



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

5th Report of Session 2021–22

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

Drawn to the special attention of the House:

Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment) Regulations 2021

Includes information paragraphs on:

3 instruments relating to COVID-19

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 13 May 2021, are set out on the website but are, broadly:

To report on draft instruments published under paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018; 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>Lord Lisvane</u>
<u>Rt Hon. Lord Chartres</u>	<u>Lord Hodgson of Astley Abbotts</u>	<u>Lord Sherbourne of Didsbury</u>
<u>Rt Hon. Lord Cunningham of Felling</u>	(Chair)	<u>Baroness Watkins of Tavistock</u>
<u>Lord German</u>	<u>The Earl of Lindsay</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 Operations Officer).

Further Information

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

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

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

Contacts

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

Fifth Report

PROPOSED NEGATIVES UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

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

- Social Security (Reciprocal Agreements) (Miscellaneous Amendments)
(EU Exit) Regulations 2021

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment) Regulations 2021 (SI 2021/682)

Date laid: 8 June 2021

Parliamentary procedure: negative

*Previous Regulations set a deadline for private providers of coronavirus tests to meet relevant ISO standards by 30 June 2021. These Regulations extend that deadline to 31 August 2021 to allow more firms to complete the assessment process. A recent article published by Which? has questioned the way the Government select the private test providers they list on their official website, raising questions about the clarity of pricing and the capacity of some of the firms listed to provide the service advertised. **The House may wish to ask the Minister whether DHSC has taken action, and if so what, to ensure that test package pricing is shown in a standardised way that reflects the Government’s wider policies for the protection of consumers.***

*Whatever disclaimer the Government may publish, the public is likely to regard a company listed on the Gov.uk website as in some way “official”. **The House may wish therefore to ask the Minister whether self-declaration is an adequate basis for inclusion on the list of providers and how frequently DHSC checks non-ISO-accredited firms’ compliance with “the minimum standards”.** These Regulations extend the assessment period to six months, lengthening the period during which firms can offer tests before they meet the ISO standard. We are already concerned however about the potential threat to public health from inaccurate test results if firms are operating before they have gained full accreditation.*

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

1. The Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020¹ set the criteria that private providers of coronavirus tests must meet. They required, in particular, that all private test providers work towards the relevant International Organisation for Standardisation (ISO) accreditation by 30 June 2021. The Department for Health and Social Care (DHSC) states that this instrument extends that deadline to 31 August 2021 to allow more firms to complete the assessment process. The delay allows the United Kingdom Accreditation Service (UKAS), which must check the evidence submitted, more time to work with applicants many of which do not have previous experience in this field.

Background

2. Private providers who offer sample collection or sample testing services (whether this is in laboratory or point of care testing) must apply for full UKAS accreditation by the stipulated deadlines. There are different standards for those who are offering general population testing and those who are offering tests that comply with international travel legislation. Criteria to be met

¹ Health Protection (Coronavirus, Testing Requirements and Standards) (England) Regulations 2020 (SI 2020/1549).

also depend on whether the applicant is a laboratory actually conducting diagnostic tests or a customer-facing organisation that subcontracts the diagnostic testing.

- Stage 1: To be included on the list of test providers, firms “self declare” that they meet the specified standards² and that declaration is subsequently reviewed by UKAS.
- Stage 2 (within four weeks of completing Stage 1—that is, the date on which the organisation made a valid application for accreditation): Firms must submit evidence demonstrating their compliance with 13 points, which include, for example, explanation of their methods for avoiding contamination of samples, and how they will dispose of clinical waste.³ This submission is subsequently reviewed by UKAS to ensure standards are being met.
- Stage 3: The organisation must complete full UKAS accreditation within the deadline set. This involves a full assessment of a laboratory’s activities in line with ISO 15189 or ISO/IEC 17025. For point of care testing providers, this would be ISO 15189 and ISO 22870. Under the existing Regulations the deadline is 30 June 2021 or four months after completing Stage 2. These new Regulations extend the assessment deadline until 31 August 2021 or six months after completing Stage 2.

Concerns from Which?

3. A recent article published by Which?⁴ has questioned the way the Government select the private test providers they list on their official website.⁵ The article raises questions about the clarity of pricing for travel tests (cheaper prices listed were found to be per test rather than per package of two tests, some prices were for tests to be taken at a specified venue rather than a home test). The article also raises concerns about the capacity of some of the firms listed to provide the service advertised at all.
4. The article notes that when Which? contacted DHSC about certain companies whose performance was in question, they were immediately removed from the Government list. The Government webpage states that “Organisations may be taken off the lists if they are at any time found to be non-compliant with any of the minimum standards for the test service they are providing”, but on the Gov.uk webpage the focus is on meeting the ISO technical standards rather than the normal consumer standards in relation to the service and its pricing.

2 See for example: DHSC, ‘Day 2 and day 8 testing for international arrivals: minimum standards for providers’ (14 February 2021): <https://www.gov.uk/guidance/testing-on-day-2-and-day-8-for-international-arrivals> [accessed 15 June 2021] or DHSC, ‘Self-declare as a private COVID-19 testing provider’ (20 October 2021): <https://www.gov.uk/guidance/self-declare-as-a-private-sector-covid-19-testing-provider> [accessed 15 June 2021].

3 See UKAS, ‘C19-Stage2 UKAS appraisal’: <https://www.ukas.com/c19-stage2-ukas-appraisal/> [accessed 15 June 2021].

4 ‘The cheap testing firms that can’t provide tests at the top of the government’s day two and day eight provider list’, *Which?* (10 June 2021): <https://www.which.co.uk/news/2021/06/the-cheap-testing-firms-that-cant-provide-tests-at-the-top-of-the-governments-day-2-and-day-8-provider-list/> [accessed 15 June 2021].

5 DHSC, ‘Private providers of COVID-19 testing: what you need to know’ (15 June 2021): <https://www.gov.uk/government/publications/list-of-private-providers-of-coronavirus-testing/list-of-private-providers-of-coronavirus-testing> [accessed 15 June 2021].

5. DHSC did not respond to our request for comment on the Which? article. **The House may therefore wish to ask the Minister whether DHSC has taken action to ensure test package pricing is shown in a standardised way, that reflects the Government’s wider policies for the protection of consumers.**

Grounds for inclusion on the Government list

6. We asked DHSC about the criteria for including firms on the list on the Gov.uk page. They said:

“The self-declaration is subsequently reviewed by the United Kingdom Accreditation Service (UKAS) to ensure standards are being met. When private providers have successfully completed due diligence for their provision of testing, they can then begin to offer testing services and appear on the appropriate Gov.uk pages.

All measures are kept under review and further action will be taken to protect the public if needed.

Anyone who has concerns about the trading standards of an individual company may wish to contact their local trading standards office.”

7. Although the Gov.uk website does say that “the government does not endorse, recommend or approve any private test provider”, it also says that, while not fully UKAS accredited, providers listed “have demonstrated compliance with the applicable minimum standards”. Which?’s findings suggest that some of the firms included on the Government list have not had the basic capacity to offer coronavirus tests either technically or commercially. **The House may therefore wish to ask the Minister whether self-declaration is an adequate basis for inclusion on the list of providers.**

Conclusion

8. Whatever disclaimer the Government may publish, the public is likely to regard a company listed on the Gov.uk website as in some way “official”. **The House may therefore wish to ask the Minister how frequently, if at all, DHSC checks non-ISO-accredited firms’ compliance with “the minimum standards”.**
9. If a firm offering Test to Release tests to travellers incorrectly returns a negative result, an infected traveller could mix freely with the general population. These Regulations propose extending the assessment period from four to six months, lengthening the period during which firms can offer tests before they meet the ISO standard. We are already concerned about the potential threat to public health from inaccurate test results if firms are operating before they have gained full accreditation.

INSTRUMENTS RELATING TO COVID-19

10. One instrument relating to the COVID-19 pandemic, the Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment) Regulations 2021 (SI 2021/682), is drawn to the special attention of the House in this report (see paragraphs 1 to 9 above).

Changes to business practice and regulation

Draft Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021

11. These Regulations include three measures intended to assist the recovery of the hospitality industry following the coronavirus pandemic:
- They extend provisions in the Business and Planning Act 2020 to allow licensed premises not normally licensed to sell alcohol for consumption off the premises to carry on doing so for a further year (to 30 September 2022).
 - They also increase the number of temporary event notices (TENs) permitted by section 107 of the Licensing Act 2003 from 15 to 20, and the maximum number of days on which such temporary events may be held from 21 to 26, in the calendar years 2022 and 2023. TENs can be used to sell alcohol on unlicensed premises, for example a wedding reception venue, or to extend an establishment's licensed hours for a special event.
 - Finally, they make consequential changes to the forms for TENs and for counter-notices (which are used when local authorities want to prevent an event proceeding).

Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 (SI 2021/652)

12. This instrument adjusts grace periods and transitional provisions in relation to import requirements that apply to certain marketing standards sectors, such as hops and hop products, wine and fruit and vegetables, and concerning the requirements for the import of organic products from the EU, European Economic Area and Switzerland into Great Britain (GB). The Department for Environment, Food and Rural Affairs (Defra) explains that transitional provisions were introduced before the end of the Transition Period to allow businesses more time to prepare for the introduction of new certification and inspection requirements and to minimise disruption of trade with the EU. This instrument aligns the dates when the new requirements will be introduced with the revised timetable for the introduction of sanitary and phytosanitary (SPS) border control checks.⁶
13. The changes mean that the transitional period for hops and hop products, wine and organic products will be extended from 1 July 2021 to 1 January 2022, while the transitional period for fruit and vegetables will be shortened from 31 December 2022 to 1 March 2022. According to Defra, the original transition periods are no longer an appropriate timeframe because of the scale of the pandemic and the additional time businesses need to prepare.

6 Written Statement [HLWS833](#), Session 2021–22.

Defra says that without the changes, EU exports of hops, wine and organic products to GB “would be halted, while also attracting a considerable amount of media attention and controversy, compromising the UK’s reputation as a trading partner”.

Travel

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 2) Regulations 2021 (SI 2021/670)

14. These Regulations amend the International Travel Regulations⁷ to remove Portugal (including the Azores and Madeira) from the Green List (Category 1) and add Afghanistan, Sudan, Sri Lanka, Bahrain, Trinidad and Tobago, Costa Rica and Egypt to the Red List (Category 3). Concerns have been raised about passengers from Red List countries mixing with other passengers; accordingly, regulation 9 permits direct flights from Red List countries to land in England at Birmingham South Terminal or Heathrow Airport Terminal 3, so that they can be processed entirely separately. London Biggin Hill Airport is also added to the list of airports at which people who have been in or transited through Red List countries may arrive.
15. These Regulations tighten up requirements so that international arrivals, who are not claiming a work-based exemption, must purchase the appropriate package even if they are staying for a shorter period: those from a Category 1 country must purchase a day 2 test, those from a Category 2 country must purchase a day 2 and day 8 test, even if they are staying for a shorter period.

⁷ The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 ([SI 2021/582](#)).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021

Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021

Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021

Instruments subject to annulment

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| SI 2021/636 | Copyright and Performances (Application to Other Countries) (Amendment) Order 2021 |
| SI 2021/637 | Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2021 |
| SI 2021/638 | Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 |
| SI 2021/639 | Proceeds of Crime Act 2002 (Administrative Forfeiture Notices) (England and Wales and Northern Ireland) (Amendment) Regulations 2021 |
| SI 2021/640 | Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales and Northern Ireland) Order 2021 |
| SI 2021/641 | Phytosanitary Conditions (Amendment) Regulations 2021 |
| SI 2021/652 | Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 |
| SI 2021/660 | Plant Health (Fees) (Forestry) (England) (Amendment) Regulations 2021 |
| SI 2021/670 | Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 2) Regulations 2021 |

APPENDIX 1: 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 15 June 2021, Members declared the following interests:

Health Protection (Coronavirus, Testing Requirements and Standards) (England) (Amendment) Regulations 2021 (SI 2021/682)

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 Abbotts, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock.