HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

14th Report of Session 2021–22

Instruments under the European Union (Withdrawal) Act 2018: Published Draft Instrument

Drawn to the special attention of the House:

Draft Green Gas Support Scheme Regulations 2021

Correspondence: The provision of Impact Assessments; Correction by DHSC of information on the dissolution of Public Health England; Further Correspondence with Defra on the draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021

Includes information paragraphs on:

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Secondary Legislation Scrutiny Committee

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

To report on draft instruments published under paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018; to report on draft instruments and memoranda laid before Parliament under sections 8 and 23(1) of the European Union (Withdrawal) Act 2018 and section 31 of the European Union (Future Relationship) Act 2020.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Bakewell of Hardington Mandeville
Rt Hon. Lord Chartres
Rt Hon. Lord Cunningham of Felling
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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 Emily Pughe (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/uksi

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.

Fourteenth Report

INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Consideration of published draft instruments under Schedule 8 to the European Union (Withdrawal) Act 2018

Published drafts on which the Committee makes no recommendations

- Renewable Transport Fuel Obligations (Amendment) Order 2021

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE:

Draft Green Gas Support Scheme Regulations 2021

Date laid: 9 September 2021

Parliamentary procedure: affirmative

1. *These draft Regulations propose a new Green Gas Support Scheme (GGSS) to replace the current Renewable Heat Incentive (RHI) scheme which has closed to new applicants. The aim of the GGSS is to encourage renewable generation of heat through the production of biomethane by anaerobic digestion for injection into the National Gas Grid. Biomethane producers will be supported through a tariff mechanism funded by a levy on fossil gas suppliers, unlike the RHI scheme which was funded by taxpayers. The Department for Business, Energy and Industrial Strategy expects that the levy costs will be passed on to consumers but estimates that these costs will be "minimal", adding a maximum of £4.70 to annual bills by 2028. While we note that the increase in costs for consumer is expected to be small, we welcome the Department's commitment to monitor the impact of the GGSS on consumers and fuel poverty which will be particularly important against the background of significant increases in gas prices. Given that the GGSS is designed to contribute to the UK's target of achieving net zero greenhouse gas emissions by 2050, the draft Regulations may be of interest to the House in the run-up to the UN Climate Change Conference (COP26) in Glasgow in November.*

2. **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.**

3. These draft Regulations have been laid by the Department for Business, Energy and Industrial Strategy (BEIS) with an Explanatory Memorandum (EM) and Impact Assessment (IA). They propose a new Green Gas Support Scheme (GGSS), which is to continue to promote biomethane production in order to decarbonise the gas grid, following the closure of the Renewable Heat Incentive (RHI) scheme to new applicants. The intention is to launch the GGSS on 30 November 2021.

How the GGSS will work

4. According to BEIS, the aim of the GGSS is to encourage renewable generation of heat through the production of biomethane by way of anaerobic digestion (AD)[1] for injection into the National Gas Grid. BEIS says that increasing the proportion of green gas in the grid is a practical, established, and cost-effective way of reducing carbon emissions. (The IA states that as of December 2020, the RHI has supported 95 biomethane to grid plants and that in 2019 it supported the production of around 3.6 terawatts per hour (TWh) of biomethane injected into the grid.) BEIS expects the new GGSS to generate 2.8TWh per year at peak production (between 2029/30 and 2040/41) and to contribute 8.2 Million tonnes carbon dioxide equivalent

1 AD is a process for turning biomass waste, such as animal manure, sewage sludge and waste food, into energy and fuel. Biomass waste can be digested in the absence of oxygen to produce a methane-rich biogas which can be used to generate heat and power or to provide fuel for transport. The biogas can be upgraded to biomethane which is potentially suitable for injection into the National Gas Grid. AD can be carried out on a small-scale, for example on a farm, or at a business producing large volumes of food waste or in large centralised systems, for example at sewage treatment works.

($MtCO_2e$) of carbon savings over its lifetime, contributing to the UK's target of achieving net zero greenhouse gas emissions by 2050.

5. Under the GGSS, biomethane producers will be required to produce at least 50% of their biomethane using waste or residue feedstocks which, according to BEIS, have higher carbon savings and a lower environmental impact on soil and water quality than bioenergy crops. The GGSS will support the production of biomethane by way of AD only, and payments will only be made for biomethane injected into the grid. To encourage new deployment, producers using equipment which has already been used to produce biomethane, including under the RHI scheme, may not apply to be registered with the GGSS. BEIS says that the GGSS may be opened up in future to supporting other green gases, such as hydrogen.

Green Gas Levy

6. Unlike the RHI scheme, the GGSS will not be funded by the taxpayer. Instead, it will support biomethane producers through a tariff-based mechanism, funded by levy payments which will be collected from fossil fuel gas suppliers. The draft Order therefore proposes a new Green Gas Levy (GGL) to fund the GGSS. Gas suppliers which provide at least 95% biomethane under the scheme will be exempt from the GGL. The Gas and Electricity Markets Authority (Ofgem) will administer both the GGSS and the GGL.

7. Asked whether the launch date of 30 November has given industry enough time to prepare for the new scheme, BEIS told us that:

> "In the Government Response in March, we set out details on the approach and broad timings for the GGL and GGSS, which has given suppliers over a year to start preparing for the first levy collection, and prospective applicants over 8 months to prepare for the opening of the GGSS. We made a public commitment to give suppliers approximately six months' notice between scheme launch and levy rate publication and the first levy collection, which will be in the first quarter of FY [financial year] 2022. This follows feedback from suppliers that they will require three to six months to undertake the necessary changes to systems and notify customers and collect any funds."

8. The GGL will levy fossil fuel gas suppliers at a flat rate (pence per day) for every meter point they supply. Each meter point will be levied at the same amount, irrespective of gas consumption or customer type. The rate will be set each year, and gas suppliers will pay the levy on a quarterly basis. BEIS explains that this meter point design is relatively straightforward to implement and can therefore be delivered within the short timescales needed to launch the GGSS, and that it also provides gas suppliers and consumers with a high certainty of costs.

9. The Department acknowledges, however, that during consultation,[2] respondents' views were evenly split between support for this approach and support for a "volumetric" levy instead. Under a volumetric levy, gas suppliers would be charged based on the volume of gas they supply, and suppliers would be expected to pass on the costs in this way, so that consumers using

2 BEIS, *Future Support for Low Carbon Heat & The Green Gas Levy* (March 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970565/green-gas-levy-future-support-low-carbon-heat-govt-response.pdf [accessed 13 October 2021].

less gas would be charged less. BEIS says that concerns were raised during consultation that the per meter point approach was regressive and unfair for vulnerable consumers and those using small amounts of gas, compared to a volumetric levy.

10. The Department says that the Government intend to transition to a volumetric levy as soon as possible, once a number of feasibility issues have been resolved, including in relation to cost impacts on energy intensive industries and seasonal variations in gas consumption. Asked about the timing of the planned switchover, the Department told us that:

> "[W]e expect to transition to a volumetric levy as soon as possible and are actively working to deliver this. While we are as yet unable to set out a timetable for moving to a volumetric levy, we expect the transition to happen before costs peak [in 2028]. The government will consult fully on any new proposals in this area."

Budget and costs

11. The GGSS will pay registered biomethane producers over a 15-year period, and there will be tariff guarantees to provide certainty to investors. An annual cap will keep the GGSS within the budget raised by the levy. The Department will publish a levy maximum collection figure before the GGSS is launched, giving gas suppliers certainty on costs.

12. With regard to the budget, the IA estimates that tariff payments will be between £1,020 million (low deployment scenario) and £1,985 million (high deployment scenario), with a central estimate of £1,765 million up to 2035/36 (in 2020 prices). After 2035/36, spending will decline as tariff payment periods for supported plants end. The IA estimates the maximum levy collection figure for a single year to be around £190 million (in 2020 prices) based on high deployment forecasts.

13. The Department anticipates that fossil fuel gas suppliers will pass on their costs to gas bill payers but expects this impact to be "minimal" compared to other policy costs on gas. For domestic consumers, BEIS expects additional annual costs to peak at £4.70 by 2028. BEIS states in the IA that its estimates "show that the impact of the levy on fuel poverty metrics, such as the average fuel poverty gap and the Low Income Low Energy Efficiency (LILEE), is minimal", adding that the Department "will continue to monitor the impacts of the levy throughout the life of the scheme as there will be a monitoring and evaluation process for both the scheme and levy, including monitoring costs on consumers and impacts on fuel poverty". **While we note that the increase in costs for consumers is expected to be small, we welcome the Department's commitment to monitor the impact of the GGSS on consumers and fuel poverty which will be particularly important against the background of significant increases in gas prices.**

CORRESPONDENCE

The provision of Impact Assessments

14. The importance of an adequate and timely Impact Assessment (IA) to support policy and explain its consequences was highlighted in several of our reports just before the summer recess.[3] Following his statement of 19 July[4] exempting time-limited pandemic statutory instruments from either an IA or consideration by the independent Regulatory Policy Committee, we wrote to Paul Scully MP, the Minister at the Department for Business, Energy and Industrial Strategy responsible for government policy on IA provision. (The full correspondence is published in Appendix 1.)

15. As well as expressing concerns about the lack of impact assessments in pandemic-related instruments, our letter drew attention to several significant instruments where the IA had not been available at the time of scrutiny and in one case did not follow for six months.

16. Effective parliamentary scrutiny is undermined by departments' failure to provide adequate information alongside an instrument. An IA is intended to inform and underpin policy development. We are therefore concerned that the policy implemented by instruments which are not accompanied by an IA may have been decided in the absence of critically important information.

17. The Minister's initial reply was disappointing. We therefore wrote again in September seeking further explanation. The Minister's letter of 7 October was more substantial, and we welcome his support for the provision of good quality and timely information alongside statutory instruments.

18. The Minister's letter also refers to a consultation on the reform of better regulation.[5] We have some concerns about proposals to "streamline the process" and whether they might reduce the quality and usefulness of the information provided. We await the Government's further proposals with interest.

Correction by the Department of Health and Social Care of information on the dissolution of Public Health England

19. In our 13th Report,[6] we published information on two instruments that effected the transfer of the functions of Public Health England to other bodies.[7] One of the bodies identified in our Report, the Care Quality Commission (CQC), subsequently told us that the CQC was not in fact involved. The information in our report was drawn from the Department of Health and Social Care's Explanatory Memoranda (EMs) accompanying the instruments. A letter of explanation and apology from the Minister is published in Appendix 2 and the EMs have been replaced. **This example**

3 See for example draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, SLSC, 8th Report, Session 2021-22, HL 40 and SLSC, 10th Report, Session 2021-22, HL 50.

4 Covid-19 Business Regulatory Easements, HCWS192, 19 July 2021.

5 Department for Business, Energy & Industrial Strategy, 'Reforming the framework for better regulation' (22 July 2021): https://www.gov.uk/government/consultations/reforming-the-framework-for-better-regulation [accessed 13 October 2021].

6 13th Report, Session 2021-22, HL 70.

7 Public Health England (Dissolution) (Consequential Amendments) Regulations 2021 (SI 2021/974) Transfer of Undertakings (Protection of Employment) (Transfer of Public Health England Staff) Regulations 2021 (SI 2021/975).

acts as a reminder to departments of the importance of ensuring that all material laid before Parliament is both accurate and up to date.

Correspondence with the Rt Hon. Jacob Rees-Mogg MP, Lord President of the Council and Leader of the House of Commons, and Victoria Prentis MP, Minister for Farming, Fisheries and Food at the Department for Environment, Food and Rural Affairs, on the draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021

20. In our 11th Report,[8] we raised concerns about these draft Regulations which propose to replace a legislative process for updating lists of recognised third countries and third country control bodies in relation to organic standards with an administrative process. As we have previously raised concerns about a loss of parliamentary oversight and a shift of power from the legislature to the executive, we wrote to the Rt Hon. Jacob Rees-Mogg MP, Lord President of the Council and Leader of the House of Commons. We received a response from the Lord President and from Victoria Prentis MP, Minister for Farming, Fisheries and Food at the Department for Environment, Food and Rural Affairs.

21. We found that the Minister's response did not fully address our concern about a loss of parliamentary oversight and asked for further consideration of the issues we raised. We received a second response from the Minister which was subsequently withdrawn by the Department after the Committee had agreed to its publication. We are now publishing a revised response by the Minister, alongside our earlier correspondence on the draft Regulations, at Appendix 3. While we note that the draft Regulations do not propose to change the technical criteria by which equivalence of third counties and third country control bodies will be assessed, our key concern remains that final equivalence decisions by the Secretary of State will in future be made administratively, rather than require legislation. **We continue to take the view that these decisions should be subject to parliamentary oversight.**

8 SLSC, 11th Report, Session 2021-22, HL 52.

INSTRUMENTS RELATING TO COVID-19

Business practice and regulation

Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021 (SI 2021/994)

22. This instrument returns requirements regarding the notice of intention that landlords have to give to seek possession of property under various statutory tenancy types to the position before the Coronavirus Act 2020 ("the Act"). The Ministry of Housing, Communities and Local Government (MHCLG, now the Department for Levelling Up, Housing and Communities) explains that the Act and subsequent instruments introduced emergency measures requiring residential landlords to provide extended notice periods of up to six months when seeking possession of a social or privately rented property. The measures were introduced to protect tenants from eviction during the pandemic. MHCLG says that following the easing of national restrictions and the progress of the vaccination programme, the extended notice periods have been reduced gradually, and that this instrument returns the notice periods to their pre-pandemic position. The instrument retains until 25 March 2022 a power for the Government to impose longer notice periods as an emergency measure should there be a future need to do so. The instrument also prescribes new versions of the forms that are used for giving notice seeking possession.

23. Asked whether the Government will make available support to help tenants pay off arrears which have built up during the pandemic, MHCLG told us that:

> "The Government has provided financial support to help prevent people getting into financial hardship as a result of COVID-19 and the vast majority (91%) of private renters are up to date with their rent. Of those in arrears, two thirds are in arrears of less than 2 months. This shows that the package of support provided by the Government has prevented wide spread rent arrears as a result of COVID-19.
>
> To support the most vulnerable renters, we have invested nearly £1 billion in raising Local Housing Allowance (LHA) rates to the 30th percentile of local rents.[9] A change that has already benefited 1.5 million households. For renters who require additional support, £140 million pounds of Discretionary Housing Payments (DHP) are available. As emergency measures are lifted support remains in place for renters through the welfare system.
>
> We continue to monitor the effectiveness of other examples of support, such as those from the devolved administrations in the UK, and note that uptake for loan support has been relatively low in Scotland and Wales."

9 This means that LHA has been raised to cover the rents of up to 30 in every 100 homes in an area.

Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Closure) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Closure) Regulations 2021 (SI 2021/1013)

24. This instrument closes the Statutory Sick Pay (SSP) Rebate Scheme, with effect from 30 September 2021, so that any absence related to coronavirus occurring after that date will not be eligible for the rebate. The instrument provides a three-month administrative period for businesses to make any remaining claims for eligible SSP costs incurred up to 30 September 2021. The administration period will end on 31 December 2021.

25. According to HM Revenue and Customs (HMRC), the Government have concluded that the SSP Rebate Scheme, which was launched in May 2020, is no longer necessary. We asked HMRC whether employee sickness levels had returned to more normal levels. HMRC told us that the Office for National Statistics "collected fortnightly data on the levels of COVID-19 absence during the pandemic via the Business Impact of Coronavirus Survey. The survey asks what percentage of a respondent's workforce is 'off sick or in self-isolation due to coronavirus with statutory or company pay'. Though there is significant variance between industries, the overall trend shows a significant decline in those off work due to COVID-19 sickness with statutory or occupational sick pay since March 2020.[10] This suggests the forthcoming closure of the temporary SSP Rebate Scheme at the end of September as always intended is unlikely to have a significant impact on employers when the legislative instrument to enact the closure comes into force."

Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) and Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Coronavirus) (Amendment) Regulations 2021 (SI 2021/1019)

26. These Regulations make three changes to early years childcare and children's social care:

- The instrument reduces, from two to one, the "minimum" number of quality assurance visits that an early years childminder agency (CMA) is required to carry out in the first year of an early years providers' registration.[11] The Department for Education (DfE) says that this will reduce the administrative burden and associated cost on CMAs of carrying out multiple visits (in addition to the pre-registration visit undertaken shortly before registration) in the first year of their registered provider's registration. This change is **permanent**, and the quality assurance visit will have to be unannounced.

- The instrument makes a **permanent** change in relation to the frequency of Ofsted inspections for children's homes, so that the minimum frequency of inspections is determined by the judgement

10 ONS, 'Business insights and impact on the UK economy' (07 October 2021): https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheukeconomy [accessed 14 October 2021]. HMRC: "In March 2020 the % off sick or in self-isolation due to coronavirus with statutory or company pay across all employers was 4.5%. There has been a consistent decline in these figures with only minor spikes in December 2020 and Spring 2021. In many rounds, including the most recent data from the 27th of August to the 9th of September, this figure is now unreported as it is statistically insignificant from 0."

11 Early years childcare providers in England must register with Ofsted or with a CMA. CMAs themselves must be approved and registered by Ofsted and are inspected by Ofsted.

in that inspection year, rather than the judgement in the previous inspection year. According to DfE, this will mean that the frequency of inspections will be based on more up to date information and will be more proportionate, enabling Ofsted to direct its resources better and focus on homes that need more support. Ofsted may undertake additional inspections if there are concerns about a home.

- The instrument gives Ofsted temporary flexibility to comply with the minimum inspection requirements for all children's social care providers "so far as reasonably practicable" in the period from 1 October 2021 to 31 March 2022. DfE says that Ofsted should comply with the statutory minimum inspection requirements, but that flexibility is needed due to the continuing uncertainty brought about by the pandemic which may affect Ofsted's ability to meet the minimum requirements.

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 (SI 2021/1029)

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) (No. 2) Regulations 2021 (SI 2021/1091)

27. SI 2021/1091 introduces new temporary tapering measures which restrict the use of winding up petitions.[12] The Department for Business, Energy and Industrial Strategy (BEIS) explains that the current temporary measures were introduced by the Corporate Insolvency and Governance Act 2020 and subsequently extended.[13] They placed restrictions on the use of statutory demands[14] and winding-up petitions and were due to expire on 30 September 2021. BEIS says that, with effect from 1 October, this instrument introduced a tapering effect to protect companies from aggressive creditor enforcement as the economy opens up, and to allow business to get back to a more normal way of working. The new temporary measures will be in place until 31 March 2022 and include:

    - A new requirement for creditors to demonstrate that they have sought to negotiate repayment of a debt, before seeking to wind up a company. Creditors will need to conform to the court that they have sent a notice to the company giving it 21 days to respond with proposals for paying the debt;

    - the debt owed must be at least £10,000; and

    - petitions cannot be brought in respect of a commercial rent debt until 31 March 2022 unless the creditor can prove that the non-payment of the debt is not related to the pandemic. This aims to support the extension of the moratorium on the forfeiture of commercial tenancies until 25 March 2022 which the Government have legislated for separately[15] and which is to allow time for the implementation through primary legislation of a rent arbitration scheme.

12 A winding up petition is an application that is made to the court to close or 'wind up' a company that cannot pay its debts.

13 The most recent extension was through the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021 (SI 2021/375).

14 A statutory demand can be made to ask for payment of a debt from an individual or a company. The individual or company will have 21 days to pay the debt or reach an agreement to pay it.

15 Business Tenancies (Protection from Forfeiture: Relevant Period) (Coronavirus) (England) (No. 2) Regulations 2021 (SI 2021/732).

28. SI 2021/1091 revokes and substitutes an earlier instrument, SI 2021/1029, which contained an error in the commencement provisions.

Direct Payments to Farmers (Inspections) (England) Regulations 2021 (SI 2021/1057)

29. This instrument reduces the Cross Compliance on-farm inspection rate from 1% to 0.5% for the 2021 claim year for Direct Payment schemes in England. The Department for Environment, Food and Rural Affairs (Defra) says that this is in response to the difficulties that the Rural Payments Agency (RPA) continues to have in planning and carrying out on-farm inspections because of the pandemic. There are currently two Cross Compliance regimes in operation in England: a domestic regime which applies to Direct Payments for farmers, and an EU Cross Compliance regime which applies to ongoing payments under EU schemes, primarily agri-environment and forestry schemes.

30. Last year the European Commission published a derogation to reduce the rate to 0.5% for EU schemes and Defra laid an equivalent instrument,[16] also reducing the Cross Compliance inspection rate to 0.5% for the 2020 scheme year. According to Defra, some difficulties in planning and carrying out on-farm visits have continued this year and the European Commission has published a further derogation to reduce the Cross Compliance inspection rate to 0.5% again for the 2021 claim year. As in 2020, this instrument mirrors the EU derogation for the 2021 scheme year. Defra says that a single Cross Compliance inspection rate for all schemes in England ensures that farmers and land managers receiving payments from EU and domestic schemes are treated consistently and fairly, and that the RPA will continue to carry out a range of other measures, such as remote sensing, to monitor compliance.

Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) Regulations 2021(SI 2021/1096)

31. This instrument extends further certain transitional periods in relation to sanitary and phyto-sanitary (SPS) checks on imports to England and Wales of products of animal origin (POAO) and animal by-products, in response to the "unprecedented adverse effects" of the pandemic. The extension was announced by the Government in a statement on border controls on 14 September.[17] The instrument ensures that a requirement for pre-notification of agri-food imports, which was due to be introduced on 1 October 2021, will now be implemented on 1 January 2022 instead, while requirements for Export Health Certificates (EHCs) and documentary checks on POAO and animal by-products at Border Control Posts will no longer be introduced on 1 October 2021. The Department for Environment, Food and Rural Affairs (Defra) says that Scotland is taking forward similar legislation which will delay the introduction of these requirement there until 1 March 2022.

32. The instrument does not include a new commencement date for the requirements for EHCs and documentary checks. Instead, these requirements will be implemented once the current transitional staging period for the introduction of border controls on SPS imports from the EU ends. This transitional staging period was originally intended to end in July 2021. It was

16 Direct Payments to Farmers (Inspections) (Coronavirus) (England) Regulations 2020 (SI 2020/575).
17 Border Controls, HLWS280, 14 September 2021.

subsequently extended until 1 March 2022[18] and has now been extended further until 1 July 2022 to reflect the challenges businesses have faced as a result of the pandemic which, according to Defra, "has impacted supply chains across Europe", especially in the agri-food sector. Defra told us that a further instrument will be laid no later than 1 December 2021 to implement the change in the end date of the transitional staging period to 1 July 2022 and to confirm that the introduction of requirements for EHCs and documentary and physical checks on SPS goods at Border Control Posts will be delayed until then.

Travel

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 11) Regulations 2021 (SI 2021/1033)

33. This instrument amends the International Travel Regulations[19] to update the list of specified competitions in Schedule 5 which permits the exemption of elite sportspersons from some requirements imposed by those Regulations.

34. The instrument also exempts international footballers travelling to or through a Category 3 country or territory from relevant measures in Schedule 11 if they arrive in England to play in a football match in the Union of European Football Associations (UEFA) Champions League, Europa League or Europa Conference League. The Department of Health and Social Care states that this should only affect one to three players per European club side in scope, and that the players will be subject to the usual conditions imposed through Schedule 4 around elite sport exemptions to minimise public health risk. UEFA has indicated that if these changes were not made, the English club sides' home fixtures would be moved abroad to neutral venues. This would cause significant disruption to English clubs and home fans. The first home fixtures affected are due to take place on 14, 15 and 16 September.

Law and order

Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2021 (SI 2021/1037)

35. This instrument makes changes to the Rules for Employment Tribunals which, according to the Department for Business, Energy and Industrial Strategy (BEIS), continue to face significant pressures from the impact of the pandemic and an increase in claims following the abolition of Employment Tribunal fees in 2017. The instrument allows the name of more than one prospective respondent to be included on a single early conciliation notification form in order simplify the way that multiple claims are handled. BEIS says that this will reduce the administrative burden and allow parties to focus on dispute resolution rather than technical procedural issues. The instrument also clarifies the position on notice for preliminary hearings which was left unclear by a previous instrument.[20] The instrument requires reasonable notice to be given of the date of the hearing and, in the case of a hearing involving any preliminary issues, at least 14 days' notice.

18 Border Controls, HLWS833, 11 March 2021.
19 Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (SI 2021/582).
20 Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 (SI 2020/1003).

The instrument further enables a Tribunal to direct a preliminary hearing as the result of an application by a party, to ensure consistency with other provisions which authorise legal officers to determine certain applications made in relation to preliminary hearings.

INSTRUMENTS OF INTEREST

Draft Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2021

Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2021 (SI 2021/988)

Heavy Commercial Vehicles in Kent (No. 3) (Amendment) (No. 2) Order 2021 (SI 2021/973)

36. Operation Brock is intended to respond to disruption at the Port of Dover and Eurotunnel. When activated, Operation Brock aims to restrict Heavy Commercial Vehicles (HCVs) on cross-Channel journeys, weighing 7.5 tonnes and over, to designated routes in Kent.

37. These amending Orders will remove requirements specifically designed for the UK's exit from the EU and other provisions that are not needed beyond 31 October 2021. However, powers conferred on traffic officers to identify and direct cross-Channel HCVs will be retained within the No. 1 Order, as will measures to assist local hauliers in the No. 2 and No. 3 Orders. Some of the roads specified have, however, been changed to reflect that Manston is no longer part of the traffic management plan as the government lease on it has expired.

38. These amending Orders also remove the sunset clauses in the existing legislation**, making Operation Brock permanently available** as a response to unforeseen disruption (such as bad weather or industrial action).

Child Benefit (General) (Amendment) Regulations 2021 (SI 2021/1039)

Allocation of Housing and Homelessness (Eligibility) (England) and Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Regulations 2021 (SI 2021/1045)

Allocation of Housing and Homelessness (Eligibility) (Amendment) Regulations (Northern Ireland) 2021 (SR (NI) 2021/254)

39. These three instruments ensure that certain people who left Afghanistan following the collapse of the Afghan government on 15 August 2021 are immediately eligible for child benefit and housing support:

- SI 2021/1039 exempts persons who have come to the UK from Afghanistan under one of the Home Office's resettlement schemes,[21] and those who are not covered by these schemes but left Afghanistan in connection with the collapse of the Afghan government, from a requirement to have lived in the UK for at least three months, so that they can receive Child Benefit immediately.

- SI 2021/1045 enables local authorities in England, Scotland and Northern Ireland to treat persons who have come to the UK from Afghanistan in connection with the collapse of the Afghan government as eligible for housing and homelessness support. In relation to England and Scotland, the instrument also exempts such persons from the Habitual Residence Test which requires people to have been resident

21 See paragraph 50 of this report for further information on the three Home Office schemes.

in the UK for at least three months if they want to make a claim. The Ministry of Housing Communities and Local Government (now the Department for Levelling Up, Housing and Communities) says that Wales will be taking forward equivalent legislation in October.

- SR (NI) 2021/254 exempts persons who are not subject to immigration control (British and Irish nationals and some Commonwealth citizens with a right of abode in the UK) and who left Afghanistan in connection with the collapse of the Afghan government, from the Habitual Residence Test which applies in relation to eligibility for social housing and homelessness assistance in Northern Ireland.

Domestic Abuse Support (Local Authority Strategies and Annual Reports) Regulations 2021 (SI 2021/990)

Domestic Abuse Support (Relevant Accommodation and Housing Benefit and Universal Credit Sanctuary Schemes) (Amendment) Regulations 2021 (SI 2021/991)

40. These two sets of Regulations make provision in relation to the Domestic Abuse Act 2021. SI 2021/990 sets out certain requirements for the preparation and publication of strategies and annual reports that local authorities have to prepare in relation to the provision of accommodation-based support for victims of domestic abuse and their children.

41. SI 2021/991 describes the types of safe accommodation within which accommodation-based support can be provided by local authorities. The Ministry of Housing, Communities and Local Government (MHCLG, now the Department for Levelling Up, Housing and Communities) says that using secondary legislation will allow it to revise these descriptions when the types of safe accommodation that are being used to house victims of domestic abuse may change over time. The instrument also introduces an exception to the rules on the maximum housing support available to Housing Benefit and Universal Credit claimants in the social rented sector whose home has been adapted with security measures under a sanctuary scheme, so that those who qualify for the exception will not have their housing support reduced if they are under-occupying their home.

42. We asked MHCLG for further information about the different types of safe accommodation and about the written evidence from "a person acting in an official capacity" that claimants need to submit if they wish to be exempt from a deduction to their housing support. We are publishing this information at Appendix 4. MHCLG told us that with regard to self-contained safe accommodation, the statutory guidance which will be published in time for the commencement of the Regulations states that "where two or more units share any part of the accommodation, including shared hallways or access routes, provision should be single gender or single sex". We note that in situations where transgender issues arise, additional provisions may be needed to protect the dignity of those concerned. We also note that the Regulations include health care professionals in the definition of "a person acting in an official capacity". It may be helpful to refer in the statutory guidance more specifically to registered health care professionals.

Public Interest Merger Reference (Perpetuus Advanced Materials plc) (Pre-emptive Action) Order 2021 (SI 2021/993)

43. This Order intervenes in the proposed acquisition of Perpetuus Advanced Materials plc ("Perpetuus"), a manufacturer of graphene[22] based in Wales, by Dr Zhongfu Zhou[23] or Taurus International Ltd ("Taurus") on the grounds of national security under section 42 of the Enterprise Act 2002. The Department for Business, Energy and Industrial Strategy (BEIS) says that the Order is made to prevent actions by the parties to the merger that might impede the Secretary of State's ability to protect national security, such as Perputuus disclosing trade secrets, commercially-sensitive information and intellectual property. Following the intervention, the Competition and Markets Authority (CMA) will now investigate the proposed merger and report to the Secretary of State by 7 February 2022.The Secretary of State is required to publish this report and will then decide whether to clear the merger, including by accepting undertakings from the merger parties that would mitigate any public interest concerns, or refer the merger to a more in-depth review by the CMA. This decision will also be published.

44. As the Explanatory Memorandum provides only limited information about the parties to the merger, we asked BEIS for further information, including about the nature of Perpetuus' business and its economic significance, as well as about Dr Zhou and Taurus as the potential new owners of Perpetuus. We are publishing this information at Appendix 5.

Immigration (Disposal of Property) (Amendment) Regulations 2021 (SI 2021/1007)

45. This instrument extends the range of disposal methods that the Home Office can use to deal with goods seized by Immigration Officers in the course of their duties to add destruction, recycling or charitable donation. Under existing rules any such goods must be stored for 12 months and may then be sold if the owner cannot be identified and the item is not required for an investigation. However, the large number of small boats being seized has been causing Border Force a particular challenge as items in storage need to be held in a secure warehouse and in compliance with fire and health and safety requirements. The Home Office states that the changes proposed will offer a wider range of disposal options which are more cost effective, proportionate and environmentally sound.

Customs (Safety and Security Procedures) Regulations 2021 (SI 2021/1011)

46. This instrument introduces a **permanent** waiver from the requirement to submit an Entry Summary (ENS) declaration for qualifying Northern Ireland (NI) goods[24] that arrive in Great Britain (GB), having passed through the Republic of Ireland (ROI). According to HM Revenue and Customs (HMRC), these goods retain their status as UK domestic goods, even though they are temporarily outside the UK during their movement between NI and

22 Graphene consists of single layer sheets of carbon atoms in a hexagonal arrangement. It has been referred to as a "miracle material" due to its strength, elasticity, thermal and electric conductivity and impermeability.

23 Dr Zhou is currently an Associate of Perpetuus. See Perpetuus Advanced Materials, 'Our Company': http://perpetuusam.com/index.php/about-us [accessed 13 October 2021].

24 As defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454). See: SLSC, 31st Report, Session 2019-21, HL 53.

GB. The new permanent waiver replaces a temporary waiver for such goods which will expire on 31 December 2021. Goods which are not qualifying NI goods and which currently also benefit from the temporary waiver for goods arriving in GB from the ROI will not be covered by the new permanent waiver. Asked how HMRC will ensure that only goods from GB or NI will benefit from the new waiver, HMRC told us that qualifying goods can be identified from the information provided in the customs declaration which is required for these goods, and that HMRC has powers to check whether any goods for which an ENS declaration has not been received qualify for the waiver.

47. The instrument also introduces a **permanent** waiver from the requirement to provide safety and security information, in the form of Exit Summary (EXS) declarations, for goods that are moved from GB to NI through the ROI under the common transit procedure.[25] A temporary waiver that is currently in place will expire on 30 September 2021. Asked how HMRC will ensure that only goods from GB benefit from the waiver, HMRC explained that "customs formalities are carried in the country of departure of the goods, in the country of destination for the goods, and in each contracting party to the Convention through whose territory the goods pass in the course of the common transit procedure". According to HMRC, these formalities are recorded in the electronic transit system which will contain information about the route by which the goods are moved, and which will also record the customs office of destination in the country in which the transit movement will end. This will enable HMRC "to determine at the time that goods leave [GB] whether the customs office of destination for the goods will be in [NI] – and therefore whether the conditions for the pre-departure declaration waiver are satisfied".

Serious Organised Crime and Police Act 2005 (Designated Scottish Sites under Section 129) Order 2021 (SI 2021/1021)

Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2021 (SI 2021/1022)

48. These instruments extend the security boundary around the Westminster and Scottish Parliaments with effect from 1 October 2021. Under the Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) Order 2007 anyone crossing the designated boundary without authorisation can be charged with trespass, a criminal offence. SI 2021/1022 extends the boundary line at Westminster to include Richmond House and the Peers' Car Park. SI 2021/1021 designates the whole Scottish Parliament site. Both instruments include maps of the designated areas.

Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021 (SI 2021/1034)

49. The Home Office has announced that those arriving in the UK from Afghanistan under the listed resettlement schemes will be granted Indefinite Leave to Remain. These Regulations disapply the Habitual Residence Test, and where appropriate the Past Presence test, so that those arriving can access Department for Work and Pensions income-related, disability

25 In accordance with the HM Revenue & Customs, 'Common Transit Convention' (12 August 2019): https://www.gov.uk/guidance/common-transit-convention-countries [accessed 12 October 2021].

and carer benefits (as appropriate) from day one. The legislation came into immediate effect in view of the need to provide urgent support.

50. The listed schemes are:

- The Afghan Relocations and Assistance Policy (ARAP). This scheme was set up to assist Afghan citizens who worked with the British armed forces, and their family members.

- The Afghan Citizens Resettlement Scheme (ACRS). This scheme was set up for those considered particularly vulnerable. The government has announced that the scheme will resettle 20,000 individuals over five years, with a focus on women, girls and minority groups

- The previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme). This scheme was announced in December 2012 and was set up to support locally employed staff who have worked for the British forces. (This scheme is set to close in November 2022.)

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Antique Firearms (Amendment) Regulations 2021

Charities Act 2011 (Exempt Charities) (British Council) Regulations 2021

Conformity Assessment (Mutual Recognition Agreements) (Construction Products) (Amendment) Regulations 2021

Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2021(

Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) (No. 2) Order 2021

Instruments subject to annulment

HC 617	Statement of changes in Immigration Rules
SI 2021/973	Heavy Commercial Vehicles in Kent (No. 3) (Amendment) (No. 2) Order 2021
SI 2021/985	Court Fees (Miscellaneous Amendments) Order 2021
SI 2021/988	Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2021
SI 2021/990	Domestic Abuse Support (Local Authority Strategies and Annual Reports) Regulations 2021
SI 2021/991	Domestic Abuse Support (Relevant Accommodation and Housing Benefit and Universal Credit Sanctuary Schemes) (Amendment) Regulations 2021
SI 2021/993	Public Interest Merger Reference (Perpetuus Advanced Materials plc) (Pre-emptive Action) Order 2021
SI 2021/994	Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021
SI 2021/995	National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2021
SI 2021/999	Compulsory Electronic Monitoring Licence Condition (Amendment) Order 2021
SI 2021/1005	Education (Student Loans) (Repayment) (Amendment) (No. 3) Regulations 2021
SI 2021/1007	Immigration (Disposal of Property) (Amendment) Regulations 2021

SI 2021/1009	National Lottery (Revocation and Amendment) Regulations 2021
SI 2021/1011	Customs (Safety and Security Procedures) Regulations 2021
SI 2021/1013	Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Closure) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Closure) Regulations 2021
SI 2021/1019	Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) and Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Coronavirus) (Amendment) Regulations 2021
SI 2021/1020	Gender Recognition (Disclosure of Information) (England and Wales) Order 2021
SI 2021/1021	Serious Organised Crime and Police Act 2005 (Designated Scottish Sites under Section 129) Order 2021
SI 2021/1022	Serious Organised Crime and Police Act 2005 (Designated Sites under Section 128) (Amendment) Order 2021
SI 2021/1025	Insolvency (Scotland) (Receivership and Winding up) (Amendment) Rules 2021
SI 2021/1026	Insolvency (Scotland) (Company Voluntary Arrangements and Administration) (Amendment) Rules 2021
SI 2021/1028	Insolvency (England and Wales) (No.2) (Amendment) Rules 2021
SI 2021/1029	Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 [Revoked]
SI 2021/1031	Income-related Benefits (Subsidy to Authorities) and Discretionary Housing Payments (Grants) Amendment Order 2021)
SI 2021/1033	Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 11) Regulations 2021
SI 2021/1034	Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021
SI 2021/1035	Immigration and Nationality (Replacement of T2 Sportsperson Route and Fees) (Amendment) Regulations 2021
SI 2021/1037	Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2021

SI 2021/1039	Child Benefit (General) (Amendment) Regulations 2021
SI 2021/1041	Democratic Republic of the Congo (Sanctions) (EU Exit) (Amendment) Regulations 2021
SI 2021/1045	Allocation of Housing and Homelessness (Eligibility) (England) and Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Regulations 2021
SI 2021/1046	Financial Services and Markets Act 2000 (Prudential Regulation of FCA Investment Firms) (Definitions for the purposes of Part 9C) Regulations 2021
SI 2021/1048	Co-operative and Community Benefit Societies (Administration) (Amendment) Order 2021
SI 2021/1056	United Kingdom Internal Market Act 2020 (Maximum Penalty) Regulations 2021
SI 2021/1057	Direct Payments to Farmers (Inspections) (England) Regulations 2021
SI 2021/1074	Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021
SI 2021/1089	City of Liverpool (Scheme of Elections and Elections of Elected Mayor) Order 2021
SI 2021/1091	Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) (No. 2) Regulations 2021
SI 2021/1093	Education (School Teachers' Qualifications) (England) (Amendment) Regulations 2021
SI 2021/1096	Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) Regulations 2021
SI 2021/1115	Renewable Energy, Energy Efficiency and Motor Fuel Emissions (Miscellaneous Amendments) (EU Exit) Regulations 2021
SR (NI) 2021/254	Allocation of Housing and Homelessness (Eligibility) (Amendment) Regulations (Northern Ireland) 2021

APPENDIX 1: THE PROVISION OF IMPACT ASSESSMENTS

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee to Paul Scully MP, Minister for Small Business, Consumers and Labour Markets

I am writing to you in my capacity as Chair of the House of Lords Secondary Legislation Scrutiny Committee (SLSC). The role of the Committee is, amongst other things, to examine all negative and affirmative statutory instruments and, where appropriate, to draw instruments to the special attention of the House. Grounds for drawing special attention are set out in our terms of reference and include "that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation". In scrutinising instruments, therefore, we consider the instrument and all the explanatory material accompanying it, including the Explanatory Memorandum and, where appropriate, any Impact Assessment (IA).

Our Guidance to Departments acknowledges that there is a threshold below which it is not necessary for a department to publish an IA for an instrument. But we also advise that: "Even if the policy change does not meet the formal threshold for an Impact Assessment, the Explanatory Memorandum (EM) should always include a short explanation of the net effects of the policy, including broad brush figures for costs and benefits". This information is, as I am sure you understand, critical to enabling the Committee, the two Houses and the public generally to make a fully informed assessment of the significance of the policy change implemented by an instrument.

In our 39th Report of session 2019-21, we expressed concern that the EMs accompanying many COVID-19 instruments included a standard phrase exempting the instrument from assessment because it would "cease to have effect after less than 12 months". By December 2020, when our 39th Report was published, we had seen a number of short-term measures being extended for a further six or eight months to cope with the second wave of the pandemic, but still without either an IA or data on the instrument's performance in the first six months. We concluded: "We are aware that many of these costs are necessary to save lives but even a basic analysis of the impact or some financial information might help the House to weigh up conflicting priorities, such as public health versus the costs to industry:'

We had hoped that this simplified but more transparent approach would be adopted in the future. It was with some disappointment, therefore, that we read your Ministerial Statement on 19 July which, amongst other things, exempted time-limited COVID-19 legislation from a requirement for a full impact assessment and scrutiny by the Regulatory Policy Committee (RPC). The Chairman of the RPC, Stephen Gibson, said: "this means that measures that have very significant impacts on businesses and civil society organisations are not subject to independent scrutiny, as well as being excluded from the [Business Impact Target]". We share that concern. Whilst the exemption may remove an administrative burden on civil servants, it also removes the accountability implied by having to compare the financial effects of different policy approaches.

We also have concerns about the provision of IAs more generally. We have come across a number of statutory instruments which have introduced long-term changes (and are therefore not subject to the exemption) that have not been accompanied by the required IA at the time of laying. Our 8th and I0th Reports

of the current session contain two reports on the draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021.We were told by the Department of Health and Social Care (DHSC) that although an IA had been prepared it was not available. During an oral evidence session with the Committee on 13 July, the Minister, Nadhim Zahawi MP. acknowledged that the IA should have been made available when the instrument had been laid. Just before the debate on the approval motion in the House of Lords on 20 July, DHSC provided an "impact statement". Members speaking in the debate were unanimous in their criticism about the lack of an IA.

On the same day, in the House of Lords debate on the draft Medical Devices (Coronavirus Test Device Approvals) (Amendment) Regulations 2021, Members also referred to the absence of an IA. (This instrument was the subject of a report in our 8th Report of this session). Other examples include:

- HMT: Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (IA was awaiting sign-off by the RPC at the time).
- DCMS: draft Code of Practice for Online Services on Age Appropriate Design (IA was promised before the Code completes its parliamentary process).
- BEIS: draft Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020 (promise of publication of regulatory triage assessment "later this year").

On other occasions we have been sent an IA months after the instrument has come into effect: for example the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 (the IA was published in March 2021, after the Committee had considered the instrument in September 2020).

An IA should inform and underpin policy development. We therefore find it surprising -and worrying -when, although required, an IA is not available when an instrument is laid. As I said at the beginning of this letter, without this information the Committee, the two Houses and the public generally are unable to make a fully informed assessment of the significance of the policy change implemented by an instrument.

We would therefore be grateful for your comments on the points I have raised. We would also ask for an assurance that departments will improve their adherence to IA procedure, along with information on the steps that will be taken to achieve this goal.

We are meeting next on Tuesday 7 September. If you were able to respond in advance of that meeting, I would be most grateful. I am copying this letter to Mr Gibson, Chair of the RPC.

28 July 2021

Letter from Paul Scully MP, to Lord Hodgson of Astley Abbotts

Thank you for your letter of 28 July expressing concerns about the quality of explanatory memorandums and the lack of impact assessments accompanying measures in response to the Covid-19 pandemic.

I would like to reassure you that we remain committed to ensuring robust regulatory practice, which supports business growth and innovation. However,

the unprecedented circumstances of Covid-19 have placed disproportionate administrative burdens on departments.

The Government has had to take a pragmatic and proportionate approach in the face of national emergency. The pace and nature of the response to the pandemic has changed the normal approach to decision making, which in some cases may mean that certain processes have been stripped back, but we will always strive to ensure that there is sufficiently robust analysis to support the decision-making that underpins regulation.

As you may know, an independent public inquiry is to be held in Spring 2022 and commits to a "frank and candid" examination of the Government's handling of the pandemic. We expect that the inquiry will examine the economic response, including the impacts of regulatory measures.

My officials will continue to engage with departments and ensure they are taking a proportionate, evidence-based approach to implementing their measures. This engagement includes ensuring that explanatory memoranda contain the right level of impact analysis for parliamentary scrutiny. We will also continue to monitor the position of emergency legislation to ensure departments produce retrospective impact assessments where Covid-19 measures are to be made permanent.

I would like to thank you for your continued engagement and I hope this response clarifies the government's position.

4 September 2021

Letter from Lord Hodgson of Astley Abbotts to Paul Scully MP

Thank you for your letter of 4 September 2021 about the provision of impact assessments (IAs). It was considered by the Secondary Legislation Scrutiny Committee (SLSC) at its meeting yesterday and, I regret to say, members were unanimous in their disappointment and surprise that your response failed to engage with the range of issues raised in my letter of 19 July. In particular, you focus exclusively on pandemic-related secondary legislation whereas my letter made reference to a number of instruments unrelated to the pandemic.

This Committee has for many years been a close observer of Impact Assessment (IA) practice through its scrutiny of tens of thousands of Statutory Instruments (Sis) and would therefore be grateful if you would provide a more thorough answer to my original letter and also to these additional questions raised by your response:

- You state that the Government "will always strive to ensure that there is sufficiently robust analysis to support the decision-making that underpins regulation". Whilst we welcome such a commitment, it is not clear to us why this "robust analysis" is not included in some form in Explanatory Memoranda, particularly when the policy does not meet the criteria for a full IA. We would like an explanation about why it is not standard practice for every relevant SI, whether a pandemic instrument or a 'business as usual' instrument.
- You also state that your officials will ensure a retrospective IA is produced if a pandemic measure is made permanent. Our concern is not only about policy made permanent but also about rolling extensions to a policy, as a result of which "temporary" solutions have remained in effect for well over a year. We would have expected, even if not a full IA, information about impact and cost to be included in the Explanatory Memorandum accompanying any

instrument extending a policy beyond 12 months. Can you please explain why this is not done?

I would be grateful if you were able to provide a more substantial response to my original letter and to the points raised in this one no later than by Friday 8 October. The Committee is meeting next on 12 October and will consider, in the light of your further response, whether any further action should be taken.

As before, I am copying this letter to Mr Gibson, Chair of the RPC.

15 September 2021

Letter from Paul Scully MP to Lord Hodgson of Astley Abbotts

I am sorry to learn that the Secondary Legislation Scrutiny Committee expressed disappointment that my letter of 4 September failed to engage with the range of issues raised in your letter of 28 July.

As I said in my earlier response, our commitment to conducting impact assessments (IAs) remains strong, and the analysis that goes into them ensures government considers the need for, and likely impact of, new regulation to support legislative change and to inform decision making and parliamentary scrutiny. I agree with you that more should be done to ensure that departments improve their adherence to IA procedure and we will take the necessary steps to achieve this goal, as set out below.

While not a statutory requirement, the administrative requirements, as currently set out in the Better Regulation Framework, expect departments to publish IAs for measures where the impacts are in excess of £5 million per annum. This includes a range of Covid-19 legislation and the relevant department is expected to submit a full IA to the Regulatory Policy Committee (RPC) for scrutiny (including verification of impact figures).

We understand that production of IAs for such measures is likely to be challenging and could impose potentially significant analytical burdens. We have taken the decision, therefore, in advance of the wider reform of the better regulation framework, not to expect departments to meet the current administrative requirement for the impacts of these specific measures to be validated by the RPC.

This relaxation of the requirements covers time-limited measures; however, emergency measures that are permanent or not time-limited still require IAs to be submitted in the normal way.

Departments have been reminded of the importance of ensuring that the appropriate level of resources is invested in gathering and analysing evidence on the regulatory impacts of the Government's affected policies, and to publish this where appropriate. However, I share the Committee's concerns that a number of statutory instruments (SIs), which have introduced long term changes, have not been accompanied by the required IA at the time of laying.

While attempts to produce IAs for public policy making may be problematic in the current climate of the Covid-19 pandemic, I accept that the position of some departments not adhering to providing the required IA at the time of laying is impermissible. It is also unacceptable that departments are not providing sufficient detail about the analysis of impacts in explanatory memoranda (EM) where an IA is not provided.

It remains the responsibility of individual departments to produce a proportionate assessment of the impacts of their policy proposals (the Cabinet Office Guide to Making Legislation is clear on this, as is the guidance on completing EMs) and we will remind departments to take a proportionate, evidence-based approach to implementing measures as well as ensuring that EMs contain the right level of impact analysis for parliamentary scrutiny, and are provided at the right time to support effective policy making.

We regularly highlight to departments the requirement that all SIs should have, when they are laid, some supporting information about impact, either in the EM, de-minimis assessment, or with a full IA attached, to ensure that proper scrutiny can occur. This is done through cross-Whitehall training delivered jointly by BRE and the RPC on better regulation policy and conducting IAs. We are confident that these efforts help to improve the regulatory IA process, but I will ask my officials to take additional steps to reinforce this message, by writing to departments to remind them of the requirements and asking them to commit to meeting them.

With particular reference to cases where time-limited measures are extended beyond 12 months, we will stress to departments the expectation that – in the absence of an IA – information about impact and cost should be clearly set out in the EM. The pandemic has required departments to operate at pace in difficult circumstances, but I agree with the Committee that more can be done to adhere to standard best practice in providing the necessary information for scrutiny.

We are also looking at further proposals as part of the ongoing consultation on reforming the framework for better regulation, including revising the process of scrutinising policy proposals earlier in the policy development cycle, and streamlining the process of producing IAs, both of which should, to some extent, help ease the burden on departments and help avoid instances where IAs are delayed or published late.

I hope this response addresses the Committee's concerns and clarifies the Government's position. My department will continue to push the importance following better regulation procedure and I thank the SLSC for its work in helping to highlight this.

I am copying this letter to Mr Gibson, Chair of the RPC.

7 October 2021

APPENDIX 2: CORRECTION BY DHSC OF INFORMATION ON THE DISSOLUTION OF PUBLIC HEALTH ENGLAND

Letter from Maggie Throup MP, Parliamentary Under Secretary of State for Vaccines and Public Health, to Lord Hodgson of Astley Abbotts

It has been brought to my attention by the Committee Clerk that there was an inaccuracy in the Explanatory Memorandums (EMs) for two Statutory Instruments (SIs) recently laid.

In the Secondary Legislation Scrutiny Committee's 13th Report House of Lords - Thirteenth Report - Secondary Legislation Scrutiny Committee (parliament.uk), the EMs for the Public Health England (PHE) (Dissolution) (Consequential Amendments) Regulations 2021 (SI 2021/974) and the Transfer of Undertakings (Protection of Employment) (Transfer of Public Health England Staff) Regulations 2021 (SI 2021/975) stated that health functions would be transferring from Public Health England to the Care Quality Commission (CQC).

The reference to CQC is incorrect and results from an administrative error. I can confirm that no functions from PHE have transferred to CQC, and that the reference to CQC has no bearing on the SI, or the effect of the SI itself. We have withdrawn the EMs and laid new EMs removing this reference. I apologise on behalf of the Department for this error, and trust that our efforts have sufficiently addressed the issue.

The EMs also reference the Office for Health Promotion, which was the interim name for the part of the Department of Health and Social Care that from the 1st October is responsible for improving the nation's health and tackling health inequalities. Since the EMs were laid, we have announced that this important capability will be named the Office for Health Improvement and Disparities. We have taken the opportunity of re-laying also to update the relevant references.

Thank you to the Committee for bringing this to my attention.

11 October 2021

APPENDIX 3: CORRESPONDENCE WITH THE LORD PRESIDENT OF THE COUNCIL AND LEADER OF THE HOUSE OF COMMONS AND VICTORIA PRENTIS MP, MINISTER FOR FARMING, FISHERIES AND FOOD, DEFRA, ON THE DRAFT ORGANICS (EQUIVALENCE AND CONTROL BODIES LISTING) (AMENDMENT) REGULATIONS 2021

Letter from Lord Hodgson of Astley Abbotts, Chair of the Secondary Legislation Scrutiny Committee to the Rt Hon. Jacob Rees-Mogg MP, Lord President of the Council and Leader of the House of Commons

Thank you for your letter of 6 July in response to my letter to you of 16 June, written in my capacity as Chair of the Secondary Legislation Scrutiny Committee (SLSC).

One of the issues raised in our exchange of correspondence concerned the blurring of the distinction between legislation and guidance, and we welcome your clear statement that "where guidance accompanies legislation, it is important that it describes the effect of the legislation accurately".

In our most recent report, our 11th Report of this session, we raise another matter which similarly brings into play broad constitutional concerns about the relationship between the legislature and the executive, and the role of Parliament in scrutinising legislation and calling the government to account.

The issue on this occasion arises in relation to the Draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021, laid by the Department for the Environment, Food and Rural Affairs. These Regulations 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. In our report, we say that we are unconvinced by the argument that the current legislative process for updating the list is "extremely time-consuming for both officials and Parliament" and we say that there should be parliamentary oversight of updates to lists. We challenge 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, and 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.

The Committee would welcome your views on this further example of a shift in the balance away from Parliament towards the executive. We are meeting next on Tuesday 7 September. If you were able to respond in advance of that meeting, I would be most grateful.

The following is a link to the Committee's report 11th Report

Letter from the Lord President to Lord Hodgson of Astley Abbotts

Thank you for your letter of 28 July following your 11th report of the session, in which you raised concerns about the legislature and the executive, and the role of Parliament in scrutinising legislation and holding the government to account.

Your letter specifically referenced a Department for Environment, Food and Rural Affairs SI, the Draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021. I have asked the department to write to you to provide further details and I hope the assurances they provide are satisfactory. I agree that it is important that Parliament has the opportunity to scrutinise significant changes in addition to streamlining processes to ensure that the regulatory system best serves the needs of British businesses and consumers.

6 September 2021

Letter from Victoria Prentis MP, Minister for Farming, Fisheries and Food, to Lord Hodgson of Astley Abbotts

I am writing in response to your letter to the Leader of the House of Commons, dated 28 July, in which you referenced the Draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021.

You raised a number of questions about the impact of using Statutory Instruments (SIs) to make small technical amendments, loss of parliamentary oversight, and about trade with Northern Ireland. This response will set out that: While Statutory Instruments are an appropriate mechanism for many legislative changes, in the case of these registers, the time taken for a Statutory Instrument is detrimental to trade. The changes in question are based on extensive technical evaluations of standards, and as such are most appropriately handled at an official level. Trade with Northern Ireland is not affected by this statutory instrument, where as a result of the Northern Ireland protocol European Union organics regulations will continue to apply. The UK government has put in place significant measures to support businesses that may be impacted.

In response to the comments in paragraph 4 of your letter about the suitability to Statutory Instruments for such changes: The vast majority of changes that would be covered under this updated process would be very minor changes to information required about control bodies, such as their name, legal address, and other contact details. Although minor, these details are necessary for port health authorities, local authorities, and other relevant parties to ensure that the goods in question have been certified in a recognised third country, or by a recognised third country control body. We are aware of a number of cases in which a minor change to a control body's information has resulted in goods being delayed at a port, due to discrepancies between the details on certification documents and in legislation.

Without the move to online lists effected by this statutory instrument, any amendment, however small, would be delayed by the time taken for a further SI to go through the legislative process. This faster mechanism would enable UK businesses to take advantage for new opportunities to trade more quickly. This allows for a competitive advantage over other nations, such as those within the European Union who are burdened by cumbersome and lengthy processes.

These online lists would provide transparency and easy accessibility for both UK stakeholders and third country officials and businesses. UK stakeholders including port health authorities, organic control bodies, producers, industry groups and other businesses have welcomed the change, as have our international partners such as the United States Department of Agriculture (USDA).

To address your concerns about loss of parliamentary oversight raised in paragraphs 5 and 6 of your letter: We believe given the technical and low

impact nature of these changes, scrutiny at an official level is appropriate. The majority of changes will be simply to details of existing recognitions, and any new equivalence recognitions would be technical decisions based on the details of the standard in question. A third country organics equivalence recognition is based on an extensive technical evaluation of their organic standards to ensure they are comparable and of their enforcement mechanisms to ensure those standards are being met in practice. The final decision will have Secretary of State oversight and, if recognition is agreed, the third country must meet obligations including the provision of annual reports, and notification of infringements or changes to its standards or controls. Recognition of individual third country control bodies will follow a similar technical evaluation process, with requirements for regular reports and notifications of changes or infringements.

Recognition of third countries or third country control bodies as equivalent for the purposes of organic certification simply recognises that they have been produced to sufficiently similar standards that they can be sold as organic in the UK, in the same way as goods produced to UK standards, where they have fulfilled the requirements for non-organic goods of their type. This recognition is a technical matter and only given after the appropriate due diligence and auditing set out above. Organic trade between the UK and any third country taking place under this recognition would still be subject to the provisions of any FTA or treaty, of which Parliament would have full oversight.

Regarding your concerns about the impact on trade with Northern Ireland raised in paragraph 7 of your letter: As a consequence of the Northern Ireland Protocol, Northern Ireland will continue to follow EU regulations around organics, including the recognition of third countries and third country control bodies. This statutory instrument does not alter that arrangement. As such, any new equivalence decisions that apply to Northern Ireland will be a result of decisions made by the European Commission to recognise third countries or third country control bodies and are not subject to UK Parliamentary oversight. As the UK is no longer a member of the European Union neither the UK Government nor the Northern Ireland Executive will have input on these decisions.

We are committed to supporting businesses with issues that arise from these changes and have put in place measures to avoid any adverse impacts on trade between Great Britain and Northern Ireland, in both directions.

Organic goods moving from Northern Ireland to Great Britain will continue to have unfettered access: a certificate of inspection attesting to their organic status is not required.

For organic goods travelling from Great Britain to Northern Ireland, certificates of inspection are required (with the exception of those covered by the UK Trader Scheme[26] until 1 November 2021). The UK Government is financing the costs of these certificates via the Movement Assistance Scheme[27], which will be in place until at least December 2023. Under this scheme, when businesses contract a UK organic control body to certify their goods they will not be charged, and the control body will invoice the government for those costs. Financial support is

26 HM Revenue & Customs, 'Apply for authorisation for the UK Trader Scheme if you bring goods into Northern Ireland' (13 September 2021): https://www.gov.uk/guidance/apply-for-authorisation-for-the-uk-trader-scheme-if-you-bring-goods-into-northern-ireland [accessed 13 October 2021]

27 Department for Environment Food & Rural Affairs, 'Traders: how to get advice and which costs are covered' (27 September 2021): https://www.gov.uk/government/publications/movement-assistance-scheme-get-help-with-moving-agrifood-goods-to-northern-ireland/traders-how-to-get-advice-and-which-costs-are-covered [accessed 13 October 2021].

also available for importer and exporter licensing costs, where the business would not previously have incurred those costs. To support businesses in the longer term, the Digital Assistance Scheme[28] will be phased in from 2023 onwards for organics. DAERA and DEFRA are working on developing this, and engagement with industry is ongoing.

Please do not hesitate to get in touch if you need further information.

6 September 2021

Letter from Lord Hodgson of Astley Abbotts to Victoria Prentis MP

Thank you for your letter of 6 September in response to my letter of 28 July to the Leader of the House of Commons about concerns in relation to the draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021, written in my capacity ;as Chair of the Secondary Legislation Scrutiny Committee (SLSC).

We considered your letter in some detail at our meeting yesterday. While it provided some helpful information about the nature of some of the changes that will in future be made administratively as well as about the arrangements with regard to Northern Ireland, we found that it did not address our main concern: under the new rules, the Secretary of State will be able to make new equivalence decisions on third countries in relation to their standards on organic products using an administrative process. Your letter referred to these decisions as "technical" matters with a "low impact" which would be made only after the "appropriate due diligence and auditing" and be subject to oversight by the Secretary of State. We take the view, however, that making an equivalence decision on a third country will almost certainly be more important than suggested. We therefore remain concerned that these decisions have been removed from the oversight of Parliament by switching from a legislative to a purely administrative process. As we explained in our letter to the Leader of the House of Commons, the Secretary, of State's general accountability to Parliament is not a suitable replacement for parliamentary oversight of individual decisions by the Secretary of State in relation to third country equivalence decisions.

We would be grateful if you could give our concerns about bypassing Parliament in this way further thought. We will be meeting next on 12 October. If you were able to respond in advance of that meeting, that would be most helpful.

15 September 2021

Letter from Victoria Prentis MP to Lord Hodgson of Astley Abbotts

I am writing in response to your letter of 15 September which responds to my letter of 6 September, regarding the Secondary Legislation Scrutiny Committee's concerns about the draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021.

The purpose of this Statutory Instrument is to streamline the process through which lists of third countries and third country control bodies are maintained. This will save Parliamentary time and meet the requests of our stakeholders, who

28 Department of Agriculture, Environment and Rural Affairs, 'Developing the Digital Assistance Scheme (DAS)': https://www.daera-ni.gov.uk/articles/developing-digital-assistance-scheme-das [accessed 13 October 2021].

rely on accurate and up-to-date lists to carry out necessary and time-sensitive border checks.

I am pleased that the SLSC found my letter helpful in explaining the arrangements with regards to Northern Ireland.

I note that the SLSC's outstanding concern relates to the power that the new rules will give the Secretary of State to make equivalence decisions on third countries in relation to their organic standards. I would like to reassure the SLSC that the process for allowing third country products to be placed on the GB market as organic remains robust, and follows highly technical criteria set out in the retained organics regulations – Council Regulation 834/2007 and Commission Regulations 889/2008 and 1235/2008. For an imported product to be placed on the GB market as organic, it must be certified by a control authority or control body which has been recognised as having equivalent standards to GB or have been produced in a third country which has been recognised as having equivalent standards.

The draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021 do not seek to change or reduce the conditions for third country recognition. The procedure for requesting inclusion in the list of third countries is set out in Article 8 of Regulation 1235/2008: when a third country applies for equivalence recognition for the purpose of organics trade, it must provide all necessary information, including details of its control system and production standards, on the basis of which a decision can be made. Any recognition will be reviewed on a regular basis to ensure the equivalent high standards are maintained; once a third country has been recognised, that recognition is limited to a period of three years. The Secretary of State may recognise a third country as having equivalent organic standards only once they are satisfied that these criteria for recognition have been met. If these standards cease to be met, or the third country does not meet its continuing obligations, the recognition may be withdrawn. Additionally, a third country recognition is generally part of a wider trade agreement, which would require Parliamentary ratification.

I hope that the further relevant legislation noted above will reassure the SLSC that the draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021 make no changes to the technical criteria by which equivalence of third countries and third country control bodies will be assessed. I remain, as always, committed to maintaining the highest standards in the GB organics sector and supporting the important work of the SLSC.

Please do not hesitate to get in touch if you have any further queries.

13 October 2021

APPENDIX 4: DOMESTIC ABUSE SUPPORT (RELEVANT ACCOMMODATION AND HOUSING BENEFIT AND UNIVERSAL CREDIT SANCTUARY SCHEMES) (AMENDMENT) REGULATIONS 2021 (SI 2021/991)

Additional information from the Ministry of Housing, Communities and Local Government (now the Department for Levelling Up, Housing and Communities)

Q1: Paragraph 7.1 of the EM: What are "dispersed accommodation" and "second stage accommodation"?

A1: There is a statutory guidance document which is being published in time for the commencement of the Regulations which gives detailed descriptions of these types of accommodation

- Dispersed accommodation is safe (secure and dedicated to supporting victims of domestic abuse) which is
    - self-contained accommodation with a similar level of specialist domestic abuse support as provided within a refuge but which may be more suitable for victims who are unable to stay in a refuge with communal spaces, and/or where peer support from other residents may not be appropriate, due to complex support needs, or where older teenage sons cannot be accommodated in a women only refuge, for example. Where two or more units share any part of the accommodation, including shared hallways or access routes, provision should be single gender or single sex.
    - self-contained 'semi-independent' accommodation which is not within a refuge but with support for victims who may not require the intensive support offered through refuge, but are still at risk of abuse from their perpetrator/s. Where two or more units share any part of the accommodation, including shared hallways or access routes, provision should be single gender or single sex.
- Second Stage Accommodation: This is accommodation temporarily provided to victims, including their children, who are moving on from other forms of relevant accommodation and/or who no longer need the intensive level of support provided in a refuge, but would still benefit from a lower level of domestic abuse specific support for a period before they move to fully independent and settled accommodation. Where second stage accommodation is in shared housing it should be single gender or single sex. There is no expectation that every victim will require this. Many victims are ready to move straight to a settled new home from refuge. However, second stage accommodation (sometimes known as 'move-on') may be helpful in some cases.

Q2: Paragraph 7.6: Could you provide some examples of persons acting in an official capacity who could provide written evidence? How easy is it for claimants to obtain such written evidence or is this a potential obstacle to making a claim, especially if claimants find themselves in a crisis situation?

A2: 'person acting in an official capacity' is defined in the regulations:

- "person acting in an official capacity" means a health care professional, a police officer, a registered social worker, the victim's employer, a representative of the victim's trade union, or any public, voluntary, or charitable body which has had direct contact with the victim in connection with domestic violence
    - And within that
    - "registered social worker" means a person registered as a social worker in a register maintained by—
    - Social Work England;. Social Care Wales; The Scottish Social Services Council; or the Northern Ireland Social Care Council;
- Any person who has received support from a sanctuary scheme will have had contact with a person who meets this definition and could ask for them to provide this confirmation

27 September 2021

APPENDIX 5: PUBLIC INTEREST MERGER REFERENCE (PERPETUUS ADVANCED MATERIALS PLC) (PRE-EMPTIVE ACTION) ORDER 2021 (SI 2021/993)

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

Q1: Could you provide some more information please about the proposed merger and the commercial significance of Perpetuus in terms of its size (number of employees and annual turnover), its sites in the UK and the nature of its business/products?

A1: Perpetuus Advanced Materials are a producer of Surface Modified Graphenes (SMGs) based in South Wales. Perpetuus have three sites in the UK (Swansea, Newport and Ammanford) with a 2020 turnover of £479,001. We believe that there are currently 14 employees.

Q2: What might be relevant national security considerations in this particular case?

A2: The Secretary of State has reviewed the evidence presented to him and believes that the public interest test of National Security has been met. Surface Modified Graphenes can be used in a number of sensitive sectors that can cause a rise to national security concerns.

Q3: What type of business is Taurus and is any information available about Dr Zhongfu Zhou?

A3: Taurus International Limited is a private limited company with its nature of business defined as 'engineering design activities for industrial process and production'. Dr Zhongfu Zhou is an associate of Perpetuus Advanced Materials and is listed on their website.

Q4: What does it mean that Dr Zhou or Taurus propose to acquire Perpetuus (as stated in the EM)? Is there some uncertainty about who is proposing the takeover?

A4: A current lack of information means that the public interest intervention notice and pre-emptive action order were drafted to capture the investment prior to any terms being released.

Q5: Is there some more information available about the CMA investigation process – with whom will the CMA consult?

A5: The CMA have been instructed by the Secretary of State to begin a Phase 1 investigation under the Enterprise Act 2002. The CMA will publish an invitation to comment seeking third party views on competition and public interest issues and will complete a report on jurisdictional and competition issues, which are binding on the Secretary of State, and pass on a summary of representations received on public interest matters. It is for the Secretary of State to decide whether to accept undertakings from the parties in lieu of a referral to a Phase 2 investigation.

If the matter is progressed to a Phase 2 investigation, the CMA will appoint a Phase 2 Inquiry Group, which will conduct a more detailed investigation taking views from interested parties such as the government. The Phase 2 Inquiry Group will report to the Secretary of State making recommendations on the public interest issues.

24 September 2021

APPENDIX 6: 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 12 October 2021, Members declared the following interests:

Draft Green Gas Support Scheme Regulations 2021

Lord Hodgson of Astley Abbotts
Owner of land used to grow biomass for fuel
Lord Hutton of Furness
Chair, Energy UK
The Earl of Lindsay
Owner of land used to grow biomass for fuel

Domestic Abuse Support (Relevant Accommodation and Housing Benefit and Universal Credit Sanctuary Schemes) (Amendment)Regulations 2021 (SI 2021/991) and one related instrument

Baroness Watkins of Tavistock
Chair, Look Ahead Care and Support Limited

Attendance:

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Chartres, Lord Cunningham of Felling, Lord German, Lord Hodgson of Astley Abbotts, Lord Hutton of Furness, the Earl of Lindsay and Baroness Watkins of Tavistock.