

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

52nd Report of Session 2019–21

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

Drawn to the special attention of the House:

**Education (Coronavirus) (School Teachers’
Qualifications, Induction, Inspection
Arrangements, Etc) (Amendment)
Regulations 2021**

**Health Protection (Coronavirus, International
Travel) (England) (Amendment) (No. 11)
Regulations 2021**

**Town and Country Planning (General Permitted
Development etc.) (England) (Amendment)
Order 2021**

Includes information paragraphs on:

4 instruments relating to COVID-19

Official Controls, Plant Health, Seeds and
Seed Potatoes (Amendment etc.) 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

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

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.

Fifty Second Report

PROPOSED NEGATIVES UNDER THE EUROPEAN UNION WITHDRAWAL ACT 2018

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

- Crime (International Co-operation) Act 2003 (Freezing Order)
(England and Wales and Northern Ireland) Regulations 2021

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Education (Coronavirus) (School Teachers' Qualifications, Induction, Inspection Arrangements, Etc) (Amendment) Regulations 2021 (SI 2021/385)

Date laid: 25 March 2021

Parliamentary procedure: negative

These Regulations make changes to the requirements for those undergoing initial teacher training to address the impacts of the pandemic; amend the criteria for the recognition of qualifications of certain overseas teachers; alter Ofsted's remit in relation to the inspection of teacher training; enable data about teachers undergoing a second year of induction to be collected from schools; and implement reforms to the statutory induction of early career teachers (ECTs) in England. Given the current challenges in retaining ECTs, the changes the instrument makes to the statutory induction of teachers and additional information the Department has provided about the wider approach to improving teacher recruitment and retention may be of interest to the House.

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

1. These Regulations have been laid by the Department for Education (DfE) with an Explanatory Memorandum (EM). They make changes in relation to teachers' qualifications, training and induction, the collection of data and Ofsted's inspection regime which are set out in more detail below.

Changes to initial teacher training requirements during the pandemic

2. The instrument relaxes some of the statutory requirements for those undergoing and completing initial teacher training (ITT). Trainees at accredited institutions in England will be allowed to undertake their practical teaching experience wholly or mainly in a school outside England before 1 September 2021, thereby enabling ITT providers to widen their pool of placement schools. According to DfE, this could include trainees training at accredited institutions in England but who may, for example, be placed mainly in schools in Wales.
3. In addition, accredited ITT providers will be able to recommend trainees for Qualified Teacher Status (QTS) if they are satisfied that the trainee has demonstrated adequate progress towards meeting the Teachers' Standards, and would have met them, were it not for a reason relating to the pandemic. This will apply to assessments completed by the accredited provider before 1 September 2021. DfE says that these changes are made in response to the disruption caused by the pandemic and seek to protect the flow and quality of ECT supply to schools in September 2021. According to DfE, more than 41,000 trainee teachers have been recruited and are currently on ITT courses leading to the award of QTS in England.

Recognition of certain overseas teaching qualifications

4. The arrangements for the recognition of qualifications and for awarding QTS to teachers from Australia, Canada, New Zealand and the USA are amended to reflect that teachers in these countries may be regulated at regional rather than national level. In addition, teachers who have completed a comparable course to ITT in Gibraltar may be awarded QTS, ensuring that these teachers are treated the same as other teachers from Europe.

Statutory induction of ECTs

5. Changes are made to the statutory induction of ECTs. DfE explains that most teachers are required to complete successfully an induction period in order to be able to teach as a qualified teacher in maintained schools and certain other institutions in England. Each year, around 30,000 ECTs undertake their statutory induction in England. This instrument extends the induction period from one year/three terms to two years/six terms. According to DfE, this extended induction period will be underpinned by a new structured training and development programme based on the Early Career Framework (ECF).¹ In addition to the 10% timetable reduction that ECTs currently receive during their one-year induction, ECTs will receive a 5% timetable reduction in the second year of induction to allow sufficient time to complete ECF professional development activities. DfE says that these changes will help address the fact that over 20% of new teachers leave the profession within their first two years of teaching, and over 30% leave within their first five years.
6. Given that the drop-out rate of ECTs is significant, we asked whether the Department was taking forward other measures to improve retention. In response, DfE explained that the 2019 Teacher Recruitment and Retention Strategy² outlines four key areas where “focus, investment and reform can have the biggest impact on improving teacher recruitment and retention”. According to DfE, the four priority areas are:
 - (a) Creating the right climate for leaders to establish supportive school cultures. This includes “radically” simplifying the system and a new Ofsted framework with “an active focus on reducing teacher workload, with inspectors considering staff workload as part of the leadership and management judgement”.
 - (b) Transforming support for ECTs through the new ECF. DfE says that the ECF will underpin the new entitlement for two years of fully-funded structured professional development which is designed to help ECTs develop their practice, knowledge and working habits. There will be additional support for the mentors assigned to ECTs, and DfE will introduce “phased training bursaries, with staggered retention payments to encourage good people to remain in the profession, as well as to join”. According to DfE, the changes made by this instrument are central to this priority.
 - (c) Building a career offer that remains attractive to teachers as their careers and lives develop. According to DfE, this includes the development

1 DfE, *Early Career Framework* (January 2019): <https://www.gov.uk/government/publications/early-career-framework> [accessed 15 April 2021].

2 DfE, *Teacher recruitment and retention strategy* (January 2019): <https://www.gov.uk/government/publications/teacher-recruitment-and-retention-strategy> [accessed 15 March 2021].

of “specialist qualifications to support clearer non-leadership career pathways for teachers that want to stay and excel in the classroom”, with investment focussed on challenging schools and support for headteachers to “transform flexible working”.

- (d) Making it easier for “great people” to become teachers through a new ‘discover teaching initiative’ and by simplifying the process for becoming a teacher, including through a simpler digital application process for initial teacher training.
7. We asked DfE to what extent ECTs start their careers via agencies/as supply teachers, rather than being employed directly by schools, and whether ECTs employed by agencies/as supply teachers would also benefit from the new induction provisions. The Department told us that:
- “We do not collect data on the number of ECTs who complete induction as supply teachers but anecdotally we think this number is relatively low. Only supply teachers who are on long-term placements (one term or more) are eligible to undertake statutory induction. Short-term supply placements of less than one term, or equivalent, cannot count towards induction, as such posts will not provide an ECT with the breadth of experience, support, and assessment. From September 2021, all ECTs who undertake statutory induction, including those on long-term supply placements, will benefit from the new induction provisions.”
8. We take the view that to help improve the recruitment and retention of ECTs, the Department may wish to develop a more comprehensive understanding of the different types of employment. This includes obtaining data about the number of ECTs employed via agencies/as supply teachers, even if these teachers are not eligible for statutory induction due to the temporary nature of their employment.
9. We also asked whether ECTs who work through agencies/as supply teachers would have their income reduced, if the 10%/5% timetable reduction is applied during induction. The Department clarified that:
- “The 10%/5% timetable reduction relates to the ECT’s time in the classroom rather than their overall time in school. This time off timetable should be used to specifically enable ECTs to undertake activities in their induction programme. Supply teachers can either be hired directly by a school or through a private supply agency. Where a local authority maintained school hires a supply teacher directly, the teacher is entitled to their pay under the School teachers’ pay and conditions document (STPCD).³ Supply agencies on the other hand are private companies and as such have discretion over individual pay — the teacher’s terms and conditions (including pay) will be a matter between the supply teacher and the agency by which they are employed.”
10. Given the importance of the changes made by this instrument to the induction process, we asked why the changes had not been made by a stand-alone instrument and had instead been included in an instrument which

3 DfE, *School teachers’ pay and conditions document 2020 and guidance on school teachers’ pay and conditions* (September 2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920904/2020_STPCD_FINAL_230920.pdf [accessed 15 April 2021].

bundles together several different measures, including temporary measures to address the impacts of the pandemic. The Department responded that:

“In order to avoid duplication of work and to minimise resourcing implications on the Department and its advisers, it was decided that amendments to the four sets of regulations should be combined into one instrument. All the changes in the instrument relate to teacher training and separate communications/guidance have been issued for each area.”

School Workforce Census

11. This instrument also amends the School Workforce Census to allow data about second year ECTs to be collected from schools. This is to enable DfE to support the delivery of statutory induction and to allocate funding to schools for the ECT's 5% timetable reduction in the second year of induction and for their mentor.

Remit of Ofsted inspections

12. Finally, the instrument extends the remit of Ofsted to enable the regulator to inspect two types of government-funded training programmes for teachers and others engaged in the provision of education or training from September 2021: ECF provider-led training delivered to ECTs and their mentors and reformed National Professional Qualifications for teachers and others who want to develop their knowledge and skills in school leadership and specialist areas of teaching practice.

Conclusion

13. Given the current challenges in recruiting and retaining ECTs, the changes the instrument makes to the statutory induction of teachers and the additional information the Department has provided about the wider approach to improving teacher recruitment and retention may be of interest to the House. **The Regulations are drawn to the special attention of the House on the ground that they are politically or legally important and give rise to issues of public policy likely to be of interest to the House.**

**Health Protection (Coronavirus, International Travel) (England)
(Amendment) (No. 11) Regulations 2021 (SI 2021/442)**

Date laid: 1 April 2021

Parliamentary procedure: negative

*This instrument makes further changes to the testing regime under the International Travel Regulations. The Explanatory Memorandum (EM) accompanying the instrument is, in our view, superficial. We therefore wrote to Jo Churchill MP at the Department for Health and Social Care (DHSC) with a number of questions. The correspondence is published in Appendix 1 to the Report. This is not the first instance of an inadequate EM from the DHSC so we asked the Minister to provide an assurance that steps would be taken to these repeated failures and to ensure that the House is always provided with an adequate explanation of the policy changes in its pandemic legislation. **The Minister's response was disappointingly vague in the light of the repeated concerns we have expressed on this matter.***

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.

14. These Regulations laid by the Department of Health and Social Care (DHSC) amend the International Travel Regulations:⁴ regulation 6 introduces a system of self-isolation for some road haulage workers; regulations 3, 4, 5 and 7 to 11 introduce a system of workforce testing for coronavirus. Regulation 12 amends the Health Protection (Notification) Regulations 2010 to require laboratory operators to secure consistent numbering of specimens tested and require pre-payment.
15. The explanation for the instrument stated in section 7 of the Explanatory Memorandum (EM) is scant:

“This instrument introduces a requirement for these critical sector workers to be tested. Some of these sectors are required to take as part in the general mandatory testing regime contained in the International Travel Regulations whilst other sectors are subject to bespoke workforce testing requirements. The introduction of the bespoke testing requirements also establishes a duty on their employers to take reasonable steps to facilitate testing.”
16. **We regard this explanation as superficial:** it fails to give any rationale for these changes or what effects are expected as a result. Several other changes made by the instrument are not explained at all.
17. We therefore wrote to Jo Churchill MP, Parliamentary Under Secretary of State at DHSC, with a number of questions, some about the practicalities of enforcement, and some about whether the changes to testing are as a result of an omission or of deliberate avoidance by travellers. The correspondence is published in Appendix 1.
18. The Minister's letter gives a much better description of why all of these legislative steps have been taken. This is the level of information that

⁴ Health Protection (Coronavirus, International Travel) (England) Regulations 2020 ([SI 2020/568](#)).

Parliament and the public need in order to understand why these changes are being made. We have asked DHSC to publish an amended EM so that this information will be available to all readers.

19. We note that much of the legislation relies on guidance (for example, about the “reasonable steps” an employer must take). The revised EM should make any such links explicit so that the reader is given a complete picture of what actions are required to meet the legal duty and to assess whether they are reasonable.
20. We also note that section 6 of the original EM includes a list of what each regulation does. This is of limited use, in part because the numbering of the regulations is incorrect, and in part because the text is descriptive in that it simply summarises what the legislation does but not the policy rationale for why the change is thought necessary. **We regard this as evidence of poor quality control within the Department.**
21. We have therefore asked the Minister **for an assurance that steps will be taken to ensure that, in future, the explanatory material in support of DHSC instruments, particularly those related to the pandemic, is fit for purpose. The Minister’s response was disappointingly vague in the light of the repeated concerns we have expressed on this matter.**

Conclusion

22. We criticised the general quality of the policy explanation in EMs produced by DHSC in relation to pandemic legislation in our Interim Report.⁵ Our 49th Report recently criticised the EM accompanying the Travel No. 9 Regulations⁶ for being selective and the Report included an exchange of correspondence with Lord Bethell, Parliamentary Under Secretary of State at DHSC, seeking clarification of certain policy issues the EM glossed over.⁷ **We are therefore disappointed to have had to write again so soon afterwards due to an inadequate EM: sufficient information to understand the reasons for and the effects of the legislation should be the core of every EM.**
23. During the 2017–19 session we said that “Brexit pressure” would not be an acceptable excuse for any decrease in the quality of explanatory material accompanying instruments.⁸ We restated that view with regard to COVID-19 instruments: “the fact that the majority 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”.⁹ In our letter to DHSC we asked the Department to take remedial action to make sure that they reach this standard. We will be monitoring their progress carefully.

5 *Interim report on the Work of the Committee in Session 2019* (39th Report, Session 2019–21, HL Paper 200); see paragraphs 10 and 12.

6 *49th Report*, Session 2019–21 (HL Paper 245): third item, Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2021 ([SI 2021/223](#)).

7 *49th Report*; Appendix 1.

8 *26th Report*, Session 2017–19 (HL Paper 1250): see para 49 onwards.

9 *Interim report on the Work of the Committee in Session 2019*, para 8.

**Town and Country Planning (General Permitted Development etc.)
(England) (Amendment) Order 2021 (SI 2021/428)**

Date laid: 31 March 2021

Parliamentary procedure: negative

This Order introduces several changes to local planning legislation to make it easier to change the use of buildings from commercial to residential use with the aim of supporting the economic recovery from the pandemic; to expand existing schools, colleges, universities, hospitals and prisons; and to further develop operational facilities at ports, as part of the Government’s programme for Freeports. The instrument also makes full local planning consideration a statutory requirement before any relevant statues, memorials or monuments can be removed, implementing a policy the Government announced in January following the removal of the statute of Edward Colston in Bristol last summer.

*We have previously expressed concern about using secondary legislation to bring about significant changes to planning legislation during the pandemic. **Given that the changes made by this Order are permanent and may have a considerable impact on high streets and the development of key infrastructure, such as schools, colleges, universities, prisons and ports, the instrument again raises the question whether it would have been more appropriate to make these changes in a Bill, enabling Parliament to scrutinise the changes and their potential impact more fully. This is particularly apposite as the instrument also puts the Government’s approach to protecting historic statues, including those which may be controversial, on a statutory footing.***

This Order 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.

24. This Order has been laid by the Ministry of Housing, Communities, and Local Government (MHCLG) with an Explanatory Memorandum (EM). The instrument makes changes to local planning legislation in relation to permitted development rights, which are explained below. A further statutory instrument will introduce the fees that will apply to these developments.
25. According to MHCLG, permitted development rights provide a more streamlined planning process with greater planning certainty than the formal local planning application process, while still enabling local planning authorities to consider key planning matters through a “light-touch” prior approval process.

Changing the use of buildings from commercial to residential use

26. The Order introduces a new permitted development right (Class MA) to allow the use of a building to be changed more easily from any use within the Commercial, Business and Service use class (Class E) to residential use (Class C3). Since 1 September 2020, Class E has included a wide range of uses such as offices, shops, cafes and gyms which are suitable for a town centre. MHCLG says that introducing a new permitted development right for such premises will support housing delivery, economic recovery from the pandemic and regeneration of high streets, meeting the Government’s

“Build, Build, Build” commitment¹⁰ to allow a wider range of commercial buildings to change to residential use without the need for a formal planning application.

27. MHCLG says that to prevent gaming of the system and to protect successful businesses, the building that is being changed to residential use must have been in Class E or an equivalent commercial, business and service use for two years and must also have been vacant for three continuous months immediately before the date of application for prior approval. Any time that the premises have been closed as a result of pandemic-related restrictions will not count towards this period. The instrument provides for a number of restrictions and protections, including that no more than 1,500 square metres of floorspace in any building may change use, and that any homes delivered will have to meet, as a minimum, the nationally described space standards. In addition, the right will be subject to prior approval by the local planning authority in respect of matters such as contamination and impacts of noise from existing commercial premises; adequate natural light in all habitable rooms; the impact of the loss of ground floor commercial, business and service use and the impact of any loss of health centres and registered children’s nurseries on the provision of local services.

Allowing further development of schools, colleges, universities, hospitals and prisons

28. The Order amends permitted development rights in Class M to support the extension of school, college, university, hospital and, for the first time, prison buildings. The footprint of any buildings to be developed may be up to 25% of the cumulative footprint of existing buildings on site on 21 April 2021 or up to 250 square metres, whichever is greater. There will also be height restrictions. MHCLG says that the changes are to help implement “Project Speed” which is focused on the delivery of important public infrastructure and, specifically, the delivery of schools, colleges, hospitals and prisons.¹¹ The development of prisons will be limited to closed prisons which operate behind a secure closed perimeter and will not be available, for example, for the development of immigration removal centres. The light-touch approval process will not impact on prison accommodation standards which, according to MHCLG, are set internally by the Ministry of Justice and through international law.
29. MHCLG says that in response to concerns raised during consultation, the Order introduces a prior approval process specifically for the development of university buildings because of their potentially sensitive city centre location and large scale. Under this process, the local authority may assess any transport and highways impacts, the design and external appearance of the development and the impact of the development on heritage and archaeology.

Allowing further development of ports

30. The Order provides the operators of “dock, pier, harbour, water transport, canal or inland navigation undertakings” with greater flexibility to develop their operational services and facilities. According to MHCLG, this supports ports as an important economic agent following the UK’s exit from the EU

10 Prime Minister Boris Johnson, Press Release: *Build Build Build* on 30 June 2020.

11 Prime Minister Boris Johnson, Speech in Dudley, 30 June 2020: <https://www.gov.uk/government/speeches/pm-economy-speech-30-june-2020> [accessed 15 April 2021].

and meets a commitment made in response to the consultation on Freeports.¹² The additional flexibilities reflect the permitted development right already available to airports. A requirement to consult the local planning authority prior to any development taking place mirrors the provision for airports and gives local planning authorities an opportunity to comment on the plans and their impacts. Consultation will not be needed where certain limited types of development are urgently required for the efficient running of a port. Asked for more detail, MHCLG told us that while the specific types of development that this encompasses “will depend on each individual circumstance and would therefore need to be considered on a case by case basis”, local planning authorities will retain their ability to take enforcement action “against development that they do not consider to be within the scope of the new permitted development right”.

Requiring full local planning consideration before any statues, memorials and monuments can be removed

31. This Order makes a permanent amendment to exempt certain statues, memorials and monuments from the permitted development right which allows their demolition. The exemption applies to statues, memorials and monuments which have been in place for at least 10 years on the date of proposed demolition, other than those in five specified exceptions. According to MHCLG, the exceptions are needed to protect the curatorial independence of museums and art galleries and to avoid every-day garden ornaments being captured by the new rules and reflect that certain statues, memorials and monuments, such as cemeteries, are governed by other regulations. The new rules mean that, in future, proposals to demolish relevant statues, memorials and monuments will require a full application for local planning permission. MHCLG says that this implements the Government’s policy intention as announced in January 2021.¹³
32. In addition to this Order, the Government are introducing separately a requirement for local planning authorities to notify planning applications for the removal of relevant statues, memorials and monuments to the Secretary of State. This will give the Secretary of State discretion to call in any such planning applications where he considers this necessary. MHCLG told us that this notification requirement will be set out in an amended Direction from the Secretary of State to local planning authorities, and that the Secretary of State will exercise these powers in accordance with the existing call in criteria as set out in 2021.¹⁴
33. Setting out the rationale for this change, MHCLG states in the EM that:

“statues, memorials and monuments which are erected to commemorate prominent individuals and events can become the subject of disagreement. Government considers that decisions to remove such public landmarks should be made following proper process in accordance

12 DIT and HMT, ‘Freeports consultation’ (October 2020): <https://www.gov.uk/government/consultations/freeports-consultation> [accessed 15 April 2021].

13 HL Deb, 18 January 2021, [HLWS709](#).

14 See: HC Deb, 26 October 2012, [col 71WS](#). According to this statement, planning issues may be of more than local importance if they conflict with national policies on important matters; have significant long-term impact on economic growth and meet housing needs across a wider area than a single local authority; could have significant effects beyond their immediate locality; give rise to substantial cross-boundary or national controversy; raise significant architectural and urban design issues; or involve the interests of national security or of foreign governments.

with the local development plan, national planning policy and other material considerations, and consultation with the public. Government is committed to protecting our historic environment and its policy is that such statues should be retained and explained — to raise awareness of our country’s complex past — rather than be removed.”

34. We asked whether there have been any cases apart from the removal of the statue of Edward Colston in Bristol in June 2020 where statues have been removed without the consent of the relevant authority. MHCLG told us that:

“We are aware of 2 other cases where statues have been removed without consent — Dunham Massey sundial and the carved head forming part of the sign to the Green Man and Black’s Head at Ashbourne, Derbyshire, although both of these can be distinguished from the removal of the Colston statute in that they were removed as a precaution, and in both cases the parties are engaging constructively.”

Conclusion

35. We have previously expressed concern about using secondary legislation to bring about significant changes to planning legislation during the pandemic.¹⁵ **Given that the changes made by this Order are permanent and may have a considerable impact on high streets and the development of key infrastructure, such as schools, colleges, universities, prisons and ports, the instrument again raises the question whether it would have been more appropriate to make these changes in a Bill, enabling Parliament to scrutinise the changes and their potential impact more fully. This is particularly apposite as the instrument also puts the Government’s approach to protecting historic statues, including those which may be controversial, on a statutory footing. The Order 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.**

¹⁵ [25th Report](#), Session 2019-21 (HL Paper 123).

INSTRUMENTS RELATING TO COVID-19

36. Three instruments relating to the COVID-19 pandemic, the Education (Coronavirus) (School Teachers' Qualifications, Induction, Inspection Arrangements, Etc) (Amendment) Regulations 2021 (SI 2021/385), the (Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 11) Regulations 2021 (SI 2021/442) and the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 (SI 2021/428) are drawn to the special attention of the House in this report (see paragraphs 1 to 13, 14 to 23 and 24 to 35 above).

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 (SI 2021/455)

37. In line with the roadmap out of lockdown,¹⁶ this instrument amends the Steps Regulations¹⁷ to move all of England into Step 2 with effect from 12 April. It also makes a few minor clarifications to the Steps Regulations: for example, to allow businesses or services otherwise permitted to open at Step 2 to also open at self-contained accommodation, caravan parks and campsites. Additionally, it clarifies that Coronavirus Improvement Notices and Coronavirus Restrictions Notices which require businesses to remedy unsafe practices within a set period or before reopening, may be issued in relation to the accommodation venues in Step 2.
38. The Secretary of State is required to review the measures imposed by the Steps Regulations every 35 days; the next review will therefore be due by Friday 14 May.

Travel

Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) (No. 2) Regulations 2021 (SI 2021/452)

39. These Regulations amend the Health Protection (Coronavirus, Public Health Information for International Passengers) (England) Regulations 2020.¹⁸ They reflect the first stage of the roadmap out of lockdown, which removes the 'Stay at Home' requirement and allows more internal travel from 29 April. These Regulations amend travel provisions so that a person without a reasonable excuse for travelling outside the UK may no longer be directed to return to the place where they are living, though they may still be directed to leave an embarkation point.
40. These Regulations also amend the International Travel Regulations 2020¹⁹ to update the list of specified competitions in Schedule 3 which is used to identify sportspersons exempt from self-isolation.

16 Cabinet Office, 'COVID-19 Response — Spring 2021 (Summary)' (22 February 2021): <https://www.gov.uk/government/publications/covid-19-response-spring-2021/covid-19-response-spring-2021-summary> [accessed 15 April 2021].

17 Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (SI 2021/364).

18 SI 2020/567, as amended.

19 SI 2020/568, as amended.

Changes to business practice and regulation

Industrial Training Levy (Construction Industry Training Board) Order 2021 (SI 2021/421)

41. This Order implements the proposals of the Construction Industry Training Board (CITB) for the levy that is to be imposed on employers in the sector to fund the CITB's services and activities in relation to industry training. The last such Order was made in 2018.²⁰ The Department for Education says that plans for another three-year Order covering the years 2021, 2022 and 2023 have not been taken forward because of the continuing uncertainty caused by the pandemic and the potential for a significant recession. Instead, this Order implements proposals for only one year. The instrument sets the levy rates for different categories of employers, based on the annual emoluments²¹ they pay to their workers. In response to the pandemic, the Order also allows employers to pay 50% of the 2020 levy in 2021–22, while the levy to be paid in 2021 is reduced by 50% compared to 2020. The Small Business Levy Exemption Threshold, which exempts small employers from the levy, is increased from £79,999 to £119,999.

Delayed or revoked legislation

Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 (SI 2021/429)

42. This instrument postpones the date from which prior notification requirements will apply to the import of products of animal origin and prescribed types of plant and plant products from the EU into Great Britain (GB), from 1 April to 31 July 2021. The instrument also extends a transitional period, so that phytosanitary certificates will not be required for the import of plants and plant products from the EU into GB until 31 December 2021. Without this extension this transitional period would have expired on 31 March. The Department for Environment, Food and Rural Affairs (Defra) says that the Government's EU Exit Operations Cabinet Committee (XO Committee) has agreed these extensions to give businesses which will be affected by the new sanitary and phytosanitary (SPS) requirements more time to familiarise themselves with the new rules and IT systems and enable workable migration from current systems at a time when they have to deal with the ongoing impacts of the pandemic. Defra says that the extensions will also ensure that necessary infrastructure and processes are in place at Border Control Posts (BCP), further minimising the risk of any disruption.
43. We asked Defra for further information about the new IT systems and when they were expected to be ready. The Department told us that:

“Since 1 January 2021, the Import of products, animals, food and feed system (IPAFFS) has been successfully introduced for imports of live animals, animal products and high-risk food and feed not of animal origin into GB. Defra is now extending IPAFFS functionality to include imports of plants and plant products from EU and non-EU third countries. Likewise, Defra continues the development of the new exports IT system (formal name to be confirmed in due course). Over the past

20 Industrial Training Levy (Construction Industry Training Board) Order 2018 ([SI 2018/432](#)).

21 Emoluments are defined in the instrument but broadly include salaries, fees and wages. The use of emoluments, rather than number of employees, reflects the nature of the industry in which employers make extensive use of subcontractors and may directly employ few people.

few months, the team have been working closely with a small group of Used Agricultural Farm Machinery exporters, to further develop, test and refine the live system. Following the success of this private beta, there will be a phased transition period to the new live systems, starting throughout Summer 2021. This will allow time for business to familiarise themselves with the new services and to new commodity groups to be onboarded, recognising that full functionality will be an ongoing process.”

44. We also asked Defra when it expected the BCP infrastructure to be ready for the new SPS checks. The Department told us that it expects this “infrastructure to be ready as required to deliver each of the revised phases of increased SPS checks in October 2021, January 2022 and March 2022, as confirmed by the XO Committee decision of 10 March 2021”.

INSTRUMENTS OF INTEREST

Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021 (SI 2021/426)

45. This instrument amends retained EU law to ensure that plant health controls within Great Britain (GB) and between relevant third countries and GB can function effectively. Amongst other changes, this includes amendments to implement the Northern Ireland Protocol; to enable plants, plant products and other objects which pose the highest risk to GB biosecurity to be subject to physical checks and identity checks at the appropriate frequency rate during a transitional period; and to ensure that the import into GB of ware potatoes from Poland, Portugal, Romania and Spain are subject to official controls.
46. We have received a submission from Friends of the Earth which raises concerns about a potential change in the approach to quarantine policy and GB regulated non-quarantine pests and about a potential weakening of standards in the procedures for eradicating potential pests and diseases. We are publishing the submission and the response from the Department for Environment, Food and Rural Affairs, which addresses these concerns, on our website.²²

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

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2021

Made instruments subject to affirmative approval

- SI 2021/429 Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021
- SI 2021/455 Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021

Instruments subject to annulment

- SI 2021/421 Industrial Training Levy (Construction Industry Training Board) Order 2021
- SI 2021/426 Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021
- SI 2021/446 National College for Advanced Transport and Infrastructure (Designated Institution and Further Education and Revocations) Order 2021
- SI 2021/452 Health Protection (Coronavirus, International Travel and Information for Passengers) (England) (Amendment) (No. 2) Regulations 2021
- SI 2021/453 Official Controls (Exemptions from Controls at Border Control Posts) (Amendment) Regulations 2021

APPENDIX 1: CORRESPONDENCE

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

I am writing to you on behalf of the House of Lords Secondary Legislation Scrutiny Committee about the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 11) Regulations 2021.

We were unable to complete our scrutiny of these Regulations at our meeting this week because of the poor quality of the Explanatory Memorandum (EM) accompanying the instrument.

Although section 6 of the EM includes a list of what each regulation does, we found this of limited use. This is, in part, because the numbering of the regulations is incorrect. The more important reason, however, is that the material is purely descriptive and fails to provide any explanation of the policy rationale for why the changes made by the instrument are necessary or how they are to be implemented.

We found the short policy explanation in section 7 of the EM to be wholly inadequate. It omits several key aspects of the instrument, including, for example:

- How self-isolation by foreign-based road haulage workers in their vehicle cabs will be enforced, the numbers involved and assessment of any potential impact on the supply chain.
- Why the seemingly sensible requirement that a laboratory operator should take reasonable steps to ensure that an individual has a consistent test specimen number is only being introduced now – was it, for example, an omission in the preceding regulations or have a number of tests gone astray?
- Regulations 10 and 11 require providers to take pre-payment for tests before issuing a reference number. Paragraph 6.9 of the EM says that this is to reduce the risk of international arrivals cancelling test packages once they have passed through border controls. Is this a precautionary measure or in reaction to a high number of defaulters?
- Regulations 7 and 8 set out new penalties but it is not entirely clear to whom regulation 8 applies.
- Regulation 11 inserts new Schedule 2D to the International Travel Regulations 2020. It requires employers with more than 50 employees, of which one or more are required to undertake “workforce tests”, to take “reasonable steps to facilitate the taking of those tests”. It would help both Parliament and industry if there was a clearer explanation of what constitutes “reasonable steps”.

On 10 March, I wrote to Lord Bethell about the poor quality of the EM in relation to the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 9) Regulations 2021. It is, therefore, disappointing to be writing again to the DHSC. If Parliament and the wider public are to be able effectively to scrutinise these (or any) Regulations, it is critically important that the EM should provide a thorough explanation of their purpose and why they are needed in plain English and using terms that are clear to all readers.

I would be grateful therefore if you could provide:

- **a full explanation of all the policy objectives of this instrument; and**
- **an assurance that steps will be taken by your Department to ensure that, in future, the explanatory material in support of DHSC instruments, particularly those related to the pandemic, is fit for purpose.**

Letter from Jo Churchill MP to Lord Hodgson

This letter provides further detail in response to your letter of 13 April in which you expressed your dissatisfaction [about] the Explanatory Memorandum (EM) for the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 11) Regulations 2021 (SI 2021/442). Your concern is that the EM gave insufficient background on the rationale for the changes made and how they are to be implemented.

The purpose of the Regulations was to introduce a new system of: (i) mandatory testing for international arrivals who are exempt from quarantine where they are travelling with a sectoral exemption, including a duty on employers to take reasonable steps to facilitate this testing; (ii) to amend the minimum standards for providers of international travel testing;²³ (ii) to amend the minimum standards for providers of international travel testing.²⁴

You asked how self-isolation by foreign-based road workers in the vehicle cabs will be enforced, the number of road haulage workers involved and an assessment of the potential impact on the supply chain. We acknowledge that there are practical challenges for enforcement of the regulation, and we have focused much more on compliance and communication to hauliers through associations and Government guidance. We understand that the majority of road haulage workers isolate in their cabs already and we envision the new regulations further enforce already practiced behaviours. If there is a large breach in compliance the police can be notified and issue a £1000 FPN.

We do not have data available for 2021 in the number of foreign based road haulage workers arriving in the UK. However, in quarter 1 of 2020, there were 463,000 trips made by foreign-based hauliers to the UK, which averages approximately 35,000 per week which would likely be impacted by these regulations. The regulations build on guidance that was issued in December 2020 which had the support of the sector and as mentioned, road haulage workers already largely isolate in their cabs while working and in the UK and so there would be likely be minimal impact on the supply chain.²⁵

You queried why we did not, when private sector provision for international arrival testing on day 2 and day 8 was enabled, set the requirement that a laboratory operator should take reasonable steps to ensure that the test result and genome sequencing result should be reported with a consistent test specimen number.

23 Detailed guidance on the bespoke or 'workplace' testing is provided on gov.uk: <https://www.gov.uk/guidance/bespoke-testing-regimes-for-exempt-groups>. Detailed guidance on which testing regime should be followed by international arrivals claiming exemptions from quarantine is also provided on gov.uk: <https://www.gov.uk/government/publications/coronavirus-covid-19-travellers-exempt-from-uk-border-rules>.

24 Detailed guidance on the minimum standards for privately provided day 2 and day 8 for international travel are provided on gov.uk: <https://www.gov.uk/guidance/testing-on-day-2-and-day-8-for-international-arrivals>.

25 Detailed guidance on haulier cab restrictions is provided on gov.uk: <https://www.gov.uk/guidance/coronavirus-covid-19-hgv-operators-and-drivers-crossing-an-international-border>.

Prior to the amendments, it was already the case that laboratory operators and test provider must have a system in place for reporting test results in accordance with their obligations under the Health Protection (Notification) Regulations (SI 2010/659) and the Health Protection (Coronavirus, International Travel) (England) Regulations (SI 2020/568).

In addition to test results, providers and laboratory operators must, where applicable, report data fields for personal data for the purposes of contact tracing and international travel data fields for the purposes of disease surveillance. Test results can be linked by name and date of birth as well as by specimen number but systematising this by establishing a minimum standard for a consistent specimen number, particularly where laboratories are genomically sequencing samples which may already have been diagnostically processed, will be more resilient to a possible increase in travel volumes in the longer term.

You ask whether the requirement for test providers to take pre-payment for tests before issuing the reference number which must be inputted into the Passenger Locator form is a precautionary measure. The vast majority of private test providers, for commercial and operational reasons, take payment with booking and before issuing a test reference number which is inputted by international arrivals into the Passenger Locator Form.

However, some private providers did not adopt this operational approach. The requirement to take pre-payment of tests before issuing a reference number is in response to concerns and limited evidence that an international arrival could, feasibly, book a test and cancel without booking a test with another provider.

You ask to whom Regulation 8 applies. Regulation 8(2) applies to employers who have breached the duty to take reasonable steps to facilitate workforce tests and sets the penalties for breach of this requirement. Regulation 8(3) sets the penalties for international arrivals breaching the testing requirements under the workforce testing regime (new regulation 3C) and offshore installation worker regime (new regulation 3D).

You highlight that it would help both Parliament and industry if there was a clearer explanation of what constitutes reasonable steps to facilitate the taking of tests for an employer with more than 50 employees, of which one or more are required to undertake 'workforce tests', i.e. to follow a bespoke testing regime. We have published guidance on gov.uk on what could be considered reasonable steps.²⁶ This includes: communicating testing requirements to the workforce when they are travelling for work, establishing workplace COVID-19 testing or providing employees with home testing and supporting access, or signposting employees to COVID-19 testing outside of the workplace. This includes: communicating testing requirements to the workforce when they are travelling for work, establishing workplace COVID-19 testing or providing employees with home testing and supporting access, or signposting employees to COVID-19 testing outside of the workplace.

We recognise the crucial role that Explanatory Memoranda play in facilitating parliamentary scrutiny and informing the wider public and we are working to make every effort to strengthen their quality.

26 Detailed guidance on the employer duty is provided on gov.uk: <https://www.gov.uk/guidance/coronavirus-covid-19-employer-testing-duty>.

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 20 April 2021, Members declared the following interests:

Education (Coronavirus) (School Teachers' Qualifications, Induction, Inspection Arrangements, Etc) (Amendment) Regulations 2021 (SI 2021/385)

Lord Chartres and Baroness Watkins of Tavistock
Both have children who are teachers

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 11) Regulations 2021 (SI 2021/386)

The Earl of Lindsay
Chairman, United Kingdom Accreditation Service (UKAS)

Attendance:

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