



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

11th Report of Session 2021–22

Drawn to the special attention of the House:

Draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021

Correspondence on the Department for Transport's backlog of maritime legislation

Correspondence with the Ministry of Justice regarding the Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021

Correspondence with Defra regarding the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021

Includes information paragraphs on:

8 instruments relating to COVID-19

International Waste Shipments (Amendment of Regulation (EC) No 1013/2006 and 1418/2007) Regulations 2021

Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021

Ordered to be printed 20 July 2021 and published 22 July 2021

Published by the Authority of the House of Lords

HL Paper 52

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.

Eleventh Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE:

Draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021

Date laid: 6 July 2021

Parliamentary procedure: affirmative

These draft Regulations propose to replace a legislative process for updating a list of third countries and third country control bodies which are recognised as equivalent in relation to organic standards, with an administrative process. We are not convinced by the Department's assertions that these changes are necessary because of the length of time the current legislative process takes, that changes to recognition are uncontroversial administrative amendments that do not require significant parliamentary scrutiny, and that there will be appropriate transparency because the Secretary of State is accountable to Parliament. We take the view that secondary legislation is indeed an appropriate vehicle for the type of changes that are the subject of this instrument, and that the Secretary of State's general accountability to Parliament is not a suitable replacement for parliamentary oversight of individual decisions in this area. These are issues that the House may wish to explore further with the Minister. The House may also wish to press the Minister on the potential impact that two separate systems operating in Great Britain and Northern Ireland may have on trade in organic products between Northern Ireland and the rest of the UK.

The draft 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 draft Regulations have been laid by the Department for Environment, Food and Rural Affairs (Defra) with an Explanatory Memorandum (EM). The instrument proposes to replace a legislative process for updating a list of third countries and third country control bodies which are recognised as equivalent in relation to organic standards, with an administrative process.

Background

2. Defra explains that in order to trade organic products internationally, the Government, in their role as the competent authority for organic production, recognise a number of third countries and control bodies based in third countries as having equivalent or compliant standards, allowing for products certified under those standards to be sold in the UK as organic. Under the current system, which has been in place since the end of the Transition Period on 31 December 2020, a statutory instrument (SI) is needed to amend the list of recognised third countries and third country control bodies each time that a new third country or control body is recognised, or the details of an existing recognition, such the contact information of a control body or third country are updated. Before EU Exit and during the Transition Period, any changes to recognitions were administered by the European Commission and had direct effect in the UK.

The changes proposed by this instrument

3. According to Defra, these draft Regulations propose to “streamline” the way in which updates and changes are made to the list of recognised third countries and third country control bodies. Rather than requiring a new SI for new recognitions and changes to existing recognitions, this instrument would enable officials to update the list directly and publish it on the gov.uk website. Defra says that any changes will be communicated to relevant stakeholders in a timely manner and that, as a result of this new administrative process, port health authorities, local authorities and businesses will be able to access and search the list easily to determine where organic products may be imported from and under what conditions, without having to search through legislation.

Concerns about a loss of parliamentary oversight

4. The Department suggests at paragraph 2.2 of the EM that the current legislative process is “extremely time-consuming for both officials and Parliament and means recognition can take as much as a year to be formalised”. **We are not convinced by this argument: while internal discussion and coordination within government may be time consuming, the actual legislative process for an SI that has been laid before Parliament can be completed in significantly less than a year.**
5. The Department also states at paragraph 7.3 of the EM that amendments to the list are “uncontroversial administrative changes, enacting existing treaty agreements or the results of agreed recognition processes, so do not require significant Parliamentary scrutiny”. **We take the view that SIs are in fact an appropriate and frequently used vehicle for more minor changes, such as updates to lists of recognised countries or bodies, and that parliamentary oversight of such changes is desirable.**
6. We asked Defra for further information about the loss of Parliamentary oversight. The Department told us that because decisions will be made by the Secretary of State using powers formerly exercised by the European Commission and because these decisions will be published, “there will be appropriate transparency as the Secretary of State is accountable to Parliament”. **We take the view that Defra’s assertion that accountability of the Secretary of State to Parliament and publication of the Secretary of State’s decisions will achieve appropriate transparency, is simply a statement of a constitutional norm. We do not agree that the Secretary of State’s general accountability to Parliament is a suitable replacement for parliamentary oversight of individual decisions in a particular policy area.** We are publishing the Department’s full response at Appendix 1 and will be writing to the Lord President and Leader of the House of Commons about the removal of parliamentary scrutiny through this instrument, as we have previously raised concerns about a shift of power from the legislature to the executive.

Concerns about the impact on trade with Northern Ireland

7. According to Defra, EU law will continue to apply directly in Northern Ireland under the Northern Ireland Protocol (“the Protocol”), and any changes in recognition by the EU in relation to organic standards will be made by the European Commission through legislative amendments. Asked

about the potential impact on trade if recognitions in Great Britain and Northern Ireland diverged, the Department told us that under the Protocol:

“organic goods moving from Great Britain to Northern Ireland will undergo the same checks as those moving from Great Britain to the EU. The terms of trade in organic goods between the UK and the EU are set in Annex 14 (Organic Products) of the Trade and Cooperation Agreement (TCA). In the case of organic goods imported to Great Britain under a trade agreement with a third country which does not have mutual recognition with the EU for organic goods, those goods will have entered Great Britain in accordance with GB laws. Goods which have been imported into Great Britain but not processed there fall outside the categories covered by Annex 14 of the TCA, and therefore could not be moved to Northern Ireland under the TCA.”

8. **The House may wish to press the Minister for further explanation of the potential impact of two separate systems operating in Great Britain and Northern Ireland on the trade in organic products between Northern Ireland and the rest of the UK.**

Opportunities for consultation

9. As changes in recognition may arise out of international treaty agreements, such as new trade agreements, we asked whether there would be opportunities for interested or affected stakeholders to be consulted, raise concerns or submit evidence. The Department confirmed that for recognitions of both third countries and third country control bodies, there will be consultation with the Devolved Administrations and industry stakeholders. Defra provided further information about the consultation process and the parties involved which we are publishing in full at Appendix 1.

CORRESPONDENCE

Update on clearing the Department for Transport's backlog of maritime legislation

10. In our 4th Report we commented on a “published draft” under the European Union (Withdrawal) Act 2018, which has now been formally laid as the *Draft Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021*. These draft Regulations would implement changes made to the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL) which are designed to control sulphur oxide (“SO_x”) and nitrogen oxide (“NO_x”) emissions from ships with the aim of reducing air pollution.
11. We raised no concerns about the policy of the instrument, which was well explained and accords with international obligations, and domestic and global policies to reduce noxious emissions. Our concern was with the Department for Transport’s (DfT) delay in implementing the changes which arise from five separate updates to MARPOL, one of which dates back to 2016.
12. We have previously criticised the DfT for its backlog of more than 40 changes to international maritime conventions that required implementation.¹ Paragraph 3.2 of the Explanatory Memorandum (EM) to the draft Regulations confirms that this instrument deals with part of the previously-identified list of such provisions.
13. DfT has argued that implementing this legislation is not a priority because ship operators tend to comply with International Maritime Organisation (IMO) requirements because their ships cross multiple jurisdictions. We do not accept this argument, in particular because failure to transpose the requirements into domestic law inhibits enforcement of the legislation within UK waters, when needed. **The revised paragraph 7.15 of the EM illustrates the issue perfectly: the ability of inspectors to sanction non-compliant ships will be very limited until these Regulations come into force.**
14. In our 4th Report² we said that we “would wish to see a fuller explanation of why the Department has not dedicated more resource to resolving a longstanding problem which it initially aimed to address by 2020 and which has knowingly left the Marine and Coastguard Agency with inadequate powers of enforcement”. We also asked for an update on the extent of the remaining backlog and how long it is estimated it will take to clear it. This has been addressed in a separate letter from the Parliamentary Under Secretary of State, Robert Courts MP, which is published in full in Appendix 2.
15. The letter states that 10 instruments have been made, a further 10 (including the former published draft and another instrument included in this Report³) are in the final stages and another eight are in preparation for the 2022–23 session. The letter concludes: “The remainder of the programme is at an earlier stage of development and is anticipated to be complete by the end of 2023.” **We do not find that expected completion date reassuring as**

1 See [21st Report, Session 2017–19](#), and [17th Report](#), Session 2019–21, which included correspondence setting out the size of the backlog and how DfT was planning to address it.

2 [4th Report](#), Session 2021–22 (HL Paper 18).

3 See *Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk and Prevention of Oil Pollution) (Amendment) Regulations 2021* ([SI 2021/818](#)).

DfT had estimated previously that it could address the backlog by 2020.

16. The number of outstanding instruments is, in our view, highly disturbing, and indicates just how much legislation DfT has allowed to lie fallow. This is the third time we have drawn attention to the backlog. We acknowledge to some extent the Minister's explanation that the pandemic has put pressure on parliamentary time and so has, in recent months, hampered clearing the backlog. But these exceptional conditions have only existed since early last year. We are very concerned that DfT do not appear to have given the this matter adequate priority. **We regard the extent and duration of the backlog to be a serious failure to provide for parliamentary scrutiny in a proper timescale.**

Correspondence with the Ministry of Justice on the Marriages and Civil Partnerships (Approved Premises) (Amended) Regulations 2021

17. In our 9th Report⁴ we drew attention to these Regulations, which enable outdoor weddings, because they were brought into effect within 24 hours of laying but did not meet the normal criteria for emergency legislation. We wrote to the Minister to seek a fuller explanation for curtailing Parliament's opportunity to scrutinise the instrument before the legislation took effect. We regret that the Minister's response (published in Appendix 3) simply repeats the reasons given in the Explanatory Memorandum. **We therefore remain unconvinced that "commercial convenience" is an appropriate reason for bypassing the parliamentary convention that there should be a gap of at least 21 days between an instrument being laid and the date on which it comes into effect.**

Correspondence with the Department for Environment, Food and Rural Affairs on the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021

18. In June we wrote to the Lord President and Leader of the House of Commons, the Rt Hon. Jacob Rees-Mogg MP, about concerns regarding the relationship between legislation and guidance, specifically about what we considered to be a discrepancy between provisions in this instrument and the statutory licence conditions which were published in the form of statutory guidance.⁵ We received a response from Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs (Defra) in July. We responded to her with a request for further explanation, as we felt that our main concern about a potential discrepancy between the requirements of the legislation and the statutory guidance had not been addressed. We have now received a further letter from the Minister. The correspondence is published at Appendix 4.

⁴ [9th Report](#), Session 2021–22 (HL Paper 45).

⁵ *Ibid.*

INSTRUMENTS RELATING TO COVID-19

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Restrictions) (Steps etc.) (England) (Revocation and Amendment) Regulations 2021 (SI 2021/848)

19. This instrument triggers the end of most lockdown restrictions in England by revoking these regulations (and certain amending regulations listed in the schedule) with effect from 23.55 on 18 July 2021:
 - the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (SI 2021/364);
 - the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (SI 2020/592);
 - the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (SI2020/791);
 - the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (SI2020/1005);
 - the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 (SI 2020/1008);
 - the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 (S.I. 2020/1375)
20. This instrument also extends the expiry date of the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (SI 2020/750) to the end of 27 September 2021 to ensure that local authorities retain powers to respond to local serious and imminent public health threats as a result of the spread of coronavirus. The Explanatory Memorandum sets out the Government's assessment of the four tests which has led them to believe free movement is now permissible.

Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Amendment) Regulations 2021 (SI 2021/851)

Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Amendment) (No 2) Regulations 2021 (SI 2021/864)

21. These Regulations amend the Self-Isolation Regulations¹ to reflect new policy. With effect from 19 July they allow a person to leave self-isolation to put an antibody test into the post. With effect from 16 August certain people will no longer be required to self-isolate if they have come into contact with a person who has tested positive for coronavirus:
 - a person who has completed a course of the coronavirus vaccination, at least 14 days previously;
 - a person who has taken part in a vaccine trial;
 - a person who can provide evidence that for clinical reasons they should not be vaccinated (who will be offered a PCR test to check if they are infectious); and a child under 18.

22. Regulation 2 also sets out a transitional provision to provide that, for anyone who is self-isolating at the time these amendments come into force, that duty will fall away. The Explanatory Memorandum states public health modelling suggests that the current rise in case numbers will have peaked by mid-August, so introducing this change then will reduce the risk of transmission, hospitalisations and deaths. It will also allow more people to be fully vaccinated, reducing the risk of severe illness.
23. SI 2021/864 was made two days after the original Regulations to correct a cross-reference, without which the part of SI 2021/851 that deals with posting COVID tests is inoperable.

Changes to business regulation and practice

Gas Act 1986 and Electricity Act 1989 (Electronic Communications) Order 2021(SI 2021/789)

24. This Order makes changes to enable the electronic service of notices and documents by the Secretary of State and by the Office of Gas and Electricity Markets (Ofgem) on behalf of the Gas and Electricity Markets Authority. The Department for Business, Energy and Industrial Strategy (BEIS) explains that the current process of serving notices and documents through physical copies is expensive, time-consuming and environmentally costly, and that during the pandemic, the process placed additional burdens on the regulator and on companies which have had to deal with notices sent to their registered offices. BEIS says because of the pandemic, Ofgem temporarily began sending email copies of notices, in addition to physical copies, to stakeholders who had agreed in advance to accept electronic communications. This Order will allow Ofgem to deliver certain regulatory responsibilities electronically against a background of future uncertainties about COVID-19 restrictions and increased remote working practices.

Official Controls (Extension of Transitional Periods) Regulations 2021 (SI 2021/809)

25. This instrument extends further (from July 2021 to the end of February 2022) transitional provisions which currently postpone the introduction of phyto-sanitary (SPS) controls on imports from the EU into Great Britain (GB) of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain. The Department for Environment, Food and Rural Affairs (Defra) says that this further extension will allow businesses which continue to be affected by the pandemic to familiarise themselves with the new SPS compliance requirements and IT systems and ensure that necessary infrastructure and processes can be put in place at Border Control Posts. The instrument also extends (from July to October 2021) the grace period during which GB can legally accept current EU model Export Health Certificates (EHCs) accompanying consignments of animals and animal products imported into GB. Defra says that this extension will give exporting countries more time to incorporate the new GB EHCs into their export systems.

Public services

School Teachers' Pay and Conditions (England) (Coronavirus) (Amendment) Order 2021 (SI 2021/806)

26. This Order builds on an earlier instrument¹ which allowed schools in England to hold an extra In Service Training (INSET) day to help teachers train and prepare for coronavirus testing in schools after the Christmas holidays. The Order modifies the School Teachers' Pay and Conditions Document 2020 and Guidance on School Teachers' Pay and Conditions ("the Document") to reduce by one the number of days a teacher must be available to teach pupils and perform other duties in the academic year 2020/21, and to allow one extra day on which a teacher must be available to teach and perform other duties or must be available to only perform other duties. The Department for Education says that this change enables schools to have provided the extra INSET day without breach of their contractual terms under the Document.
27. The Department told us that INSET days are teacher training days, so all teachers employed by a school will be paid for attending. As for teachers supplied by an agency, they would not usually attend INSET days, but if they were asked to do so, they would also be paid. We note in passing that there is an argument that supply teachers should attend all INSET days where this is helpful for them or their students, and that financial considerations by their agencies should not be a factor in deciding their attendance.

Changes to benefits

Universal Credit (Coronavirus) (Restoration of the Minimum Income Floor) Regulations 2021 (SI 2021/807)

28. This instrument extends certain exemptions that were given to self-employed claimants of Universal Credit during the pandemic: the Gainful Self-Employment (GSE) test, the Minimum Income Floor (MIF) and Start-Up periods were suspended. The exemptions were due to expire on 31 July 2021 and these Regulations extend them until 31 July 2022. However, they also give the Department for Work and Pensions flexibility to manage the re-introduction of the tests as the economy recovers. For example, regulation 2(3) allows for the MIF to be reduced to zero but only for those who can demonstrate that they are still financially impacted by COVID Government restrictions, and that decision is subject to review by Work Coaches at two monthly intervals, and limited to six months in total.

Tax Credits and Child Benefit (Miscellaneous and Coronavirus Amendments) Regulations 2021 (SI 2021/810)

29. This instrument ensures that payments under the Covid Local Support Grant and equivalent schemes delivered by the Devolved Administrations are disregarded as income for the purposes of tax credits, so that tax credit recipients will receive the full benefit of these support payments. The Covid Local Support Grant provides additional support for children, families and the most vulnerable during the period of lockdown restrictions and is an extension and follow-on scheme to the earlier Covid Winter Support Grant. The instrument also extends the definition of approved training to include the "Skills for Life and Work" programme which has been introduced in Northern Ireland to ensure that young persons under age 20 undertaking such training can continue to be eligible in respect of the payment of Child Benefit and Child Tax Credit.

INSTRUMENTS OF INTEREST

International Waste Shipments (Amendment of Regulation (EC) No 1013/2006 and 1418/2007) Regulations 2021 (SI 2021/785)

30. This instrument amends retained EU law concerning the export of waste. According to the Department for Environment, Food and Rural Affairs (Defra), the changes introduce export control procedures in relation to non-OECD countries for a new category of sorted, non-hazardous, plastic waste (classified as B3011), which has previously been a subset of another classification (B3010) which is no longer used in the Basel Convention.⁶ The instrument also removes now defunct references to plastic waste classified as B3010.
31. We have received a submission from Green Alliance which criticises that while the EU has gone further than the changes to the Basel Convention required, the UK has not and continues to allow the export of dirty or unsorted plastic waste to non-OECD countries for energy recovery, for example incineration, as long as the regulator in the importing country has provided ‘prior informed consent’. Green Alliance calls for “urgent clarity on how [the UK] intends to implement further bans or restrictions that will stop the export of materials that damage environments and people abroad”. In response, Defra explains that, unlike the EU, “the UK government is committed to banning the export of all plastic waste to non-OECD countries”, and that the Government intent to consult on the options for a ban on such exports. We are publishing the full correspondence on our website.⁷

Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 (SI 2021/814)

32. This Order introduces new requirements for consideration of fire safety and consultation with the Health and Safety Executive for certain high-rise residential buildings that can be created under a permitted development right.⁸ According to the Ministry of Housing, Communities, and Local Government (MHCLG), this reflects changes made by an earlier instrument⁹ which introduced equivalent new requirements into the planning application process for relevant high-rise residential buildings in response to a recommendations of the Independent Review that was conducted after the Grenfell Fire.¹⁰

6 The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted in 1989 and came into force in 1992. It is a global environmental agreement on hazardous and other wastes.

7 See our webpage: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/>.

8 Where planning permission is granted under a “permitted development right” an application for planning permission is not required, although in some cases permitted development rights require the local planning authority to approve certain key planning matters before development can proceed by way of “prior approval”.

9 Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021 (SI 2021/746), see: [8th Report](#), Session 2019–21 (HL Paper 40).

10 MHCLG, *Independent Review of Building Regulations and Fire Safety: final report* (17 May 2018): <https://www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-final-report> [accessed 21 July 2021].

33. The Order also makes a number of consequential changes to permitted development rights to reflect changes made by an earlier instrument¹¹ which created a new Local Community use class (F2) for valued local uses, a new Learning and Non-residential institutions use class (F1) and a new broad Commercial, business and service use class (Class E) which incorporates previous use classes for shops, financial and professional services, offices, restaurants and cafes, gyms, nurseries and health centres. Changes of use within a use class do not require planning permission; this Order sets out in detail which changes of use are permitted or not: for example, while casinos, betting offices, pay day loan shops or hot food takeaways may be changed to uses in Class E, the Order specifies that changes of use to that of a betting shop or pay day loan shop or between a betting office and pay day loan shop are not permitted.
34. The changes made to permitted development rights may have a considerable impact, including on the ability of local authorities to shape the character of their high streets and local communities, as certain changes in the use of buildings will no longer require planning permission. As we have noted previously,¹² this raises the question of whether it would have been more appropriate to make such changes in a Bill, enabling Parliament to scrutinise the changes and their potential impact more fully.

11 Town and Country Planning (Use Classes) (Amendment) (England) Regulations ([SI 2020/757](#)), see: [25th Report](#), Session 2019–21 (HL Paper 123).

12 See, for example, Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021 (SI 2021/428), [52nd Report](#), Session 2019–21 (HL Paper 268).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) Order 2021

Ecodesign for Energy-Related Products and Energy Information (Amendment) Regulations 2021

Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021

Made instruments subject to affirmative approval

SI 2021/827 Money Laundering and Terrorist Financing (Amendment) (No. 2) (High-Risk Countries) Regulations 2021

SI 2021/848 Health Protection (Coronavirus, Restrictions) (Steps etc.) (England) (Revocation and Amendment) Regulations 2021

SI 2021/851 Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021

SI 2021/864 Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 2) Regulations 2021

Draft instruments subject to annulment

Modifications to the Standard Conditions of Electricity and Gas Supply Licences, the Smart Energy Code, and the Distribution Connection and Use of System Agreement (Smart Meters No. [1] of 2021)

Instruments subject to annulment

SI 2021/785 International Waste Shipments (Amendment of Regulation (EC) No 1013/2006 and 1418/2007) Regulations 2021

SI 2021/789 Gas Act 1986 and Electricity Act 1989 (Electronic Communications) Order 2021

SI 2021/805 Teachers' Pensions Miscellaneous Provisions) (Amendment) Regulations 2021

SI 2021/806 School Teachers' Pay and Conditions (England) (Coronavirus) (Amendment) Order 2021

SI 2021/807 Universal Credit (Coronavirus) (Restoration of the Minimum Income Floor) Regulations 2021

SI 2021/809 Official Controls (Extension of Transitional Periods) Regulations 2021

SI 2021/810 Tax Credits and Child Benefit (Miscellaneous and Coronavirus Amendments) Regulations 2021

SI 2021/811 Social Security (Reciprocal Agreements) (Miscellaneous Amendments) (EU Exit) Regulations 2021

SI 2021/812	Benchmarks (Provision of Information and Documents) Regulations 2021
SI 2021/814	Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021
SI 2021/818	Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk and Prevention of Oil Pollution) (Amendment) Regulations 2021
SI 2021/822	Technical Education Certificate (England) Regulations 2021
SI 2021/823	Somalia (Sanctions) (EU Exit) (Amendment) Regulations 2021
SI 2021/824	M6 Motorway (Junction 19) (40 Miles Per Hour Speed Limit) Regulations 2021
SI 2021/831	Road Vehicles (Display of Registration Marks) (Amendment) Regulations 2021
SI 2021/834	Human Medicines (Amendment) (EU Exit) Regulations 2021

APPENDIX 1: DRAFT ORGANICS (EQUIVALENCE AND CONTROL BODIES LISTING) (AMENDMENT) REGULATIONS 2021

Additional information from the Department for Environment, Food and Rural Affairs

Q1: The changes mean that Parliament will no longer have oversight of new recognitions or changes to existing recognitions. The EM also explains that new recognitions or changes to existing recognitions can arise out of treaty agreements, such as new trade agreements. Is there any stage in the process of recognising new or changing existing recognitions where Parliament could intervene, ask questions of the Department or debate the changes?

A1: The retained Organic Regulations allow decisions on third countries and third country control body recognition to be made by the Secretary of State using powers formerly exercised by the European Commission and will be published in accordance with Regulation 1235/2008, so there will be appropriate transparency as the Secretary of State is accountable to Parliament.

When the UK was a member of the EU, decisions on recognition of third countries or third country control bodies were made at the EU level. As a Member State, the UK had limited input and scrutiny powers when amendments to regulation 1235/2008 were proposed by the Commission.

Generally, where treaties or FTAs are negotiated, the following processes would apply:

Parliament will be provided with information to make an informed view of the agreement we will strike. This includes an independently scrutinised impact assessment, covering the economic and environmental impacts of the agreement; and an explanatory memorandum.

The statutory process before a treaty can be ratified is set out in Part 2 of the Constitutional Reform and Governance Act 2010 (CRaG).

The Government has also committed to allow time for the relevant Parliamentary Committees a reasonable time prior to the agreement being laid for the purposes of CraG, to produce a report on the deal.

Q2: Are there opportunities for interested/affected stakeholders to raise concerns or submit evidence? For example, if a trade agreement with the US included recognition of US organic standards, would there be a public consultation before the Department agreed to this or an opportunity to make submissions to the Department? How transparent is the process of agreeing new or changing existing recognitions?

A2: For recognitions of both third countries and third country control bodies there would be consultation with the Devolved Administrations and industry stakeholders.

The Four Nations Working Group on Organics is composed of representatives from Scottish Government, Welsh Government, DAERA and Defra, and will have formal oversight of all new recognitions of third countries and third country control bodies and will be advised by an independent expert group. Through this process the Devolved Administrations, as major stakeholders, will be consulted.

The main external stakeholders for organics regulation are the UK organic control bodies, who will be consulted via the UK Organic Certifiers Group (UKOCG). Defra and the other members of the Four Nations Working Group meets with UKOCG on a monthly basis. If the Four Nations Working Group considers it appropriate they may also consult other stakeholders.

Regarding transparency, the requirements for a country or control body to be recognised as equivalent are listed in the retained EU regulations. Information on new recognitions will be communicated to relevant stakeholders and published on GOV.UK, where recent updates will also be highlighted.

Q3: The EM highlights that the move from a legislative to an administrative process will be more time efficient and reduce costs as well as improve accessibility for relevant stakeholders and allow for greater speed. How important a factor is speed in this area? What would be the negative consequences of a recognition of organic standards taking up to a year (as set out in the EM), apart from the administrative work that is required to get legislation through Parliament?

A3: The recognition of a third country, or third country control body, as equivalent is needed for organic goods certified to the standards of that country or control body to be sold as organic in the UK. This means that in cases where the recognition is delayed for up to a year, by the need to pass an additional statutory instrument, businesses would not export those goods to the UK. This delay would directly harm the profitability of businesses wishing to import these goods into the UK, and any businesses that would subsequently sell them to consumers.

A delay in goods being available for import would also reduce the selection of organic products available to UK consumers, retailers, and other businesses. This is not just an issue for finished organic products being exported to the UK to be sold to end consumers. A significant portion of the UK organic sector relies upon importing organic raw materials to be processed in the UK, and then sold to UK consumers or exported as UK organic goods and this would also be impacted by the lack of options.

Q4: The EM states at para 4.2 that under the Protocol, EU law continues to apply in Northern Ireland. Does that mean that legislative changes continue to be required in Northern Ireland if the EU changes or introduces new recognitions?

A4: Under Article 5(4) and Annex 2 of the Northern Ireland Protocol, Council Regulation 834/2007 on organic production and labelling of organic products and its implementing Commission Regulations 889/2008 and 1235/2008 will apply in Northern Ireland as they do in the EU. By virtue of section 7A of the European Union (Withdrawal) Act 2018, these regulations apply directly in Northern Ireland, without requiring them to be transposed into domestic law. Changes to the equivalent countries or control bodies recognised by the EU will be listed in Annexes III and IV of Regulation 1235/2008 and will apply directly in Northern Ireland; such changes would be made by legislative amendment made by the Commission.

Q5: Also, given that the UK Government is now able to negotiate its own trade agreements which may include recognitions which differ from those under EU law, what would be the practical impact on trade of organic products between Northern Ireland and Great Britain? For example, could organic products from a country with which the UK has a mutual recognition in place but not the EU, still be exported from Great Britain to

Northern Ireland?

A5: Through section 7A of the European Union (Withdrawal) Act 2018, directly applicable EU legislation in Annex 2 of the Northern Ireland Protocol directly applies in Northern Ireland without requiring transposition. EU regulations on organics are included in Annex 2 of the Protocol, and therefore apply in Northern Ireland: this means that organic goods moving from Great Britain to Northern Ireland will undergo the same checks as those moving from Great Britain to the EU. The terms of trade in organic goods between the UK and the EU are set in Annex 14 (Organic Products) of the Trade and Cooperation Agreement (TCA).

In the case of organic goods imported to Great Britain under a trade agreement with a third country which does not have mutual recognition with the EU for organic goods, those goods will have entered Great Britain in accordance with GB laws. Goods which have been imported into Great Britain but not processed there fall outside the categories covered by Annex 14 of the TCA, and therefore could not be moved to Northern Ireland under the TCA.

16 July 2021

APPENDIX 2: CORRESPONDENCE ON THE DEPARTMENT FOR TRANSPORT'S BACKLOG OF MARITIME LEGISLATION

Letter from Robert Courts MP, Minister for Aviation, Maritime and Security at the Department for Transport to Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee

Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021

I am writing to provide you and your Committee with an update on the progress the Department for Transport has made in reducing the backlog of maritime legislation, following your comments relating to the consideration of the draft Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021. I am pleased to be able to report positive progress and provide a response to your question.

We would wish to see a fuller explanation of why the Department has not dedicated more resource to resolving a longstanding problem which it initially aimed to address by 2020 and which has knowingly left the Marine and Coastguard Agency with inadequate powers of enforcement. The explanation should also set out the extent of the remaining backlog and how long it is estimated it will take to clear it completely.

My predecessor as Minister, Kelly Tolhurst MP, wrote to your Committee in June 2020 following the laying of the Merchant Shipping (Life Saving Appliances and Arrangements) Regulations 2020. In her letter she referred to the earlier “road map” initially set out by Nusrat Ghani MP as Minister, that included all international maritime legislation that was required to be implemented into our domestic regime by statutory instruments. She noted that the Department had prioritised the instruments that would be required in advance of the International Maritime Organization (IMO) flag State administration audit (that is, the IMO Instruments Implementation Code audit, known as ‘Triple I’), then expected to take place in September 2020, and that additional lawyers had been employed to focus only on the ‘Triple I’ packages to consolidate progress and further accelerate this work.

I can report that the work undertaken on the Triple I instruments resulted in six of the instruments listed in the first list below being laid in 2020. 2021 will produce a similar result and all Triple I related SIs not yet in force will be ready in draft for the audit.

The global pandemic has meant that work on some instruments had to be temporarily paused, whilst others had to be deferred to 2021 to help alleviate pressures on Parliamentary time in late 2020, this was done to allow time for both the necessary EU-related legislation at the end of the Implementation Period and for additional legislation relating to the pandemic. I note that in relation to the pandemic that the IMO ‘Triple I’ audit was also postponed, and we expect it to take place later this year.

Despite these difficulties, progress has been made and I am pleased to confirm that the following instruments were made in 2020 and early 2021:

- The Merchant Shipping (Technical Requirements for Inland Waterway Vessels) (Amendment) Regulations 2020

- The Merchant Shipping (Safety Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations 2020.
- The Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020
- The Merchant Shipping (Safety of Navigation) Regulations 2020
- The Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020
- The Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2020
- The Merchant Shipping (Port State Control and Prevention of Pollution from Noxious Liquid Substances in Bulk) (Amendment) Regulations 2020The Merchant Shipping (Tonnage) (Amendment) Regulations 2020The Merchant Shipping (Cargo Ship) (Bilge Alarm) Regulations 2021
- The Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2021

A further ten proposed instruments are well progressed and are either at consultation or in the final stages prior to making and laying:

- The Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021, referred to in your report
- The Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk and Prevention of Oil Pollution) (Amendment) Regulations 2021
- The Merchant Shipping (Standards for Passenger Ships on Domestic Voyages) (Miscellaneous Amendments) Regulations
- The Merchant Shipping (Radiocommunications) (Amendment) Regulations 2022
- The Merchant Shipping (Polar Code) Regulations 2021
- The Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations
- The Merchant Shipping (Entry into Enclosed Spaces) Regulations 2021The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) Regulations 2021
- The Merchant Shipping (Nuclear Ships) Regulations 2021
- The Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2022

Another eight SIs are currently being prepared for consultation and are expected to be completed by the end of 2022/early 2023:

- Merchant Shipping (Inspections of Ro-Ro Passenger Ships and High-Speed Passenger Craft) Regulations 2021
- The Merchant Shipping (Fire Protection) Regulations 2022
- The Merchant Shipping (Cargo and Passenger Ship Construction) Regulations 2022
- The Merchant Shipping (High Speed Offshore Service Craft) Regulations

- The Merchant Shipping (High Speed Craft) Regulations 2022
- The Merchant Shipping (Special Measures to Enhance Maritime Safety) Regulations 2022
- The Merchant Shipping (Carriage of Cargoes) Regulations 2022
- The Merchant Shipping (Carriage of Dangerous Goods) Regulations 2022

The remainder of the programme is at an earlier stage of development and is anticipated to be complete by the end of 2023.

5 July 2021

APPENDIX 3: CORRESPONDENCE WITH THE MINISTRY OF JUSTICE REGARDING THE MARRIAGES AND CIVIL PARTNERSHIPS (APPROVED PREMISES) (AMENDMENT) REGULATIONS 2021

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee, to Lord Wolfson of Tredegar QC, Parliamentary Under Secretary of State at the Ministry of Justice

I am writing as Chairman of SLSC. This week the Committee considered the Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 which temporarily enable civil weddings and partnership ceremonies to be conducted outdoors. The Committee has no comment to make on the policy itself but questions the justification for bringing the instrument into effect within 24 hours of laying.

The normal criteria for emergency legislation are that life, property or national security are in danger and immediate preventative action is required. None of those reasons appear to apply here - the only rationale provided is commercial and that is not an adequate reason to curtail Parliament's opportunity to scrutinise any new legislation.

The Committee would therefore be grateful if you could provide a fuller explanation for this breach of the 21 day rule. We look forward to receiving your response by 10.30 on Monday 20 July so that it may be considered at our next meeting.

14 July 2021

Letter from Lord Wolfson of Tredegar to Lord Hodgson of Astley Abbotts

Thank you for your letter of 14 July seeking the justification for bringing the above statutory instrument into effect within 24 hours of laying.

When the Government in 2019 asked the Law Commission to undertake a fundamental review of the law governing how and where people legally marry in England and Wales, it also committed separately to accelerate work to enable civil wedding and civil partnership ceremonies to take place outdoors. However, the subsequent and ongoing impact of Covid-19 presented significant challenges in delivering such a change at the pace envisaged—indeed, it was simply not feasible to bring forward the necessary secondary legislation in time for the 2020 wedding season. My Department therefore worked very hard with the General Register Office to deliver that change as soon as practicable for the 2021 wedding season.

The Committee will, of course, be aware that the weddings industry has been severely impacted by the legal restrictions on activities and on social gatherings imposed in response to the Covid-19 pandemic. Many thousands of couples had to postpone or cancel their planned wedding in 2020. To bring about a change which would give more options to such couples, and to the weddings sector, in how civil weddings and civil partnerships could be celebrated by allowing all aspects of the proceedings to take place outdoors seemed to me to be of the utmost importance and urgency.

At the same time, this step supports the weddings sector by providing greater choice and potentially helping venues to meet demand for larger ceremonies. The

change will benefit the almost 75% of all weddings in England and Wales that are non-religious, and which take place on approved premises, along with civil partnerships.

I should also note that the changes made by this instrument are time limited. We will undertake a public consultation on these measures, together with an Impact Assessment, with the intention of laying a further instrument in Spring 2022.

I do very much regret that, on this occasion, my Department failed to meet the 21-day rule for laying this instrument. I can give the Committee my full assurance that the usual procedure for the laying and commencement will be followed for the further instrument we plan to lay in Spring next year, and this will allow for full parliamentary scrutiny.

19 July 2021

APPENDIX 4: CORRESPONDENCE: WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULE 9) (ENGLAND) (NO. 2) ORDER 2021

Letter from Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, to Lord Hodgson of Astley Abbots, Chair of the Secondary Legislation Scrutiny Committee

Thank you for your response to my letter of 7 July on the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021 (SI 2021/548).

Prohibiting the direct release of gamebirds onto a European site (including allowing them to escape) without a licence is necessary in order to limit potential negative environmental impacts on environmentally important sites and to meet our legal requirements. Releases on the 500m buffer zone around the European site are similarly constrained. It is a further safeguard to ensure that those that are released in the buffer zone are not then encouraged towards the European site.

We have worked closely with shooting industry representatives who understand the reasons for doing this. They find the general licence to be based upon existing industry best practice (The principles of Gamebird Management in the UK by the Game and Wildlife Conservation Trust¹³), which also specifies the density of direct releases on a site, and in most cases easy to employ. Where this is not the case it is possible to apply for an individual licence.

Please let me know if I can be of any further assistance with this or any other matters in the future.

19 July 2021

Letter from Lord Hodgson of Astley Abbots to Rebecca Pow MP

Thank you for your letter of 7 July in which you provided additional information on the new licensing regime for the release of gamebirds.

Your letter explained that there is not a mismatch between legislation and statutory guidance, as the new licence has the status of a legal document, rather than statutory guidance. We note that this is not clear from your Department's website to which we were directed, where the licence (GL43) has been published under the heading of "Statutory guidance".¹⁴

Your letter also stated that there is not a policy inconsistency between the scope of the Order and the requirements of the licence conditions. You explained that the Order makes it an offence to release or allow to escape pheasants and red-legged partridges into the wild within European sites in England and within a 500 metre buffer zone of those sites, unless the person acts in accordance with a licence issued under section 16(4) of the Wildlife and Countryside Act. Licence users have

13 Game and Wildlife Conservation Trust, 'The principles of Gamebird Management in the UK': <https://www.gwct.org.uk/principles> [accessed 21 July 2021].

14 See: Department for Environment Food & Rural Affairs, *GL43: licence to release common pheasants or red-legged partridges on European sites and within 500m of their boundary* (21 May 2021): <https://www.gov.uk/government/publications/gamebirds-licence-to-release-common-pheasants-or-red-legged-partridges-on-european-sites-and-within-500m-of-their-boundary-gl43/gl43-licence-to-release-common-pheasants-or-red-legged-partridges-on-european-sites-and-within-500m-of-their-boundary> [accessed 21 July 2021].

to comply with the mandatory conditions of the licence. This does not, however, address our concern that there appears to be a difference between releasing or not allowing gamebirds to escape into protected areas without a licence, as set out in the Order, and not encouraging released gamebirds to inhabit or occupy such areas, as required by the licence conditions. We take the view that, in practice, the licence condition seems to offer a more realistic approach.

We would welcome further clarification of this point by 12 noon on Monday, 19 July to enable us to share the additional information with the Committee at the last meeting before the Summer Recess on 20 July.

13 July 2021

Letter from Rebecca Pow MP to Lord Hodgson of Astley Abbotts

I understand you have recently written to the Leader of the House of Commons in reference to the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021 (SI 2021/548).

I note your concerns in relation to this SI and would like to reassure you that no such mismatch of legislation and statutory guidance has occurred in this instance. This is primarily because the licence is not statutory guidance, it is a legal document.

I'd also like to reassure you that there is no policy inconsistency between the scope of the Order and the requirements of the licence conditions. The Order makes it an offence to release (or allow to escape) pheasants and red-legged partridges into the wild within European sites in England within a 500m buffer zone of those sites. However, this is not an offence if the person acts in accordance with a licence issued under section 16(4) of the Wildlife and Countryside Act.

The general licence that Defra has issued permits the release of pheasants and red-legged partridges on European sites and their buffer zones providing that licence users comply with the mandatory conditions of the licence. These conditions are aimed at protecting the European sites from damage from the released game birds. The main element of protection is limiting the density of birds that can be released.

The conditions of the licence vary according to whether the release is occurring on the European site itself or within the 500m buffer zone surrounding the site, with a higher density of birds permitted to be released in the buffer zone than on the adjacent European site. It is therefore desirable to manage releases in the buffer zone around the European site in a way that does not encourage the released birds to inhabit the adjacent European site. This has been included as a condition of the licence for releases in the buffer zone and non-mandatory advice has been provided to help licence users to consider ways in which they might best do this.

Where a gamebird release cannot meet general licence conditions, it is possible to apply for an individual licence from Natural England.

I hope that this reassures you that there is no blurring of function between the Order and the licence. We have received feedback from a broad range of shooting industry stakeholders that they are clear about both when a licence is required by the Order and what is required of licence users to comply with the conditions of the licence.

My officials or I would be very happy to meet to discuss this SI further or provide any further information should you require it.

7 July 2021

APPENDIX 5: 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 July 2021, Members declared no interests.

Attendance:

The meeting was attended by Lord Chartres, Lord German, Viscount Hanworth, Lord Hodgson of Astley Abbotts, the Earl of Lindsay, Lord Lisvane, Lord Sherbourne of Didsbury and Baroness Watkins of Tavistock