



HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

11th Report of Session 2019–21

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

Drawn to the special attention of the House:

Abortion (Northern Ireland) Regulations 2020

Includes information paragraph on:

39 instruments relating to Covid 19

Draft Criminal Justice Act 2003 (Early
Release on Licence) Order 2020

Draft Immigration (Health Charge)
(Amendment) Order 2020

Railways (Interoperability) (Miscellaneous
Amendments and Revocations) (EU Exit)
Regulations 2020

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Union (Withdrawal) Act 2018.

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>Lord Hodgson of Astley Abbotts</u>	<u>The Earl of Lindsay</u>
<u>Rt Hon. Lord Chartres</u>	<u>(Chair)</u>	<u>Lord Lisvane</u>
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<u>Viscount Hanworth</u>	<u>Lord Liddle</u>	<u>Baroness Watkins of Tavistock</u>

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at <http://www.parliament.uk/seclegpublications>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Helen Gahir (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Further Information

Further information about the Committee is available at <https://www.parliament.uk/business/committees/committees-a-z/lords-select/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

MESSAGE FROM THE COMMITTEE

During the past three weeks the staff of the Secondary Legislation Scrutiny Committee have, working from home, analysed no fewer than 39 sets of regulations resulting from the Coronavirus pandemic. This is over and above their normal flow of work. The Members of the Committee would like to place on record their thanks to our staff and to draw this to the attention of the whole House since their work plays a critical part in ensuring effective scrutiny of legislation and so enabling the Government to be held properly to account.

This report is revised text in which an error in paragraph 30 has been corrected

**PROPOSED NEGATIVE STATUTORY INSTRUMENTS UNDER
THE EUROPEAN UNION (WITHDRAWAL) ACT 2018**

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

- Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Abortion (Northern Ireland) Regulations 2020 (SI 2020/345)

Date laid: 25 March 2020

Parliamentary procedure: made affirmative

The purpose of these Regulations is to implement a requirement under section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 to make provision for regulating abortions in Northern Ireland, and to set out the circumstances in which an abortion may take place. Section 9(6) of the 2019 Act requires the Regulations to come into force by 31 March 2020. The provision proposed for Northern Ireland broadly mirrors that for England and Wales but is also required by law to implement the recommendations of the UN Report under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Committee has received submissions from Members of the House of Commons, the House of Lords and the Northern Ireland Assembly, Churches and other organisations. This Report seeks to set out the key points made in the submissions. Because we found that the Government's policy choices were not always clearly explained in the Explanatory Memorandum, additional material is included here. This Report also notes several instances where the Government's administrative process for bringing these Regulations forward appears suboptimal.

The Committee draws these Regulations 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. The purpose of these Regulations is to implement a requirement under section 9 of the Northern Ireland (Executive Formation etc.) Act 2019 ("the 2019 Act") to make provision for regulating abortions in Northern Ireland, and to set out the circumstances in which an abortion may take place. Section 9(6) of the 2019 Act requires the Regulations to come into force by 31 March 2020. The Regulations were laid on 25 March 2020 with an Explanatory Memorandum (EM) by the Northern Ireland Office (NIO).
2. The instrument implements paragraphs 85 and 86 of the UN Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Report).¹ The full text of those paragraphs is set out in Appendix 1 to this Report.
3. The Committee has received submissions about this instrument from Members of the House of Commons, the House of Lords and the Northern Ireland Assembly, Churches and other organisations. The key points raised in the submissions are set out in this Report. The 21 submissions are published in full on the SLSC webpage.²

1 Report CEDAW/C/OP.8/GBR/, published 18 September 2018 https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf.

2 SLSC Publications page: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>.

Legislative Background

4. The Abortion Act 1967, which liberalised rules in relation to abortion in England and Wales, was not extended to Northern Ireland. A termination has only been permitted in Northern Ireland if a woman's life is at risk or if there was a risk of permanent and serious damage to her mental or physical health. Rape and incest, or diagnosis of fatal foetal abnormality (FFA) — where medical professionals believe that a baby will die before, during or shortly after birth — have not been grounds for abortion in Northern Ireland. On that basis, eight terminations were carried out in Northern Ireland in 2018-19.
5. A number of court cases have contested this position on human rights grounds. The CEDAW Report states that it is in breach of Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and makes a number of recommendations on how the Government should remedy the situation.
6. When the Northern Ireland (Executive Formation etc.) Bill was before the House of Commons in July 2019, an opposition amendment added a requirement on the Secretary of State to give effect to the CEDAW Report recommendations in Northern Ireland through regulations. This provision was further amended in the House of Lords to require the regulations to be in force by 31 March 2020.
7. Because the Northern Ireland Executive was not restored by 21 October 2019, section 9 of the 2019 Act automatically came into force. Section 9(2) repealed sections 58 and 59 of the Offences Against the Person Act 1861, meaning that abortion up to the point at which a child is capable of being born alive³ has not been, since 22 October 2019, a criminal offence in Northern Ireland.
8. These Regulations now make provision for regulating abortions in Northern Ireland and set out the circumstances in which an abortion may take place. The Department of Health in Northern Ireland will be responsible for commissioning services consistent with the new regulatory framework, including the long-term oversight and monitoring of such services.

Policy framework

9. Regulation 3 of the instrument allows for a termination of a pregnancy without conditions if one medical professional confirms that the pregnancy has not exceeded 11 weeks and six days gestation.⁴ Regulation 8 provides that up to the end of the tenth week, following a medical consultation and the first stage of treatment (usually the drug Mifepristone), the second part of that treatment (usually the drug Misoprostol) may be carried out in the woman's home. The EM states that, in England and Wales, 90% of abortions are performed within this timeframe, and that a 12-week limit is also consistent with provision in the Republic of Ireland and many other countries worldwide.

3 Section 25 of the Criminal Justice Act (Northern Ireland) 1945.

4 This differs from the Abortion Act 1967 which allows abortion up to 24 weeks gestation on grounds of risk to mental or physical health, but not unconditional access. The NIO states that this was determined to be the most appropriate policy way to comply with the legal obligation to allow access to abortions in cases of rape and incest as required by the CEDAW recommendation.

10. Abortions beyond 12 weeks gestation are made lawful, subject to conditions:
 - up to 24 weeks gestation (23 weeks and six days) where two medical professionals are of the opinion, made in good faith (that is, not dishonestly or negligently), that the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman, greater than the risk of terminating the pregnancy. Medical professionals may take into account a woman's wellbeing, and her actual or reasonably foreseeable circumstances, including wider social circumstances (regulation 4);
 - without any gestational time limit, where there is a risk to the life of the woman, greater than if the pregnancy were terminated, or where necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman, including in cases of immediate necessity (regulations 5 and 6); and
 - without any gestational time limit, where there is severe foetal impairment or FFA. As well as complying with the requirements of the CEDAW Report, this, according to the NIO, complies with the judgment of the High Court in Belfast that, where FFA is involved, the lack of abortion services in Northern Ireland is contrary to Article 8 of the European Convention on Human Rights (ECHR)⁵ (regulation 7).
11. A termination of pregnancy may only be carried out by a "registered medical professional". This is defined in regulation 2 as a registered medical practitioner (doctor), a registered nurse or a registered midwife. It is an offence for anyone else to terminate a pregnancy subject to a level 5 fine (up to £5,000).⁶
12. Regulation 13 modifies section 25 of the Criminal Justice Act (Northern Ireland) 1945 to exclude the woman and medical professionals from the offence of child destruction, so that late terminations may be conducted legally if in accordance with regulations 3 to 8.
13. The Department of Health in Northern Ireland intends to commission General Practitioners premises, clinics provided by a Health and Social Care (HSC) Trust, and HSC hospitals to conduct the later terminations (see regulation 8). The details of this will be announced in due course.
14. The NIO states that the overarching policy aim of these Regulations is to ensure that the framework: protects and promotes the health and safety of women and girls; provides clarity and certainty for the medical profession; and, is responsive and sensitive to the Northern Ireland Executive and Assembly being restored.

Certification

15. Part 5 of the Regulations puts in place a certification process for all terminations in Northern Ireland. In relation to terminations carried out before 12 weeks gestation (regulation 3) or in a case of immediate necessity where there is a

⁵ High Court of Northern Ireland, *Sarah Jane Ewart (Abortion — FFA)*, [031019](#).

⁶ This differs from the Abortion Act 1967 where only a doctor is permitted. However, the NIO states that this approach reflects continued developments in multidisciplinary patient care in Northern Ireland, with many nurses and midwives now taking on additional duties, in line with their professional competence, training and patient care.

risk to the life of the woman (regulation 5), the certificate must be signed by one medical professional. For terminations on other grounds (regulations 4, 6 and 7), the certificate must be signed by two medical professionals. Certificates must be retained by the medical professional carrying out the abortion for three years.

16. Regulation 10 requires specified information relating to the termination to be submitted to the Northern Ireland Chief Medical Officer so that data can be collected to enable scrutiny and to inform further development of termination services. Intentional failure to comply with the certification process is an offence subject to a level 4 fine (up to £2,500).
17. The NIO confirms that these provisions largely mirror how certification is provided and retained in the rest of the UK under the Abortion Act 1967. This information will be subject to the existing procedures already in place for the treatment of medical records, including normal data protection and patient confidentiality rules.

Conscientious objection

18. Regulation 12 provides protection for conscientious objection in Northern Ireland. Except where a woman's life is in danger, "a person is not under a duty to participate in any treatment authorised by these Regulations".
19. The EM states that this is consistent with the approach taken across the rest of the UK (see section 4 of the Abortion Act 1967). Paragraph 7.40 of the EM further explains that the UK Supreme Court, in the case of *Doogan*⁷ has held that the extent of conscientious objection is restricted to "participation", that is, performing the tasks involved in the course of treatment to terminate the pregnancy and its immediate consequences. People carrying out ancillary, administrative and managerial functions that might be associated with those tasks do not therefore have the same right to conscientious objection.
20. Almost all of the submissions received by the Committee are critical of regulation 12 on the ground that, by excluding those carrying out ancillary, administrative and managerial functions, the provision is too narrow and does not adequately protect their rights to their religious or philosophical beliefs under Article 9 of the ECHR.
21. John F. Larkin QC, Attorney General for Northern Ireland, in his submission to the Committee, argues that, although by using the word "participate" regulation 12 is referencing the *Doogan* case, that case related to the law of Scotland. In Northern Ireland there is an overarching requirement under section 6(2)(e) of the Northern Ireland Act 1998 which prevents the Assembly (and, therefore, the Secretary of State) from enacting any provision which discriminates against any person or class of person on the ground of religious belief or political opinion. He asserts that, by excluding ancillary staff, regulation 12 discriminates against them unlawfully.
22. The NIO takes the view that the approach is proportionate. They state that section 6(2)(e) of the Northern Ireland Act 1998 provides a prohibition against direct discrimination (see section 98(4) of the Northern Ireland Act 1998):

⁷ Supreme Court UK, *Doogan and another v Greater Glasgow and Clyde Health Board*, [UKSC 68](#).

“It is the Department’s view that it would not amount to direct discrimination to require all employees, or all employees of a particular class, to perform the same duties, regardless of their religious belief or political opinion.

It is accepted that it may amount to indirect discrimination, if a person could show that, due to their religion or belief, they were disproportionately affected by the requirement to carry out certain duties. But a provision that amounts to indirect discrimination is not ultra vires by reason of section 6(2)(e) of the Northern Ireland Act 1998.”

23. The NIO added:

“The proportionality of regulation 12 is furthermore supported by the independent assessment of the Northern Ireland Human Rights Commission, who said as follows in their response to the Government consultation on the new framework:⁸

In respect of the proposed conscientious objection provision, the Commission is of the view that the exclusion of ancillary, administrative and managerial tasks, represents a proportionate restriction on Article 9 ECHR and is in keeping with the Supreme Court’s 2014 ruling. The Commission is of the view that allowing a conscientious objection provision in respect of termination treatment alone is sufficient to safeguard Article 9 ECHR and reflects the position taken in the rest of the UK’ “.

24. Regulation 12 is expressed in general terms, referring to “a person” not being under a duty to participate. The restrictive interpretation of the provision following the Doogan case is explained in paragraph 7.40 of the EM rather than in the legislation. **Given the sensitivity of the issues around conscientious objection, the House may wish to ask the Minister to consider further the scope of the policy and how it will be interpreted.**

25. A number of submissions, for example from Baroness O’Loan and most Churches, point out that beliefs are strongly held in Northern Ireland and the requirement to associate with or, in cases of emergency, participate in terminations may lead to shortages of NHS staff in certain areas. The Presbyterian Church also notes that there is no Impact Assessment nor any indication of how many women might use the service and the associated financial cost.

26. Given the number of submissions expressing opposition to the legislation, including the Christian Medical Fellowship, we asked whether the Government are confident that they will be able to recruit sufficient staff willing to operate the system so as to be able to create a reasonably accessible national network of termination clinics. The NIO replied:

“We have been engaging with the Department of Health in Northern Ireland and medical practitioners, including royal medical colleges, for many months, including during the period of public consultation, and

8 See Northern Ireland Human Rights Commission, *Response to HM Government consultation on a new legal framework for abortion services in Northern Ireland - Implementation of the legal duty under section 9 of the Northern Ireland (Executive Formation etc) Act 2019* (December 2019): https://www.nihrc.org/uploads/publications/NIHRC_response_to_TOP_consultation_Dec_2019.pdf [accessed 20 April 2020].

understand that there would be sufficient staffing levels across doctors, nurses and midwives, to be able to commission and provide services, consistent with the Regulations.”

Disability

27. Regulation 7 states that a termination may be authorised if (a) the death of the foetus is likely before, during or shortly after birth or (b) “if the child were born, it would suffer from such physical or mental impairment as to be seriously disabled”.
28. A number of submissions assert that the provision in relation to disability goes too far. For example, Fiona Bruce MP, Sir Edward Leigh MP and Care NI state that regulation 7(b) is contrary to EU law because the UN Convention on the Rights of Persons with Disabilities (UNCPRD) extends to those in the womb. The Attorney General for Northern Ireland, on the other hand, acknowledges that regulation 7 implements the requirement of paragraph 85(b)(iii) of the CEDAW Report. There therefore appears to be a question over which UN Convention should take priority. Several submissions also highlight that this possible conflict of conventions applies to abortion legislation throughout the UK.⁹
29. The NIO responded that the instrument is fully compliant with all the conventions but commented that the UNCPRD does not have the status of binding EU law. It is an unincorporated treaty which does not form part of domestic law. On the extent to which the UNCPRD is to be treated as part of EU law by means of the European Communities (Definition of Treaties) (United Nations Convention on the Rights of Persons with Disabilities) Order 2009, the European Court of Justice held that the UNCPRD is not “unconditional and sufficiently precise” to have direct effect.¹⁰
30. The NIO continued that:

“In relation to Article 10 of the CRPD, we do not agree that the provision extends protection to those in the womb. Article 10 of the CRPD, in our view, does no more than restate Article 2 to the European Convention on Human Rights (ECHR). The unborn do not enjoy rights under the Convention: see, for example, *Re Northern Ireland Human Rights Commission’s application for judicial review* [2018] UKSC 27, [2019] 1 All ER 173 at para. 21 per Lady Hale.¹¹ If Article 10 is to be read as suggested, then it would seem to suggest that abortion would never be lawful.”¹²
31. The Christian Medical Fellowship, among others, agree that section 9(1) of the 2019 Act requires the Secretary of State to comply with the requirements of the CEDAW Report, but argue that paragraph 85(b) of the Report only requires abortion to be made available in the situations addressed in regulations 4 to 7. The elective provisions in regulation 3, they say, are

9 The Delegated Powers Committee also commented on this in their report on the 2019 Act, [59th Report](#), Session 2017-19 (HL Paper 408).

10 European Court of Justice, *Wolfgang Glatzel v Freistaat Bayern*, [C356/12 Glatzel v Freistaat Bayern](#).

11 Supreme Court, *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland)*, [\[2018\] UKSC 27, \[2019\] 1 All ER 173](#).

12 The NIO response was misquoted and has now been corrected.

objectionable. On a similar note, Lord Morrow questions the addition of gestation limits to the basic CEDAW requirements.

32. Recommendation 85(b) requires the Secretary of State to:

“(b) Adopt legislation to provide for expanded grounds to legalise abortion at least in the following cases: (i) Threat to the pregnant woman’s physical or mental health, without conditionality of “long-term or permanent” effects; (ii) Rape and incest; (iii) Severe foetal impairment, including fatal foetal abnormality, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term”.

33. The Recommendation sets out a minimum requirement and does not prevent the Secretary of State from setting up a more liberal regime. The regime chosen largely mirrors the services available in the rest of the UK. **In the light of the overwhelmingly negative response to the consultation exercise, it would have been better if the reasons for the specific policy choices made, were explained in more detail in the EM, and the House may wish to press the Minister for further explanation.**
34. Several submissions, for example those from Carla Lockhart MP, and the Evangelical Alliance, question how a “severe disability” will be interpreted, and whether a cleft lip or Downs Syndrome might be included within the definition. Others, including the Presbyterian Church, point to a dichotomy in the CEDAW recommendation which requires the provision of termination for “severe foetal impairment” but “without perpetuating stereotypes towards persons with disabilities”. **The House may wish to press the Minister about how these provisions will be interpreted.** Although this may well be set out in the guidance, this is not yet available; **it would have aided clarity if a draft of any interpretive guidance had been available alongside these Regulations.**
35. Fiona Bruce MP comments that these Regulations make no provision in relation to paragraph 85 (b) of the CEDAW Report which requires “appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term”. The NIO confirms that this is because such a woman and her child would be eligible for the normal disability and/or carer’s benefits and no additional legislation is required.
36. The submission from Both Lives Matter is critical of the Regulations for failing to make provision for any alternative care or support services other than abortion. We note that many of the recommendations in paragraph 86 of the CEDAW Report relate to sexual education, contraception and support services, none of which are mentioned in these Regulations. **Section 9(1) of the 2019 Act also requires the Secretary of State to implement paragraph 86 of the CEDAW Report. The House may wish, therefore, to ask the Minister how the Government intend to comply with those requirements.**

Other concerns

37. Submissions from Lord Alton of Liverpool and Right to Life, among others, argue that there is a significant omission in the Regulations in that, by allowing unconditional abortion before 12 weeks, they do not prevent

abortion on the grounds of the foetus's gender, which can now be identified at 10 weeks.

38. Fiona Bruce MP, among others, argues that the Regulations are deficient because they do not include an offence of coercive abortion, for example where a partner secretly inserts abortifacients into the food of a pregnant woman. However, regulation 13 requires the woman's explicit consent to medical treatment, and regulation 11 makes it an offence for anyone other than a medical professional to administer treatment.
39. Joanne Bunting MLA argues that the Regulations are deficient because they do not mirror the provisions in England for the inspection of premises with a specific focus on whether they provide abortions safely. She states that the Regulation and Quality Improvement Authority (the equivalent of the Care Quality Commission in England) does not have the requisite powers. She also suggests that there is a gap in the regulatory regime because there is no requirement for a private abortion clinic to be registered under regulation 4 of the Independent Health Care Regulations (Northern Ireland) 2005. The NIO responded that the duties are equivalent, and the differences are a matter of choice in legal drafting. As such, this may be a matter for consideration by the Joint Committee on Statutory Instruments.

Challenges to the 2019 Act

40. Some submissions question the legitimacy of the Regulations given the restoration of the Northern Ireland Executive and Assembly on 13 January 2020. Care NI, for example, argues that Parliament could have repealed section 9 of the 2019 Act to allow the Northern Ireland Assembly to make its own arrangements and that not to have done so undermines the principle of devolution. Sir Jeffrey Donaldson MP supports that view and also raises some constitutional issues around the passage of the 2019 Act. Paul Given MLA points out that 100% of the Northern Ireland MPs who take their seats in Westminster voted against the proposal on 9 July 2019 and that this should be taken as evidence of the Assembly's likely objection to the arrangements being imposed on Northern Ireland.
41. A number of submissions, for example those from the Attorney General for Northern Ireland and from Baroness O'Loan, raise a question about whether the Secretary of State has exceeded the powers conferred by the 2019 Act, in particular in relation to regulations 7 and 12. They argue that, although section 9(9) of the 2019 Act provides that the Secretary of State may make any provision that could be made by an Act of the Northern Ireland Assembly, this clashes with separate legislation that prevents non-compliance with EU law.
42. **Whilst beyond the scope of this Committee's remit, the House may wish to ask the Minister for a response to these questions.**

Consultation

43. Public consultation began on 4 November 2019 and lasted for a period of six weeks. **In our view this is too short for so sensitive a topic.** Added to which, it took place during the General Election period and in the run up to Christmas, **neither of which conforms with best practice.** Of the over 21,000 responses received, 79% registered general opposition to any change to the established position in Northern Ireland.

44. Submissions from Paul Given MLA, NI Voiceless and the Christian Institute criticise the Government response to the consultation for failing to explain why such a strong level of objection has been overridden. They also assert that no attempt has been made to engage with them to address their objections or with the restored Northern Ireland Executive, and that certain provisions, in particular regulation 13 (which excludes the woman and medical professionals from the offence of child destruction), were not included in the consultation document.

Timing

45. Section 9(6) of the 2019 Act requires the Regulations to come into force by 31 March 2020. They are subject to the made affirmative procedure and, under the provisions of the 2019 Act, they will cease to have effect after a period of 28 days¹³ unless they are approved by both Houses of Parliament.
46. While acknowledging that due to the current coronavirus crisis, Ministers have had much to occupy them, **we find it regrettable that the Government chose to lay so controversial an instrument just as a recess started and, more importantly, so close to the implementation date set out in the 2019 Act, thereby denying Parliament an opportunity for scrutiny before the instrument came into effect.**
47. That said, we note that these are only enabling Regulations and no services have been formally commissioned in Northern Ireland. The NIO states in the EM its intention for service provision to be gradually introduced so that registered medical professionals can receive appropriate training and will be made aware of the requirements being imposed on them.

Conclusion

48. The NIO states that, where possible, this statutory framework mirrors the Abortion Act 1967 so that provision will be broadly consistent with the abortion services in the rest of the UK. The NIO was, however, obliged by law to implement the specific recommendations of the CEDAW Report which relate to Northern Ireland. This report has sought to expand on some of the Government's policy choices and also to air the main issues drawn to our attention in submissions, to assist the House in the forthcoming debate.

¹³ No account is taken of periods when Parliament is dissolved or prorogued or adjourned for more than four days (s12(5) of the 2019 Act).

INSTRUMENTS RELATING TO COVID 19

49. The Government have laid a large number of statutory instruments (SIs) in response to the Covid 19 emergency. To assist the House, the Committee has introduced two new sources of information:

- (a) A numerical list of all SIs subject to this Committee's scrutiny that directly or indirectly deal with the consequences of the pandemic on the SLSC website.¹⁴ We will endeavour to update this daily so that there is a central reference point for the House.
- (b) Because there is likely to be a high level of interest in these instruments, we have added a dedicated section in the Committee's Report. Contrary to our normal practice, this includes an information paragraph for every instrument, and is arranged thematically. We believe that grouping them in this way will be particularly helpful where, as illustrated below, later instruments have superseded SIs laid only a day or two earlier. The themes are:
 - Restrictions on businesses and public gatherings
 - Changes to business practice and regulation
 - Public services
 - Changes to benefits
 - Law and order
 - Delayed or revoked legislation

The Committee has noticed the use of a wide variety of different sunset dates and provisions in the statutory instruments dealing with the pandemic. We have written to the Minister about this complexity and how it is monitored.

Restrictions on businesses and public gatherings

Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (SI 2020/327)

50. To prevent the further spread of Covid 19, this instrument required the closure of businesses in England selling food or drink for consumption on the premises, such as restaurants, pubs and cafes, and other businesses, including cinemas and theatres, betting shops, museums and galleries, as listed in the Schedule to the instrument. Canteens in hospitals, schools, care homes, prisons or in premises used by the Armed Forces were exempt from the closure. The Ministry of Housing, Communities and Local Government (MHCLG) laid the instrument under the made affirmative procedure, which meant it would not remain in force unless approved by both Houses within 28 days. However, the instrument has since been superseded by SI 2020/350.

¹⁴ Secondary Legislation Scrutiny Committee, 'Scrutiny of secondary legislation laid to tackle coronavirus pandemic' (27 March 2020): <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/145773/scrutiny-of-secondary-legislation-laid-to-tackle-coronavirus-pandemic/> [accessed 21 April 2020].

Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 (SI 2020/330)

51. This instrument allows the restaurants, cafes and pubs in England which were closed by SI 2020/327 to provide a takeaway or delivery service for hot or cold food for a limited period of 12 months until 23 March 2021. According to MHCLG, there is no application process for the new arrangements; businesses will only need to notify their local planning authority by e-mail or in writing if they decide to provide a takeaway food or delivery service. MHCLG states that this temporary permission will not impact on the original planning use which will be retained and to which premises will revert after the 12-month period.

Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350)

52. This instrument superseded SI 2020/327 above by tightening the restrictions on businesses in England with immediate effect from 1pm on 26 March 2020. The Department for Health and Social Care (DHSC) states that this was in response to advice that, although compliance with social distancing measures was increasing, it was not increasing sufficiently quickly to have the necessary effect.
53. Regulation 4 required the immediate closure of all drinking establishments and entertainment venues, and food venues (except for collection or delivery of food for consumption off the premises). Regulation 5 stopped businesses offering goods for sale or rent except in response to orders received online, telephone or by mail order, and closed all hotels except those that cater for permanent residents. Regulations 5(5) to (8) placed restrictions on places of worship and crematoriums. As in SI 2020/327, Environmental Health, Trading Standards and police officers will monitor compliance with these regulations and businesses that breach them will be subject to prohibition notices, and potentially unlimited fines. The Explanatory Memorandum indicates that these closures will affect 13.1% of the UK's business units.
54. This instrument also banned public gatherings of more than two people (regulation 7) and prohibited anyone from leaving the place where they are living without reasonable excuse, such as the need to provide care or assistance, to travel for the purposes of work and to access critical public services (regulation 6). These regulations are enforceable by a police constable and breach is subject to a fixed penalty notice fine of £60, reduced to £30 if paid within 14 days.
55. The instrument came into immediate effect and Parliament has 28 sitting days to approve it retrospectively. The instrument will lapse automatically six months after coming into force (regulation 12). However, regulation 3 requires the Secretary of State to review the need for the restrictions it imposes every 21 days, the first review must take place by 16 April 2020. When appropriate, any amendments to regulations or guidance may be made by a ministerial direction, which will be published on <https://www.gov.uk/coronavirus>. The Committee has also written to the Minister about the alignment between the restrictions introduced by this instrument and the published guidance.

Changes to business practice and regulation

Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2020 (SI 2020/322)

56. This instrument exempts the Covid Corporate Financing Facility (CCFF) from the general prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (“the Act”), according to which no persons may carry on a regulated activity in the UK unless they are authorised by the Financial Conduct Authority (FCA) or exempt. HM Treasury (HMT) explains that as a response to the economic shock caused by the pandemic, the CCFF has been established to provide funding to large businesses that are material to the UK economy, by purchasing short-term corporate debt (so-called commercial paper) of up to one-year maturity. This is to support businesses in paying salaries, rents and suppliers at a time of severe disruption to cashflows. The Bank of England (“the Bank”) operates the CCFF as a wholly owned subsidiary. HMT explains that the CCFF’s function amounts to dealing in investments as principal, which is a regulated activity, and that the CCFF may also have to undertake other regulated activities. According to HMT, obtaining FCA authorisation, which typically takes several months, was not a viable option given the need to act swiftly to provide liquidity to companies. In addition, the FCA authorisation regime was established for commercial entities, and therefore its requirements and processes are not suitable in the context of the CCFF: the exemption of the CCFF from the general prohibition in section 19 of the Act mirrors the exemption of the Bank itself. The CCFF offers financing on terms comparable to those prevailing in markets before the pandemic. Businesses need to demonstrate that they were in sound financial health before the crisis, with eligibility based on their pre-crisis credit ratings. They do not need to have issued commercial paper before. HMT expects the CCFF to operate for at least 12 months and for as long as support is needed to relieve cash flow pressures. HMT told the Committee that, as of 10 April, the CCFF had purchased £5.9 billion in commercial paper, and that the Bank will be publishing updates on the funding provided by the CCFF in its weekly report.

Single Use Carrier Bags Charges (England) (Amendment) Order 2020 (SI 2020/324)

57. This instrument suspends, for a period of six months, the obligation on retailers with 250 or more employees to charge a minimum of 5p for single-use carrier bags (SUCBs) where these are used for the home delivery of online grocery shopping. The Department for Environment, Food and Rural Affairs (Defra) explains that online groceries are predominantly delivered in re-usable crates which are unpacked on the doorstep and then returned to drivers. Defra says that with unprecedented demand for online grocery orders due to the spread of Covid 19, the temporary suspension of the 5p charge aims to encourage the use of SUCBs. This is to help to prevent the spread of the virus from crates being passed from customer to customer via drivers and to speed up delivery times as drivers can drop deliveries more easily at the doorstep using SUCBs.

Working Time (Coronavirus) (Amendment) Regulations 2020 (SI 2020/365)

58. This instrument amends the Working Time Regulations 1998 to ensure that workers for whom it is not reasonably practicable to take holiday due to the pandemic can carry their holiday into the following two leave years. The

Department for Business, Energy and Industrial Strategy (BEIS) says that this will protect workers by ensuring they do not risk losing their holiday entitlement, while also ensuring that businesses have the flexibility and the staff needed to respond to the crisis. BEIS expects take-up mainly by businesses and public sector organisations that have experienced a significant increase in short-term demand as a result of the pandemic and the resulting restrictions on public life, such as manufacturers of essential goods, food retailers, healthcare and transport businesses and their respective supply chains. The instrument applies to Great Britain. With regard to enforcement, BEIS told us that “[w]here the exemption applies but an employer does not permit a worker to carry their holiday forwards, they must instead facilitate the worker taking their holiday in the leave year to which it relates. Workers who feel their rights are being denied may complain to an employment tribunal or contact ACAS for free and confidential advice”.

Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020 (SI 2020/368)

Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 (SI 2020/369)

Competition Act 1998 (Solent Maritime Crossings) (Coronavirus) (Public Policy Exclusion) Order 2020 (SI 2020/370)

59. These three Orders temporarily lift prohibitions of certain types of anti-competitive activity and agreements, as set out in Chapter 1 of the Competition Act 1998 (“the 1998 Act”), in three sectors: private and public healthcare providers in England, UK supermarkets and their logistic service providers and ferry services to and from the Isle of Wight. BEIS says that the aim is to enable private healthcare providers to support an expansion of NHS capacity in England, to secure the continued supply of groceries across the UK and to maintain the transport of essential goods and personnel, including medical staff, to and from the Isle of Wight during the pandemic. The Orders specify the types of activities and agreements between the different providers that are temporarily excluded from the prohibitions under the 1998 Act, such as sharing information about capacity, coordinating staff deployment or the joint purchasing of goods, facilities or services. The exemptions apply retrospectively from 1 March (health services and groceries) and 14 March (ferry services in the Solent). According to BEIS, the direct sharing of sensitive information relating to costs or prices or future business planning is not exempt, to ensure that competition law is disapplied only where this is necessary to deal with the current crisis. BEIS expects the exemptions to be in place for less than 12 months. The Orders enable the Secretary of State to end the exemptions once health services, the supply of groceries and ferry services in the Solent are no longer disrupted. The Secretary of State will have to give a minimum of 28 days’ notice to allow for the orderly winding down of any temporary arrangements.

Public services

National Health Service (Amendments Relating to the Provision of Primary Care Services During a Pandemic etc.) Regulations 2020 (SI 2020/351)

60. These Regulations enable the NHS Board,¹⁵ with the agreement of DHSC, to suspend certain services normally required by GP, pharmacy and dental contracts in England and to prioritise delivery of other more essential services during a pandemic. **The House should be aware that these are permanent provisions that may also be applied to future situations where there is serious risk to health.** In particular, these Regulations enable arrangements for the delivery of medicines to patients under isolation or the ‘shielding’ strategy who have been advised to stay at home. They also make provision for GP practices to work on Good Friday and bank holidays, if need be. Suspension of any contract terms will be implemented by the NHSE/I as a formal “trigger” letter which will include an end date on which the arrangement will lapse. These letters will be widely distributed to commissioners, practices and other stakeholders. It would be for DHSC to consider notifying Parliament.

Police Act 1997 (Criminal Records) (Amendment) Regulations 2020 (SI 2020/359)

61. In response to the Covid 19 pandemic, the Government announced on 20 March 2020 that they were asking retired health and social care practitioners to consider returning to work. Such individuals can only be re-engaged by the NHS or other employers if they have been registered with the relevant professional body, and that in turn requires a criminal record check to ensure that the applicant is not barred from working with children or adults in a regulated activity. This instrument will allow for the appropriate checks to be undertaken free of charge for emergency volunteers, health professionals subject to temporary emergency registration, and those applying to provide NHS health services or social care services in England and Wales, whether they are providing direct care or covering for staff who are ill. The intention is to avoid placing cost burdens on the employer or applicant at a time when the focus is on filling roles safely and quickly.

Nursing and Midwifery Council (Emergency Procedures) (Amendment) Rules Order of Council 2020 (SI 2020/364)

62. This instrument is being made in order to allow the Nursing and Midwifery Council (NMC) to adapt its current operating procedures to respond to the Covid 19 emergency, particularly in the light of its new temporary powers under the Coronavirus Act 2020 to register volunteers it decides are fit, proper and suitably experienced. The amended Rules allow more flexibility in the time limits for professionals to renew their registration. They also adapt NMC’s panel hearing process, including fitness to practice hearings, during the emergency by changing the rules for panel member terms, panel constitution, and by providing for remote hearings, and for notices to be sent by e-mail rather than post. These amendments will cease to have effect when the Secretary of State notifies the Registrar that the emergency has ended or when the relevant section of the Coronavirus Act 2020 is no longer in operation.

¹⁵ The instrument refers to the NHS Commissioning Board as the key agent whereas the EM refers to NHS England and Improvement (NHSE/I): they are the same organisation – the NHS Commissioning Board is the formal name for NHSE/I.

National Health Service (Performers Lists) (England) (Amendment) Regulations 2020 (SI 2020/411)

63. Normally medical practitioners cannot provide general medical practitioner services for the NHS unless they are registered on the specific “medical performers list” maintained by the NHS Commissioning Board. To respond to the Covid 19 emergency, these Regulations allow the NHS to deploy medical practitioners in primary care in a more flexible way. This instrument sits alongside powers in the Medical Act 1983 to carry out the emergency registration of medical practitioners. However, these Regulations do not cover non-GPs returning to join the General Medical Council’s temporary register as they will not be considered eligible to work in primary care.

Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (SI 2020/392)

64. This instrument temporarily removes statutory requirements for local authorities to hold annual meetings and allows such meetings to be held remotely using video or telephone conferencing or live web streaming. The instrument also allows local authorities to provide access for the public and press to any meetings and associated documents through remote means, such as the local authority website. As annual meetings are typically used to make appointments, the instrument allows current appointments to continue until the next annual meeting. The instrument also enables Police and Crime Panels in England and Wales, which advise and scrutinise the work of Police and Crime Commissioners, to hold meetings remotely and to give the public and press remote access to these meetings. MHCLG says that the measures are time limited and apply only to meetings taking place before 7 May 2021. The Department may bring forward this date through further regulations if social distancing rules are relaxed or removed. According to MHCLG, the measures will help local authorities redeploy their resources to deal with the pandemic and ensure essential business continues whilst upholding democratic principles and protecting the health and safety of members, officers and the public in line with official public health guidance. MHCLG says that the instrument has been drafted following engagement with local government representatives, including the Local Government Association.

Accounts and Audit (Coronavirus) (Amendment) Regulations 2020 (SI 2020/404)

65. This instrument extends the deadlines for certain public and local bodies to publish, and make available for public inspection, their annual accounts and supporting documents. The changes apply only in relation to annual accounts for the 2019/20 financial year. The deadline for making the annual accounts available for public inspection is extended from the first 10 working days of June or July (depending on the category of local body) to the first working day of September 2020, while the deadline for publishing the statement of accounts (together with any certificate or opinion of the local auditor) is extended from 31 July or 30 September (depending on the category of local body) to 30 November 2020. MHCLG says that the new deadlines will help authorities to better manage any staff shortages resulting from the pandemic and also provide audit firms with more time to audit the accounts this year. While the territorial extent of the instrument includes Wales, MHCLG explains that there are also separate regulations covering Welsh authorities

and that officials have consulted with the Devolved Administrations to make them aware of this instrument, so that they may consider making similar arrangements.

Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 (SI 2020/412)

66. To support the response to the pandemic, this Order allows local authorities and health service bodies in England to temporarily develop and change the use of facilities without having to submit a planning application. The instrument amends the Town and Country Planning (General Permitted Development) (England) Order 2015 to introduce a new time-limited national “permitted development right”. This allows local authorities and health service bodies to bring forward additional facilities and new uses for existing buildings until 31 December 2020, for example for use as hospitals, testing centres, coroner facilities, mortuaries and accommodation or for parking, storage and distribution. MHCLG says that the temporary permitted development right will avoid any delays caused by having to make, submit and process planning applications, and that it will give the NHS and local authorities time to determine their needs. If necessary, they will be able to apply for planning permission for longer term use which would then be considered in the usual way. Any extension of the temporary period beyond 31 December 2020 will require a further instrument. With regard to private property rights, MHCLG told the Committee that the Permitted Development Right can be used “where there is a pre-existing contract and also where the NHS/public body wish to arrange a contract now or in the future”. MHCLG added that the “right does not override any existing arrangements with landlords” and that for new contracts it “would be up to the council or NHS body to reach an agreement with the private owner”.

Changes to Benefits

Tax Credits, Child Benefit, Guardian’s Allowance and Childcare Payments (Miscellaneous Amendments) Regulations 2020 (SI 2020/297)

67. This instrument mainly amends regulations on tax credits, Child Benefit, Guardian’s Allowance and Childcare Payments to give effect to the Fiscal Framework Agreement with Scotland, so that any new benefits or discretionary payments do not result in UK benefits being reduced. The instrument also includes provisions to ensure that payments made by the National Emergencies Trust (NET) are disregarded as income for tax credits purposes. The NET was established as a charity in March 2019 to support victims of a national domestic disaster, allowing the public to donate to a single organisation which then distributes the funds to frontline charities. The NET has launched an appeal for donations to help with the Covid 19 pandemic which raised £12.5 million in its first week.

Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371)

Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020 (SR 2020/53)

68. These instruments make provision for both those who are making a new claim because of the pandemic or were already in receipt of Universal Credit (UC), Jobseeker’s Allowance or Housing Benefit to cope with the financial

impacts arising from the Covid 19 outbreak. Benefit rates are increased by approximately £20 per week and the requirement to seek employment has been suspended initially for three months. Rules that would normally affect those who are self-isolating, sick or caring for a sick family member are suspended, as are certain rules affecting the self-employed. It is estimated that 2.5 million households will benefit from the increase to the UC Standard Allowance, as well as new claimants who become unemployed or whose earnings or work hours decrease because of the outbreak. The main provisions will lapse eight months after 13 March 2020.

Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 (SI 2020/374)

Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations (Northern Ireland) 2020 (SR 2020/54)

69. Statutory Sick Pay (SSP) is paid by employers to employees who are incapable of work due to sickness at a flat rate of £94.25 for up to 28 weeks (uprated to £95.85 on 6 April). In relation to coronavirus these instruments suspend the normal rules so someone may receive SSP when not actually sick but self-isolating and remove the requirement to serve three unpaid “waiting days”. This will apply retrospectively from 13 March 2020 to align with previous regulations, the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020 (SI 2020/287)¹⁶ which from that date provided that employees isolating themselves in accordance with government guidance on coronavirus should be treated as incapable of work, and therefore potentially entitled to SSP, with the objective of encouraging people to stay at home if they had been in contact with the disease.

Social Security (Coronavirus) (Further Measures) Amendment Regulations 2020 (SI 2020/397)

Social Security (Coronavirus) (Further Measures) Amendment Regulations (Northern Ireland) 2020 (SR 2020/61)

70. These instruments make changes to the Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) and equivalent regulations for Northern Ireland (SR 2020/53) mentioned above, to change the assessment period in which the temporary increase of the Universal Credit standard allowance and increased Local Housing Allowance rates will take effect for each award of Universal Credit. This is intended to make the additional support provided available to claimants more quickly.

Social Fund Funeral Expenses Payment (Coronavirus) (Amendment) Regulations 2020 (SI 2020/405)

71. Social Fund Funeral Expenses Payments help eligible claimants with the cost of arranging a funeral. The Payment meets the full, necessary costs of a cremation or burial, including documentation and transport of the deceased. An additional discretionary element can be used to help pay for items such as flowers, car hire, the funeral ceremony and funeral director charges for making the arrangements. This instrument increases the cap on the discretionary element from £700 to £1,000 to provide additional support to claimants in order to help them manage the economic impacts of the coronavirus pandemic.

16 Or SR 2020/32 in Northern Ireland.

*Social Security (Coronavirus) (Prisoners) Regulations 2020 (SI 2020/409)**Social Security (Coronavirus) (Prisoners) Regulations (Northern Ireland) 2020 (SR 2020/63)*

72. This instrument makes provision for the approximately 4,000 individuals on temporary release from a prison in England and Wales and Northern Ireland during the Covid 19 outbreak (see SIs 400 and 401 below) to access means tested benefits during the period of that release. These instruments will expire at the same time as the main social security variation set out in SIs 289 and 371 and SRs33 and 53 respectively. (In Scotland the policy is the same, but prisoners are being released under devolved powers, which means that they can be paid these means tested benefits without a need to amend legislation.)

Law and Order*Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 (SI 2020/360)*

73. The Investigatory Powers Act 2016 regulates the intelligence and law enforcement agencies, by requiring them to use warrants approved by a Judicial Commissioner when deploying certain techniques to investigate national security issues and serious crime. These Regulations vary the warrant procedure to extend the timelines for after the event approval by a Judicial Commissioner from three working days to nine working days and the lifespan of the urgent warrant from five working days to 12 working days. As many of the Judicial Commissioners are in the at-risk demographic for Covid 19, this instrument also allows the Investigatory Powers Commissioner to directly appoint temporary Judicial Commissioners to alleviate the strain Covid 19 has placed on the process. The instrument will lapse after 12 months but may be repealed earlier if the Home Office and the Investigatory Powers Commissioner deem it appropriate.

Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 (SI 2020/395)

74. The Coronavirus Act 2020 postpones the local elections that were to be held on 7 May 2020 elections by a year to 6 May 2021. It also extends the term of office of current incumbents for a year and reduces by a year the term of office of those elected in the postponed elections from four to three years to avoid further disruption to the electoral cycle. Amongst other changes, this instrument postpones local by-elections,¹⁷ local advisory polls and governance and neighbourhood planning referendums in England that had already been scheduled and any local electoral events that would otherwise be required to be held by 5 May 2021 until 6 May 2021. The instrument also postpones by-elections for Police and Crime Commissioners (PCCs) in England and Wales until 6 May 2021. MHCLG says the changes will give local authorities greater flexibility as to how they deploy their resources in response to the pandemic, as they will not have to support electoral events, and that further regulations will be laid to deal with related issues, such as the treatment of postal votes that have already been received for elections that have been postponed. MHCLG told the Committee that the practice of

¹⁷ By-elections are scheduled to fill casual vacancies that occur when an individual is no longer able to fill their elected seat as a result of death, resignation, incapacity or disqualification.

co-opting councillors to fill vacancies would continue in the absence of local by-elections and that this would help to prevent meetings of parish councils from becoming inquorate.

Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2020 (SI 2020/400)

Offender Management Act 2007 (Coronavirus) (Approved Premises) (Amendment) Regulations 2020 (SI 2020/401)

75. For the duration of the coronavirus transmission control period (as determined by the Coronavirus Act 2020) the Government have been advised by Public Health England of the need to put in place mechanisms to allow Her Majesty's Prison and Probation Service to release prisoners within clearly prescribed limits. This needs to balance protecting the public and maintaining law and order, with protecting the health and safety of those working and detained in prison. The first instrument gives the prison governor, on behalf of the Secretary of State, the power to direct temporary releases, specifies which prisoners may be released and which prisoners may not be released (for example those serving life sentences, terrorists and sex offenders). It also gives the power to add conditions to the release. The second instrument provides that prisoners so released may be accommodated in Approved Premises. (See also SI 409 and SR 63 which provide for the payment of benefits to prisoners on temporary release.)

Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020 (SI 2020/415)

Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 (SI 2020/416)

76. These Rules amend normal proceedings so that Tribunal cases can be conducted more safely during the pandemic. The Employment Appeal Tribunal ("the Appeal Tribunal") may be conducted by means of electronic communication, but only if the Appeal Tribunal considers that it would be just and equitable to do so. SI 2020/415 also provides that the parties and members of the public are able to hear what the Appeal Tribunal hears and see any witness as seen by the Appeal Tribunal. SI 2020/416 introduces more flexibility for a range of other First-tier and Upper Tribunal hearings either by extending time limits, allowing certain urgent decisions to be decided only on papers, allowing for remote hearings or for a private hearing where suitable technology for broadcasting is not available (though in such cases a recording must be made of proceedings). These amendments will expire on the same day as section 55 of the Coronavirus Act 2020.

Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (SI 2020/417)

77. These Rules make temporary amendments to the Criminal Procedure Rules 2015,¹⁸ to apply the modifications to legislation made by the Coronavirus Act 2020 ("the 2020 Act"). These Rules make practical changes so that the greater use of live links for hearings and trials will work appropriately, in particular in relation to extradition hearings. They also make amendments to the relevant Criminal Procedure Rules so that the modification made by the 2020 Act, allowing detention under the Mental Health Act 1983 on the advice of only one doctor where necessary, can be applied. Most of these

18 Criminal Procedure Rules 2015 ([SI 2015/1490](#)).

amendments will expire automatically when the relevant sections of the Coronavirus Act 2020 expire.

Electronic Monitoring (Responsible Persons) (Coronavirus) (Amendment) Order 2020 (SI 2020/418)

78. This Order expands the capacity for monitoring tagged individuals by adding another provider to the approved list. This is necessary because of the number of prisoners being temporarily released from jails and Young Offenders institutions to reduce infection during the pandemic period. (See SIs 400 and 401 above.)

Delayed or revoked legislation

Street and Road Works (Amendments Relating to Electronic Communications) (England) (Amendment) Regulations 2020 (SI 2020/346)

79. We recently published information about the Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020 (SI 2020/122).¹⁹ Those Regulations mandated the use in England of Street Manager, a new digital service developed by the Department of Transport (DfT) which aims to transform the planning, management and communication of street and road works. As a result of the impact of Covid 19 on their resources, many representatives from local authorities and utility companies have asked DfT to delay the coming into force date of Street Manager from 1 April 2020 to 1 July 2020 so that the staff who are available can focus on delivery of front-line services. This instrument implements that delay.

Occupational and Personal Pension Schemes (General Levy) (Revocation) Regulations 2020 (SI 2020/355)

80. These Regulations revoke SI 2020/195²⁰ which was to increase the General Levy paid by occupational and personal pension schemes by 10% from 1 April 2020. The General Levy recovers the core running costs of the Pensions Regulator, the Pensions Ombudsman and parts of the Money and Pensions Service and is currently running at a deficit. The revocation means that the levy will remain at the lower levels set in SI 2005/626²¹ as amended, with the aims of preventing additional cash flow pressures for businesses in view of the economic uncertainties posed by the pandemic.

Feed-in Tariffs (Amendment) (Coronavirus) Order 2020 (SI 2020/375)

81. This instrument gives small-scale renewable electricity generators extra time to apply for accreditation under the Feed-In Tariffs (FIT) scheme. BEIS explains that the FIT scheme, the main programme to encourage the deployment of small-scale low-carbon electricity generation in Great Britain, closed to new applications on 31 March 2019, subject to several time-limited extensions which had a deadline of 31 March 2020. According to BEIS, up to 250 projects, mostly community energy installations, were close to completion but were facing delays beyond their control due to the pandemic, so that they were unable to complete construction, commission

19 See [6th Report](#), Session 2019-21 (HL Paper25) on Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020 ([SI 2020/122](#)).

20 Occupational and Personal Pension Schemes (General Levy) (Amendment) Regulations 2020 ([SI 2020/195](#)).

21 Occupational and Personal Pension Schemes (General Levy) Regulations 2005 ([SI 2020/626](#)).

the projects and submit their application for accreditation by 31 March 2020. This instrument extends the deadline to 30 September 2020 for most schemes to prevent the loss of investment. The Department says that it will consider whether further extensions are necessary if the consequences of the pandemic continue in the longer term.

Motor Vehicles (Tests) (Amendment) (Coronavirus) Regulations 2020 (SI 2020/382)

82. This instrument exempts light vehicles (cars, vans, motorcycles, etc.) in Great Britain that are due for an MOT test from 30 March 2020 to 29 March 2021 from that requirement for six months, although the duty to ensure vehicles are in good working order remains unchanged. This also allows for the testing of the estimated 16.6 million relevant MOTs affected, to be staggered as their six-month period ends. Without this exemption vehicles could not be taxed, and their insurance cover might be invalidated. The provisions of this instrument do not apply to public service vehicles or goods vehicles. DfT states that this instrument will lapse on 30 September 2020 but may be revoked earlier if it no longer serves a useful purpose.

Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) Regulations 2020 (SI 2020/391)

83. This instrument extends the retention deadlines for fingerprints and DNA profiles held by Counter-Terrorism Policing Command, Police Service of Northern Ireland (PSNI), and Police Scotland that would otherwise automatically be destroyed during the six-month period from 2 April 2020. An exception in the Protection of Freedoms Act 2012 allows, where there is a national security interest, the Police to apply to retain such samples for a further two years (renewable), but due to the impact of Covid 19, the resources to conduct the necessary reviews have been diverted to other tasks. If the statutory retention periods were left to operate as normal, the biometrics of up to 150 individuals per month would be deleted without review. The Home Office has sought the extension to ensure that the records of potential subjects and of some already identified as of national security interest due for review, are not accidentally lost.

INSTRUMENTS OF INTEREST

Draft Criminal Justice Act 2003 (Early Release on Licence) Order 2020

84. Home detention curfew (HDC) is a discretionary power, exercised by prison governors on behalf of the Secretary of State. Subject to a risk assessment, prisoners who meet the eligibility requirements may be released on licence before their automatic release date, usually with an electronic tag. Before they can be released on HDC prisoners must serve a minimum of one quarter of their sentence (subject to a minimum of 28 days in custody) and certain groups of offenders are excluded including terrorists, sex offenders and anyone serving a sentence of more than four years. This draft Order does not alter the eligibility criteria in any way but extends the maximum period of release on licence on HDC from 135 days (four and a half months) to 180 days (six months). The Ministry of Justice states that the extension would provide earlier resettlement opportunities for low risk offenders while also helping to reduce the pressures on the prison population.²²

Draft Immigration (Health Charge) (Amendment) Order 2020

85. The immigration health charge is payable by non-European Economic Area nationals who enter the UK for more than six months, subject to certain exemptions listed in Schedule 2 of the Immigration (Health Charge) Order 2015 (“the Principal Order”). Those who pay the immigration health charge can access NHS services for free (apart from any standard charges UK residents must also pay, such as for prescriptions and dental treatment in England). This Committee has seen a number of iterations of this policy and each time questioned why visitors were paying less than the estimated cost of the treatment that they received.²³ We are therefore pleased to note that this Order increases the amount of the charge so that it should now cover the full cost of use. The charge will increase to £470 for students, dependants of a student, and Youth Mobility Scheme applicants, and to £624 for adults.
86. The Impact Assessment notes that this Order represents a change in policy which is estimated to provide the NHS with approximately £200 million per year additional income. However, that calculation was made before the coronavirus lockdown was announced, and the House may also recall that regulations laid earlier this year²⁴ waived the normal charges for overseas visitors using NHS services in England if they were seeking diagnosis or treatment for coronavirus.

Railways (Interoperability) (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2020 (SI 2020/318)

87. This instrument corrects two previous EU Exit Statutory Instruments and makes consequential amendments to related rail legislation so that they refer to the correct set of technical standards that will apply in the UK at the end of the Implementation Period. The amended suite of regulations provides the

22 See also SIs 400 and 401 on page 21 of this report that relate to the temporary release of prisoners during the Covid 19 pandemic.

23 Our most recent report on the matter was on the Draft Immigration (Health Charge) (Amendment) Order 2018 in the [3rd Report](#) of Sub-Committee A, Session 2017-19 (HL Paper 210).

24 National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2020 (SI 2020/59) see paragraph in [4th Report](#), Session 2019-21 (HL Paper 13).

Secretary of State for Transport with the power to publish UK rail technical standards to ensure the UK has sufficient flexibility to keep pace with or diverge from EU rail technical standards after the end of the transition period. It also enables a system of recognition, so that where the UK and EU technical standards remain aligned, the UK will continue to recognise vehicles, systems and rail products with EU certification carried out against the EU technical standards. Importantly, this system allows for Northern Ireland to stay more aligned with the EU's rail technical standards for the purpose of protecting cross-border services with the Republic of Ireland.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Automatic Enrolment (Offshore Employment) (Amendment) Order 2020

Criminal Justice Act 2003 (Early Release on Licence) Order 2020

Immigration (Health Charge) (Amendment) Order 2020

Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2020

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020

Victims and Witnesses (Scotland) Act 2014 (Consequential Modification) Order 2020

Weights and Measures Act 1985 (Definitions of “Metre” and “Kilogram”) (Amendment) Order 2020

Made instruments subject to affirmative approval

SI 2020/327 Health Protection (Coronavirus, Business Closure) (England) Regulations 2020

SI 2020/350 Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Draft instruments subject to annulment

Draft Modifications to the Standard Conditions of the Electricity and Gas Supply Licences, The Smart Energy Code, The Smart Meter Communication Licences, The Master Registration Agreement and the Uniform Network Code (Smart Meters No. (2) of 2020)

Made instruments subject to annulment

SI 2020/294 Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2020

SI 2020/296 National Health Service (Existing Liabilities Scheme for General Practice) Regulations 2020

SI 2020/297 Tax Credits, Child Benefit, Guardian’s Allowance and Childcare Payments (Miscellaneous Amendments) Regulations 2020

SI 2020/300 Social Security (Contributions) (Amendment No. 2) Regulations 2020

SI 2020/302 Guardian’s Allowance Up-rating Regulations 2020

SI 2020/303 Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 2020

SI 2020/310	Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2020
SI 2020/314	First-tier Tribunal (Immigration and Asylum Chamber) Fees (Amendment) Order 2020
SI 2020/316	Damages for Bereavement (Variation of Sum) (England and Wales) Order 2020
SI 2020/318	Railways (Interoperability) (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2020
SI 2020/320	Social Security (Contributions) (Amendment No. 3) Regulations 2020
SI 2020/322	Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2020
SI 2020/324	Single Use Carrier Bags Charges (England) (Amendment) Order 2020
SI 2020/330	Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020
SI 2020/335	International Accounting Standards, Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2020
SI 2020/346	Street and Road Works (Amendments Relating to Electronic Communications) (England) (Amendment) Regulations 2020
SI 2020/351	National Health Service (Amendments Relating to the Provision of Primary Care Services During a Pandemic etc.) Regulations 2020
SI 2020/355	Occupational and Personal Pension Schemes (General Levy) (Revocation) Regulations 2020
SI 2020/359	Police Act 1997 (Criminal Records) (Amendment) Regulations 2020
SI 2020/360	Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020
SI 2020/362	Merchant Shipping (Tonnage) (Amendment) Regulations 2020
SI 2020/364	Nursing and Midwifery Council (Emergency Procedures) (Amendment) Rules Order of Council 2020
SI 2020/365	Working Time (Coronavirus) (Amendment) Regulations 2020
SI 2020/368	Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020
SI 2020/369	Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020
SI 2020/370	Competition Act 1998 (Solent Maritime Crossings) (Coronavirus) (Public Policy Exclusion) Order 2020
SI 2020/371	Social Security (Coronavirus) (Further Measures) Regulations 2020

SI 2020/374	Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020
SI 2020/375	Feed-in Tariffs (Amendment) (Coronavirus) Order 2020
SI 2020/382	Motor Vehicles (Tests) (Amendment) (Coronavirus) Regulations 2020
SI 2020/384	Posted Workers (Agency Workers) Regulations 2020
SI 2020/385	Elections (Policy Development Grants Scheme) (Amendment) (No. 2) Order 2020
SI 2020/391	Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) Regulations 2020
SI 2020/392	Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020
SI 2020/395	Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020
SI 2020/397	Social Security (Coronavirus) (Further Measures) Amendment Regulations 2020
SI 2020/400	Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2020
SI 2020/401	Offender Management Act 2007 (Coronavirus) (Approved Premises) (Amendment) Regulations 2020
SI 2020/404	Accounts and Audit (Coronavirus) (Amendment) Regulations 2020
SI 2020/405	Social Fund Funeral Expenses Payment (Coronavirus) (Amendment) Regulations 2020
SI 2020/409	Social Security (Coronavirus) (Prisoners) Regulations 2020
SI 2020/411	National Health Service (Performers Lists) (England) (Amendment) Regulations 2020
SI 2020/412	Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020
SI 2020/415	Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020
SI 2020/416	Tribunal Procedure (Coronavirus) (Amendment) Rules 2020
SI 2020/417	Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020
SI 2020/418	Electronic Monitoring (Responsible Persons) (Coronavirus) (Amendment) Order 2020
SR 2020/53	Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020

- SR 2020/54 Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations (Northern Ireland) 2020
- SR 2020/61 Social Security (Coronavirus) (Further Measures) Amendment Regulations (Northern Ireland) 2020
- SR 2020/63 Social Security (Coronavirus) (Prisoners) Regulations (Northern Ireland) 2020

APPENDIX 1: ABORTION (NORTHERN IRELAND) REGULATIONS 2020 (SI 2020/345)

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Recommendations

A. Legal and institutional framework

85. The Committee recommends that the State party urgently:

- (a) Repeal sections 58 and 59 of the Offences against the Person Act, 1861, so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health-care professionals and all others who provide and assist in the abortion;
- (b) Adopt legislation to provide for expanded grounds to legalize abortion at least in the following cases: (i) Threat to the pregnant woman's physical or mental health, without conditionality of "long-term or permanent" effects; (ii) Rape and incest; (iii) Severe foetal impairment, including fatal foetal abnormality, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term;
- (c) Introduce, as an interim measure, a moratorium on the application of criminal laws concerning abortion and cease all related arrests, investigations and criminal prosecutions, including of women seeking post-abortion care and health-care professionals;
- (d) Adopt evidence-based protocols for health-care professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols;
- (e) Establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions, and ensure enhanced coordination between the mechanism with the Department of Health, Social Services and Public Safety and the Northern Ireland Human Rights Commission;
- (f) Strengthen existing data-collection systems and data sharing between the Department and the police to address the phenomenon of self-induced abortion.

B. Sexual and reproductive health rights and services

86. The Committee recommends that the State party:

- (a) Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion;
- (b) Ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral, emergency, long-term and permanent forms of contraception, and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;
- (c) Provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area;

- (d) Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation;
- (e) Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;
- (f) Adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers;
- (g) Protect women from harassment by anti-abortion protesters by investigating complaints and prosecuting and punishing perpetrators.

Report of 18 September 2018 CEDAW/C/OP.8/GBR/1

APPENDIX 2: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 21 April 2020, Members declared the following interests:

Railways (Interoperability) (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2020

Weights and Measures Act 1985 (Definitions of “Metre” and “Kilogram”) (Amendment) Order 2020

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Attendance:

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