



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

6th Report of Session 2021–22

Drawn to the special attention of the House:

Sea Fisheries (Amendment etc.) Regulations 2021

Includes information paragraphs on:

7 instruments relating to COVID-19

Draft Health Security (EU Exit) Regulations
2021

Draft Market Surveillance (Northern Ireland)
Regulations 2021

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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.

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<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Viscount Hanworth</u>	<u>Lord Lisvane</u>
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<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 Louise Andrews (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.

Sixth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Sea Fisheries (Amendment etc.) Regulations 2021 (SI 2021/698)

Date laid: 10 June 2021

Parliamentary procedure: negative

This instrument revokes retained EU legislation that deals with fishing measures which protect certain fish stocks in the Celtic Sea and which currently apply within the English and Welsh zones of British fishery limits. The Department for Environment, Food and Rural Affairs says that these measures will be replaced with improved and more responsive measures which will be brought in through the application of domestic and foreign vessel licence conditions. While the licence conditions will not be laid before Parliament, the Department told us that relevant Committee Chairs in both Houses have been informed about the new measures. The instrument also makes adjustments to the level of European seabass that may be caught as bycatch within the current fishery limits and incidental and consequential adjustments to the bass management measures. The changes are the first time that powers conferred by the Fisheries Act 2020 have been exercised. We have asked the Department to revise the Explanatory Memorandum, so that some of the technical terms are explained and the changes made by the instrument are easier to understand for the lay reader.

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

1. This instrument has been laid by the Department for Environment, Food and Rural Affairs (Defra) with an Explanatory Memorandum (EM). The instrument revokes retained EU legislation that deals with fishing measures which protect fish stocks in the Celtic Sea. Defra says that the revoked legislation will be replaced with improved and more responsive measures which will be brought in through the application of domestic and foreign vessel licence conditions. The instrument also makes adjustments to the level of European seabass that may be caught as bycatch within the current fishery limits and incidental and consequential adjustments to the bass management measures. Defra says that the instrument is the first time that powers conferred by the Fisheries Act 2020 have been exercised.

Revocation of Celtic Sea technical measures

2. The instrument revokes retained EU legislation¹ that deals with technical measures in the Celtic Sea, which currently apply within the English and Welsh zones of British fishery limits. According to Defra, the revoked legislation will be replaced with improved measures which will be brought in through the application of domestic and foreign vessel licence conditions. This is to enable a “more responsive management regime, allowing improvements in selectivity to be applied more rapidly, in response to new scientific information or the outcomes of negotiations on fishing opportunities”. Defra

¹ [Commission Implementing Regulation \(EU\) No 737/2012](#) on the protection of certain stocks in the Celtic Sea.

says that improved selectivity will “enable the vulnerable stocks that are in a poor state (including cod) to recover [...] enable the continuation of a profitable and sustainable fishery as stocks recover”.

3. The revocation will take effect from 5 September 2021. Defra says that on the same day, the Marine Management Organisation (MMO) will apply the improved measures through domestic and foreign vessel licence conditions, so that there is no regulatory gap. Asked about the scrutiny of the new measures, the Department explained that:

“Amendments to fisheries management measures will still adhere to the Better Regulation Framework, undergo appropriate clearance and scrutiny for measures that classify as ‘regulatory provision’. These must be developed in line with wider legislative objectives such as the Fisheries Objectives in the Fisheries Act, including the sustainability objective, the ecosystem objective, and the scientific evidence objective, for example. Any significant changes to fisheries management measures will be subject to consultation, along with a regulatory triage assessment or impact assessment, as appropriate.”

4. Given that the licence conditions will not be laid before Parliament, we raised the lack of Parliamentary scrutiny with Defra. The Department told us that:

“We recognise your concern regarding this issue. To inform parliament, Minister Prentis sent a letter on 10 June 2021 to MPs with a potential interest and relevant committee chairs [including the Chair of the House of Lords European Union Committee] notifying of the government’s intention to implement changes to the UK fisheries management measures relevant to the Celtic Sea technical measures and seabass fisheries management.² Within the annex, the minister provided a detailed summary of the new improved Celtic Sea technical measures which are to be applied on 5 September 2021 through vessel licence conditions. [...] As stated our approach will provide for a more responsive management regime in the Celtic Sea mixed fishery, allowing improvement to be applied more rapidly and in response to new scientific information or the outcomes of negotiations. We believe this is necessary to allow for the objectives within the Fisheries Act to be more effectively applied.”

5. We also asked Defra whether the new measures had been consulted on. The Department told us that:

“The package of improvement measures in the Celtic Sea have been developed closely with scientists, fisheries managers and industry. They are based on the position taken by the government, presented to the EU within December Fisheries Council from 2019. There has been ongoing engagement with relevant industry and stakeholders to inform the position. [MMO] recently published a communication note,³ summarising the measures and notifying industry of timings. Proposed amendments to technical measures relevant to Nephrops-directed

2 See, for example, letter to the Chair of the House of Commons International Trade Committee, 10 June 2021: <https://committees.parliament.uk/publications/6321/documents/69486/default/>.

3 MMO and Defra, ‘New Fisheries Technical Measures’: <https://www.gov.uk/government/news/new-fisheries-technical-measures> [accessed 23 June 2021].

fisheries require further consultation which we are currently planning to launch this summer.”

6. According to Defra, the UK EU Trade and Cooperation Agreement requires each party to notify the other Party of new measures that are likely to affect the vessels of the other Party before those measures are applied, to allow sufficient time for the other Party to provide comments or seek clarification. The Department has told us that it has formally notified the EU of the new measures.

Measures on European seabass fisheries

7. The instrument also makes adjustments to the level of European seabass that may be caught as bycatch within the English and Welsh zones of British fishery limits and several incidental and consequential adjustments to the bass management measures.
8. Defra explains that the UK and the EU currently manage seabass fisheries jointly, and that under this system, the fishing pressure on seabass stock has been reduced to sustainable limits this year. The Department says that the UK aims to reduce the level of wasted discards within these limits, by providing additional flexibility in the English and Welsh zones to the vessel landing limit derogation for seabass bycatch.⁴ The instrument therefore adjusts the cap on how much bass can be landed cumulatively, from 520 kilograms per two months, to 380 kilograms per month, within the overall existing limit that seabass must not exceed 5% of the weight of the total catches of marine species on board caught by a vessel per fishing trip. The instrument also adjusts the scope of the general bass fishing prohibition, so that it does not apply to bycatches using certain shore-based fishing methods.⁵ Defra says that this will make it possible to market the bycatch rather than discard it while remaining within the relevant limits.
9. The Department further explains that while the UK remains within the shared management approach with the EU and adheres to mutually agreed catch limits, it is now able to exercise regulatory autonomy to make incidental adjustments to the retained EU measures. This instrument therefore clarifies a provision in the retained EU measures on the vessel annual bycatch landing limit which the Department says has been consistently contested by the UK. According to Defra, the clarification enables more effective use of the annual bycatch limit without relaxing the mutually agreed annual bycatch derogation limit itself. The instrument also makes an amendment to make it easier to replace small vessels with newer, safer vessels, whilst transferring the authorisation to retain bass which is tied to the previous vessel to the new vessel.

Consultations with the Devolved Administrations

10. Defra says that the changes made by this instrument were developed in consultation with the Devolved Administrations. Formal consent was obtained from the Welsh Government as the instrument is directly relevant to the English and Welsh zones of the British fishery limits. While parts of the Scottish and Northern Irish fishing industry operate within the relevant

4 This relates to bycatch generated by certain fishing methods, such as demersal trawl and seine fishing.

5 Fixed gillnets.

area, Defra told us that the Scottish and Northern Irish administrations did not raise any specific concerns about the changes.

INSTRUMENTS RELATING TO COVID-19

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021 (SI 2021/705)

11. These Regulations extend the expiry date of all the key Regulations⁶ for coronavirus restrictions in England until just before midnight on 18 July 2021. The Explanatory Memorandum (EM) states that the Government have made clear that moving to the next Step of the Roadmap would always be dependent on the data supporting this move and the four tests being met. The current data, however, does not support the planned move to Step 4 from 21 June. The EM gives the main reasons as increasing rates of infection and hospitalisations, and that this is due to a new Variant of Concern, the Delta variant, about which there is insufficient data. In consequence, these Regulations extend the current Step 3 restrictions (with some minor relaxations in relation to weddings, civil partnerships and funerals) for a further four weeks (subject to continuous consideration of the epidemiological data). This will allow more people to receive vaccinations and thus support the objective of lifting the remaining restrictions when it is deemed appropriate to do so.

Changes to business practice and regulation

Draft Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021

12. These Regulations extend until 30 September 2022 a temporary provision under the Business and Planning Act 2020 for a quicker and cheaper process to allow businesses selling food or drink to obtain authorisation from the local authority for a pavement licence (which is needed to place furniture such as tables and chairs on the highway adjacent to the licenced premises). Without this extension, the temporary provision would expire on 30 September 2021, with no pavement licence able to extend beyond that date. The Home Office has taken forward separate regulations⁷ to allow licensed premises not normally licensed to sell alcohol for consumption off the premises to carry on doing so for a further year, also until 30 September 2022.

Insolvency (England and Wales) (Amendment) Rules 2021 (SI 2021/672)

Insolvency Proceedings (Monetary Limits) (Amendment) Order 2021 (SI 2021/673)

13. These two instruments update arrangements for Debt Relief Orders (DROs).⁸ The Department for Business, Energy and Industrial Strategy (BEIS) explains that in order to qualify for a DRO, a person must meet strict monetary eligibility criteria which were last changed in 2015. SI 2021/672 amends the list of property the official receiver must disregard for the

6 Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020, the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 and Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020.

7 [Draft Alcohol Licensing \(Coronavirus\) \(Regulatory Easements\) \(Amendment\) Regulations 2021.](#)

8 DROs are delivered in partnership with the debt advice sector and aim to provide low cost, easy access to debt relief for those with relatively low levels of unmanageable debt, providing a fresh start for the most vulnerable. At the end of the DRO period (usually 12 months) the debts are written off.

purposes of determining the value of a person's property. The list includes a single domestic motor vehicle, and SI 2021/672 increases the maximum potential realisable value of that vehicle from less than £1,000 to less than £2,000. SI 2021/673 raises the prescribed monetary limits that need to be met in order for an individual to be able to apply for a DRO: the amount of a debtor's overall indebtedness is raised from £20,000 to £30,000, the monthly surplus income from £50 to £75 and the total value of property a debtor may own from £1,000 to £2,000.

14. According to BEIS, these changes reflect that the economic outlook as a result of the pandemic remains highly uncertain, and that there is expected to be a greater need for people in financial distress to have access to an appropriate debt solution. The Department says that the changes complement the new breathing space scheme that the Government introduced earlier this year⁹ which will provide people in debt with a 60 day pause on creditor enforcement action. We note that these changes have wider implications than the pandemic, and that there is a risk that some small businesses may suffer from those who are able to pay their debt but will take advantage of the raised limits to avoid having to do so.

Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendment and Modification) Regulations 2021 (SI 2021/676)

15. These Regulations make changes that are consequential to two earlier instruments¹⁰ which relaxed temporarily the certification process for the Combined Heat and Power Quality Assurance (CHPQA) Scheme and updated the CHPQA Standard. The CHPQA Scheme certifies energy efficient Combined Heat and Power (CHP) plants¹¹ across the UK as Good Quality. Such certification is needed for schemes to access financial incentives. The instrument updates references to the updated CHPQA Standard and to certificates issued under the CHPQA Scheme. This has the effect of confirming the relaxation of the certification process and will provide continuity of financial support, preventing a secondary financial hit to CHP operators in 2021 as a result of the pandemic.

Queen Elizabeth II Conference Centre Trading Fund (Variation) Order (SI 2021/666)

16. This Order raises the aggregate maximum borrowing limit of the Queen Elizabeth II Conference Centre Trading Fund ("the Fund") from £2 million to £12 million in order to enable the Ministry of Housing, Communities and Local Government (MHCLG) to provide any financial support that is needed to help the Queen Elizabeth II Conference Centre ("the Centre") deal with the impact of the pandemic. MHCLG says that the Centre, as the largest dedicated conference, events and exhibition space in central London, typically hosts over 450 events a year but has now been closed for 15 months, and that the Fund has used up its cash reserves and has reached its current £2 million aggregate borrowing limit. MHCLG expects that in the long-term business will return to pre-pandemic levels. While it is not anticipated that the Fund will need to borrow the maximum £12 million, MHCLG says

9 See our [24th Report](#) of Session 2019–21 (HL Paper 116).

10 The Renewable Heat Incentive Scheme (Temporary Modification) Regulations 2021 ([SI 2021/346](#)) and The Combined Heat and Power Quality Assurance (Temporary Modifications) Regulations 2021 ([SI 2021/656](#)).

11 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.

that this is the amount the Fund spends in a typical financial year, and that extending the maximum aggregate borrowing limit to this figure will allow the Fund to cover a range of eventualities.

Official Controls (Temporary Measures) (Coronavirus) (Amendment) (No. 2) Regulations 2022 (SI 2021/681)

17. These Regulations extend powers which allow competent authorities in Great Britain to adopt new, and maintain existing, temporary measures concerning official controls in relation to food and feed law, rules on animal health and welfare, plant health and plant protection products. The temporary powers were originally introduced last year and subsequently extended until 1 July to address disruption of official controls during the pandemic.¹² The instrument ensures that the powers can be used until 31 December 2021. The use of such powers includes, for example, carrying out electronic document checks on some imported goods, including at locations other than a Border Control Post, instead of checking hard copies; authorising appropriately authorised persons to carry out checks under the supervision of the competent authority; and conducting meetings with operators remotely.

¹² The powers were initially introduced until 1 February 2021 by retained Commission Implementing Regulation (EU) 2020/466 and subsequently extended until 1 July 2021 by the Official Controls (Temporary Measures) (Coronavirus) (Amendment) Regulations 2021 (SI 2021/78).

INSTRUMENTS OF INTEREST

Draft Health Security (EU Exit) Regulations 2021

18. This instrument aims to maintain existing public health standards by liaison with the Devolved Administrations to coordinate data sharing, epidemiological surveillance and their approach to the prevention and control of serious cross-border health threats (defined in regulation 5). Following discussion under the common frameworks initiative, regulation 4 of this instrument establishes the UK Health Protection Committee, which will consist of one member for each of England, Scotland, Wales and Northern Ireland representing a relevant Minister and one member representing each of the four UK public health agencies.
19. It also implements article 702 of the UK-EU Trade and Cooperation Agreement on health security to establish Public Health England temporarily as the UK focal point for coordination with the EU on health threats and epidemiological surveillance; for example, to liaise with the European Centre for Disease Prevention and Control. The new system is intended to take effect from 1 September 2021. Once the UK Health Security Agency (UKHSA) becomes fully operational in October 2021, it will, according to the Department of Health and Social Care, be wearing “two hats”: it will be the public health agency for England, and it will also take over as the UK’s designated focal point for receiving alerts from the UK’s public health agencies and for coordination with the EU.
20. Although the Explanatory Memorandum (EM) provided is full of information on future EU-relations, it does perhaps overestimate the average reader’s knowledge of the UK’s plans. We therefore had to ask a number of questions to ensure we understood which entity had which function and how they are intended to operate. That additional information is published at Appendix 1. Because of the pandemic, coordination of health surveillance is more important than usually, and an EM needs to make it absolutely clear to the House what it is being asked to agree to.

Draft Market Surveillance (Northern Ireland) Regulations 2021

21. This instrument implements an obligation arising from the Northern Ireland (NI) Protocol, specifically aspects of an EU Regulation on Market Surveillance and Compliance (MSC)¹³ which will come into force in NI on 16 July 2021. MSC is part of the EU’s regulatory framework for goods and replaces the market surveillance provisions of another EU Regulation on Accreditation and Market Surveillance (RAMS).¹⁴ The Department for Business, Energy and Industrial Strategy (BEIS) explains that while most provisions of MSC will be directly applicable in NI, certain provisions require further implementation to take effect. This instrument therefore proposes changes in relation to market surveillance for the products placed on the NI market.
22. The provisions include, for example, a requirement for economic operators, such as manufacturers and importers, to have a person established in the EU responsible for compliance activities when placing certain products on the EU/NI market. The instrument also sets out the responsibilities

¹³ [Regulation \(EU\) 2019/1020.](#)

¹⁴ [Regulation \(EC\) No 765/2008.](#)

for authorities in charge of the control of products at the border when products first enter the EU/NI market, the procedures to be followed in assessing the risk presented by those products, and the steps to be taken when considering its release from customs procedures. While BEIS states in the Explanatory Memorandum that the Government's approach is to ensure that the implementation of EU obligations under the NI Protocol minimises the impact on UK traders and regulators, we asked for further information about the practical impact of the changes on businesses and relevant public authorities. We are publishing the Department's response at Appendix 2.

23. BEIS told us that "the UK will continue to take an intelligence led and risk-based approach to checks, with the same proportionate and pragmatic approach that has guided the implementation of the Protocol to date", and that the "low risk profile of goods from [Great Britain] means that they will not routinely be subject to inspection". Given the different interpretations of the requirements of the NI Protocol and the sensitivities around its implementation, the House may wish to ask the Minister to what extent this approach has been agreed with the EU.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Business and Planning Act 2020 (Pavement Licences)
(Coronavirus) (Amendment) Regulations 2021

Health Security (EU Exit) Regulations 2021

Market Surveillance (Northern Ireland) Regulations 2021

Road Vehicle Carbon Dioxide Emission Performance
Standards (Cars and Vans)(Amendment) (EU Exit)
Regulations 2021

Made instruments subject to affirmative approval

SI 2021/705 Health Protection (Coronavirus, Restrictions) (Steps
and Other Provisions) (England) (Amendment) (No. 2)
Regulations 2021

Draft Instruments subject to annulment

Bracknell Forest (Electoral Changes) Order 2021

Human Tissue Act Code of Practice D: Public Display 2021

St Albans (Electoral Changes) Order 2021

Instruments subject to annulment

SI 2021/665 Allocation of Housing and Homelessness (Eligibility)
(England) (Amendment) Regulations 2021

SI 2021/666 Queen Elizabeth II Conference Centre Trading Fund
(Variation) Order 2021

SI 2021/672 Insolvency (England and Wales) (Amendment) Rules 2021

SI 2021/673 Insolvency Proceedings (Monetary Limits) (Amendment)
Order 2021

SI 2021/674 Childcare (Early Years Provision Free of Charge) (Extended
Entitlement) (Amendment) Regulations 2021

SI 2021/676 Hydrocarbon Oil Duties (Reliefs for Electricity Generation)
(Amendment and Modification) Regulations 2021

SI 2021/677 Education (Student Loans) (Repayment) (Amendment) (No.
2) Regulations 2021

SI 2021/681 Official Controls (Temporary Measures) (Coronavirus)
(Amendment) (No. 2) Regulations 2021

SI 2021/684 Public Lending Right Scheme 1982 (Commencement of
Variations) (Northern Ireland) Order 2021

SI 2021/695 Customs (Declaration Modification) Regulations 2021

APPENDIX 1: DRAFT HEALTH SECURITY (EU EXIT) REGULATIONS 2021

Additional information from the Department of Health and Social Care

Q1: Please clarify the role of UKHSA—what it does and when it will come into operation i.e. why PHE needs to be appointed as a stopgap Focal Point.

The UK Health Security Agency (UKHSA) will be responsible for planning, preventing and responding to external health threats, and providing intellectual, scientific and operational leadership at national and local level, as well as on the global stage. The agency will lead on health protection and security activity for England, and will also take over from the PHE and NHS Test and Trace work those organisations already carry out on a UK basis, either as reserved functions or under collaborative arrangements with the Scottish, Welsh and Northern Ireland administrations—for example, the Joint Biosecurity Centre. It will not replace the public health agencies in the other 3 UK countries, but will operate a close collaborative relationship with them.

The UKHSA was formally established on 1 April 2021, however the transition of staff and functions will happen over a period of six months, with UKHSA fully operational from October 2021. Until October, PHE and NHS Test and Trace will continue to deliver all their existing functions.

Specifically with regards to these Regulations, a number of the functions previously exercised by the EU on behalf of the member States have been modified and transferred to the public agency for England, acting in cooperation with the public health agencies for the other parts of the UK. This includes designating the public health agency for England as the UK's focal point for the purposes of the TCA.

As the UKHSA will not be fully operational until October 2021, it is necessary for the functions which have been transferred to England's public health agency to be carried out by PHE until such point as those functions are transferred to UKHSA.

Q2: Can you clarify whether there are special arrangements with the Irish Republic on health security (separate from the general EU arrangements)?

The arrangements agreed as part of the Trade and Co-operation Agreement support effective working arrangements with ROI as an EU member state. However, taking account of the land border, we also continue to work closely with the Republic of Ireland on issues of cross-border health protection, including technical engagement at public health agency level, and regularly have bilateral conversations on how we can strengthen our collaboration.

In addition, there is daily collaborative working and data sharing arrangements that exist between the Public Health Agency Northern Ireland and the HSE Health Protection Service in the Republic of Ireland, with specific arrangements in place to maintain this collaboration following the end of the Transition Period.

Q3: Could you please provide a clearer statement of the overarching structure including how the system will operate both in surveillance mode and when a threat is identified (if different), making clear how the UK Health Protection Committee and the UKHSA will interact.

The UK Health Security Agency is an existing executive agency of the Department of Health and Social Care and is England's public health agency. As health

protection is largely devolved, Scotland, Wales and Northern Ireland have their own public health agencies too. These are Public Health Scotland, Public Health Wales and the Public Health Agency Northern Ireland. Each public health agency is responsible for delivering health protection services for their respective part of the UK, for example surveillance or responding to an infectious diseases incident.

The UK Health Protection Committee—The purpose of the Health Protection Committee, which is established by the Regulations, is to provide a forum which allows for the four public health agencies of the UK set out above (along with the respective Departments of Health) to collaborate on health protection policy. The Committee consists of one representative for each of the four health departments in the UK and the four public health agencies. The Committee’s main functions with regards to these Regulations are as follows:

- review and provide advice to the Secretary of State on the list of communicable diseases and related special health matters that are subject to UK-wide surveillance;
- maintain the list of case definitions to be used when the UK public health agencies share information with each other collected as part of their epidemiological surveillance;
- establish and review procedures for the collection of surveillance data; and
- maintain the Focal Point Communications Protocol.

The Committee’s main role with regards to these Regulations is to determine which diseases are subject to UK-wide surveillance and to ensure that adequate procedures are in place for the collection of surveillance data. Separately, it will also be responsible for ensuring constructive and effective cooperation between all parts of the UK on health security policy.

The Committee has a very limited role with respect of early alerting, which instead is carried out in line with an operational protocol, which can be found [online].¹⁵

There may be confusion “because alongside being England’s public health agency, UKHSA also carry out a small number of functions on behalf of all of the UK. It wears two hats so to speak. This includes being the UK’s designated focal point for receiving alerts from the UK’s public health agencies and the EU. The easiest way to explain this may be providing a few examples:

- If a serious cross-border threat to health is identified in Wales, for example a case of Middle Eastern Respiratory Syndrome, the Regulations require Public Health Wales to alert UKHSA to this threat in its role as the UK’s focal point (not its responsibility as England’s public health agency). UKHSA will then work with Public Health Wales (and Public Health Scotland and Public Health Agency NI as required) to conduct a risk assessment. The risk assessment will, amongst other things, determine whether notification to the EU is required. This consultation all takes place outside of the Health Protection Committee through other established response procedures.

15 Public Health England, *UK Focal Point communications protocol on serious cross-border threats to health*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989453/TCA_Health_Security_UK_National_Focal_Point_Communications_Protocol.pdf [accessed 23 June 2021].

- If a serious cross-border threat to health is identified in England, UKHSA in its role as the public health agency for England is required to notify the persons in UKHSA responsible for its functions as the UK's designated focal point i.e. in effect it is notifying itself but in practice it will be separate teams carrying out each of these functions. UKHSA will carry out a risk assessment and then notify and consult with the other public health agencies as required—again this is all done outside of the UK Health Protection Committee.
- Finally, if a serious cross-border threat to health is identified in an EU Member State, the EU will notify UKHSA in its UK focal point capacity. UKHSA will then share that notification with Public Health Scotland, Public Health Wales and Public Health Agency NI as necessary.

As stated above this is all set out in the operational protocol published at the above link.

17 June 2021

APPENDIX 2: DRAFT MARKET SURVEILLANCE (NORTHERN IRELAND) REGULATIONS 2021

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

Q1: Para 7.4 states that businesses will have to establish a person in the EU with responsibility for compliance activities when placing certain products on the EU/NI market. For a GB business wanting to put a relevant product on the market in NI—is it sufficient if they have a person in NI responsible for compliance or would they need to establish one in an EU Member State?

To comply with this obligation, it is sufficient for a GB business to have a manufacturer, importer, authorised representative or fulfilment service provider established in NI. The Regulation will not require one such person in NI and another in an EU country to trade with the rest of the EU.

Q2: How significant is the impact of this requirement on GB businesses?

There are various ways to meet the new requirements and most UK businesses will likely have sufficient arrangements in place. For those that do not, the EU's estimated cost of establishing an Authorised Representative is between 300-1500 Euros dependent on the size of the business. To help business prepare for the change we have been providing advice and guidance to ensure all GB based business are prepared for this new obligation, we will continue with a targeted sector specific engagement approach up to and beyond the date the Regulation comes into force on 16th July.

Please see guidance below:

- Guidance for Market Surveillance Authorities.¹⁶
- Guidance for businesses on EU Regulation 2019/1020 on Market Surveillance and Compliance of Products.¹⁷

Q3: Para 7.6 refers to the responsibilities for authorities in charge of the control of products at the border when products first enter the EU market, and the procedures to be followed in assessing the risk presented by those products and the steps to be taken when considering its release from customs. The para refers to notification requirements, risk-based controls and reporting requirements, including reporting each incidence of interception. Do these requirements apply to relevant products from GB being placed on the market in NI?

Yes, goods entering NI from outside the EU are subject to risk-based checks. The UK will continue to take an intelligence led and risk-based approach to checks, with the same proportionate and pragmatic approach that has guided the implementation of the Protocol to date. The low risk profile of goods from GB means that they will not routinely be subject to inspection.

Q4: What is the expected impact of these new requirements on GB businesses and the relevant NI authorities?

This new EU Regulation maintains the framework for market surveillance that exists under the prior Regulation EU 765/2008 in respect of border controls.

16 Office for Product Safety & Standards, *Guidance: EU Regulation 2019/1020 on Market Surveillance and Compliance of Products*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993170/guidance-msc-regulation-article-4-msas.pdf [accessed 23 June 2021].

17 Office for Product Safety & Standards, *Guidance: EU Regulation on Market Surveillance and Compliance of Products (2019/1020)*: <https://www.gov.uk/government/publications/placing-certain-products-on-the-northern-ireland-market> [accessed 23 June 2021].

The requirements in Articles 25-28 (products entering the Union market) have been clarified but are not substantively changed. Through directly applicable provisions MSA will be required to report each interception although, as above, checks will continue to risk based and are likely to be minimal. We continue to provide support and advice to authorities and businesses so that they are aware the legal obligations remain unchanged in terms of the controls and targeted risk-based approach to goods entering the market.

Q5: Under paras 12.1 and 12.2, the EM suggests that there is no significant impact on business or the public sector, but the requirements do appear to present substantial administrative processes that are needed before relevant products from GB can be placed on the market in NI.

The NI Protocol has already been subject to an Impact Assessment under the European Union (Withdrawal Agreement) Act 2020. Subsequent changes which are necessary to maintain the application of EU laws to NI under Article 13 (3) of the Protocol—are to be considered part of the baseline which has already been assessed.

Most requirements of the Regulation, apart from those provisions requiring the conferring of investigatory and enforcement powers on authorities and providing for penalties, are directly applicable in Northern Ireland from 16 July 2021 and as such not implemented through this instrument.

15 June 2021

APPENDIX 3: 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 22 June 2021, Members declared the following interests:

Draft Market Surveillance (Northern Ireland) Regulations 2021

The Earl of Lindsay

President, Chartered Trading Standards Institute (CTSI)

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 Sherbourne of Didsbury and Baroness Watkins of Tavistock.