



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

7th Report of Session 2021–22

Includes information paragraphs on:

Draft European Union (Future Relationship)
Act 2020 (References to the Trade and
Cooperation Agreement) Regulations 2021

Gambling (Operating Licence and Single-
Machine Permit Fees) (Amendment)
Regulations 2021

Draft Fisheries Act 2020 (Scheme for
Financial Assistance) (England) 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.

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 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.

Seventh Report

INSTRUMENTS OF INTEREST

Draft European Union (Future Relationship) Act 2020 (References to the Trade and Cooperation Agreement) Regulations 2021

1. When negotiations with the EU concluded on 24 December 2020, there was insufficient time to complete a final legal revision of the Trade and Cooperation Agreement (checking cross-references to ensure legal accuracy and looking for other errors). Article FINPROV.9 (now Article 780) made provision for typographical and other errors in the Agreement to be corrected and the Articles renumbered from Article 1 to 783.
2. The Agreement was signed and provisionally applied from 1 January 2021 pending full ratification and was given domestic legal effect by the European Union (Future Relationship) Act 2020.
3. This instrument updates references to the Agreement in that Act and in other domestic legislation to reflect this final technical revision. The substance of the Agreement has not changed.

Draft Fisheries Act 2020 (Scheme for Financial Assistance) (England) Regulations 2021

4. These draft Regulations propose a new scheme for financial assistance in England under the powers in section 33(1) of the Fisheries Act 2020 (“the Act”). The Department for Environment, Food and Rural Affairs (Defra) explains that before Brexit, financial support for the fisheries, aquaculture and seafood sector was primarily delivered through the EU’s European Maritime and Fisheries Fund. This instrument proposes a new long-term funding power for the Marine Management Organisation (MMO) to deliver financial support relating to commercial aquaculture activities, commercial fish activities, fisheries management plans, the marine and aquatic environment and processing.¹ While the instrument will apply only to England, the Devolved Administrations have comparable powers under the Act to deliver their own support schemes.
5. The instrument specifies the application procedure, lists areas which are ineligible for funding and provides the MMO with powers to attach conditions to grants and require their repayment. It also confers enforcement functions in relation to fraudulent applications and other potential offences. Defra says that the first intended use of the new funding power will be the new Fisheries and Seafood Scheme which will be available to applicants whose businesses and/or vessels are registered in England.
6. We have received a submission from ClientEarth which criticises that the instrument does not contain provisions to make the payment of financial support conditional on the sustainable management of fisheries. We put this concern to Defra which responded that:

¹ The MMO is an executive non-departmental public body, sponsored by Defra and required to report to Parliament annually.

“As a specific financial support scheme that will be delivered through the Statutory Instrument, the Fisheries and Seafood Scheme (FaSS) has clear eligibility criteria to ensure funding delivers the desired outcomes of supporting the long-term sustainability and success of seafood businesses and safeguarding the marine environment. All eligibility criteria and payment conditions are made clear to applicants through FaSS guidance documents.² [...] The FaSS has been developed in line with government policy to drive meaningful change to increase sustainability, provide world-class fisheries management, and support a thriving marine environment.”

7. We are publishing the full correspondence on our website.³

Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2021 (SI 2021/701)

8. These Regulations increase several fees that gambling operators pay to the Gambling Commission (“the Commission”). The Department for Digital, Culture, Media and Sport (DCMS) says that the increases reflect the need for the Commission to respond to new risks and technological developments as well as the increasing cost of its existing regulatory activities. The additional resources will also enable the Commission to address specific areas for improvement identified by the National Audit Office (NAO)⁴ and the Public Accounts Committee (PAC),⁵ which, amongst other recommendations, called for a review of fees to make sure they “can address the challenges [...], in particular keeping up with a rapidly developing and innovating gambling sector”.
9. DCMS says that the Peers for Gambling Reform group supported the increases during consultation. Some of the increases are substantial: all application fees will rise by 60%, while the fee bands for annual operating licences for remote (online) operators will increase by 55%. DCMS says that despite these large uplifts, licence fees will continue to form only a small part of each operator’s cost base, and that the increased fees will represent 0.22% of the gambling industry’s gross gambling yield (the difference between money staked and winnings paid out), up from 0.16% before. DCMS told us that, as gambling is “discretionary leisure spend”, the instrument does not include specific provisions to protect consumers from increased fees being passed on to them. but that “the scale of the increase is not enough to be likely to make a difference”. The Department explained that “like any business, operators will have to consider their overall cost base when setting prices, but the GC gambling market is very open and competitive and customers often shop around for the best odds and offers. So we wouldn’t expect these fee increases to impact on consumers.”
10. We also asked DCMS why the increases were needed now, when in 2017, the last time that fees were revised, many fees were reduced. DCMS responded

2 MMO and Defra, *Guidance: Fisheries and Seafood Scheme* (21 June 2021): <https://www.gov.uk/guidance/fisheries-and-seafood-scheme> [accessed 30 June 2021].

3 Secondary Legislation Scrutiny Committee, scrutiny evidence page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

4 NAO, *Gambling regulation: problem gambling and protecting vulnerable people* (28 February 2020): <https://www.nao.org.uk/report/gambling-regulation-problem-gambling-and-protecting-the-vulnerable/> [accessed 30 June 2021].

5 PAC, *Gambling regulation: problem gambling and protecting vulnerable people* (Seventh Report, Session 2019–21, HC 134).

that the reductions in 2017 were based on the findings of a review in 2015, and that the situation had changed very considerably since then. The Department explained that:

“[R]apid technological development, an increasingly globalised market and the risks from the black market are posing key challenges for regulation [...]. The Commission has also increased its enforcement activity very significantly. [...] And as well as increased complexity of regulation and increased activity, Commission fees have not even been uprated for inflation since 2017, which has cumulatively increased costs vs income. The increases we are bringing forward are therefore very much needed. The highest percentage rises to annual fee bands are for online fees, as this is where the increased regulatory demand is primarily falling. They will enable the Commission to bring in staff with key technological, financial, legal and international regulatory expertise, as well as the tools it needs to strengthen its use of data and improve analysis.”

11. DCMS added that as fee levels are currently outside the Commission’s control, the Department is looking at wider changes to the way in which fees are set in the Gambling Act Review.⁶

⁶ DCMS, *Review of the Gambling Act 2005: Terms of Reference and Call for Evidence* (8 December 2020): <https://www.gov.uk/government/publications/review-of-the-gambling-act-2005-terms-of-reference-and-call-for-evidence> [accessed 30 June 2021].

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021

European Union (Future Relationship) Act 2020 (References to the Trade and Cooperation Agreement) Regulations 2021

Fisheries Act 2020 (Scheme for Financial Assistance) (England) Regulations 2021

Medical Devices (Northern Ireland Protocol) Regulations 2021

Draft Instruments subject to annulment

Central Bedfordshire (Electoral Changes) Order 2021

Medway (Electoral Changes) Order 2021

North Kesteven (Electoral Changes) Order 2021

Instruments subject to annulment

SI 2021/689 Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms) Order 2021

SI 2021/701 Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2021

SI 2021/717 Care and Support (Charging and Assessment of Resources) (Amendment) 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 29 June 2021, Members declared the following interests:

Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2021 (SI 2021/701)

Baroness Bakewell of Hardington Mandeville

Member of Peers for Gambling Reform

Lord Chartres

Member of Peers for Gambling Reform

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.