.
26. The NIHRC is also challenging the Northern Ireland Executive Committee and the Minister of Health for failure to agree, commission and fund abortion and post-abortion care, as a breach of Article 8 of the ECHR. Both cases are due to be heard in May.
27. The Presbyterian Church in Ireland and the DUP both question the title and scope of the 2021 Regulations because the CEDAW recommendations extend beyond making abortion available, also requiring the authorities, under recommendation 86(d), to “make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights

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13 Cabinet Office and NIO, *Devolution settlement: Northern Ireland* (20 February 2013): <https://www.gov.uk/guidance/devolution-settlement-northern-ireland> [accessed 12 April 2021].

a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation.” They object on the ground that a direction to implement this provision will take local power from school governors, teachers and parents on sensitive issues, thereby undermining the devolved right of both the Executive and the individual schools to embrace a particular ethos.

28. The submissions also raise the legal status of the CEDAW recommendations. They refer to paragraph 7.7 of the EM which states the power to direct conferred by the 2021 Regulations “is similar to” the power conferred by section 26 of the Northern Ireland Act 1998 but that provision cannot be relied on by the Secretary of State to ensure that the recommendations in paragraphs 85 and 86 of the CEDAW Report are implemented “... [because] those recommendations are not binding and do not constitute international obligations”. The submissions therefore question whether, if they are not binding, the Secretary of State is obliged to implement them all or in full, in the face of opposition from the local population.
29. The CARE NI submission also queries the logic of the NIO assertion in paragraph 10.2 of the EM: “Nor is this instrument dealing with the manner in which the recommendations in the CEDAW Report should be implemented” on the ground that, until that direction is given it will not be clear whether the Secretary of State is requiring the authorities to comply or setting out the way in which it must be done.
30. A further constitutional issue arises because the DUP has proposed a private members Bill, the Severe Fetal Impairment Abortion (Amendment) Bill (“the SFI Bill”) which has just passed second reading stage in the Northern Ireland Assembly. The SFI Bill seeks to amend Regulation 7 of the No 2 Regulations to remove access to abortions in cases of ‘severe foetal impairment’, but retains access to abortions in cases of fatal foetal abnormalities. This change would be contrary to the CEDAW recommendation 85 (b) (iii) and could therefore conflict with the Secretary of State’s duties under section 9 of the NIEF Act to implement the CEDAW recommendations in full. The NIO argues that, were the SFI Bill to be passed, it would not conflict with the 2021 Regulations. They are monitoring the progress of the SFI Bill.

### *Conclusion*

31. These Regulations are supplementary to the 2020 Regulations and our earlier reports on those Regulations reflect some of the substantive issues associated with the extension of abortion services in Northern Ireland. The 2021 Regulations do not change the intention or content of the 2020 Regulations; however, they provide a mechanism to enforce their implementation which, in turn, raises complex legal and constitutional questions. We regard it as poor practice to bring new policy into effect when the House is not sitting, and using a procedure which prevents discussion before the legislation takes effect. It is particularly inappropriate when that policy is likely to be controversial, and the House may wish to ask the Minister to explain that decision
32. **We therefore draw the 2021 Regulations to the special attention of the House on the ground that they are politically and legally important and give rise to issues of public policy likely to be of interest to the House.**

## INSTRUMENTS RELATING TO COVID-19

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### Changes to business practice and regulation

#### *Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021 (SI 2021/375)*

33. This instrument extends several temporary measures, which were introduced by the Corporate Insolvency and Governance Act 2020 and earlier statutory instruments,<sup>14</sup> beyond their current expiry dates:
- Restrictions on the use of statutory demands<sup>15</sup> and winding up petitions<sup>16</sup> are extended from 31 March to 30 June 2021. The Department for Business, Energy and Industrial Strategy (BEIS) says that these restrictions help to protect companies from aggressive creditor action at a time when they continue to be financially impacted by the pandemic.
  - The modifications to moratorium provisions and temporary moratorium rules are extended from 30 March to 30 September 2021. The moratorium provides companies in financial difficulty with protection from creditors whilst they consider a rescue solution. The temporary modifications relax the eligibility criteria for a moratorium and make it more widely available in recognition of the extraordinary difficulties during the pandemic.
  - The small supplier exemption from termination clause provisions<sup>17</sup> is extended from 30 March to 30 June 2021. According to BEIS, this provides certainty to small suppliers that whilst they attempt to recover from any financial impact of the pandemic on their business, they can continue to rely on contractual termination clauses where their customer has entered a formal insolvency procedure.
  - Provisions suspending liability for wrongful trading<sup>18</sup> are extended from 30 April to 30 June 2021. BEIS says that this protects directors of companies rendered insolvent by the pandemic from being held personally liable for debts incurred by the company during the insolvent period if they continue to use their best efforts to trade.
34. We note that although the Explanatory Memorandum only describes some of the expected impacts of these measures, the full Impact Assessment that was prepared for the Corporate Insolvency and Governance Bill includes in its Annex an economic assessment and an assessment of the regulatory impact of these temporary measures.<sup>19</sup>

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14 See for example [SI 2020/1031](#), [SI 2020/1349](#) and [SI 2020/1483](#).

15 A statutory demand can be made to ask for payment of a debt from an individual or company. The individual or company will have 21 days to pay the debt or reach an agreement to pay it.

16 A 'winding up' petition is an application that is made to the court to close or 'wind up' a company that cannot pay its debts.

17 The termination clause provisions prohibit contractual terms that allow contracts to be terminated if a customer enters an insolvency procedure.

18 Wrongful trading may apply where creditors have incurred losses as a result of a company being allowed to trade beyond the point at which insolvency proceedings were inevitable. In such cases a court may require a director of the company to contribute to the company's assets from their personal assets.

19 BEIS, Impact Assessment for the Corporate Insolvency and Governance Bill (April 2020): <https://publications.parliament.uk/pa/bills/cbill/58-01/0146/SIGNED%20-%20IA%20Insolvency%20and%20Corporate%20Governance%20Enactment%20Stage.pdf> [accessed 13 April 2021].

*Draft Combined Heat and Power Quality Assurance (Temporary Modifications) Regulations 2021*

*Renewable Heat Incentive Scheme (Temporary Modification) Regulations 2021 (SI 2021/346)*

35. These two instruments modify temporarily the certification process for the Combined Heat and Power Quality Assurance Scheme which certifies energy efficient Combined Heat and Power (CHP) plants<sup>20</sup> across the UK as Good Quality. Such certification is needed for schemes to access financial incentives, including environmental tax exemptions, such as exemptions from the Climate Change Levy. The Department for Business, Energy and Industrial Strategy (BEIS) says that the COVID-19 lockdowns and restrictions mean that some previously Good Quality CHP operators may not qualify for such incentives in 2021 based on their 2020 operational data and would lose financial support as a result. These two instruments therefore provide a 12-month easing of the certification process to allow CHP operators, which have demonstrated that COVID-19 has had a direct impact on their performance, to submit their 2019 operational data instead of their 2020 data for 2021 certification. BEIS says that this will allow them to remain certified and claim appropriate benefits in 2021, providing continuity of financial support and preventing a further financial hit to CHP operators in 2021.

*Higher Education (Registration Fees) (England) (Amendment) Regulations 2021 (SI 2021/304)*

36. This instrument reduces the registration fees which the Office for Students charges higher education providers by approximately 3% in real terms for the academic year 2021–22. The Department for Education (DfE) says that the reduction aims to remove some of the current financial burden on higher education providers during the pandemic. The smallest providers<sup>21</sup> will continue to be exempt from the registration fees. DfE says that, as announced on 10 September 2020,<sup>22</sup> the plan is to reduce registration fees by a total of 10% in real terms over two years in recognition of the difficult financial environment for higher education providers, so a further 7% reduction is planned for the 2022–23 academic year.

*Valuation for Rating (Coronavirus) (England) Regulations 2021 (SI 2021/398)*

37. This instrument ensures that rateable values in the current 2017 rating lists, which are used in the calculation of business rate bills, will continue to be based on the economic factors, market conditions and the general level of rents which prevailed at the valuation date for those lists of 1 April 2015. This will be done by assuming, for the purpose of assessing rateable values, that there were no interventions to control COVID-19. The Ministry of Housing, Communities and Local Government explains that without this instrument rateable values would be reduced as a result of public health interventions

20 CHP is an energy efficient technology that allows generation of both heat and power on site, providing fuel and carbon savings compared to separate generation.

21 These are so-called micro-entities which have 300 or fewer Full Time Equivalent students and also meet two or more of the following conditions: a turnover of not more than £632,000; a balance sheet total of not more than £316,000; and average number of employees of no more than 10.

22 BEIS and DfE, *Reducing bureaucratic burden in research, innovation and higher education* (10 September 2020): <https://www.gov.uk/government/publications/reducing-bureaucratic-burdens-higher-education/reducing-bureaucratic-burdens-on-research-innovation-and-higher-education> [accessed 8 April 2021].

during the pandemic, leading to a reduction in business rates income for local government and HM Treasury. The next revaluation will take effect on 1 April 2023 and will reflect market rental values at 1 April 2021.

### Travel

#### *Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 12) Regulations 2021 (SI 2021/447)*

38. These Regulations amend the International Travel Regulations<sup>23</sup> to add further countries to the “red list”, in Schedule B1, of countries and territories subject to enhanced measures. The Joint Biosecurity Centre has advised that Bangladesh, Kenya, Pakistan and the Philippines should be added to the red list. This means that with effect from 9 April, international arrivals from those countries have been required to enter managed quarantine.

### Law and order

#### *Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) (Amendment) Regulations 2021 (SI 2021/362)*

39. This instrument extends the prevention of evictions from residential premises, except in the most serious circumstances, from 31 March 2021<sup>24</sup> until the end of 31 May 2021. The exemptions first introduced in November 2020 still apply; for example, evictions may still take place where the court is satisfied that the case involves trespassers, anti-social behaviour, nuisance, domestic abuse in social tenancies, false statements, substantial rent arrears exceeding six months’ rent or the death of the occupant.

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<sup>23</sup> Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)).

<sup>24</sup> When the previous instrument expires, Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) (Amendment) Regulations 2021 ([SI 2021/164](#)).

## **INSTRUMENTS OF INTEREST**

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### **Draft Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021**

#### **Civil Liability (Specification of Authorised Persons) Regulations 2021 (SI 2021/326)**

40. Section 6 of the Civil Liability Act 2018 (“the 2018 Act”) restricts the settlement of whiplash claims without a medical report. In our 49th report<sup>25</sup> we commented on the new simplified online system for claiming damages for whiplash injuries and set out concerns raised by the Motor Accident Solicitors Society about the proposed tariff-based approach. These latest two instruments enable the implementation of the restrictions under the 2018 Act: The draft Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021 provide the Financial Conduct Authority (FCA) with powers to enforce the ban on pre-medical offers to settle whiplash claims, while SI 2021/326 establishes the authorised persons dealing with whiplash claims to whom the FCA’s regulatory powers will apply. According to HM Treasury, the FCA will have to authorise the persons dealing with whiplash claims.

### **Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021 (SI 2021/392)**

41. These Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the MLRs”)<sup>26</sup> in relation to business relationships and transactions involving so-called “high-risk third countries”. These countries are currently listed in a Commission Delegated Regulation<sup>27</sup> which became retained EU law on 31 December 2020, and businesses must take extra customer due diligence measures when dealing with these countries. Following EU Exit and the end of the Transition Period, this instrument revokes the Commission Delegated Regulation and replaces references to it in the MLRs with reference to a freestanding list of countries in a new Schedule 3ZA to the MLRs. According to HM Treasury (HMT), this will allow the UK to take its own view on which countries are high-risk in relation to money laundering and terrorist financing. HMT says that in future the Schedule will be updated periodically by way of further regulations, for example to reflect changes made by the Financial Action Task Force (FATF)<sup>28</sup> to its lists.

### **Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) (Amendment) Regulations 2021 (SI 2021/366)**

42. This instrument amends an earlier instrument<sup>29</sup> to extend the temporary removal of the requirement for meat preparations, such as raw sausages, hamburgers, meatballs and peppered steak, imported from the European Economic Area (EEA) into England to be deep frozen to a temperature of minus 18 degrees until 30 September 2021. Without this extension, the

25 [Draft Whiplash Injury Regulations 2021 and Civil Procedure \(Amendment No.2\) Rules 2021 \(SI 2021/196\)](#), [49th Report](#), Session 2019–21 (HL Paper 245).

26 [SI 2017/692](#).

27 Commission Delegated Regulation (EU) [2016/1675](#).

28 The FATF, of which the UK is a member, is an inter-governmental body established in 1989 that sets international standards with the aim of preventing money laundering and terrorist financing activities.

29 [Meat Preparations \(Amendment and Transitory Modification\) \(England\) \(EU Exit\) Regulations 2020 \(SI 2020/1666\)](#).

temporary measure would have expired on 31 March, and it would have been illegal for traders to import chilled meat preparations from the EEA from 1 April. The Department for Environment, Food and Rural Affairs (Defra) says that the extension brings policy in line with the revised timetable for the phased introduction of import controls on goods arriving from the EEA, as announced on 11 March,<sup>30</sup> providing a consistent approach towards imports and preventing disruption to businesses and consumers.

43. We note the absence of a level playing field for businesses from Great Britain (GB) in this area: because the EU has not reciprocated the temporary measures introduced by this instrument, GB businesses have been unable to export chilled meat preparations, such as raw sausages, to the EEA since 1 January 2021.
44. Defra told us that Scotland and Wales have made equivalent legislation, so that there is a GB wide approach, while Northern Ireland (NI) can continue to import chilled meat preparations from the EU under the NI Protocol. In addition, a six-month grace period until 30 June 2021 allows the movement of ‘restricted and prohibited’ meat products, including chilled meat preparations, from GB to NI. With regard to the end of this grace period, Defra says that the Trade and Cooperation Agreement allows the UK and the EU to cooperate on avoiding unnecessary Sanitary and Phytosanitary barriers to trade in agri-food goods and that the Department is “focused on the need for a long-term solution to this issue”, adding that “the UK government will consider what is the appropriate response to take in line with obligations under the protocol; working with industry, government and the EU”.

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30 Border Controls, Statement [UIN HLWS833](#), 11 March 2021.

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

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

Air Quality (Legislative Functions) (Amendment) Regulations 2021

Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021

Combined Heat and Power Quality Assurance (Temporary Modifications) Regulations 2021

Electricity Trading (Development of Technical Procedures) (Day-Ahead Market Timeframe) Regulations 2021

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

Food and Feed Safety (Miscellaneous Amendments and Transitional Provisions) Regulations 2021

Misuse of Drugs Act 1971 (Amendment) Order 2021

Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) (Amendment) Regulations 2021

Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2021

Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2021

Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2021

Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2021

Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) Regulations 2021

Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) (Northern Ireland) Order 2021

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

SI 2021/362 Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) (Amendment) Regulations 2021

SI 2021/375 Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021

SI 2021/392 Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021

### **Instruments subject to annulment**

SI 2021/228 Universal Credit (Childcare in Wales) (Amendment) Regulations 2021

- SI 2021/285 Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2021
- SI 2021/304 Higher Education (Registration Fees) (England) (Amendment) Regulations 2021
- SI 2021/308 Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2021
- SI 2021/318 Industrial Training (Film Industry Training Board For England And Wales) (Revocation) Order 2021
- SI 2021/326 Civil Liability (Specification of Authorised Persons) Regulations 2021
- SI 2021/346 Renewable Heat Incentive Scheme (Temporary Modification) Regulations 2021
- SI 2021/366 Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) (Amendment) Regulations 2021
- SI 2021/387 Football Spectators (2020 UEFA European Championship Control Period) Order 2021
- SI 2021/393 Vegetable and Ornamental Plant Propagating Material and Fodder Plant Seed (Amendment) Regulations 2021
- SI 2021/398 Valuation for Rating (Coronavirus) (England) Regulations 2021
- SI 2021/420 Bee Diseases and Pests Control (England) (Amendment) Order 2021
- SI 2021/422 Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2021
- SI 2021/440 Marriage and Civil Partnership (Conversion of Civil Partnership and Fees) (Amendment) Regulations 2021
- SI 2021/447 Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 12) Regulations 2021

## **APPENDIX 1: INTERESTS AND ATTENDANCE**

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

For the business taken at the meeting on 13 April 2021, Members declared no interests.

### **Attendance:**

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