HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

19th Report of Session 2021–22

Instruments under the European Union (Withdrawal) Act 2018: Proposed Negative Instruments

Includes information paragraphs on:

1 instrument relating to COVID-19

Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021

Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2021

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Secondary Legislation Scrutiny Committee

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

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

And, to scrutinise –

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

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

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

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

Members

Baroness Bakewell of Hardington Mandeville
Rt Hon. Lord Chartres
Rt Hon. Lord Cunningham of Felling
Lord German
Viscount Hanworth
Lord Hodgson of Astley Abbotts (Chair)
Rt Hon. Lord Hutton of Furness
The Earl of Lindsay
Lord Lisvane
Lord Sherbourne of Didsbury
Baroness Watkins of Tavistock

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.

Nineteenth Report

INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Consideration of proposed negative instruments under Schedule 8 to the European Union (Withdrawal) Act 2018

Proposed negative statutory instrument about which no recommendation to upgrade is made

- Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2021

INSTRUMENTS RELATING TO COVID-19

Changes to business practice and regulation

Draft Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021

1. This draft Order proposes to extend the scope of the Primary Authority scheme, as provided under the Regulatory Enforcement and Sanctions Act 2008, to include regulations made under the Public Health (Control of Disease) Act 1984 dealing with public health protection. According to the Department for Business, Energy and Industrial Strategy (BEIS), this will have the effect of enabling businesses to form Primary Authority partnerships with local authorities in England in relation to public health protection, including in the context of a future pandemic.

2. The Primary Authority scheme was launched in 2009 and is a way for businesses to receive assured and tailored advice on meeting regulatory requirements, for example in relation to environmental health or trading standards, through a single point of contact. Advice provided through a Primary Authority must be respected by other local regulators. Primary Authority is based on legal partnerships between businesses and individual local authorities; businesses may set up their own partnership or belong to a trade association with an existing partnership.

3. BEIS explains that in 2020 around 46,000 businesses with an existing Primary Authority partnership (covering a different regulatory area) were receiving informal advice on complying with regulations dealing with the pandemic. The changes proposed by this instrument would enable these businesses to access consistent and reliable advice on compliance with public health protection regulations, thereby supporting preparations for any future public health emergency, including a future pandemic. The Department says that businesses, local authorities, and trade associations have requested the extension of the Primary Authority scheme to enable a more uniform approach to the interpretation and application of public health protection regulations.

INSTRUMENTS OF INTEREST

Draft Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021

4. These draft Regulations propose new reporting obligations for certain UK registered companies, including certain listed companies and companies with more than 500 employees and a turnover of more than £500 million, which would require them to report climate-related financial information as part of their Strategic Report, in line with the recommendations of the industry-led Taskforce on Climate-related Financial Disclosures (TCFD).[1] The additional information will describe a company's governance, strategy, risk management, performance indicators and targets in relation to climate change. The Department for Business, Energy and Industrial Strategy (BEIS) says that the new requirements are to support the UK's transition towards net zero greenhouse gas emissions by 2050, by improving the way investors, policymakers, civil society and businesses are informed of the likely impacts of climate change, thereby enabling investment decisions to reflect climate risks better, leading to a more climate-resilient economy. The new requirements are to come into force on 6 April 2022 and would apply in relation to any financial year of a company which commences on or after that date.

5. The Department says that the draft Regulations form part of wider efforts to make climate-related financial disclosures mandatory across the UK economy, and that a further instrument will be laid under the negative procedure in December to make equivalent changes in relation to certain limited liability partnerships (LLPs). According to BEIS, regulatory action is needed because the current voluntary approach "is unlikely to be effective": while the TCFD framework is widely supported, current levels of disclosure across the economy are low and reporting quality varies significantly.

6. The Department expects annual net costs of £145.3 million (in 2019 prices) for businesses covered by these draft Regulations and by the further instrument which will make provisions for LLPs. We note that the Department will produce guidance on the new reporting requirements which, according to the Impact Assessment, will be around 125 pages long. This suggests a considerable degree of complexity. In the absence of the actual guidance, it is difficult to form a view of the nature and extent of the new reporting requirements, and how robust the Department's assessment of the impact on businesses is.

Draft Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2021

7. The Prevention of Terrorism Act 2005 (the "2005 Act"), provides the Home Secretary with the power to impose certain measures on an individual, whom she reasonably believes has been involved in terrorism-related activity that may put the public at risk. For example, she may restrict the person's movements, finances, and communications with others. Such measures are imposed by means of a "TPIM notice", and the duration and terms of

1 Task Force on Climate Related Financial Disclosures, *Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures* (June 2017): https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf [accessed 15 November 2021].

these notices have recently been strengthened by the Counter-Terrorism and Sentencing Act 2021. There are five such notices currently in operation.[2]

8. TPIMs are civil preventative measures used to manage the threat posed by terrorists who cannot be prosecuted for a terrorism-related offence or deported in the case of foreign nationals. The 2005 Act contains a review clause which allows this provision to expire after five years unless renewed by the Home Secretary. This Order makes no change to the TPIM notices regime but extends their availability to 14 December 2026.

2 See HLWS 329, Session 2021–22.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Made instruments subject to affirmative approval

Draft	Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021
Draft	International Organization for Marine Aids to Navigation (Legal Capacities) Order 2022
Draft	Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Order 2022
Draft	Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021
Draft	Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2021

Instruments subject to annulment

HC 803	Statement of changes in Immigration Rules
SI 2021/1218	Money Laundering and Terrorist Financing (Amendment) (No. 3) (High-Risk Countries) Regulations 2021
SI 2021/1221	Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021
SI 2021/1222	Housing (Right to Buy) (Designated Rural Areas and Designated Regions) (England) Order 2021
SI 2021/1229	Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021
SI 2021/1231	Births and Deaths Registration (Electronic Communications and Electronic Storage) Order 2021
SI 2021/1235	Trade Marks and International Trade Marks (Amendment) (EU Exit) Regulations 2021
SI 2021/1242	Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Miscellaneous Amendments) Regulations 2021

APPENDIX 1: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 16 November 2021, Members declared no interests.

Attendance:

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord German, Viscount Hanworth, the Earl of Lindsay, Lord Lisvane, and Lord Sherbourne of Didsbury.